No. _____

In the

Supreme Court of the United States

MAHFOOZ AHMAD.

Petitioner,

v.

COLIN DAY, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

APPENDIX

Mahfooz Ahmad
224 Porters Hill Rd,
Monroe, Connecticut, 06468
(718) 536-1972

In Propria Persona Petitioner

December 18, 2023

TABLE OF APPENDICES

App. A:

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23-920

MAHFOOZ AHMAD,

Plaintiff-Appellant,

v.

COLIN DAY et al.,

Defendants-Appellees.

Filed: December 08, 2023

Appeal from the United States District Court
for the Southern District of New York.
Gabriel W. Gorenstein, Magistrate Judge,
Jesse M. Furman, District Judge.

ORDER: Amalya L. Kearse, Susan L. Carney,
Myrna Pérez, Circuit Judges.

IT IS HEREBY ORDERED that the motion to reconsider (docket entry 131) and motion for unrestricted access to PACER and waiver of PACER fees (docket entry 140) are DENIED as moot in light of the mandate issued on December 7, 2023.

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Appellant, pro se, moves for in forma pauperis status, appointment of counsel, an initial hearing en banc, a summary remand, and an award of costs for the appeal. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); see 28 U.S.C. § 1915(e).

App. B:

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 1:20 cv 04507

MAHFOOZ AHMAD,

Plaintiff-Appellant,

v.

COLIN DAY et al.,

Defendants-Appellees.

Filed: August 20, 2021

OPINION AND ORDER

GABRIEL W. GORENSTEIN,
United State Magistrate Judge

NOTE: The below quoted order remains unchanged, except for the addition of the terms "alleged" and "allegedly" 32 times before the term "agreement." The Defendants assert that the Plaintiff allegedly agreed to their alleged agreement, a claim the Plaintiff disputed well before the wrongful termination. The Plaintiff has provided evidence refuting the existence of any such agreement presented by iCIMS Defendants during employment. The Plaintiff also contends that the intentional withholding of the alleged agreement was part of a discriminatory scheme orchestrated by the Defendants, acting on orders from Comcast Corporation's venture capital arm, Dream It Ventures, due to the Plaintiff's minority status and entrepreneurial activities.

GABRIEL W. GORENSTEIN, United State Magistrate Judge

Pro se plaintiff Mahfooz Ahmad brings this employment discrimination action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, New York State Human Rights Law, N.Y. Exec. Law §§ 290-97 and New York City Humans Rights Law, N.Y. City Admin. Code §§ 8-101 to -31 alleging his former

employer, iCIMS Inc. ("iCIMS"), and two individual defendants, Colin Day and Courtney Dutter, discriminated against him because of his race, color, religion and national origin. Before the Court is defendants' motion to compel arbitration under the Federal Arbitration Act ("FAA"). For the following reasons, defendants' motion is denied.

I. BACKGROUND

A. Facts

Ahmad started working at iCIMS in February 2016. See Complaint, filed June 11, 2020 (Docket # 2), at *63 ("Comp."); Griffith Decl. ¶ 4; Letter from M. Ahmad, filed May 21, 2021 (Docket # 64). He began "as a Junior Project Specialist" but, according to Ahmad, his title changed twice "[d]ue to [his] great work performance." Comp. at *6.

In January 2016, before his employment began, defendants informed Ahmad that his acceptance of the offer of employment was contingent upon the **(allegedly)** "execution of the . . . Employee Confidentiality and Proprietary Rights Agreement." Exh. D of

Griffith Decl. In December 2016 and May 2018, when his title at iCIMS changed, defendants sent emails to Ahmad similarly stating that acceptance of the offer for these new titles was contingent upon his execution of the **(allegedly)** Employee Confidentiality and Proprietary Rights Agreement (the "Confidentiality Agreement"). See Exh. A of Pl. Opp.; Exh. B of Pl. Opp. The **(alleged)** Confidentiality Agreement, at least in its most recent form, contains an arbitration clause. See Exh. A of Griffith Decl. ¶ 11.3 ("Confidentiality Agreement").

In the defendants' view, "[t]he **(alleged)** [Confidentiality] Agreement is part of the offer and acceptance process at iCIMS." Sosnoskie Aff. ¶ 6. According to defendants, Ahmad accepted the **(alleged)** Confidentiality Agreement "by entering his internal credentials and clicking on a check box marked 'I ACCEPT.'" Id. ¶ 7. Ahmad denies ever receiving or signing the **(alleged)** Confidentiality Agreement. See Declaration of Mahfooz Ahmad, annexed as Exh. 11 to Pl. Opp. ¶¶ 1-2; Pl. Opp. at 4.

