APPENDIX

INDEX TO APPENDICES

S.D.N.Y. – N.Y.C.
15-cv-7007
Schofield, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of October, two thousand twenty-two.

Towaki Komatsu,

Petitioner,

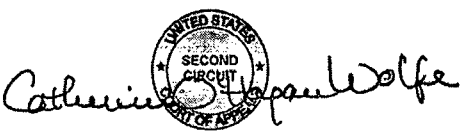
v. 22-1405

NTT Data, Inc., Credit Suisse AG,
AKA Credit Suisse Securities (USA) LLC,

Respondents.

In 2021, this Court entered a leave-to-file sanction against Petitioner. *See Komatsu v. The City of New York*, 2d Cir. 21-511, doc. 92. Petitioner now moves for leave to file this appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED because the appeal does not depart from Petitioner's "prior pattern of vexatious filings." *See In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



From,

Towaki Komatsu

802 Fairmount Pl., Apt. 4B
Bronx, NY 10460
Tel: 347-316-6180
Towaki_Komatsu@yahoo.com

s_/Towaki Komatsu
Plaintiff, Pro Se

Plaintiff's application for reconsideration of the Court's May 17, 2016, Order dismissing the case is denied for the reasons stated in the July 26, 2016, August 22, 2016, October 29, 2018, January 3, 2019, and May 5, 2022, Orders. To the extent the letter is a motion for reconsideration alleging fraud on the court, the motion is denied. The motion does not satisfy the legal requirement of showing by "clear and convincing evidence that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by ... unfairly hampering the presentation of the opposing party's claim or defense." *Passlogix, Inc. v. 2FA Technology, LLC*, 708 F. Supp. 2d 378, 393 (S.D.N.Y. Apr. 27, 2010) (internal quotation marks omitted). The motion seeks to re-litigate issues that have already been addressed, which is legally insufficient.

This case was dismissed and has been closed since May 2016. As the court has previously stated, motions for reconsideration are now, and for several years, have been untimely. Plaintiff has been instructed not to file motions for reconsideration of orders denying a motion for reconsideration. On May 5, 2022, Plaintiff was advised that a filing injunction may be imposed if he continues to file baseless motions. The Second Circuit has identified five factors relevant to the decision to impose a filing injunction: "(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, [including whether the litigant has] an objective good faith expectation of prevailing[]; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties." *Eliahu v. Jewish Agency for Israel*, 919 F.3d 709, 713 (2d Cir. 2019) (quoting *Iwachiw v. N.Y. State Dep't of Motor Vehicles*, 396 F.3d 525, 528 (2d Cir. 2005)). Though the Court is reluctant to impose an injunction, the factors counsel in favor of imposing a filing bar. Accordingly, Plaintiff is barred from filing, without prior leave of the Court, (1) any further documents in this case except for those captioned for the Second Circuit and (2) any further actions in the Southern District of New York against the Defendants arising out of the events alleged in the First Amended Complaint in this action. So Ordered.

Dated: June 28, 2022
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Those e-mails also refer to a computer system known as "Remedy" that recorded information about how I performed my work in 2012 at Credit Suisse. NTT also illegally didn't provide me the records in that Remedy computer system that pertained to the work that I performed in 2012 at Credit Suisse. What the preceding discussion confirms is that by having violated Judge Kotler's 4/12/13 discovery order, NTT was estopped with unclean hands to have been able to be granted its motion to compel arbitration later in that same case on 4/11/14. "It would be anomalous and could lead to inconsistent results" for a party in one case to be able to ignore a judge's order before getting what they want from a subsequent order in that same case.

From,

Towaki Komatsu

s_/Towaki Komatsu
Plaintiff, Pro Se

802 Fairmount Pl., Apt. 4B
Bronx, NY 10460
Tel: 347-316-6180
Towaki_Komatsu@yahoo.com

Plaintiff's letter at Dkt. No 89 is not properly before the Court. Plaintiff's motion for reconsideration is denied as the case was closed more than three years ago. The Court has dismissed the case and the U.S. Court of Appeals has denied the appeal. The Court has also directed Plaintiff to make no further frivolous applications in this action. Plaintiff is warned that, if Plaintiff makes additional frivolous applications, an injunction may be imposed.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff. The Clerk of Court is further directed to strike the letter at Dkt. No. 89 and return to Plaintiff the improperly filed letter at Dkt. No. 89. So Ordered.

