Appendix

TABLE OF APPENDIX

Second Circuit Court of Appeals, Order, Aug. 7, 2025, denying motion to recall mandate and to consolidate appeals 23-920 & 24-856.

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

Second Circuit Case No: 24-856

August 07, 2025,

Eunice C. Lee,
Beth Robinson,
Maria Araújo Kahn,
Circuit Judges.

Appellant, pro se, moves the Court to recall the mandate and to consolidate Docket No. 24-856 with Docket No. 23-920. IT IS HEREBY ORDERED that the motion is DENIED.

For the Court, Catherine O'Hagan Wolfe, Clerk of Court.

Second Circuit Court of Appeals, Judgment, Aug. 5, 2024, "lacks arguable basis"

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

Second Circuit Case No: 24-856

Eunice C. Lee,
Beth Robinson,
Maria Araújo Kahn,
Circuit Judges,

Appellant, proceeding pro se, moves for a writ of habeas corpus, to hold the appeal in abeyance, for an injunction, for summary judgment, and to withdraw the habeas, abeyance, and summary judgment motions. Appellees, through counsel, move for imposition of a leave-to-file sanction against Appellant. Upon due consideration, it is hereby ORDERED that Appellant's 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 Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam) (holding that this

Court has "inherent authority" to dismiss a frivolous appeal). It is further ORDERED that Appellees' motion is DENIED.

For the Court, Catherine O'Hagan Wolfe, Clerk of Court.

Second Circuit Court of Appeals, Judgment, Nov. 7, 2023 "lacks arguable basis"

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

Second Circuit Case No: 23-920

Amalya L. Kearse,
Susan L. Carney,
Myrna Perez,
Circuit Judges,

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).

For the Court, Catherine O'Hagan Wolfe, Clerk of Court.

Second Circuit Court of Appeals, Judgment, Nov. 7, 2023, "lacks arguable basis"

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

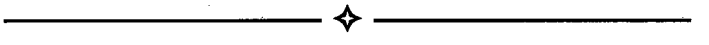
Colin Day, et al.,

Defendants-Appellees.

Second Circuit Case No: 23-920

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.

For the Court, Catherine O'Hagan Wolfe, Clerk of Court.



U.S. District Court, Southern District of New York 1:20-cv-04507, Opinion & Order, Dec. 28, 2022, leave to amend partly granted.

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

U.S. District Court for the Southern District Court of New York Case No: 1:20-cv-04507

December 28, 2022, Gabriel W. Gorenstein, United States Magistrate Judge,

Pro se plaintiff Mahfooz Ahmad brought this case alleging claims relating to his employment and the alleged theft of his intellectual property. See First Amended Complaint, filed Aug. 25, 2021 (Docket # 76) ("FAC"). Following a partial dismissal of his first amended complaint, Ahmad moves for leave to file a new complaint.[1] In the

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[1] See Notice of Motion for Proposed Amended Complaint, filed July 13, 2022 (Docket # 168) ("Pl. Mot."); Memorandum in Support of Motion for Proposed Amended Complaint, filed July 13, 2022 (Docket # 168) ("Pl. Mem."); Proposed Second Amended Complaint, attached to Pl. Mem. (Docket # **168-1**) ("PSAC"); Letter, filed July 25, 2022 (Docket # 172) ("July 25 Letter"); Memorandum of Law in Opposition, filed July 27,

proposed second amended complaint ("PSAC"), Ahmad names as defendants iCIMS Inc. ("iCIMS") and associated individuals Colin Day and Courtney Dutter (collectively, the "iCIMS defendants"); Beacon Hill Staffing Group ("Beacon"); naviHealth Inc. ("naviHealth") and Clay Richards; Vista Equity Partners ("Vista"); Susquehanna Growth Equity ("Susquehanna"); and Comcast Corporation ("Comcast"). See PSAC. For the reasons that follow, the motion for leave to amend is granted in part and denied in part.

I. BACKGROUND

A. Allegations in the Proposed Amended Complaint

The proposed amended complaint makes the following allegations, which we assume to be true for purposes of ruling on this motion to amend. Ahmad worked in a contract position for NBCUniversal beginning September 30, 2013. PSAC ¶ 3;[2] July 25 Letter at 2. In February 2014, Ahmad launched a social networking website called "Keepup," and, a month later, he applied for

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2022 (Docket # 173) ("iCIMS Opp."); Memorandum of Law in Opposition, filed July 27, 2022 (Docket # 174) ("naviHealth Opp."); Memorandum of Law in Opposition, filed July 27, 2022 (Docket # 175) ("Vista Opp."); Memorandum of Law in Opposition, filed July 27, 2022 (Docket # 176) ("Beacon Opp."); Reply Memorandum in Support, filed Aug. 24, 2022 (Docket # 183) ("Pl. Reply"); Letter, filed Sept. 13, 2022 (Docket # 184) ("September 13 Letter").

[2] The PSAC restarts paragraph numbering at various points. Our citations to paragraph numbers are to the paragraphs in the section entitled "Amended Complaint," beginning on page 10 of the document. Where we cite to other portions of the PSAC, we use page numbers followed by a parenthetical indicating the paragraph number.

funding from an investment firm called DreamIt Ventures, a New York state based firm backed by Comcast. PSAC ¶¶ 4-5. Ahmad found out later that year that two New York state entrepreneurs, Angel Davis and Lauren Washington, won $250,000 in a startup competition for a social networking application also named "Keepup." PSAC ¶ 6. Davis, Washington, "and their affiliates" trademarked Keepup with the U.S. Patent and Trademark Office ("USPTO"). PSAC ¶ 6. Ahmad sent them a cease-and-desist letter, and in December 2015, he filed a request to extend time to oppose this trademark with the USPTO, which denied the request. PSAC ¶ 6. Ahmad later applied for a job at iCIMS and was hired. PSAC ¶¶ 7-10. iCIMS hired Ahmad at Comcast's order, "so that iCIMS and its affiliates could easily and closely monitor Plaintiff." PSAC ¶ 9. Ahmad began working for iCIMS on February 1, 2016. PSAC ¶ 10. Although Ahmad had "great work performance" while at iCIMS, he received worse pay and more burdensome responsibilities than his colleagues. PSAC ¶¶ 10, 12. A majority of iCIMS employees "were of white race." PSAC ¶ 10. iCIMS forced Ahmad to work through weekends and occasionally well over 60 hours a week without requisite pay. PSAC ¶¶ 14, 17. Even though iCIMS was aware that Ahmad is Muslim and observes a compulsory Friday prayer, his managers scheduled calls during Friday prayers and spoke to him harshly when he explained why he was rescheduling a Friday call. PSAC ¶ 18. On some occasions, iCIMS would order food for employees, but did not order kosher or halal food that Ahmad could eat, consistent with his religious practices. PSAC ¶ 13.