According to Ahmad's complaint, notwithstanding his (allegedly) excellent work, "[w]hen it came to increasing [his] salary, nothing was done" and he was eventually given a "really low salary increase of mere [sic] few dollar per week." Comp. at *6. He was told that he was not getting a pay increase because others in the company had gotten one. Id. Ahmad points out that, at the time, the "majority of the employees [at iCIMS] were white people." Id.

In May 2018, Ahmad "submitted a business plan for a new business model to iCIMS CEO 'Colin Day.'" Comp. at *6. Five days after submitting this business plan, Ahmad was fired. Id. The explanation he was given for the firing was that he had **(allegedly)** "violated company policy." Id. Ahmad (alleges) that he did not in fact violate company policy and thus that his employer's contention otherwise was a "complete lie." Id. (emphasis omitted).

Ahmad (alleges) that, during his employment, he "was a victim of many instances of discrimination" including being

"expected to work 60+ hours" per week "with no overtime pay," being the only person asked to work on weekends, that he was not "paid for . . . work done on weekends," that multiple calls were scheduled during his "compulsory Friday prayer" time despite "iCIMS management [being] aware that [he is] a Muslim," that Halal food was never ordered when food was ordered for employees, and that generally he was "given the worst . . . responsibilities on the lowest possible salary," despite receiving praise for his work. Comp. at *6-7.

At his termination, iCIMS offered Ahmad a severance payment but "[t]he money offered by iCIMS was nothing compared to the discrimination" he faced. Comp. at *7. Ahmad asserts that "[t]his complaint is only about the discrimination I faced during my employment with iCIMS and I think other employees of color are continuing to face due to their color, race, religious beliefs and ethnic background." Id.

In the section titled "Cause of Action," the complaint lists claims of employment discrimination under Title VII and other federal and state employment discrimination

laws. Comp. at 3-4. It lists no other claims. Under "Adverse Employment Action," Ahmad lists a number of adverse actions including the termination of his employment, failure to promote, unequal terms and conditions of employment, and "discrimination in job advertisement and paid me lower salary." Id. at 5. As the basis for his Title VII claim, he asserts that the defendants discriminated against him based on his race ("Asian"), color ("Brown"), religion ("Islam") and national origin ("Pakistani"). Id. at 3. In the summary of facts, Ahmad states that the defendants "performed no investigation of my complaint of discrimination on bases [sic] of color, race, religious beliefs and ethnic background." Id. at 5.

B. Procedural Background

Ahmad, proceeding pro se, filed the complaint in this action on June 11, 2020. See Comp. Although an attorney filed a notice of appearance on behalf of Ahmad on December 1, 2020 (Docket # 17), the attorney quickly withdrew (Docket # 22), and Ahmad resumed his pro se status.

Defendants filed the instant motion on January 8, 2021. Ahmad then filed a letter seeking an extension of time to respond to the motion and expedited discovery. See Letter from M. Ahmad, dated January 13, 2021 (Docket # 26). Ahmad made several discovery requests in this letter including requesting the metadata of his alleged signing of the Confidentiality Agreement. See id. ¶ 13.

Defendants opposed this request and sought "a stay of discovery pending the Court's determination on Defendants' Motion to Compel Arbitration." Letter Motion to Stay, filed January 19, 2021 (Docket # 28), at 1. On February 22, 2021, this Court granted defendants' motion for a stay of discovery "except with respect to plaintiff's request for discovery regarding the metadata of the alleged acceptance of the confidential agreement." (Docket # 34 at 3) (punctuation omitted).

A number of disputes ensued regarding the defendants' provision of the metadata (Docket ## 37-39, 42, 44-45, 51, 53). The Court ultimately ruled that defendants had satisfied

their production obligation. See Order, filed May 7, 2021 (Docket # 57), at 2. The parties thereafter completed briefing on the motion to compel arbitration.