Dated: May 5, 2022
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

16-2977
Komatsu v. NTT Data, Inc.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand eighteen.

Present:

BARRINGTON D. PARKER,
DEBRA ANN LIVINGSTON,
DENNY CHIN,
Circuit Judges.

TOWAKI KOMATSU,

Plaintiff-Appellant,

v. 16-2977

NTT DATA, INC., CREDIT SUISSE AG, a/k/a Credit Suisse Securities (USA) LLC,

Defendants-Appellees.

For Plaintiff-Appellant:	TOWAKI KOMATSU, pro se, Bronx, NY.
For Defendant-Appellee NTT Data, Inc.:	CHRISTOPHER NEFF, Moskowitz, Book & Walsh, LLP, New York, NY.
For Defendant-Appellee Credit Suisse AG, a/k/a Credit Suisse Securities (USA) LLC:	DANIEL SHTERNFELD (Stephen M. Kramarsky, *on the brief*), Dewey Pegno & Kramarsky LLP, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Schofield, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Towaki Komatsu ("Komatsu"), pro se, appeals from the district court's dismissal of his claims against Defendants-Appellees NTT Data, Inc. and Credit Suisse AG, a/k/a Credit Suisse Securities (USA) LLC. *See Komatsu v. NTT Data, Inc.*, No. 15-CIV-7007, 2016 WL 2889064 (S.D.N.Y. May 17, 2016). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Under the *Rooker–Feldman* doctrine, "federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments." *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005). "*Rooker–Feldman* directs federal courts to abstain from considering claims when four requirements are met: (1) the plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state court judgment, (3) the plaintiff invites district court review of that judgment, and (4) the state court judgment was entered before the plaintiff's federal suit commenced." *McKithen v. Brown*, 626 F.3d 143, 154 (2d Cir. 2010). We review de novo a district court's application of the *Rooker–Feldman* doctrine. *Hoblock*, 422 F.3d at 83. Having conducted an independent and de novo review of the record in light of these principles, we conclude that the *Rooker–Feldman* doctrine applies here: Komatsu lost in New York state court before he filed this federal lawsuit; he complains of an injury caused by the state court's erroneous interpretation of state law, explaining that the state court's decision "induced and misled" him; and he seeks review and reversal of that judgment. Amended Compl. at 4–5, 7, *Komatsu v. NTT Data, Inc.*, No. 15-CIV-7007 (S.D.N.Y. Sept. 10, 2015), ECF No. 3; *see also*

McKithen, 626 F.3d at 155 (observing that "[t]he proper vehicle for [plaintiff] to challenge the state court's interpretation of [state law] was an appeal to the New York Appellate Division" in concluding that *Rooker–Feldman* applies to bar federal court jurisdiction). The *Rooker–Feldman* doctrine thus deprives this Court and the district court of jurisdiction to review Komatsu's claims.

We have considered each of Komatsu's arguments to the contrary and find them to be without merit. Accordingly, the judgment of the district court is **AFFIRMED**. It is hereby **ORDERED** that Komatsu's May 11, 2018 and May 18, 2018 motions to seal are **GRANTED** to the extent necessary to preserve confidentiality. The Clerk of Court is directed to seal the motions consistent with this order.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOWAKI KOMATSU,

Plaintiff,

-against-

NTT DATA, INC., et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 05/17/2016

15 Civ. 7007 (LGS)

OPINION & ORDER

LORNA G. SCHOFIELD, District Judge:

Pro se Plaintiff Towaki Komatsu brings this action against Defendants NTT Data, Inc. ("NTT Data") and Credit Suisse AG ("Credit Suisse"), pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C § 201 et seq., and New York Labor Law § 215. Plaintiff moves for leave to amend the First Amended Complaint ("FAC"). Having reviewed the parties' memoranda of law and other submissions in connection with the motion, Plaintiff's motion to amend is denied. Furthermore, because Plaintiff's claims must be arbitrated rather than litigated in this forum, the FAC is dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

I. BACKGROUND

A. The Agreement

On January 13, 2012, Plaintiff executed a consultancy agreement (the "Agreement") between Ikam Adeu Corporation ("Ikam") and M.I.S.I. Co., Ltd. ("M.I.S.I."), in his capacity as president of Ikam. Plaintiff owns and operates Ikam. According to the affidavit of Francis J. Convery, an executive at NTT Data who also had served as an executive of M.I.S.I., M.I.S.I. merged with and into NTT Data on or about March 31, 2012.

