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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1853

PALANI KARUPAIYAN,
Appellant

v.

INTERNATIONAL SOS; ACCESS STAFFING, LLC; KAPITAL DATA CORP; DESSI NIKOLOVA, Individually and in her official capacity as director, product engineering of the international SOS; GREGORY HARRIS, Individually and in his official capacity as team leader, mobile applications of the international SOS; KUMAR MANGALA, Individually and in their official capacity as founder and CEO of the Kapital Data Corp; MIKE WEINSTEIN, Individually and in his official capacity as principal product engineering of the Access Staffing LLC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-19-cv-02259)
District Judge: Honorable Petrese B. Tucker

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 1, 2021
Before: GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges

(Opinion filed: December 22, 2021)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Palani Karupaiyan was employed by International SOS, through some combination of contractual arrangements with Access Staffing and Kapital Data, as a software engineer. Proceeding pro se, he filed in the District Court a complaint against these companies and numerous individuals, claiming that the termination of his contract and subsequent decision not to hire him for another position were the result of discrimination on the basis of his race, ethnicity, national origin, and disability, in violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and other federal and state laws.

Identifying even these few basic details in the complaint is difficult, as it lacked any comprehendible factual narrative. Defendants moved to dismiss. Karupaiyan then sought numerous extensions, responded to the individual defendants' motions, and filed his first amended complaint. The first amended complaint cited, in the District Court's words, "a hornbook's worth of additional statues," which the defendants allegedly violated. Order 2–3, ECF No. 70. Addressing defendants' second round of motions, the District Court held that the first amended complaint failed to comply with Federal Rule of Civil Procedure 8(a),[1] and entered an order of dismissal without prejudice, ordering Karupaiyan to file his second amended complaint within thirty days.

A month after that deadline passed, Karupaiyan filed a second amended complaint

[1] Rule 8(a) requires, among other things, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

that was even longer than—and equally unintelligible as—the first. Defendants again moved to dismiss, and Karupaiyan responded by moving for summary judgment. The District Court dismissed the complaint with prejudice, explaining that Karupaiyan failed to comply with its prior order and that further amendment would be futile. See Order 3–8, ECF No. 70 (citing, inter alia, Fed. R. Civ. P. 8(a), 10(b), 41(b)). Karupaiyan timely moved the District Court for reconsideration, which was denied. Karupaiyan now appeals.[2]

In certain cases, there may be good reasons to give a plaintiff, particularly a pro se one, multiple shots at amendment. That said, "the question before us is not whether we might have chosen a more lenient course than dismissal . . . but rather whether the District Court abused its discretion in ordering the dismissal." Garrett v. Wexford Health, 938 F.3d 69, 92 (3d Cir. 2019). There was no such abuse here. Karupaiyan has had multiple opportunities to persuade a court that he could adequately plead his claims—his original complaint, two amended complaints, responses to defendants' motions to dismiss, motion for reconsideration, and, most recently, appellate brief—and he has missed with each. See id. at 93 ("[A] district court acts within its discretion when it

[2] Karupaiyan originally appealed the order dismissing his second amended complaint. We stayed our proceedings pending disposition of his motion for reconsideration. He filed an amended notice of appeal when it was denied, so our review encompasses that order, as well. See R. 4(a)(4)(B)(ii); United States v. McGlory, 202 F.3d 664, 668 (3d Cir. 2000) (en banc). We have jurisdiction under 28 U.S.C. § 1291. Our review is for abuse of discretion. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999) (reconsideration review); In re Westinghouse Sec. Litig., 90 F.3d 696, 702 (3d Cir. 1996) (Rule 8 review).

dismisses an excessively prolix and overlong complaint, particularly where a plaintiff declines an express invitation to better tailor [his] pleading.").

Karupaiyan argues on appeal that the District Court's order dismissing his first amended complaint did not give him sufficient instructions on how to comply with Rule 8. See Appellant Br. 11–13. First, we disagree and find that the District Court gave Karupaiyan adequate information in its first order of dismissal. See Order 5–6, ECF No. 46. Second, "[d]istrict judges have no obligation to act as counsel or paralegal to pro se litigants." Pliler v. Ford, 542 U.S. 225, 231 (2004).

We conclude that dismissal of the second amended complaint on Rule 8 grounds was appropriate and detect no error in the District Court's denial of reconsideration. Accordingly, the District Court's judgment will be affirmed.