GOVERNING LAW

The FAA reflects "a strong federal policy favoring arbitration as an alternative means of dispute resolution." Ross v. Am. Express Co., 547 F.3d 137, 142 (2d Cir. 2008) (punctuation omitted). Section 2 of the FAA provides in pertinent part:

> A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. Section 4 of the FAA permits a party to obtain from a federal district court "an order directing that [an] arbitration proceed in the manner provided

for" in an arbitration agreement. 9 U.S.C. § 4. As the Second Circuit has held, "'[t]he Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (1988), requires the federal courts to enforce arbitration agreements, reflecting Congress' recognition that arbitration is to be encouraged as a means of reducing the costs and delays associated with litigation.'" Vera v. Saks & Co., 335 F.3d 109, 116 (2d Cir. 2003) (quoting Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S., 9 F.3d 1060, 1063 (2d Cir. 1993)).

The Second Circuit has held that a court considering a motion to compel arbitration of a dispute first must determine whether the parties agreed to arbitrate; second, it must determine the scope of that agreement; third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be nonarbitrable; and fourth, if the court concludes that some, but not all, of the claims in the case are arbitrable, it must then decide whether to stay the balance of the proceedings pending arbitration.

JLM Indus., Inc. v. Stolt-Nielsen SA, 387 F.3d 163, 169 (2d Cir. 2004). "[U]nder the FAA, 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.'" Id. at 171 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)).

When a motion to compel arbitration is brought, a "court applies a standard similar to that applicable for a motion for summary judgment," in that it must determine whether "there is an issue of fact as to the making of the agreement for arbitration." Bensadoun v. Jobe-Riat, 316 F.3d 171, 175 (2d Cir. 2003). "If undisputed facts in the record required the issue of arbitrability to be resolved against the Plaintiff as a matter of law," the motion to compel arbitration must be granted. Id.

If, however, the party opposing arbitration can show "there is an issue of fact as to the making of the agreement for

arbitration, then a trial is necessary." Id. (citing 9 U.S.C. § 4).

Because, as discussed below, we find defendants have not proven that the claims made in the complaint in this case are within the scope of the arbitration clause, it is unnecessary to reach any of the other issues raised.

DISCUSSION

A. Law Governing the Scope of Arbitration Clauses On the issue of scope, the Second Circuit has held: To determine whether a particular dispute falls within the scope of an agreement's arbitration clause, a court should undertake a three-part inquiry. First, recognizing there is some range in the breadth of arbitration clauses, a court should classify the particular clause as either broad or narrow. See Mehler v. Terminix Int'l Co., 205 F.3d 44, 49 (2d Cir. 2000); Peerless Imps., Inc. v. Wine, Liquor & Distillery Workers Union Local One, 903 F.2d 924, 927 (2d Cir. 1990); McDonnell Douglas Fin. Corp. v. Pa. Power & Light Co., 858 F.2d 825, 832 (2d Cir.

1988). Next, if reviewing a narrow clause, the court must determine whether the dispute is over an issue that "is on its face within the purview of the clause," or over a collateral issue that is somehow connected to the main agreement that contains the arbitration clause. Rochdale Vill., Inc. v. Pub. Serv. Employees Union, 605 F.2d 1290, 1295 (2d Cir. 1979); see also Prudential Lines, Inc. v. Exxon Corp., 704 F.2d 59, 64 (2d Cir. 1983).

Where the arbitration clause is narrow, a collateral matter will generally be ruled beyond its purview. See Cornell Univ. v. UAW Local 2300, 942 F.2d 138, 140 (2d Cir. 1991). Where the arbitration clause is broad, "there arises a presumption of arbitrability" and arbitration of even a collateral matter will be ordered if the claim alleged "implicates issues of contract construction or the parties' rights and obligations under it." Collins & Aikman Prods. Co. v. Bldg. Sys., Inc., 58 F.3d 16, 23 (2d Cir. 1995).

Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc., 252 F.3d 218, 224 (2d Cir 2001), cert. denied, 534 U.S. 1020 (2001).

Notwithstanding the presence of a "broad" arbitration clause, the Second Circuit has since made clear that the FAA's liberal policy in favor of arbitration is limited by the principle that "arbitration is a matter of consent, not coercion. Specifically, arbitration is a matter of contract, and therefore a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit." JLM Indus., 387 F.3d at 171 (alteration in original) (citations and internal quotation marks omitted). It is axiomatic that "[w]hether enforcing an agreement to arbitrate or construing an arbitration clause, courts and arbitrators must give effect to the contractual rights and expectations of the parties. In this endeavor, as with any other contract, the parties' intentions control." Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 682, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) (citations and internal quotation marks omitted). Holick v. Cellular Sales of New York, LLC, 802 F.3d 391, 395 (2d Cir. 2015).