The Agreement provides that Ikam as a consultant of M.I.S.I. would provide services to

certain of M.I.S.I.'s clients as provided in Exhibit A. Exhibit A states that Ikam's employee, Plaintiff, would provide "production support" services to M.I.S.I.'s client, Credit Suisse, from on or around January 18, 2012, to January 18, 2013. Pursuant to the Agreement, Plaintiff was the only employee of Ikam to be assigned to provide services to Credit Suisse. Credit Suisse is not a party to the Agreement.

The Agreement explicitly states that, under its terms, Ikam is an independent contractor rather than an employee of M.I.S.I. The Agreement establishes five conditions under which it may be terminated: (1) by M.I.S.I., for any reason or for no reason, upon two weeks prior notice to Ikam -- although the Agreement explicitly provides that the services provided to M.I.S.I.'s client may terminate upon shorter notice or without notice if the client so requires; (2) by Ikam, for any reason or for no reason, upon two weeks prior notice to M.I.S.I.; (3) by the filing of a petition in bankruptcy by or against Ikam as debtor; (4) by any breach by Ikam of any of the Agreement's representations or warranties; or (5) by any failure of Ikam to fully and faithfully perform any of its obligations under the Agreement. According to the Convery affidavit, NTT Data exercised its right to terminate the agreement in April 2012.

The Agreement requires that any "controversy, dispute and/or claim" between Ikam and M.I.S.I. -- or any of their respective officers, directors, shareholders or employees -- "which may ever arise between them in relation to this Agreement" be settled solely by binding arbitration to be held in New York City.

B. The State Court Action

Plaintiff previously pursued relief against NTT Data in New York state court, according to the affirmation of M. Todd Parker. On November 21, 2012, Plaintiff filed a complaint for failure to pay wages and for breach of contract against NTT Data relating to NTT Data's

termination of the Agreement and alleged failure to pay Plaintiff. In its order dated April 11, 2014, the Civil Court of the City of New York[1] granted NTT Data's motion to stay the proceeding and compel arbitration pursuant to the arbitration clause of the Agreement.

C. The Federal Court Action

Plaintiff filed this action on September 4, 2015, and named both NTT Data and Credit Suisse as Defendants. The FAC, the operative complaint, alleges that both Defendants violated the FLSA and New York Labor Law by failing to pay Plaintiff overtime wages and by retaliating against him. The FAC further alleges claims against NTT Data of breach of the Agreement, negligence and fraudulent misrepresentation. These claims are substantially identical to the claims raised in Plaintiff's state court action in that they allege that NTT Data failed to pay Plaintiff overtime wages and misclassified him as an independent contractor rather than an employee. The FAC also alleges claims against Credit Suisse of fraudulent misrepresentation, negligence and unjust enrichment. Credit Suisse was not a Defendant in the state court action.

On September 18, 2015, Plaintiff sought a preliminary injunction and temporary restraining order against NTT Data, in substance seeking payment of monies allegedly owed to Plaintiff. At the hearing on the order to show cause for a preliminary injunction and temporary restraining order on September 28, 2015, the Court dismissed Plaintiff's claims against NTT Data for lack of subject matter jurisdiction, as Plaintiff's claims alleged an injury from a prior state court ruling -- the New York state court's order compelling arbitration -- and effectively asked the Court to reverse the decision of the New York state court to compel arbitration.

Plaintiff filed his motion for leave to amend the FAC on October 19, 2015, and both Plaintiff and Defendants extensively briefed the issue of whether Plaintiff's proposed Second

[1] The Civil Court of the City of New York is part of the New York State Unified Court System and accordingly is referred to in this opinion as the "state court." *See* http://www.nycourts.gov/.

Amended Complaint ("SAC") would be futile.

Plaintiff's proposed SAC alleges the following causes of action:

1. Against Credit Suisse for violation of the FLSA for failure to pay regular wages and overtime wages;

2. Against Credit Suisse for violation of the New York Labor Law for failure to pay wages;

3. Against both Defendants for violation of the New York Labor Law for retaliation;

4. Against Credit Suisse for fraudulent misrepresentation;

5. Against Credit Suisse for negligence;

6. Against Credit Suisse for unjust enrichment;

7. Against NTT Data for retaliation in violation of the Sarbanes-Oxley Act (the "SOX Claim");

8. Against NTT Data for fraudulent misrepresentation.

In sum, as to NTT Data, Plaintiff has dropped some claims and reasserted some claims that were dismissed in the FAC, and seeks to add the new SOX Claim. Plaintiff seeks to reassert all of its claims against Credit Suisse, including his FLSA and New York Labor Law claims.