On May 30, 2018, Ahmad submitted a "pdf pitch deck business plan" of "novel intellectual property" named "Jobtrail" to the CEO of iCIMS, Colin Day, as an investment opportunity. PSAC ¶ 19. On June 5, 6, and 7, 2018, iCIMS scheduled meetings to learn and review Jobtrail's "pre[-]release platform." PSAC ¶ 20. Having "fully understood Jobtrail's trade secrets, business model, application and use case of the novel intellectual property," iCIMS then terminated Ahmad's employment on June 7, 2018, "acting in discrimination." PSAC ¶¶ 21-22. The complaint alleges that iCIMS "acted deceptively and illegally to acquire intellectual property that Plaintiff had been creating even prior to joining iCIMS as an employee." PSAC ¶ 27. On August 17, 2018, about two months after Ahmad's termination from iCIMS, Vista invested $1.2 billion in iCIMS. PSAC ¶ 32.

In June 2019, Beacon contacted Ahmad about a job opportunity, initially stating that Ahmad would be a "contractual employee" of Beacon and would work with naviHealth to implement iCIMS' software. PSAC ¶ 35. After Ahmad expressed "great hesitance," Beacon and naviHealth stated that naviHealth was seeking someone full time for a role as "Senior Configuration Engineer." Id. Beacon and naviHealth said "this role will be made direct hired full time with naviHealth and that will happen after Plaintiff initiates the contract." Id. At some point in July 2019, Ahmad accepted the role Beacon offered, induced by "false statements of [a promising career with naviHealth." PSAC ¶ 36. As part of this acceptance, Ahmad also signed the first

and last page of the agreements titled "Invention Assignment Agreement" and "Business Associate Addendum." Id. Despite a "remote employment understanding," Beacon and naviHealth demanded Ahmad travel to Brentwood, Tennessee, which cost him time and money. PSAC ¶ 40. During his employment, Beacon and naviHealth "improperly" reported Ahmad's wages as earnings in Tennessee. PSAC ¶ 41. Because of this, Ahmad was not able to qualify or was delayed in qualifying for unemployment benefits during the pandemic, "resulting in financial harm in New York." Id. Around June 2020, iCIMS, "as backed by" both Vista and Susquehanna, was "able to engineer and reverse-engineer Plaintiff[']s novel intellectual[] property and began to offer it as services to its clients." PSAC ¶ 44.

The complaint also contains (1) allegations claiming various conspiracies among the defendants to harm plaintiff; (2) allegations that some action was taken by the "defendants" without specifying which defendants are at issue or the role of each defendant; and (3) allegations that cite a statute or legal principles that are conclusory insofar as they do not detail the specific acts demonstrating that the defendants violated those laws or legal principles. See, e.g., PSAC ¶¶ 25, 29, 33-34, 37-39, 43-46, 49-51, 54-59, 61-62. For the reasons explained below, we do not consider these allegations.[3]

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[3] We also ignore an allegation that makes references to other filings in this case, see PSAC ¶ 52, as such an allegation is inconsistent with the requirements of Fed. R. Civ. P. 10, which provides pleadings shall refer to paragraphs of an earlier pleading, not to memoranda of law.

B. Procedural History

Ahmad filed his original complaint in this action on June 11, 2020, naming the iCIMS defendants and describing for the most part an employment discrimination claim. Complaint filed June 11, 2020 (Docket # 2) ("Compl."). The iCIMS defendants, originally the only defendants in the case, moved to compel arbitration shortly thereafter on the ground that the claim in the complaint arose out of confidentiality agreement Ahmad had executed with iCIMS. See Ahmad v. Day, 556 F. Supp. 3d 214, 215 (S.D.N.Y. 2021). The Court denied the motion to compel arbitration on the ground that the complaint made claims of employment discrimination and did not arise out of the confidentiality agreement. Id. Ahmad filed the FAC on August 25, 2021, adding naviHealth, Beacon Hill, and Vista as defendants and adding intellectual property claims. See FAC. The iCIMS defendants answered the FAC on September 15, 2021. Answer, filed Sept. 15, 2021 (Docket # 78). naviHealth, Beacon, and Vista each filed a motion to dismiss. See Motion to Dismiss, filed Jan. 14, 2022(Docket # 104); Motion to Dismiss, filed Jan. 18, 2022 (Docket # 109); Motion to Dismiss, filed Jan. 18, 2022 (Docket # 117). The Court granted naviHealth and Beacon's motions on the ground that plaintiff lacked standing to sue them because he had shown no injury traceable to their conduct and granted Vista's motion to dismiss for lack of personal jurisdiction. See Ahmad v. Day, 2022 WL 1814905, at *5-6 (S.D.N.Y. June 2, 2022), adopted, 2022 WL 2452231 (S.D.N.Y. July 6, 2022). Ahmad was given permission to move to file an amended complaint. See Ahmad, 2022 WL 2452231, at *3.

Ahmad filed the instant motion on July 13, 2022. See Pl. Mem. Attached to the motion is a proposed amended complaint that realleges claims against the previous defendants and adds as new defendants Susquehanna, Clay Richards (who is associated with naviHealth), and Comcast. PSAC at 1. The proposed complaint lists a host of federal and state statutes and common law claims. See PSAC at 5-8. Some relate to employment discrimination or mistreatment during his employment, and others appear to relate to his claims of theft of his intellectual property. Id.

Additionally, Ahmad filed documents in which he seeks to challenge the constitutionality of the Federal Arbitration Act. See Notice of Constitutional Question, filed July 13, 2022 (Docket # 167) ("Not."); Supplement to ECF Docket # 167, filed July 18, 2022 (Docket # 171) ("Supp. to Not.").

II. LAW GOVERNING MOTIONS FOR LEAVE TO AMEND

Rule 15(a) provides that a "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The policy behind this rule is that "[l]iberal amendment promotes judicial economy by making it possible to dispose of all contentions between parties in one lawsuit." Bilt-Rite Steel Buck Corp. v. Duncan's Welding & Corr. Equip., Inc., 1990 WL 129970, at *1 (E.D.N.Y. Aug. 24, 1990) (citing JennAir Prods. v. Penn Ventilator, Inc., 283 F. Supp. 591, 594 (E.D. Pa. 1968)). The decision to grant or deny leave to amend under Rule 15(a)(2) is "within the discretion of the trial court." See Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330

(1971) (citation omitted). The court may deny leave to amend for "good reason," which normally involves an analysis of the four factors articulated in Foman v. Davis, 371 U.S. 178, 182 (1962): undue delay, bad faith, futility of amendment, or undue prejudice to the opposing party. McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 200 (2d Cir. 2007) (citing Foman, 371 U.S. at 182).