Thus, the "presumption of arbitrability" that accompanies a broad arbitration clause

must be viewed in this context. Emphasizing the importance of effectuating the parties' intentions, the Second Circuit has noted in dicta, if an arbitration clause is best construed to express the parties' intent not to arbitrate certain disputes, that intent controls and cannot be overridden by the presumption of arbitrability. Granite Rock [Co. v. Int'l Broth. Of Teamsters], 561 U.S. [287,] 302, 130 S.Ct. 2847 [(2010)]; see also Allstate Ins. Co. v. Mun, 751 F.3d 94, 97 (2d Cir. 2014). The presumption is a soft one, and has effect "only where it reflects, and derives its legitimacy from, a judicial conclusion that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate . . . [is] best construed to encompass the dispute." Granite Rock, 561 U.S. at 303, 130 S.Ct. 2847 (emphasis added). The presumption may tip the scale if an agreement is truly ambiguous, see Allstate, 751 F.3d at 97, but it does not alter the controlling question: is the arbitration agreement "best construed to encompass the dispute"?

Lloyd v. J.P. Morgan Chase & Co., 791 F.3d 265, 270 (2d Cir. 2015) (some alteration in original).

Analysis

In accordance with these directives, our task is to determine whether the arbitration clause reflects an intention to arbitrate the claims in Ahmad's complaint. "When considering whether claims fall within the scope of an arbitration clause, . . . we analyze the factual allegations made in the plaintiff's complaint." Holick, 802 F.3d at 395. As summarized previously, those allegations describe Ahmad's claim that, during the course of his employment, he was the victim of discrimination on the basis of race, color, religion and national origin in numerous ways, including his termination. Although the complaint describes how, at the time of the termination, iCIMS asserted that the reason for his termination was that Ahmad had **(allegedly)** violated the Confidentiality Agreement, see Comp. at *6, Ahmad seeks no relief under that **(alleged)** Agreement. Instead, the complaint adverts to the **(alleged)** Confidentiality Agreement, which Ahmad refers to as the *"company policy handbook,"* solely to make clear that Ahmad believes that iCIMS's claimed justification for his termination — that he violated the

Confidentiality Agreement — was a "complete lie." Id. (emphasis omitted). In other words, Ahmad claims that defendants' invocation of the **(alleged)** Confidentiality Agreement to justify his termination was pretextual.

Turning to the arbitration clause itself, we note that, unlike cases cited by defendants, the clause does not state that any claims arising out of Ahmad's "employment" would be subject to arbitration. See, e.g., E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 282 (2002) (cited in Def. Mem. at 11). This is also not a case where there was an "employment contract" that contained a provision providing for arbitration of disputes "arising under . . . this Agreement" (that is, under the employment contract). See Oldroyd v. Elmira Sav. Bank, FSB, 134 F.3d 72, 74 (2d Cir. 1998) (cited in Def. Mem. at 10). Instead, the arbitration clause appears in a **(alleged)** document entitled "Employee Confidentiality & Propriety Rights Agreement." This **(alleged)** Confidentiality Agreement is not an employment contract and indeed explicitly states as much. See **(alleged)** Confidentiality Agreement ¶ 7 ("this Agreement is not a contract of employment"). Instead, the

The question before us is therefore whether Ahmad's complaint of discrimination in employment "arise[s] out of" or is "related to" the **(alleged)** Confidentiality Agreement. While these phrases are "broad" in relation to the **(alleged)** Confidentiality Agreement, Ahmad makes no claims seeking to enforce any provision of the **(alleged)** Confidentiality Agreement. More to the point, no reasonable person reading the arbitration clause in the **(alleged)** Confidentiality Agreement could conclude that it was intended to cover claims of employment discrimination given that the obligations in the **(alleged)** Agreement do not involve the overall terms and conditions of employment. Instead, the obligations involve specific enumerated conditions, largely relating to confidentiality, that are placed on an employee's continued employment.

It appears defendants recognize the scope of the arbitration clause to some degree because they strain to characterize the complaint not as one involving employment discrimination at all, but rather as a suit about the **(alleged)** Confidentiality Agreement. See Def. Mem. at 11; Def. Reply at

9-10. In essence, defendants contend that, because they claim to have fired Ahmad for breaching the (alleged) Confidentiality Agreement, it follows that Ahmad's lawsuit "arises out of" or is "related to" the (alleged) Confidentiality Agreement. See id.