Plaintiff filed a complaint on October 29, 2015, with the Occupational Safety and Health Administration ("OSHA") against both Defendants regarding his termination. OSHA dismissed the complaint as untimely on February 11, 2016.

II. STANDARD

A motion for leave to amend a complaint is entrusted to the discretion of the district court. *In re Arab Bank, PLC Alien Tort Statute Litigation*, 808 F.3d 144, 159 (2d Cir. 2015) ("As for leave to amend the complaints, 'we review [the district court's refusal to allow such amendment] only for abuse of discretion which ordinarily we will not identify absent an error of law, a clearly erroneous assessment of the facts, or a decision outside the available range of

permitted choices.'" (quoting *Knife Rights, Inc. v. Vance,* 802 F.3d 377, 389 (2d Cir.2015))). "While '[l]eave to amend should be freely granted, . . . the district court has the discretion to deny leave if there [was] a good reason for it, such as futility, bad faith, undue delay, or undue prejudice to the opposing party.'" *Id.* (quoting *Jin v. Metro Life Ins. Co.*, 310 F.3d 84, 101 (2d Cir. 2002)). Futility is assessed under the same standard as a motion to dismiss: "determining whether the proposed complaint contains 'enough facts to state a claim to relief that is plausible on its face.'" *Indiana Pub. Retirement Sys. v. SAIC, Inc.*, No. 14-4140-cv, 2016 WL 1211858, at *5 (2d Cir. March 29, 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

District Courts have the inherent authority to dismiss meritless claims sua sponte. *Fitzgerald v. First East Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) (per curiam) (affirming the district court's conclusion that it had the power to dismiss a frivolous action sua sponte); *Wachtler v. Cty. of Herkimer*, 35 F.3d 77, 82 (2d Cir. 1994) ("The district court has the power to dismiss a complaint sua sponte for failure to state a claim.") (quoting *Leonhard v. United States*, 633 F.2d 599, 609 n.11 (2d Cir. 1980)); Charles A. Wright & Arthur R. Miller, *5B Fed. Prac. & Proc. Civ.* § 1357 (3d ed.) ("Even if a party does not make a formal motion under Rule 12(b)(6), the district judge on his or her own initiative may note the inadequacy of the complaint and dismiss it for failure to state a claim as long as the procedure employed is fair to the parties.").

Where, as here, a party appears pro se, a court must construe "the submissions of a pro se litigant . . . liberally" and interpret them "to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (internal quotation marks omitted); *see Smith v. Fischer*, 803 F.3d 124, 127 (2d Cir. 2015) (confirming *Triestman*'s approach to pro se litigants). However, "failure of subject matter jurisdiction is not

waivable and may be raised at any time by a party or by the court *sua sponte*." *Lyndonville Sav. Bank & Trust Co. v. Lussier*, 211 F.3d 697, 700 (2d Cir. 2000); *see also Faucette v. Colvin*, No. 15 Civ. 8495, 2016 WL 866350, at *2 (S.D.N.Y. Mar. 3, 2016) (same).

III. DISCUSSION

A. Claims Against NTT Data

Because the proposed SAC would assert claims against NTT Data that could not survive a motion to dismiss, leave to amend as to NTT Data is futile and is denied. The proposed complaint alleges three claims against NTT Data -- retaliation in violation of New York Labor Law, fraudulent misrepresentation and the SOX Claim.

The first two of these could not survive a motion to dismiss because the Court previously dismissed them from this action on September 28, 2015. Plaintiff's FAC and proposed SAC both allege that NTT Data fraudulently misrepresented the terms of the Agreement to Plaintiff; and both allege the New York Labor Law retaliation claim. These claims were dismissed from the FAC for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine, which "directs federal courts to abstain from considering claims when four requirements are met: (1) the plaintiff lost in state court, (2) the plaintiff complains of injuries caused by the state court judgment, (3) the plaintiff invites district court review of that judgment, and (4) the state court judgment was entered before the plaintiff's federal suit commenced." *McKithen v. Brown*, 626 F.3d 143, 154 (2d Cir. 2010); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) (explaining the *Rooker-Feldman* doctrine). The *Rooker-Feldman* doctrine is intended to foreclose a narrow and specific kind of case: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."