"Futility is a determination, as a matter of law, that proposed amendments would fail to cure prior deficiencies or to state a claim under Rule 12(b)(6) of

the Federal Rules of Civil Procedure." Empire Merchs., LLC v. Reliable Churchill LLLP, 902 F.3d 132, 139 (2d Cir. 2018) (citations omitted).

III. DISCUSSION

In reviewing the complaint, we are mindful that "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotation marks omitted); accord McPherson v. Coombe, 174 F.3d 276, 280 (2d Cir.1999) (A pro se party's pleadings should be construed liberally and interpreted "to raise the strongest arguments that they suggest[.]") (quoting Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir.1994)). However, even pro se pleadings must contain factual allegations that "raise a right to relief above the speculative level." Dawkins v. Gonyea, 646 F.Supp.2d 594, 603 (S.D.N.Y.2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545, (2007)). We address each defendant or set of defendants in turn.

A. Vista

The Court previously granted Vista's motion to dismiss the First Amended Complaint based on lack of personal jurisdiction. Ahmad, 2022 WL 1814905, at *5-6. The Court found that the FAC did not establish that Vista "committed a tortious act merely by investing money in iCIMS" and did not meet the requirements for specific jurisdiction under New York law. Ahmad, 2022 WL 1814905, at *6, adopted, 2022 WL 2452231, at *2.

In examining the proposed amended complaint, we ignore the paragraphs that make allegations against all or some defendants in an undifferentiated manner as a group, including those with conclusory allegations of conspiracy. See, e.g., Appalachian Enterprises, Inc. v. ePayment Sols., Ltd., 2004 WL 2813121, at *7 (S.D.N.Y. Dec. 8, 2004) ("A plaintiff fails to satisfy rule 8, where the complaint lumps all the defendants together and fails to distinguish their conduct because such allegations fail to give adequate notice to the defendants as to what they did wrong.") (citations and internal punctuation omitted); Stutts v. De Dietrich Grp., 2006 WL 1867060, at *14 (E.D.N.Y. June 30, 2006) ("Conspiracy claims premised upon conclusory, vague or general allegations will not withstand a motion to dismiss.") (citation and internal punctuation omitted). We also ignore conclusory allegations regarding Vista's presence in New York. See PSAC at 9 (¶ 7) (alleging that all defendants have "significant presence in the Sate [sic] of New York" and "generate a significant

amount of revenue and have large presence in the state.").

The only specific allegations regarding Vista are that on August 17, 2018, it "invested hundreds of millions of dollars (approximately $1.2 Billion) in iCIMS, . . . two months after Plaintiff's unlawful termination." PSAC ¶ 32. The complaint alleges that
Vista sold "close to half its stake in iCIMS" in June 2022. PSAC ¶¶ 47, 53.

Nothing else in the complaint describes any specific acts by Vista. While the complaint contains a number of allegations lumping Vista in with various other defendants, see e.g., ¶¶ 44-49, no description is given of any acts undertaken by Vista itself. The claims that the defendants as a group harmed plaintiff are entirely conclusory.

As the Court noted previously, Ahmad, 2022 WL 1814905, at *5 n.8, general jurisdiction over a nonresident corporation based on the corporation's in-state presence is constitutional only if the corporation's in-state contacts "are so continuous and systematic as to render it essentially at home in the forum State." Daimler AG v. Bauman, 571 U.S. 117, 139 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)) (punctuation omitted). Ahmad's proposed complaint contains no non-conclusory allegations showing such contacts, and thus subjecting Vista to general personal jurisdiction would violate the Due Process Clause. See Ahmad, 2022 WL 1814905, at *5 n.8.

As to specific jurisdiction, which in New York is codified at C.P.L.R. § 302(a), the proposed complaint does not cure the defects of the original

complaint. Section 302(a) authorizes the exercise of specific personal jurisdiction over a nonresident defendant in four circumstances: (1) if the defendant "transacts any business within the state or contracts anywhere to supply goods or services in the state," id. § 302(a)(1); (2) if the defendant "commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act," id. § 302(a)(2); (3) if the defendant "commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce," id. § 302(a)(3); or (4) if the defendant "owns, uses or possesses any real property situated within the state," id. § 302(a)(4). There are no non-conclusory allegations that show that Vista engaged in any of these acts. The only specific allegation about Vista's activity is a business transaction with iCIMS two months after Ahmad's termination. That transaction has no nexus to whatever harm Ahmad is alleging (or any other claim in the proposed complaint) and thus cannot satisfy §302(a)(1). See, e.g., Sole Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC, 450 F.3d 100, 103 (2d Cir. 2006) ("A connection that is 'merely coincidental' is insufficient to support jurisdiction.") (citation omitted). As to the

remaining allegations referring to defendants as a group, they are all conclusory, and "a plaintiff may not rely on 'conclusory non-fact-specific jurisdictional allegations' to overcome a motion to dismiss[.]" Doe v. Delaware State Police, 939 F. Supp. 2d 313, 321 (S.D.N.Y. 2013)(quoting Jazini v. Nissan Motor Co., 148 F.3d 181, 185 (2d Cir. 1998)). Accordingly, the Court will not grant leave to amend to include Vista as a defendant.

B. Defendants Beacon Hill and naviHealth

1. Intellectual Property Claims

The Court previously granted the motion to dismiss claims against naviHealth and Beacon because of a lack of standing. Ahmad, 2022 WL 1814905, at *4-5, adopted, 2022 WL 2452231, at *2-3. The PSAC appears to assert claims about the theft of intellectual property by iCIMS, roping naviHealth and Beacon into these claims in an entirely conclusory manner, again without showing how their actions had any relation to those claims. See, e.g., PSAC ¶ 33. Thus, plaintiff lacks standing to sue Beacon and naviHealth to remedy any harm caused to him by iCIMS, given that he continues to show no connection between the actions of Beacon and naviHealth and any allegedly improper action by iCIMS. See, e.g., Rothstein v. UBS AG, 708 F.3d 82, 91 (2d Cir. 2013) (to satisfy standing requirement, plaintiff must "demonstrate a causal nexus between the defendant's conduct and the injury") (citation omitted).