We reject this argument. First, and most obviously, the argument ignores the fact that Ahmad does not complain merely about his termination but also complains about his treatment while he worked at iCIMS — alleging that he was the subject of discrimination during his employment in various ways. See Comp. at *6-7. Defendants do not even argue that Ahmad's complaints about employment discrimination during his employment before his termination come within the terms of the arbitration clause.

Second, with regard to the termination itself, Ahmad's complaint is fairly read to complain that his firing — including the reason given for his firing — was discriminatory inasmuch as he alleges that the complaint is "only" about the discrimination he was subjected to by iCIMS.4

Comp. at *7. Notwithstanding defendants' suggestion to the contrary, see Def. Reply at 10 (plaintiff has brought a "wrongful termination claim sounding in breach of contract"); accord Def. Mem. at 11, Ahmad does not purport to assert a breach of contract claim in the complaint. Indeed, the (alleged) Confidentiality Agreement was explicitly not an employment contract and provides no promise of continued employment. Thus, Ahmad could not bring a breach of contract claim under the (alleged) Confidentiality Agreement to obtain a remedy for his termination.

Certainly, Ahmad cites to the (alleged) Confidentiality Agreement in his complaint, but its only purpose is to assert that the claimed reason for his termination was "false," Comp. at *6, thus suggesting that iCIMS's reliance on the (alleged) Confidentiality Agreement was a pretext for invidious employment discrimination. While the defendants' invocation of the (alleged) Confidentiality Agreement will presumably figure in their defense, it is not the case that Ahmad's claim against iCIMS in any way "arises out of" or is "related to" this (alleged)

Agreement in any rational understanding of those terms. Contrary to defendants' assertion, Ahmad's complaint is not "premised around Plaintiff's . . . contention that he did not violate" the **(alleged)** Confidentiality Agreement. Def. Mem. at 6. Instead, it is premised on his contention that the actions taken against him in the course of his employment, including his termination, were the result of invidious discrimination. It is iCIMS's planned defense, not Ahmad's claim, that "arises out of" or is "related to" the **(alleged)** Confidentiality Agreement.

The Second Circuit has cautioned that, notwithstanding any ability to characterize an arbitration clause as "broad," it is the parties' **"intention"** that controls, Holick, 802 F.3d at 395, and thus in this case we must determine whether the arbitration clause is "best construed to encompass" plaintiff's employment discrimination complaint, Lloyd, 791 F.3d at 270 (emphasis omitted). Here, no such reading can be given to the arbitration clause.

CONCLUSION

For the foregoing reasons, defendants' motion to compel arbitration (Docket # 24) is denied.

Dated: August 20, 2021
New York, New York

GABRIEL W. GORENSTEIN,
United State Magistrate Judge

Dated: August 20, 2021

GABRIEL W. GORENSTEIN, United State Magistrate Judge

In an Opinion and Order issued today, this Court denied defendants' motion to compel arbitration (Docket # 24).

Plaintiff's opposition to this motion mentions various claims not included in plaintiff's complaint and requests "that if the court believes that plaintiff complaint [sic] is not sufficient court [sic] should permit the pro se plaintiff to amend his complaint." (Docket # 54 at 19). While we make no determination regarding the sufficiency of the complaint, we

note that plaintiff is not required to seek permission from the Court to file an amended complaint at this time. Under Rule 15(a) of the Federal Rules of Civil Procedure, a plaintiff may file an amended pleading within 21 days of the filing of a "responsive pleading," or within 21 days of "service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Neither of these events has yet occurred, however. Defendants responded to the complaint only with a motion to compel arbitration. Such a motion is not a "pleading," see Fed. R. Civ. P. 7(a), and was not brought under Fed. R. Civ. P. 12 (see Docket # 24).

To ensure the orderly progress of this case, the Court directs that if plaintiff intends to file an amended complaint, he shall do so by September 10, 2021. If the amended complaint adds claims other than those of employment discrimination, defendants are free to make another motion to compel arbitration (returnable before the undersigned) if they wish. If plaintiff adds no new claims, however, they must either file an answer or *a motion to dismiss* (returnable before Judge Torres) within 21 days of the filing of any amended complaint.

App. C:

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 1:20-CV-04507

MAHFOOZ AHMAD,

Plaintiff-Appellant,

v.

COLIN DAY et al.,

Defendants-Appellees.

Federal Charge No. **16GB902104**
NYS Division of Human Rights No. **10199870**
NYS Division of Human Rights Filing Date:
February 05, 2019

Submitted to District Court: June 05, 2020
District Court Filed Date: June 11, 2020

COMPLAINT

DISCRIMINATION COMPLAINT

Plaintiff: Mahfooz Ahmad
Defendants: Colin Day et al,.