Exxon Mobil, 544 U.S. at 284; *see also Green v. Mattingly*, 585 F.3d 97, 101 (2d Cir. 2009) (same). Because the state court rejected Plaintiff 's objection to arbitration, and Plaintiff seeks relief in federal court as an alternative to that arbitration, Plaintiff's claims meet all four criteria of *Rooker-Feldman*: he lost in state court as he was compelled to arbitrate under the terms of the Agreement; he seeks relief here to avoid that arbitration; the state court judgment was entered before the commencement of the present federal court action; and Plaintiff's claims here necessarily invite the district court to reject the judgment of the state court. *See Yonkers Elec. Contracting Corp. v. Local Union No. 3, Int'l Bhd. Elec. Workers' AFL-CIO*, 220 F. Supp. 2d 254, 259 (S.D.N.Y. 2002) ("A federal court does not have subject matter jurisdiction over a petition to compel arbitration after a state court has already ruled on the merits of that petition."); *Wanderlust Pictures, Inc. v. Empire Entm't Grp.*, No. 01 Civ. 4465, 2001 WL 826095, at *4 (S.D.N.Y. July 19, 2001) ("[S]everal courts have applied the Rooker-Feldman doctrine in cases where a state court has ruled on a party's right to arbitrate prior to the petitioner's filing of the federal suit."). The state law claims against NTT Data were properly dismissed from the FAC and, if reasserted, could not survive a motion to dismiss, rendering leave to amend futile.

Plaintiff also seeks to amend his complaint to add the SOX Claim against NTT Data. Although this claim is new -- albeit alleging essentially the same facts as Plaintiff's previously dismissed retaliation claim under New York Labor Law and the FLSA -- it is dismissed because this Court lacks jurisdiction to hear Plaintiff's claim. An employee seeking relief under the Sarbanes-Oxley Act must first file a complaint with OSHA, the agency with delegated authority to receive such complaints. 29 C.F.R. § 1980.103(c) (2015); *see* 18 U.S.C. § 1514A(b)(1)(A) (2010). Plaintiff filed his OSHA complaint after filing for leave to add the SOX claim in this action. OSHA dismissed Plaintiff's complaint as untimely. Plaintiff was permitted to object to

this determination and request a hearing with an Administrative Law Judge within thirty days of OSHA's determination, *see* 29 C.F.R. §§ 1980.105(c), 1980.107, which was dated February 11, 2016. If Plaintiff failed to object, OSHA's dismissal is final. *See id.* at § 1980.105(c). If Plaintiff did object and the administrative law judge affirmed OSHA's findings, Plaintiff's sole recourse in the federal courts is an appeal to the United States Court of Appeals. *See id.* at § 1980.112; *see generally* Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes-Oxley Act of 2002, as amended, 80 Fed. Reg. 11865, 11866 (Mar. 5, 2015). Plaintiff cannot seek relief in this Court, as OSHA acted within 180 days of Plaintiff's filing of the complaint. Only if OSHA had "not issued a final decision within 180 days of the filing of the complaint," could the employee bring "an action at law or equity for *de novo* review in the appropriate district court of the United States." 29 C.F.R. § 1980.114 (2015).

Even if the Court had subject matter jurisdiction to review OSHA's determination, it is evident from the face of the proposed SAC that the SOX Claim is untimely. The Sarbanes-Oxley Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, obligates a complainant to file his complaint within 180 days of discovering the violation. 18 U.S.C. § 1514A(b)(2)(D) (2010). The proposed claim alleges impermissible retaliation on April 27, 2012, in a complaint filed in October 2015. Plaintiff did not file until more than 1,200 days had elapsed. The proposed SAC is therefore untimely and would not survive a motion to dismiss. Leave to amend would be futile.

Plaintiff's request dated April 6, 2016, to further amend his pleading to add a claim for violation of the civil provisions of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("civil RICO""), is also denied as futile. The proposed SAC does not allege, nor has Plaintiff otherwise suggested specific facts that, construed in the most generous

light, would give rise to an inference of a criminal predicate act necessary to bring a civil RICO claim. *See* 18 U.S.C. § 1962 (establishing conduct constituting RICO predicate); 18 U.S.C. § 1964 (providing for civil remedies to RICO offenses). Plaintiff makes only conclusory statements that he "can substantiate allegations that Ed Epstein and Sharin Newman of NTT Data, Inc. committed multiple acts of wire fraud at [his] expense." Although Plaintiff raised the possibility of amending the FAC to add a civil RICO claim at the September 28, 2016, hearing, his decision not to do so in the proposed SAC does not entitle him to successive bites at the apple by rationing his proposed amendments over multiple iterations of the complaint.