2. Employment-Related Allegations

The proposed complaint includes entirely new allegations regarding plaintiff's employment that name naviHealth and Beacon Hill. We discern

two separate factual circumstances. First, plaintiff alleges that Beacon and/or naviHealth did not fulfill a promise to provide him with a "full time career" and to be hired by naviHealth. PSAC ¶ 35. Second, the proposed complaint alleges that Beacon and naviHealth "improperly reported Plaintiff[']s wages in the State of Tennessee" and that this misreporting meant he later was not "able to qualify for Regular Unemployment Benefits" or was otherwise delayed in receiving benefits. PSAC ¶ 41 In its opposition, Beacon Hill disputes making any such promise to Ahmad and cites to emails and documents Ahmad previously placed in the record along with language from their employment contract in an apparent effort to argue that the motion to amend would be futile. Beacon Opp. at 18-19. naviHealth similarly points to materials outside the record to refute Ahmad's allegations. naviHealth Opp. at 5 n.2. But materials outside the pleadings are not properly considered on a motion to amend, see Kiarie v. Dumbstruck, Inc., 473 F. Supp. 3d 350, 355-56 (S.D.N.Y. 2020). As one court has noted, the fact that futility may sometimes constitute a reason for denial of a motion to amend is not a general invitation to explore the merits of novel proposed claims or to raise defenses that require analysis of matters outside the pleadings. The futility defense to a motion to amend is not, in short, a substitute for a motion to dismiss or a motion for summary judgment. Livingston v. Trustco Bank, 2021 WL 6199655, at *2 (N.D.N.Y. Apr. 23, 2021) (citation omitted). Accordingly, we consider only the allegations in the complaint. With respect to the claim made that plaintiff was falsely given the "promise of [a] full time career,"

PSAC ¶ 35, if we were to construe this claim as one of fraud, it plainly does not satisfy the pleading standards of Fed. R. Civ. P. 9(b) inasmuch as Ahmad's allegations "fail[] to state with particularity the circumstances constituting fraud" Indeed, the circumstances of the alleged promise are utterly garbled and no particular speaker or statement is identified. See PSAC ¶ 35. To the extent the proposed amended complaint could be construed as attempting to state a breach of contract claim, it fails because it is does not allege with any specificity what the actual promise was, who made the promise, and in what form it was made. See, e.g., Wolff v. Rare Medium, Inc., 210 F. Supp. 2d 490, 494 (S.D.N.Y. 2002) ("a plaintiff must identify the specific provision of the contract that was breached as a result of the acts at issue"), aff'd, 65 F.App'x. 736 (2d Cir. 2003); Sud v. Sud, 211 A.D.2d 423, 424 (1st Dep't 1995) (A breach of contract claim is "properly dismissed" where plaintiff fails "to allege, in nonconclusory language, as required, the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated.").

The other employment-related claim is that Beacon and naviHealth "improperly reported Plaintiff[']s wages in the State of Tennessee" and that this misreporting meant he later was not "able to qualify for Regular Unemployment Benefits" or was otherwise delayed in receiving benefits. PSAC ¶ 41. The proposed complaint, however, does not explain why or how naviHealth would be responsible for the misreporting. According to the proposed complaint, Ahmad accepted a job offer

from Beacon for a project at naviHealth, and there is no factual allegation that he worked for naviHealth. PSAC ¶¶ 35-36. Thus, the proposed complaint does not show that Ahmad has standing to assert this claim with respect to naviHealth because he has not shown how naviHealth caused the alleged injury.

As for the claim with respect to Beacon, Ahmad's allegations are meager and vague. There is an unclear reference to a "remote employment understanding," PSAC ¶ 40, with no specifics as to the basis for this "understanding." Additionally, Ahmad's factual allegations concede that the work was at a Tennessee-based business and that he repeatedly traveled to Tennessee for this work. PSAC ¶ 40. More importantly, Ahmad has not alleged how his wages were misreported, and it is unclear what statutory or common law claim he would have against Beacon. Whatever supposed right this claim draws from, the complaint does not provide allegations that show the claim could survive a motion to dismiss.

The proposed complaint also alleges repeatedly that different defendants alone or in tandem breached a fiduciary responsibility owed to Ahmad. PSAC ¶¶ 38, 49, 56. Putting aside the conclusory nature of the allegations, a claim for breach of fiduciary duty requires "the existence of a fiduciary relationship[.]" Yukos Cap. S.A.R.L. v. Feldman, 977 F.3d 216, 241 (2d Cir. 2020) (quoting United States Fire Ins. Co. v. Raia, 94, A.D.3d 749 (2d Dep't 2012)). A fiduciary relationship is a specific arrangement grounded in trust and confidence, which may be express or implied. N. Shipping Funds I, LLC v. Icon Cap. Corp., 921 F.

Supp. 2d 94, 104-105 (S.D.N.Y. 2013). Ahmad has alleged no facts to show the existence of a fiduciary relationship with naviHealth or Beacon. At times, he asserts instead that employers owe such a duty to their employees. See, e.g., PSAC ¶ 38. But, in fact, case law holds otherwise. See, e.g., Kavitz v. Int'l Bus. Machines Corp., 2010 WL 11507447, at *10 (S.D.N.Y. Aug. 27, 2010), aff'd, 458 F. App'x 18 (2d Cir. 2012) ("[T]here is no fiduciary relationship between an employee and his employer."); BGC Partners, Inc. v. Avison Young (Canada) Inc., 160 A.D.3d 407, 407-08 (1st Dep't 2018) ("[N]o fiduciary relationship arises from an employment relationship[.]"). Thus, the complaint does not state a claim against naviHealth and Beacon based on breach of fiduciary duty.

Finally, while neither party has raised it, we are not convinced that there is subject matter jurisdiction over any claims against naviHealth and Beacon. The Court will not list the many federal statutes listed in the complaint, see Compl. at 5-8, as it is enough to say there are no factual allegations in the complaint against naviHealth or Beacon that fit within any of these federal statutes. With the federal claims gone from the complaint, there is no indication that the Court has subject matter jurisdiction over any state law claims inasmuch as there are no non- conclusory allegations (or indeed any allegations) that show the jurisdictional amount in 28 U.S.C. § 1332 has been satisfied with respect to any employment-related claims.

3. Clay Richards

The proposed complaint would add Clay Richards as a defendant to the case. Id. at 4. While

it appears that Clay Richards is associated with naviHealth, see PSAC at 3-4 (showing same address for Richards as naviHealth),[4] the only reference the proposed complaint makes to Richards specifically is that "Defendants collectively including Clay Richards, conspired to create an illegal plan of a misrepresented contract." PSAC ¶¶ 34. Such a vague and conclusory allegation of a conspiracy is insufficient to state a claim against Richards.

For the above reasons, the motion to amend as to Beacon, naviHealth and Clay Richards is denied.