PLACE OF EMPLOYMENT

848 Leland Ave, C, Bronx, New York 10473

CAUSE OF ACTION

This employment discrimination lawsuit is brought under *Title VII of the Civil Rights Act of 1964,* 42 U.S.C. §§ 2000e to 2000e-17, for employment discrimination on the basis of race, color, religion, sex, or national origin. The defendant discriminated against me because of my, Race - Asian Color - Brown Religion - Islam National Origin - Pakistani *42 U.S.C. § 1981,* for intentional employment discrimination on the basis of race, my race is Asian.

In addition to my federal claims listed above, I assert claims under: *New York State Human Rights Law,* N.Y. Exec. Law§§ 290 to

297, for employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status *New York City Human Rights Law,* N.Y. City Admin. Code§§ 8-101 to 131, for employment discrimination on the basis *qf* actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status.

STATEMENT OF CLAIMS

Terminated my employment; Did not promote; Provided me with terms and conditions of employment different from those of similar employees; Retaliated against me; Harassed me and created a hostile work environment; Unlawful inquiry, limitation, specification, discrimination in job advertisement and paid me lower salary.

FACTUAL BACKGROUND

Colin Day, Courtney Dutter and iCIMS Inc didn't take any actions, and performed no investigation of my complaint of discrimination on the bases of Color, Race, Religious beliefs and Ethnic background. A detailed account of discrimination is attached:

I joined iCIMS Inc in February 2016 as a Junior Project Specialist. I worked hard and completed my projects in timely manner and received great client feedback. Due to my great work performance my work Title was changed twice. First, I was given responsibilities of Software Implementation Manager and secondly, I was given responsibilities that included projects of Software Integration with larger enterprise level clients. During my employment I worked with 119 iCIMS clients. When it came to increasing my salary, nothing was done. After many backs and forth discussions with my manager, I was given a really low salary increase of mere few dollars per week. I was told that since other people in the company got pay increase, I will not get one. I was informed of this while iCIMS Inc majority of the employees were white people.

On 30th May 2018, after completion of the business day, I submitted a business plan for a new business model to iCIMS CEO 'Colin Day'. This business plan was named, Jobtrail which I had been working on with my friends. My manager 'Mat Watson' from iCIMS Inc, was well aware that I am working on a side gig. 5 days later from my email to CEO 'Colin Day' about investment discussion my job was terminated. I only received partial explanation from 'Courtney Dutter' legal representative of iCIMS Inc that I violated company policy, this in fact was a complete lie.

iCIMS company policy handbook which I was never provided with on start of my employment, and of which I only received a copy after termination of my job, states that anything invented during my employment with iCIMS will be owned by iCIMS. It didn't state that my job prohibits me from inventing a new business model. When I asked for an internal investigation of this incident, I was informed to send back company laptop immediately and to immediately cease speaking to any of my co-workers at iCIMS. I was also informed by 'Courtney Dutter' legal representative of iCIMS that I must not speak

to anyone about this matter. Nor should I email any of my coworkers or anyone in the board of directors. During my employment I was a victim of many instances of discrimination, iCIMS orders food for their employees but it never included any halal food which I could eat. In most days when other white majority employees would enjoy a good meal, I would be sitting at my desk expecting to order my own food. Besides this, I was given extra work responsibilities.

On many occasions I was expected to work 60+ hours/wk., with no overtime pay. Many of the clients that were assigned to me were in different time zones, which meant I had to work late hours to speak to these clients. On multiple occasions, I was asked to upload client data at 11:55 PM in the evening. My role as the Project Specialist involved regular situations where the client was going live on early Monday morning and I was expected to upload, transfer client data over the weekend so the client could go live on Monday morning. I wasn't paid for the work done on weekends. This data upload approach allowed for the client to go live with iCIMS products without any gap of data, on Monday

morning. No other employee in the company of 500+ employee was asked to do this except me. Basically, I was given the worst possible responsibilities on the lowest possible salary. The only thing in return that I received was an appreciation note written on corporate social site 'Yammer', which in some cases wrote, great job by 'Max Ahmad' with such and such client on the data migration project. iCIMS management is aware that I am a Muslim and due to my religion, I am required to offer compulsory Friday prayer yet on multiple occasions my managers scheduled calls exactly during my Friday prayer timing. In one phone call I was spoken to quite harshly when I explained that I had to reschedule a meeting due to Friday prayer.