B. Claims Against Credit Suisse

Plaintiff alleges several claims against Credit Suisse. Credit Suisse was not a signatory to the Agreement, and its arbitration clause does not cover disputes with Credit Suisse. However, Plaintiff's services were provided to Credit Suisse pursuant to the Agreement, and Plaintiff cannot avoid the arbitration provision by pressing his claims against Credit Suisse rather than NTT Data, the counterparty to the Agreement. "[A] signatory [is estopped] from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed." *Smith/Enron Cogeneration Ltd. P'ship v. Smith Cogeneration Int'l*, 198 F.3d 88, 98 (2d Cir. 1999) (emphasis omitted).

Plaintiff's claims against Credit Suisse are intertwined with the Agreement as it gave rise to any relationship between Plaintiff and Credit Suisse. The allegations of non-payment and retaliatory firing arise primarily from any rights Plaintiff may or may not have under the Agreement. *See Holick v. Cellular Sales of N.Y., LLC*, 802 F.3d 391, 395 (2d Cir. 2015) ("If the allegations underlying the claims touch matters covered by the parties' . . . agreements, then

those claims must be arbitrated." (quoting *Smith/Enron*, 198 F.3d at 99)). It would be anomalous and could lead to inconsistent results to require claims against NTT Data to be arbitrated and the related, if not identical, claims against Credit Suisse to be litigated. Plaintiff is therefore estopped from litigating here claims that should be arbitrated. Allowing Plaintiff leave to amend his complaint to add the proposed claims against Credit Suisse would be futile and is denied.

This estoppel precluding the litigation of claims against Credit Suisse in the proposed SAC applies equally to the existing claims against Credit Suisse in the operative FAC. Both complaints are predicated on identical alleged facts and bear the same relationship to the Agreement. Plaintiff's claims against Credit Suisse are dismissed sua sponte, leaving no further claims for the Court to adjudicate.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion for leave to amend the complaint is DENIED. Plaintiff's First Amended Complaint is DISMISSED. The Clerk of Court is respectfully directed to mail a copy of this Order and Opinion to the pro se Plaintiff and to close the case.

Dated: May 17, 2016
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

WHISARD Complaint Information Form

U.S. Department of Labor
Wage And Hour Division

Complaint ID: *3633488* Receiving Office: *New York City District Office* Last updated by:

Date of Contact: *10/10/2012* Contact Priority: Last updated *10/10/2012*

Complaint Status: *FILED-NO ACTION* Contact Type: See customer history log for Contact type(s)

Establishment Information

Name: *NTT Data International LLC*
Address: *45 W. 36 St, Suite 7*
New York, NY 10018
County: *New York*
Contact Name: ,
Contact Title:
Estimated # of locations:
Headquarters location:
Branch Name/Location 1:
Branch Name/location 2:
ER business status:
Estimated $ADV:
Nature of Business:
Interstate Commerce:
Number Of Employees:

Primary Phone: *212-588-8340* ext.
Other Phone: ext.
Fax: ext.
Email:
NAIC
Gov. Contract, Furnishes goods: *N*
Gov. Contract, Furnishes services: *N*
Gov. Contract, Performs construction: *N*
Gov. Contract, Other contract type: *N*
Gov. Contract, Unknown contract *N*
Est. expiration date of gov.
Estimated EEs affected:
Special Coverage:
Franchise: *N*
Union Shop: *N*
ER Exempt? *N*

Person Submitting Information

Name: *Komatsu , Towaki*
Address *99-60 64th Ave. Apt. 3V*
Rego Park, NY 11374
Is Customer complainant? *Y*

Primary Phone: *201-315-5484* ext.
Other Phone: ext.
Fax: ext.
Email:
If not complainant, EE Name:

Verbal permission to use name *N*
Written permission to use name *N*
Written permission to use name *N*

Verbal notification of Private Right Action *N*
Relationship

Alleged Act	Alleged Violation	From	To	Notes
FLSA	*Failure to pay proper overtime*			

WHISARD Complaint Information Form

Most critical act: *FLSA*

Employment Information

Job title: *Production Support*

Description of duties:

Employed From: *Jan 18, 2012* To: *April 27, 2012*

Employee status: *Former*

Date of Birth:

Employee age at time of complaint:

Employee age at time of violation:

Payroll Information

Pay rate: *478* *Day*

Hours Worked:

Sun Mon Tue Wed Thu Fri Sat

Avg. hrs per day:

Days worked per week:

Total hrs per week: *50*

Pay period: *Bi-Weekly*

Time records kept: *N*

Complaint Notes

C alleged that the ER failed to pay hours worked over 40 per week at 1/2. Hours worked over 40 paid ST. The ER paid C a IC C worked F/T at the company C has no other client. C worked the company website. C was managed by Shelden Samlal-Manager at Credit Swiss. C worked on a fixed schedule.