C. The iCIMS Defendants

The original complaint and FAC contained claims against the iCIMS defendants for employment discrimination. See Compl. at 5; FAC 9-11. The new complaint adds a number of other claims relating to employment discrimination and intellectual property. See, e.g., PSAC ¶¶ 7-38.

The iCIMS defendants first argue that the entire proposed amended complaint as it concerns them is improper because the Court in its July 6, 2022 Order did not permit Ahmad to seek leave to amend with respect to the iCIMS defendants. iCIMS Opp. at 2-3; see also Ahmad, 2022 WL 2452231, at *3. We disagree that Ahmad is barred from making a motion to amend.

While the rulings in the July 6, 2022, Order are certainly the law of the case, its grant of permission to file a leave to amend does not speak

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[4] In its opposition memorandum, naviHealth identified Richards as the former CEO of naviHealth. naviHealth Opp. at 6.

to any future motion to amend with respect to the iCIMS defendants. As iCIMS itself recognizes, iCIMS Opp. at 2, Fed. R. Civ. P. 15(a)(2) allows a party to seek leave to amend. iCIMS selectively quotes from that rule to omit the portion that states that leave to amend should be "freely" given when "justice so requires." In a perhaps related argument, iCIMS argues that the new allegations in the complaint "should have been included in either [Ahmad's] Original or First Amended complaint" and that there is some burden in responding to allegations two years after the filing of the original complaint. Id. at 5. But iCIMS makes no effort to show any prejudice resulting from the new allegations, and it is settled that in the absence of prejudice or bad faith, undue delay is not in itself a basis to reject a motion to amend. See State Tchrs. Ret. Bd. v. Fluor Corp., 654 F.2d 843, 856 (2d Cir. 1981); accord Contrera v. Langer, 314 F. Supp. 3d 562, 575 (S.D.N.Y. 2018).

iCIMS also argues that the complaint violates Rule 8 of the Federal Rules of Civil Procedure in that it fails to contain a "short and plain statement of the claim showing the pleader is entitled to relief." iCIMS Opp. at 3. It argues that the complaint is so "confusing, ambiguous, and unintelligible" that the defendants cannot respond. Id. at 4. We disagree. While, as we have noted, there are a number of allegations that are improper, vague, and conclusory, we believe that they are of a character that iCIMS should be able to admit or deny (or deny knowledge or information about) the allegations without great difficulty. In other words, the complaint passes muster under Rule 8 even if

the allegations may fail to state a claim under Rule 12(b)(6).

Finally, iCIMS argues that "many of the allegations are meritless or time-barred." iCIMS Opp. at 4. iCIMS' brief, however, confines its arguments as to the merits of the claims to a single, brief paragraph and provides only the most cursory argument on this point. See id. As to one claim, it improperly relies on material outside the pleadings. See, e.g., id. (asserting that plaintiff was under 40 years old and thus cannot state a claim for age discrimination). iCIMS also states that its brief gives a "mere sampling" of the deficiencies in the proposed complaint. Id. In light of the cursory and undeveloped manner in which iCIMS presents its arguments as to the merits of any potential motion to dismiss (and thus as to the "futility" of accepting the proposed complaint), we do not find it appropriate to deny leave to amend to add allegations against the iCIMS defendants on the ground of futility. The iCIMS defendants will be free to make such arguments in a future motion, such as a motion to dismiss, or perhaps more efficiently, a motion for summary judgment.

D. Newly Added Defendants

The proposed complaint would add Comcast and Susquehanna as defendants if allowed. PSAC at 4. While these defendants have not yet been served or appeared, it is plain from the face of the complaint that it states no claims against them and thus the plaintiff should not be permitted to amend the complaint to add these defendants. This is one of those instances where, if the complaint were filed, the Court could appropriately dismiss it

immediately upon filing under 28 U.S.C. § 1915(e)(2)(B) on the ground that plaintiff is proceeding in forma pauperis and it is "unmistakably clear that the . . . complaint lacks merit or is otherwise defective." Catzin v. Thank You & Good Luck Corp., 899 F.3d 77, 82 (2d Cir. 2018) (citation omitted).

As to Comcast, the only non-conclusory and specific allegations are that it was involved with "DreamIt Ventures" in the period of 2012-2014. PSAC ¶¶ 1-6. Ahmad alleges only that Comcast "backed" DreamIt. PSAC ¶ 5. He does not make any allegations showing that Comcast actually caused him any injury, let alone within any possible period that would not be barred by a relevant statute of limitations. Ahmad does allege that iCIMS hired plaintiff "on the orders of its affiliates [sic] Comcast so that iCIMS and its affiliates could easily and closely monitor Plaintiff." PSAC ¶ 9. These allegations, however, do not state any claim for relief against Comcast. See generally United States ex rel. Hussain v. CDM Smith, Inc., 2018 WL 11217206, at *1 (S.D.N.Y. Jan. 31, 2018) ("[T]he substance of Relator's contemplated amendments is so vague as to preclude application of the Rule 15 standard, thereby rendering amendment futile."). Moreover, it appears that Ahmad lacks standing to assert any claim against Comcast as he has not shown "a causal connection" between any injury to Ahmad "and the conduct complained of." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Thus, the Court lacks subject matter jurisdiction over any claim against Comcast. Finally, there are no non-

conclusory allegations that there is personal jurisdiction over Comcast.

As to Susquehanna, the complaint's allegations that mention it are entirely conclusory and/or made in conjunction with allegations against other defendants or unsupported claims of conspiracy that fail to specify what acts Susquehanna specifically engaged in. See PSAC ¶¶ 44, 46, 48-49. It is similarly the case that Ahmad lacks standing to assert any claim against Susquehanna because he has not shown "a causal connection" between any injury to Ahmad "and the conduct complained of." Lujan, 504 U.S. at 560. Thus, the Court would lack subject matter jurisdiction over this claim. Additionally, there are no non-conclusory allegations that there is personal jurisdiction over Susquehanna.

E. FAA Notice

Finally, Ahmad has filed a document seemingly in conjunction with the briefing of this motion that seeks to challenge the constitutionality of the Federal Arbitration Act ("FAA"). See Not.; Supp. to Not. There is no claim involving the FAA in this case, however. While iCIMS at one point sought to dismiss the complaint on the ground that it was covered by an arbitration agreement, the Court denied that motion. See Ahmad, 556 F. Supp. 3d at 215. As a result, this Court has no reason to make any ruling regarding the FAA inasmuch as federal courts may only "determine actual controversies arising between adverse litigants." Muskrat v. United States,219 U.S. 346, 361 (1911); accord Whole Woman's Health v. Jackson, 142 S. Ct. 522, 532 (2021).