UNITED STATES COURT OF APPEALS
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INTERNATIONAL SOS; ACCESS STAFFING, LLC; KAPITAL DATA CORP; DESSI NIKOLOVA, Individually and in her official capacity as director, product engineering of the international SOS; GREGORY HARRIS, Individually and in his official capacity as team leader, mobile applications of the international SOS; KUMAR MANGALA, Individually and in their official capacity as founder and CEO of the Kapital Data Corp; MIKE WEINSTEIN, Individually and in his official capacity as principal product engineering of the Access Staffing LLC

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Submitted Pursuant to Third Circuit LAR 34.1(a)
December 1, 2021
Before: GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on December 1, 2021. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the orders of the District Court

entered April 22 and June 28, 2021, be and the same are hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 22, 2021

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PALANI KARUPAIYAN,	:	
	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	**NO. 19-2259**
	:	
INTERNATIONAL SOS, et al.,	:	
	:	
Defendants.		

ORDER

AND NOW, this __22nd__ day of April 2021, upon consideration of Motions to Dismiss from Defendants Access Staffing, LLC (ECF 57), Gregory Harris, International SOS, and Dessi Nikolova (ECF 58) and Kapital Data Corp and Kumar Mangala (ECF 59), and Plaintiff's first Motion for Summary Judgment (ECF 63), Motion for Order Granting 50% Copyright of International SOS and 50% Ownership of Access Staffing and Kapital Data (ECF 64), Plaintiff's second Motion for Summary Judgment (ECF 65) and Plaintiff's third Motion for Summary Judgment (ECF 68) **IT IS HEREBY ORDERED AND DECREED** that:

1. Defendants' Motions are **GRANTED;**
2. Plaintiff's Second Amended Complaint is **DISMISSED WITH PREJUDICE.**[i]
3. Plaintiff's Motions are **DENIED.**

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.

Before this Court are separate motions from Defendants Access Staffing, International SOS, and Kapital Data Corp. to dismiss Plaintiff's Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6), as well as Plaintiff's three motions for Summary Judgment and Motion for fifty-percent (50%) Copyright of International SOS and fifty-percent (50%) Ownership of Access Staffing and Kapital Data.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 23, 2019, Plaintiffs Palani Karupaiyan and Karupaiyan Consulting Inc. first filed a complaint against Defendants International SOS Assistance, Inc., Dessi Nikolova, Gregory Harris, Access Staffing LLC, Kapital Data Corp and Kumar Mangala. Pls.' Compl. (ECF 1). Karupaiyan's complaint made claims for race, color, citizenship and national origin discrimination, age, genetic information, retaliation, and hostile work environment under Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age and Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act. Pls.' Compl. ¶ 1.

Karupaiyan is a naturalized U.S. citizen of Indian origin born with situs inversus totalis, a genetic condition that causes organs to be flipped from their standard locations in the body. Pls. 2nd Am. Compl. 3. On January 18, 2019, Karupaiyan, who has over twenty years' experience as a software developer, was offered a one-year contract position as a software engineer by Defendants International SOS, Access Staffing LLC, and Kapital Data Corp. *Id.* at 4 and 12. The suit stems from the Defendants' failure to hire Plaintiff as a full-time software engineer, and subsequent dismissal from the team. Pls' Second Amended Complaint ¶ 1.

After the three sets of defendants—(1) Kapital Data Corp and Kumar Mangala, (2) Access Staffing, and (3) International SOS—first moved to dismiss in July 2019, Plaintiff filed a December 2019 response and an amended complaint that sought relief under a hornbook's worth

of additional statutes, including the Racketeer Influenced Corrupt Organizations Act and the Copyright Act of 1976, among many others. Pls.'Am. Compl. 38. In January 2020, Defendants filed a new set of motions to dismiss the First Amended Complaint, which this Court granted for failure to comply with Federal Rule of Civil Procedure 8. First Or. Dismissing Complaint (ECF 46). On July 6, 2020, Plaintiff filed his Second Amended Complaint, and on July 20, Defendants filed three motions to dismiss.

II. STANDARD OF REVIEW

The Federal Rules of Civil Procedure provide that all pleadings which state a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 8 "[o]perates in tandem with . . . Rule 10," which requires that a pleading contain a caption with the Court's name and the names of the parties, and that claims be listed in numbered paragraphs. *Fabian v. St. Mary's Med. Ctr.*, No. 16-4741, 2017 WL 3494219, at *3 (E.D. Pa Aug. 11, 2017) (citing Fed. R. Civ. P. 10). A district court may *sua sponte* dismiss a complaint that does not comply with Rule 8 if "the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Tillio v. Spiess*, 441 F. App'x 109, 110 (3d Cir. 2011) (quoting *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995)).