Contact Log:

10/10/2012 4:41:03 PM	*FILED-NO ACTION*
10/10/2012 4:40:06 PM	*In Review*
10/10/2012 4:35:05 PM	*FILED-NO ACTION*

From: Rebecca Freund
Sent: Wednesday, May 02, 2012 4:24 PM
To: Contract; Sharin Newman; Keith Backer
Subject: end form_Towaki Komatsu

DNU* consultant was extremely difficult to work with and the client had issues with him too.
Corp consultant $59.75 p/h

Consultant End Date Form:	
Client name:	Credit Suisse
Consultant Name:	Towaki Komatsu
Consultant's Skill Set:	Production Support
W2 (Misicom) or Corp.:	CORP
End date:	4/27/12
Reason for termination (please refer to one of the 7 reasons):	7
Initial start of *first engagement* with MISI:	1/25/12
Initial start of *current engagement/current client*:	1/25/12
What source did this consultant come from? (i.e. job board):	N/A
Use Again? – yes /no	NO

1	Normal End		
2	Conversion to FTE		
3	Budget/Project Lost		
4	Another Consulting Opportunity		
5	For FTE elsewhere		
6	For Personal Reasons		
7	Client end / Performance		

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Constitutional Provisions and Other Matters of Law Involved

1. The following are relevant provisions of **a)** the First and Fourteenth Amendment of the U.S. Constitution:

a) **First Amendment**: "Congress shall make no law… abridging the freedom of speech…the right of the people peaceably to assemble, and to petition the government for a redress of grievances".

b) **Fourteenth Amendment**: "No State shall make or enforce any law which shall abridge the privileges…of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Federal Rule of Civil Procedure ("FRCP") Rule 60(b), (c), and (d) state the following:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.
>
> (c) Timing and Effect of the Motion.
>
> (1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
>
> (2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

> (d) Other Powers to Grant Relief. This rule does not limit a court's power to:
>
> (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
>
> (2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or
>
> (3) set aside a judgment for fraud on the court.

3. 18 U.S.C. §401 states the following:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
> **(1)** Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> **(2)** Misbehavior of any of its officers in their official transactions;
>
> **(3)** Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

4. 18 U.S.C. §1507 states the following:

> "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.
>
> Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt."

5. 18 U.S.C. §1509 states the following:

> "Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.
>
> No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime."

6. CPLR §3126 contains the following relevant provisions:

> § 3126. Penalties for refusal to comply with order or to disclose. If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:
>
> 1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or
>
> 2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
>
> 3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

7. 18 U.S.C. §1001(a) and 18 U.S.C. §1001(b) state the following:

> **(a)** Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
>
> **(1)** falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> **(2)** makes any materially false, fictitious, or fraudulent statement or representation; or
>
> **(3)** makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

8. 18 U.S.C. §1512(b) and 18 U.S.C. §1512(c) state the following:

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

9. 18 U.S.C. §1519 states the following:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

10. FRCP Rule 11 include the following provisions:

> (a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
>
> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
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> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
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> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.
>
> (c) Sanctions.
>
> (1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

11. FRCP Rule 37(a)(3)(A) states the following:

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

12. 29 CFR §1980.103(d) contains the following relevant terms:

"The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint equitably tolled if a complainant mistakenly files a complaint with the another agency instead of OSHA within 180 days after becoming aware of the alleged violation."

13. 28 U.S.C. §1367(a) states the following:

"(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

14. FRCP Rule 42 states the following:

> (a) Consolidation. If actions before the court involve a common question of law or fact, the court may:
>
> (1) join for hearing or trial any or all matters at issue in the actions;
>
> (2) consolidate the actions; or
>
> (3) issue any other orders to avoid unnecessary cost or delay.
>
> (b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

15. The following are relevant provisions of 9 U.S.C. §4, 9 U.S.C. §3, and 9 U.S.C. §2 that are parts of the Federal Arbitration Act ("FAA"):

a) **9 U.S.C. §4**: "If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof."

b) **9 U.S.C. §3**: "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

c) **9 U.S.C. §2**: "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be

valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4."