iCIMS Inc. offered me a severance payment of $6,630 in 5 weekly payments on 21'1 June 2018, realizing their wrong doings, there was a contract provided with this offer. I was told to accept this severance payment within 3 days, or the offer will be considered voided. The contract along sided this money offer was written by iCIMS in their favor to cover up their discriminatory actions. The money offered by iCIMS was nothing

compared to the discrimination faced by me, I clearly refused to accept the financial offer. I am afraid if I had accepted such an offer, iCIMS would continue its discriminatory practices against other employees of color and other ethnic backgrounds. I did try to speak to CEO 'Colin Day' via email, but he didn't respond. In my emails, I offered iCIMS to buy the new business plan I had created but it didn't matter to CEO 'Colin Day' as him and iCIMS Inc had already learned everything about my intellectual property. It was clear to iCIMS that they have gotten away with religious and ethnic discrimination, and they can also get away with stealing intellectual property. This complaint is only about the discrimination I faced during my employment with iCIMS, and I think other employees of color are continuing to face due to their color, race, religious beliefs and ethnic background.

June 05, 2020 */s/ Mahfooz Ahmad*

ADMINISTRATIVE PROCEDURES

A charge of discrimination against the Defendant(s) with the Equal Employment

Opportunity Commission was cross-filed on **February 05, 2019**.

A *Notice of Right to Sue* from the Equal Employment Opportunity Commission was received on June 05, 2020, with a notice date of January 09, 2020.

PRAYER FOR RELIEF

Direct the defendant to reasonably accommodate my religion, Colin Day, Courtney Dutter and iCIMS Inc. should provide a written apology to me and should accommodate all employee's according to their religion equally and shouldn't not treat people of color differently. iCIMS Inc needs to immediately cease from giving worst work responsibilities to people of color and low salary as compared to White employees' I should be given $6 million Dollars in money damages for the discrimination, I faced due to my skin color: race, religious beliefs and ethnic hackgm1 md and wmngf1 ii jab termination I faced.

PLAINTIFF'S CERTIFICATION

By signing below, I certify to the best of my knowledge, information, and belief that: The complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); the claims are supported by existing law or by a nonfrivolous argument to change existing law; 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 the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11. I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

June 05, 2020 */s/ Mahfooz Ahmad*

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On August 25, 2021, plaintiff filed the First Amended Complaint, adding claims

based on new factual findings by adding of additional defendant parties, *Navi Health Inc, Beacon Hill Staffing Group, and Vista Equity Partners.*

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On July 13, 2022, plaintiff filed the motion for Proposed Second Amended Complaint as per district court order, by addition of three new defendant parties, *Clay Richards, Susquehanna Growth Equity and Comcast Corporation.* The District Court in its December 28, 2022, Order partially denied and partially granted the motion to amend the complaint.

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On December 29, 2022, plaintiff filed the Second Amended Complaint as per Court order, by removing names of some of the defendants as the Court order asked to do so; though the District Court later dismissed the Second Amended Complaint, which it had ordered the plaintiff to file by removing the names of some of the defendant parties, and later construed those related claims as *"conclusory".*

TO: THE ATTORNEY GENERAL OF SOUTHERN DISTRICT COURT OF NEW YORK **AND TO:** THE ATTORNEY GENERAL OF UNITED STATES OF AMERICA, **AHMAD v. DAY 1:20-CV - 04507- AT-GWG (S.D.N.Y.)**

PRIMARY CONSTITUTIONAL QUESTIONS:

1. Do implementation of the Federal Arbitration Act of 1925 (See 9 U.S.C. Code § 2.3.4.) annuls the United States Constitution Seventh Amendment and Ninth Amendment which is part of the Bill of Rights?

a) insofar as these sections deny employees the right to life, liberty and security of the person and the right not to be deprived thereof, and that such denials and deprivations do not accord with principles of fundamental justice; or

b) infringes upon the basic rights allowed by the U.S. Constitution i.e. Bill of Rights. Insofar as these sections of (FAA) deny employees equal protection and benefits of the law without discrimination based on their races; and,

c) the impugned provisions are not reasonable limit prescribed by the U.S. Constitution as can be demonstrably justified in a free and democratic society.

RELATED CONSTITUTIONAL QUESTIONS:

2. Does the Federal Arbitration Act of 1925 Violates Federal Rule 38. (a) Right to a Jury Trial?

F.R.C.P Rule 5.1. Constitutional Challenge to a Statute (a) Notice by a Party.