In determining whether a pleading conforms with Rule 8, the Court should consider "whether, liberally construed, a pleading 'identifies discrete defendants and the actions taken by these defendants' in regard to the plaintiffs' claims." *Garrett v. Wexford Health*, 938 F.3d 69, 93 (3d Cir. 2019) (citations omitted). A pleading may still satisfy the "plain" statement requirement "even if it is vague, repetitious, or contains extraneous information" and "even if it does not include every name, date, and location of the incidents at issue." *Id.* at 93–94. The important

consideration for the Court is whether "a pro se complaint's language . . . presents cognizable legal claims to which a defendant can respond on the merits." *Id.* at 94. However, "a pleading that is so 'vague or ambiguous' that a defendant cannot reasonably be expected to respond to it will not satisfy Rule 8." *Id.* at 93.

III. DISCUSSION

A. The Complaint still fails to properly allege facts that support the claims made, and Plaintiff has shown no ability to do so after three attempts

In their joint Motion to Dismiss, Defendants Access Staffing and Mike Weinstein ("Access Defendants") argue that Plaintiff's Second Amended Complaint should be rejected under Fed. R. Civ. P. 41(b), for failing to comply with Federal Rules of Civil Procedure 8 and 10. Plaintiff's latest amended complaint was filed a month after the June 5, 2020 deadline to file a Second Amended Complaint given in this Court's last order to dismiss. (ECF 46). Under Federal Rule of Civil Procedure 41(b), an action can be dismissed if the plaintiff fails "to comply with these rules or a court order". Such a dismissal is fully within the discretion of a district court. *Mindek v. Rigatti*, 964 F.2d 1369 (3d Cir. 1992).

Fed. R. Civ. P. 8(a)(2) requires a pleading to make a "short and plain statement of the claim showing that the pleader is entitled to relief" for it to properly state a claim for relief. Fed. R. Civ. P. 10(b) requires parties to state their claims or defenses in numbered paragraphs, with each one limited "as far as practicable to a single set of circumstances". While pleadings must be liberally construed, owing to Plaintiff's *pro se* status, those liberal pleading provisions do not foreclose dismissal for violation of Rule 8. *See Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003); *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239 (3d Cir. 2013) ("pro se litigants still must allege sufficient facts in their complaints to support a claim.").

Plaintiff's Second Amended Complaint (SAC), despite the multiple opportunities given to amend his complaint, continues to fail the test set forth by Rules 8 and 10. The new-look complaint has largely the same problems as the old one and is noticeably longer. It clocks in at over 200 paragraphs—growing from the 136 paragraphs in the First Amended Complaint; contains an extra ten pages—not counting exhibits tacked to the end of either; and adds two counts to the charge—one for "Civil Conspiracy" and the other for unjust enrichment. *Compare* 1st Am. Compl., *and* 2nd Am. Compl. (ECFs 29 and 56) (showing persistent pleading problems). Further, the SAC does not specify which of the defendants each of the counts is directed toward. Instead, the counts attempt to reiterate the overarching narrative, each ending with the following obtuse sentence:

"The stated reasons for The Defendant's conduct were not the true reasons, but instead were pretext to hide the Defendant's retaliatory animus." 2nd Am. Compl. 32-49.

The Court has already flagged these issues for Plaintiff in its last order. Specifically, we highlighted the Complaint's extreme length, combined with the "laundry list" of remedies sought, and the nearly identical vague claim for each count. These problems in the first Complaint made it impossible for Defendants to comprehend the specific conduct driving Plaintiff's claims. 1st Or. Dismissing Compl. (ECF 46). These problems have not been cured. The Access Defendants contend that, "the SAC consists of nonsensical paragraphs, seemingly out of place and unnecessary exhibits, and lengthy ramblings," and despite that length, "Neither the allegations, nor the causes of action, nor the parties against whom Plaintiff purports to bring these allegations, are clearly delineated." Def.'s Mot. To Dismiss (ECF 57). We agree.