CONCLUSION

For the above reasons, the motion for leave to amend (Docket # 168) is granted in part and denied in part. Ahmad is given leave to file the proposed amended complaint as long as he deletes from the caption and from the list of defendants (on pages 3 and 4) the following defendants: Beacon Hill Staffing Group, naviHealth Inc., Vista Equity Partners, Clay Richards, Susquehanna Growth Equity, and Comcast Corporation. In other words, plaintiff may file the proposed amended complaint as long as the only defendants named are iCIMS Inc., Colin Day, and Courtney Dutter. Also, this proposed amended complaint must be filed on or before January 6, 2023. So, Ordered, December 28, 2022, New York, New York.

U.S. District Court, Southern District of New York 1:20-cv-04507, Order, June 6, 2023, dismissal granted; injunction denied.

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

U.S. District Court for the Southern District Court of New York Case No: 1:20-cv-04507

June 06, 2023, Jesse M. Furman, United States District Judge,

Plaintiff Mahfooz Ahmad, proceeding without counsel, brings this case against iCIMS, Inc. ("iCIMS" or "the Company"), iCIMS Chief Executive Officer Colin Day, and iCIMS Deputy General Counsel Courtney Dutter (collectively, "Defendants"), asserting a host of federal and state causes of action arising from events during and after his employment with iCIMS. The Second Amended Complaint makes passing reference to a dozen or so federal and state statutes, but — liberally construed — it alleges three causes of action. *See* ECF No. 188 ("SAC"), 4-8, ¶¶ 1-25. First, Ahmad alleges employment discrimination on the basis of race, religion, and national origin,

in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, Section 1981 of the 1866 Civil Rights Act ("Section 1981"), 42 U.S.C. § 1981; New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290 *et seq.*; and New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101 *et seq.* SAC 4-5, ¶¶ 1-4. Second, Ahmad alleges wage and hour violations under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* SAC 5, ¶ 6. Finally, Ahmad alleges that Defendants misappropriated his intellectual property and violated the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836 *et seq.* SAC 7, ¶¶ 16, 22-23. Defendants now move, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Complaint for failure to state a claim. ECF No. 197.[5] For the

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[5] While the parties do not address the issue, the Court notes that Defendants previously filed an answer to the First Amended Complaint. See ECF No. 78 ("Defs.' Answer"). Although Rule 12(b) requires that a party move to dismiss before filing a responsive pleading, courts have generally held that a party may move to dismiss an amended complaint, notwithstanding a prior answer to an earlier complaint, if the amendment added new factual allegations. See, e.g., Coppelson v. Serhant, No. 19-CV-8481 (LJL), 2021 WL 148088, at *3 (S.D.N.Y. Jan. 15, 2021); Kalin v. Xanboo, Inc., 526 F. Supp. 2d 392, 398 (S.D.N.Y. 2007). This is especially true when, as here, the earlier answer alleged failure to state a claim as an affirmative defense. See Doolittle v. Ruffo, 882 F. Supp. 1247, 1257 n.9 (N.D.N.Y. 1994); Wright & Miller, Federal Practice and Procedure § 1361 (3d ed. 2020); see also Defs.' Answer 5, ¶ 1. In any event, to the extent that Defendants' motion is untimely under Rule 12(b)(6), the Court may and does treat it as a motion for judgment on the pleadings under Rule 12(c). See, e.g., Patel v. Contemporary Classics of Beverly Hills, 259 F.3d 123, 126 (2d Cir. 2001)

reasons that follow, Defendants' motion to dismiss is GRANTED.[6]

BACKGROUND

The following facts, which are taken from the Second Amended Complaint, are deemed to be true for purposes of this motion and construed in the light most favorable to Ahmad. *See, e.g.*, *Kleinman v. Elan Corp., PLC*, 706 F.3d 145, 152 (2d Cir. 2013). Ahmad was hired by iCIMS as a Data Migration Specialist in February 2016. SAC 12, ¶ 10. He was promoted twice but received only minimal salary increases; his employment later transitioned from in-person to remote. *Id.* at 12, ¶¶ 10-11. Sometime thereafter, Ahmad's responsibilities increased: He was required to commute to headquarters periodically without reimbursement and often worked more than forty hours per week without overtime compensation. *Id.* at 12-13, ¶¶ 12-15, 17. Additionally, despite knowing that Ahmad is a practicing Muslim, iCIMS managers did not order halal or kosher food on occasions that he visited headquarters with other employees and scheduled calls during compulsory Friday prayer on multiple occasions. *Id.* 13-14, ¶¶ 13, 18. Ahmad alleges that, on one occasion, he "was spoken to harshly" after he

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(holding that conversion "makes eminently good sense" under such circumstances and citing cases).

[6] In light of that disposition, Ahmad's motions for a preliminary injunction, see ECF No. 212, for appointment of pro bono counsel, see ECF No. 232, to file certain documents under seal, see ECF No. 233, and to waive any injunction bond, see ECF No. 234, are denied as moot.

explained that he needed to reschedule a meeting due to Friday prayers. *Id.* at 14, ¶ 18. On May 30, 2018, Ahmad submitted to Day "as an investment opportunity" a pitch deck business plan for a web-based social networking platform he had developed called Jobtrail; after Ahmad did so, iCIMS scheduled meetings to review the business plan. *Id.* 14, ¶¶ 19-20. On June 7, 2018, however, his employment was terminated, allegedly in order to deprive him of his intellectual property. *Id.* at 15, ¶¶ 22-25.

Ahmad alleges that, following his termination, iCIMS "and their affiliates" launched a complex retaliatory scheme to cover up their "illegal and deceptive copying of [his] novel intellectual property invention." *Id.* at 17, ¶ 33. The Second Amended Complaint is somewhat fuzzy on the particulars of this plan, making allegations only as to former Defendants naviHealth, Inc. ("naviHealth") and Beacon Hill Staffing Group ("Beacon Hill"), styled as "affiliates" of iCIMS.[7] *Id.* at 17, ¶ 35. In essence, Ahmad alleges that in June 2019, a year after he was terminated from iCIMS, he received unsolicited emails from Beacon Hill encouraging him to apply for a position with

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[7] Ahmad's First Amended Complaint added naviHealth and Beacon Hill as defendants. *See* ECF No. 76. On June 2, 2022, Magistrate Judge Gorenstein issued a Report and Recommendation recommending dismissal of the Amended Complaint against naviHealth and Beacon Hill for lack of personal jurisdiction and Article III standing, which the Honorable Analisa Torres — to whom this case was previously assigned — adopted shortly thereafter. *See Ahmad v. Day*, No. 20-CV-4507 (AT), 2022 WL 1814905 (S.D.N.Y. June 2, 2022), *adopted* 2022 WL 2452231 (S.D.N.Y. Jul. 6, 2022).

naviHealth. *Id.* Ultimately, he got a job with naviHealth as a Senior Configuration Engineer, a role that required him to implement iCIMS software. *Id.* Ahmad claims that, as a condition of employment, he was "deceptively lured and induced" into signing an "Invention Assignment Agreement," after which iCIMS apparently "reverse- engineer[ed]" Ahmad's intellectual property for its own purposes. *Id.* at 18, 20, ¶¶ 36, 43-44.