A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly: (1) file a notice of constitutional question stating the question and identifying the paper that raises it, if: (A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or (B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and (2) serve the notice and paper on the Attorney General of the United States if a federal

statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose. (b) Certification by the Court. The court must, under 28 U.S.C. §2403, certify to the appropriate attorney general that a statute has been questioned. (c) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional. (d) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

28 U.S. Code § 2403 - Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United

States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

/s/ Mahfooz Ahmad July 12, 2022

App. E:

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 1:20 cv 04507

MAHFOOZ AHMAD,

Plaintiff-Appellant,

v.

COLIN DAY et al.,

Defendants-Appellees.

Filed: July 18, 2022

PAPERS IDENTIFYING THE CONSTITUTIONAL QUESTION

F.R.C.P Rule 5.1. Constitutional Challenge to a Statute: (a) Notice by a Party. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly: (1) file a notice of constitutional question stating the question and identifying the paper that raises it,... Plaintiff filed 'Notice of Constitutional Question' ECF # 167 with this Honorable Court as per F.R.C.P Rule 5.1 and requested that the Court certify to the appropriate attorney general that a statute has been questioned as per 28 U.S. Code § 2403.

Plaintiff hereby identifies the papers that raises the Constitutional Question. On May 03, 2021, in the United States Federal District Court of Southern District Court of New York, in the case of,

Ahmad v. Day et al., 1:20 cv 04507 (S.D.N.Y); Electronic Case Filing No. 54, on page no. 13, 14, 15.

Plaintiff stated the arguments which raise the Constitutional Question. Federal Arbitration Act of 1925 (9 U.S.C. Code § 2.3.4.)

Annuls the U.S. Constitution, Seventh and Ninth Amendments.

TEXT OF SEVENTH AMENDMENT

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

TEXT OF NINTH AMENDMENT

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

TEXT OF TENTH AMENDMENT

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

ARGUMENT

In the Ninth Amendment, the term *'Constitution'* is mentioned alone by itself and not the full term *'United States Constitution'*. However, the term 'United States' is explicitly used in the Seventh Amendment and the Tenth Amendments, where the framers of the Constitution wanted to include it.

This shows that the term *'Constitution'* mentioned in the Ninth Amendment is implicitly used for the term *'laws'*. If it had meant *'United States Constitution'* it would state *'United States'* explicitly as it is done in the Seventh and Tenth Amendments.

SUPREME COURT PRECEDENT

The United States Supreme Court defined the term *"common law"* in the Seventh Amendment meant the common law of England. Parsons v. Bedford (1830).

The Supreme Court has also ordered that the Amendment preserves the *"substance"* of the right, not *"mere matters of*

form or procedure." Baltimore & Carolina Line, Inc. v. Redman (1935).

The Supreme Court also declared that the Amendment was to be interpreted according to the common law of England at the time the Amendment was ratified, that is, in 1791. Dimick v. Schiedt (1935).

As per the United States Supreme Court order, the Amendments are to be interpreted according to the time the Amendment was ratified in 1791.

In 1791, the term *'Constitution'* meant, "Mid-14c., constitucioun, "law, regulation, edict; body of rules, customs, or laws," from Old French constitucion (12c.) "establishment," (see constitute)".

(Etymology Dictionary)

Furthermore, when one accurately follows the Supreme Court statement of Baltimore & Carolina Line, Inc. v. Redman (1935) that the Amendment preserves the *"substance"* of the right, not *"mere matters of form or procedure.",* it concludes that the term

'Constitution' when mentioned by itself in the Bill of Rights means the *'laws'* as per the definition in the dictionary in 1791.

'A law that violates the United States Constitution should be repealed'. See, Griswold v. State of Connecticut (1965).

The Ninth Amendment says that all the rights not listed in the 'Constitution' (laws) belong to the people, not the government. In other words, the rights of the people are not limited to just the rights listed in the laws, as one may think in the case of the Federal Arbitration Act of 1925.

Honorable Judges should acknowledge the fact that Federal Arbitration Act of 1925 (See 9 U.S.C. Code § 2.3.4.) annuls the United States Constitution, and specifically the Ninth Amendment (Bill of Rights). Furthermore, the Federal Arbitration Act violates, Federal Rule 38. (a) Right to a Jury Trial.

Respectfully submitted,

July 18, 2022 */s/Mahfooz Ahmad*