16. The following is a relevant excerpt from 29 U.S.C. §207(a)(1):

> "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

17. 29 CFR §541.602(a)(1) states the following:

> **(a)** ***General rule.*** An employee will be considered to be paid on a "salary basis" within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.
>
> > **(1)** Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work.

18. The following is a relevant excerpt from 29 U.S.C. §211(c):

> "Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time"

19. 29 U.S.C. §215(a)(2), 29 U.S.C. §215(a)(3), and 29 U.S.C. §215(a)(5) contain the following relevant provisions:

> (a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—
>
> > (2) to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Secretary issued under section 214 of this title;
> >
> > (3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be

instituted any proceeding under or related to this chapter,

(5) to violate any of the provisions of section 211(c) of this title, or any regulation or order made or continued in effect under the provisions of section 211(d) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

20. 29 U.S.C. §216 contain the following relevant provisions:

"(a) Fines and imprisonment
Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection."

"(b) Damages; right of action; attorney's fees and costs; termination of right of action
Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages." ... "An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." ... "The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

21. 29 U.S.C. §217 includes the following relevant provisions:

"The district courts" ... "shall have jurisdiction, for cause shown, to restrain violations of section 215 of this title, including in the case of violations of section 215(a)(2) of this title the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this chapter"

22. The following is the text of 18 U.S.C. §1514A that corresponds to the Sarbanes-Oxley Act ("SOX"):

(a) Whistleblower Protection for Employees of Publicly Traded Companies.—

No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),[1] or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) Enforcement Action.—

(1) In general.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) Procedure.—

(A) In general.—

An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) Exception.—

Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

(C) Burdens of proof.—

An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) Statute of limitations.—

An action under paragraph (1) shall be commenced not later than 180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation.

(E) Jury trial.—

A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.

(c) Remedies.—

(1) In general.—

An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

(2) Compensatory damages.—Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable

attorney fees.

(d) Rights Retained by Employee.—

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(e) Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes.—

(1) Waiver of rights and remedies.—

The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(2) Predispute arbitration agreements.—

No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

23. 29 CFR §1980.114(a) and 29 CFR §1980.114 (b) state the following:

(a) If the Secretary has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. A party to an action brought under this paragraph shall be entitled to trial by jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1980.109. An employee prevailing in any action under paragraph (a) of this section shall be entitled to all relief necessary to make the employee whole, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the retaliation;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the retaliation; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

24. The following are relevant provisions of 18 U.S.C. §1964(a) and 18 U.S.C. §1964(c):

> **(a)** The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.
>
> **(c)** Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee

25. With respect to civil RICO claims, "racketeering activity" partly includes the following:

a. Any act which is indictable under:

i. 18 U.S.C. §1341 (mail fraud) and 18 U.S.C. §1343 (wire fraud).

ii. 18 U.S.C. §1512 (relating to tampering with a witness, victim, or an informant) and 18 U.S.C. §1513 (relating to retaliating against a witness, victim, or an informant).

iii. 18 U.S.C. §1503 (relating to obstruction of justice), 18 U.S.C. §1510 (relating to obstruction of criminal investigations), 18 U.S.C. §1511 (relating to the obstruction of State or local law enforcement), 18 U.S.C. §1951 (relating to interference with commerce, robbery, or extortion), 18 U.S.C. §1952 (relating to racketeering)

26. The following are relevant provisions of 18 U.S.C. §1341:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises" ... "for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or

deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both."

27. 18 U.S.C. §1343 state the following:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

28. This petition largely stems from flagrant violations of the following canons that are presented in whole and/or in part that are from the Code of Conduct for U.S. Judges ("USCOC"):

a. **Canon 3(A)(4)**:

A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law."

b. **Canon 3(B)(6)**:

"Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence."

c. **Canon 3(A)(1)**:

"A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism."

d. **Canon 3(A)(3)**:

"A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process."

e. **Canon 3(A)(2)**:

"A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings."

f. **Canon 3(B)(1)**:

"A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel."

g. **Canon 3(B)(4)**:

"(4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards."

"Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that "cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner"

h. **Canon 3(B)(6)**:

"Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence."

29. A relevant part of 28 U.S.C. §2201 states that "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any

such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

30. 28 U.S.C. §2202 states the following:

> "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."