STANDARD OF REVIEW

In reviewing a motion to dismiss pursuant to Rule 12(b)(6), a court must accept the factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *See Giunta v. Dingman*, 893 F.3d 73, 79 (2d Cir. 2018). A court will not dismiss any claims unless the plaintiff has failed to plead sufficient facts to state a claim to relief that is facially plausible, *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) — that is, one that contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). More specifically, a plaintiff must allege facts showing "more than a sheer possibility that a defendant has acted unlawfully." *Id.* A complaint that offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Further, if the plaintiff "ha[s] not nudged [his] claims across the line from conceivable to plausible, [those claims] must be dismissed." *Id.* at

570. Where, as here, a plaintiff brings claims of employment discrimination, however, the facts "alleged in the complaint need not give plausible support to the ultimate question of whether the adverse employment action was attributable to discrimination. They need only give plausible support to a minimal inference of discriminatory motivation." *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015); *see also Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 86-87 (2d Cir. 2015). Ahmad is proceeding *pro se* — that is, he is proceeding without counsel. It is well established that a court is "obligated to afford a special solicitude to *pro se* litigants." *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010); *accord Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). Thus, when considering Ahmad's submissions, the Court must 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). Nevertheless, "to survive a motion to dismiss, a *pro se* plaintiff must still plead sufficient facts to state a claim that is plausible on its face." *Bodley v. Clark*, No. 11-CV-8955 (KBF), 2012 WL 3042175, at *2 (S.D.N.Y. July 23, 2012); *accord Green v. McLaughlin*, 480 F. App'x 44, 46 (2d Cir. 2012) (summary order).

DISCUSSION

As noted, the Court liberally construes the Second Amended Complaint to allege three sets of claims: employment discrimination claims under federal, state, and local law; wage and hour claims under the FLSA; and misappropriation of

intellectual property claims. [8] The Court will discuss each set of claims in turn, but will leave the NYCHRL claims for last.

A. Employment Discrimination Claims

First, Ahmad brings employment-discrimination claims under Title VII, Section 1981, and the NYSHRL. Courts examine claims under Title VII, Section 1981, and the NYSHRL using the same general standards. *See Torre v. Charter Commc'ns., Inc.*, 493 F. Supp. 3d 276, -85 (S.D.N.Y. 2020) (Title VII and NYSHRL); *Awad v. City of New York*, No. 13-CV-5753 (BMC), 2014 WL 1814114, at *5 (E.D.N.Y. May 7, 2014) (Section 1981, Title VII, and NYSHRL). Under these statutes, "[t]o survive a motion to dismiss, a plaintiff need only establish a *prima facie* case of . . . discrimination by demonstrating that (1) he was within the protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action; and (4) the adverse action

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[8] The Court declines to consider claims raised in the Second Amended Complaint that are wholly without factual support and not addressed in Ahmad's opposition to Defendants' motion to dismiss. See, e.g., White v. Gutwein, No. 20-CV-4532 (NSR), 2022 WL 2987554, at *2 (S.D.N.Y. July 28, 2022) ("The Court's duty to construe [a pro se] Complaint liberally and favorably is not the equivalent of a duty to re-write it." (internal quotation marks omitted)). The Court also declines to consider claims raised for the first time in Ahmad's opposition, including his First Amendment claims. See ECF No. 215 ("Pl.'s Opp'n"), at 26; see also, e.g., Davila v. Lang, 343 F. Supp. 3d 254, 267 (S.D.N.Y. 2018) (noting that a court may consider new facts raised by a pro se plaintiff in opposition "to the extent that they are consistent with the complaint" but that a plaintiff may not raise "entirely new causes of action for the first time" (internal quotation marks omitted)).

occurred under circumstances giving rise to an inference of discrimination." *Menaker v. Hofstra Univ.*, 935 F.3d 20, 30 (2d Cir. 2019) (cleaned up). At this early stage of the litigation, Ahmad must "only give plausible support to a minimal inference of discriminatory motivation"; he need not plausibly allege that "the adverse employment action was attributable to discrimination." *Littlejohn*, 795 F.3d at 311. Unlike the other three statutes, however, Section 1981 applies only to claims of intentional racial discrimination. *See Patterson v. Cnty. of Oneida*, 375 F.3d 206, 226 (2d Cir. 2004).

Measured against these standards, Ahmad's claims of employment discrimination —which are based on three categories of allegations — fall short.[9] The first category of allegations is that he was denied a salary increase despite being assigned the "worst job duties" and "worst work responsibilities." SAC 12-13, ¶¶ 10-14. As Defendants correctly point out, however, the Second Amended Complaint is bereft of any allegation that he was paid less well *because* of his race, national origin, or religion. Defs.' Mem. 21.

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[9] To the extent that the Second Amended Complaint alleges claims under the Age Discrimination in Employment Act or discrimination based on membership in any other protected class, such claims were not included in, or reasonably related to the claims that were included in, Ahmad's Equal Employment Opportunity Commission complaint, *see* ECF No. 201- 2 (noting specifically that the bases for discrimination were creed, national origin, and race/color), and thus would be subject to dismissal for failure to exhaust administrative remedies, *see Williams v. N.Y.C. Hous. Auth.*, 458 F.3d 67, 70 (2d Cir. 2006); *Deravin v. Kerik*, 335 F.3d 195, 201 (2d Cir. 2003).

Ahmad merely asserts in conclusory fashion that he did not receive as large a raise as other employees, the majority of whom were white. SAC 12, ¶ 10; *see also* Pl.'s Opp'n 22. But he fails to plead any facts relating to the conduct and responsibilities of other employees, differences in compensation, or other circumstances tending to demonstrate that he was paid less by reason of his race, religion, or national origin.