While *pro se* litigants may be afforded some leeway, the circuit has repeatedly upheld dismissals of amended complaints from *pro se* litigants in similar circumstances. For instance, in

Moody v. City of Philadelphia, a district court's dismissal of a second amended complaint was upheld where the Plaintiff had failed to specify which defendant had caused his alleged injuries. 810 F. App'x. 169 (3d. Cir. 2020). A plaintiff's suit alleging discrimination that did not point to contextual or "factual matter sufficient to nudge its claims across the line from conceivable to plausible" was also properly dismissed after a second amended complaint was filed. *White v. Barbe*, 767 F. App'x 332, 335 (3d Cir. 2019) (quoting *EEOC v. Port Auth. of N.Y. & N.J.*, 768 F.3d 247, 254 (2d Cir. 2014)). According to the court, the second amended complaint did not meet the strictures of Rule 8 because it failed to move beyond "tender[ing] naked assertions devoid of further factual enhancement". *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 at 557 (2007)). What ties together all of these cases is that pleading defects were detailed specifically to the plaintiffs, and there was no improvement in the subsequent amended complaint. A plaintiff's lack of responsiveness to pleading problems lends support to an "implicit conclusion that granting leave to amend would be futile." *Tekman v. Berkowitz*. 639 F. Appx 801, 807 (3d. Cir. 2016). The Court is reaching a similar conclusion here.

B. Second Amended Complaint is untimely

In addition to the rampant pleading issues, Plaintiff's amended complaint was filed a month after the June 5, 2020 deadline to file a second amended complaint given in this Court's last order to dismiss. (ECF 46). The Access Defendants argue this delay also necessitates dismissal under Rule 41(b). In evaluating the decision to dismiss under Rule 41(b), we look to the six part test articulated in *Poulis v. State Farm Fire and Casualty Co.*:

> (1) the extent of the *party*'s personal *responsibility;* (2) the *prejudice* to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a *history* of dilatoriness; (4) whether the conduct of the party or the attorney was *willful* or in *bad faith;* (5) the effectiveness of sanctions other

than dismissal, which entails an analysis of *alternative sanctions;* and (6) the *meritoriousness* of the claim or defense.
747 F.2d 863, 868 (3d Cir. 1984).

On the question of (1) party personal responsibility, Plaintiff, as a self-represented party, is solely responsible for the timeliness of his filings. On the question of (2) prejudice to the other party, the Access Defendants argue that they have been prejudiced by being forced to respond to Plaintiff's "futile" pleadings with "extensive briefing" to counter his allegations. Access Def.'s Mot. To Dismiss (ECF 57-1) at 15. This is the same kind of harm to the defendant detailed in *Poulis*, where interrogatories going unanswered forced the defendant to file a motion to compel answers and write a pretrial statement without seeing documents from opposing counsel. 747 F.2d at 868. As to (3) history of dilatoriness, Plaintiff has asked for extensions ranging from 90 to 120 days and even six months to respond to motions from each of the Defendants in this case. *See* ECFs 18, 22, 23, 38, and 60. Plaintiff has also delivered filings substantially later than court-imposed deadlines, including the SAC that is the subject of this order.

There is some question as to whether Plaintiff's lack of timeliness was "willful"—Plaintiff cites a litany of health problems, changes of address, and work on a separate complaint in a lawsuit proceeding in another district in his motion seeking an extra two months to file the SAC. Mot. For Extension (ECF 53). The *Poulis* test for "[W]illful" conduct "involves intentional or self-serving behavior" that would be "characterized as flagrant bad faith," which is not present here. *Briscoe v. Klaus*, 538 F.3d 252, 262 (3d Cir. 2008) (quoting *Adams v. Trustees of N.J. Brewery Employees' Pension Trust Fund*, 29 F.3d 863, 875 (3d Cir.1994)).

Prong (5) of the factors asks the court to weigh the effectiveness of sanctions other than dismissal. One possible alternative would be the imposition on counsel of expenses incurred by opposing parties from failure to comply with court orders. As Plaintiff is proceeding *pro se*, such

sanctions would be useless here. *Briscoe* at 262-263. Furthermore, Plaintiff has gotten two chances to amend his pleadings, after receiving notice of problems over a year before the motions this order addresses were filed.

Lastly to factor (6) on the merit of a claim, this is determined by 12(b)(6) standards; whether these allegations, if established at trial, would support recovery by Plaintiff. *Briscoe v. Klaus*, 538 F.3d at 263 (citing *Poulis* 747 F.2d at 870). The failure of the SAC and every version of this lawsuit to comply with Rules 8 and 10 constitutes a lack of merit on this prong. The failure of Plaintiff to satisfy five out of these six prongs tilts in favor of dismissal.

Given Plaintiff's inability to properly plead his claims, in tandem with his inability to file the latest complaint on time, Defendants' motions are granted and the Second Amended Complaint is dismissed.

C. Plaintiff's Motions for Summary Judgment

In the time since these motions to dismiss were filed, Plaintiff filed three motions for summary judgment and a motion to grant him fifty-percent (50%) copyright of International SOS' Mobile Assist application and Mobile Web Management application and fifty-percent (50%) ownership of Access Staffing and Kapital Data. (ECFs 53, 64, 65, and 68). These motions are premature and nonsensical. Discovery has not been conducted in this case, the Motion to Dismiss was still pending as of each of the filings, and Plaintiff provides no substantiation for the staggering amounts in damages requested. The Access Defendants correctly note that Plaintiff "fails to point to any evidence establishing that no genuine issue of material fact exists with respect to his claims". Def.'s Letter (ECF 66). In addition to being procedurally premature, the motions are substantively meritless, and for that reason they must be denied.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motions are **GRANTED** and Plaintiff's Motions are **DENIED**.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PALANI KARUPAIYAN,	:	
	:	**CIVIL ACTION**
Plaintiff,	:	
	:	**NO. 19-2259**
v.	:	
	:	
INTERNATIONAL SOS, et al.,	:	
	:	
Defendants.		

ORDER

AND NOW, this __25th__ day of June 2021, under consideration of Palani Karupaiyan's Motion for New Trial (ECF 75), the Defendants' Responses (ECFs 78 and 80), Karupaiyan's Motion for Proposed Complaint (ECF 81), the Defendants' Responses (ECFs 82 and 83), and Karupaiyan's Motion to Seal (ECF 84), **IT IS HEREBY ORDERED AND DECREED** that:

1. The Motion for New Trial is **DENIED**.[1]
2. The Motion for Proposed Complaint is **DENIED**.
3. The Motion to Keep the Docket Under Seal is **DENIED**.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.

[1] Before this Court are Plaintiff Palani Karupaiyan's Motion for a New Trial (ECF 75) and "Motion for Proposed Complaint" (ECF 81), as well as a motion to "keep the docket under seal and stay case until recovery" (ECF 84). All of these motions are denied.

After this Court dismissed Plaintiff's Second Amended Complaint (ECF 70) in an April 22, 2021 Order, a notice of appeal was filed with the Third Circuit Court of Appeals (ECF 71), which was docketed on May 3, 2021. This appeal was followed-up by a motion seeking a new trial, a motion for a "proposed complaint", and a motion to seal the docket "until recovery".

While a docketed appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Georgiou*, 777 F.3d 125, 145 (3d Cir. 2015) (citation omitted), the appeal of the order dismissing Plaintiff's case was stayed pending resolution of his motion for a new trial. ISOS Defs.' Letter June 1, 2021 (ECF 83) 2. Therefore, the motions must be resolved on the merits.

The motion for a new trial and "proposed complaint" (collectively the "new trial motions") are denied, for two reasons. First, trial did not occur, and even if it had, a new trial motion cannot be used to seek rehearing on the merits. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n.5 (2008) ("Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.") (citation and internal quotations omitted).

Secondly, a motion for relief from judgment under Rule 60—as the Court will construe Plaintiff's new trial motions—can only be granted if the moving party is able to demonstrate (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; or (3) fraud, misrepresentation, or misconduct by an opposing party, among other reasons. Fed. R. Civ. P. 60(b). The new trial motions do not even gesture at any of these bases. Plaintiff simply repeats the contention that the Second Amended Complaint in this matter was actually timely—ignoring all of the substantive pleading issues this Court has identified multiple times. Pl.'s Mot. New Trial 2. New motions making the same arguments this Court already rejected will not lead to different results.

For the foregoing reasons, Plaintiff's motions are **DENIED**.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1853

PALANI KARUPAIYAN,
Appellant

v.

INTERNATIONAL SOS; ACCESS STAFFING, LLC; KAPITAL DATA CORP; DESSI NIKOLOVA, Individually and in her official capacity as director, product engineering of the international SOS; GREGORY HARRIS, Individually and in his official capacity as team leader, mobile applications of the international SOS; KUMAR MANGALA, Individually and in their official capacity as founder and CEO of the Kapital Data Corp; MIKE WEINSTEIN, Individually and in his official capacity as principal product engineering of the Access Staffing LLC

(D.C. Civil Action No. 2-19-cv-02259)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS and NYGAARD,* *Circuit Judges.*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

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* Judge Nygaard's vote is limited to panel rehearing only.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: January 19, 2022
JK/cc: Palani Karupaiyan
All Counsel of Record

Additional material from this filing is available in the Clerk's Office.