Accordingly, Ahmad's claims based on a pay disparity fail as a matter of law. *See, e.g.*, *Servello v. N.Y. State Office of Child. & Fam. Servs.*, No. 18-CV-0777, 2019 WL 974972, at *5 (N.D.N.Y. 2019) (holding that by "fail[ing] to plausibly allege that [his] and [other] employees' duties required substantially equal responsibility, Plaintiff fails to make out an unequal pay claim under . . . Title VII"); *Hughes v. Xerox Corp.*, 37 F. Supp. 3d 629, 645 (W.D.N.Y. 2014) (dismissing an unequal pay claim for failure to identify similarly situated co-workers who were paid more than the plaintiff); *accord Matthew v. Tex. Comptroller of Pub. Accts.*, No. 21-CV- 5337 (JPC), 2022 WL 4626511, at *7-8 (S.D.N.Y. Sept. 30, 2022); *Jong-Fwu v. Overseas Shipholding Grp., Inc.*, No. 00-CV-9682 (DLC), 2002 WL 1929490, at *6 (S.D.N.Y. Aug. 21, 2002).

Ahmad's next category of allegations sounds in the hostile work environment arena. To establish a hostile work environment under Title VII, Section 1981, or the NYSHRL, "a plaintiff must show that 'the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Littlejohn*, 795

F.3d at 320-21 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)); *accord Lenart v. Coach, Inc.*, 131 F. Supp. 3d 61, 66(S.D.N.Y. 2015) (applying the same standards to the NYSHRL claim). Ahmad's allegations, even taken together, fall short of this rigorous standard. He contends that his job duties were more burdensome than those of other employees, SAC 12-13, ¶¶ 12, 14-15; *see also* Pl.'s Opp'n 22; that iCIMS failed to provide halal (or kosher) meals when he came into the office and, further, that iCIMS refused to take into consideration his mandatory prayer times when scheduling calls, SAC at 13-14, ¶¶ 13, 18; and that, on one occasion, he was spoken to harshly after he explained that he needed to reschedule a call, *id.* at 14, ¶ 18. Once again, however, what dooms Ahmad's claims is what is missing: any allegation that this treatment was "*because* of his race, national origin, or religion." *Farooq v. N.Y.C. Health & Hosps. Corp.*, No. 19-CV-6294 (JMF), 2020 WL 5018387, at *9 (S.D.N.Y. Aug. 25, 2020). Moreover, Ahmad offers only "[o]ffhand and isolated incidents of offensive conduct," which "will not support a claim of discriminatory harassment. " *Salas v. N.Y.C. Dep't of Investigation*, 298 F. Supp. 3d 676, 683 (S.D.N.Y. 2018) (internal quotation marks omitted); *see, e.g.*, *Harris v. NYU Langone Med. Ctr.*, No. 12-CV-0454 (RA), 2013 WL 3487032, at *15 n.19 (S.D.N.Y. July 9, 2013) (noting that the plaintiff's claim that she "spoke a prayer at work in the presence of her supervisor . . . resulting in inhumane discipline and discharge," without more, is insufficient to survive a motion to dismiss), *adopted as modified* 2013 WL 5425336 (S.D.N.Y. Sept. 27, 2013); *Brodt v. City of New*

York, 4 F. Supp. 3d 562, 569 (S.D.N.Y. 2014) ("Courts also dismiss religious discrimination claims when the allegations are too vague to plausibly allege animus.").

Finally, Ahmad asserts in conclusory fashion that iCIMS "discriminatorily and unlawfully terminated" his employment. SAC at 14, ¶ 21. But, as Defendants point out, *see* Defs.' Mem. 20, the very same paragraph of the Second Amended Complaint explicitly alleges that the reason for Ahmad's termination was his proffering of the pitch deck to Day, *see* SAC 14, ¶¶ 20-21. That is, Ahmad's own allegations undermine any claim that his termination was caused by discrimination on the basis of race, national origin, or religion. *See, e.g.*, *Soloviev v. Goldstein*, 104 F. Supp. 3d 232, 249 (E.D.N.Y. 2015) (granting a motion to dismiss where the plaintiff had "shown no connection between his termination and his gender, race, or national origin"); *see also, e.g.*, *Nationwide Mut. Ins. Co. v. Morning Sun Bus. Co.*, No. 10-CV-1777 (ADS), 2011 WL 381612, at *6 (E.D.N.Y. Feb. 2, 2011) ("[Where a plaintiff's] own pleadings are internally inconsistent, a court is neither obligated to reconcile nor accept the contradictory allegations in the pleadings as true in deciding a motion to dismiss.").

Thus, Ahmad's Title VII, Section 1981, and NYSHRL claims must be and are dismissed.

B. FLSA Claims

Ahmad's FLSA claims are almost all time-barred and, regardless, fail to state a claim. In general, a statute of limitations is "an affirmative defense that must be raised in the answer." *Ellul v. Congregation of Christian Bros.*, 774 F.3d 791,

798 n.12 (2d Cir. 2014). It is well established, however, that "a statute of limitations defense may be decided on a Rule 12(b)(6) motion if the defense appears on the face of the complaint." *Id.* (citing *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008)). That is the case here for nearly all of Ahmad's FLSA claims. In general, the statute of limitations for an FLSA claim is two years. *See* 29 U.S.C. § 255(a); *see also, e.g.*, *Alvarez v. Michael Anthony George Const. Corp.*, 15 F. Supp. 3d 285, 296 (E.D.N.Y. 2014). Ahmad filed his initial Complaint — in which he did arguably plead an FLSA violation, *see* ECF No. 2, at 5 ("On many occasions I was expected to work 60+ hours/wk., with no overtime pay.") — on June 11, 2020. Accordingly, any FLSA claim based on paychecks prior to June 11, 2018, is time-barred. *See Nakahata v. N.Y.- Presbyterian Healthcare Sys., Inc.*, 723 F.3d 192, 198-99 (2d Cir. 2013) ("The cause of action for FLSA . . . claims accrues on the next regular payday following the work period when services are rendered[, and] each paycheck represents a potential cause of action."). Ahmad was terminated on June 7, 2018, SAC 14, ¶ 21, so, at most, his final pay period would be within the applicable statute of limitations; any claims based on earlier pay periods are time-barred.

It is true that the statute of limitations for an FLSA claim is "extended to three years" where the violation was willful. *Alvarez*, 15 F. Supp. 3d at 296 (internal quotation marks omitted); *see* 29 U.S.C. § 255(a). But Ahmad does not allege facts in any of his complaints, let alone the operative Second Amended Complaint, to suggest that the alleged FLSA violation was willful. *See*

McLaughlin v. Richland Shoe Co., 486 U.S. 128, 132-33 (1988) (defining "willful" within the context of the FLSA to mean that "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute"); *Whiteside v. Hover-Davis, Inc.*, 995 F.3d 315, 320 (2d Cir. 2021) ("[A] plaintiff must allege facts at the pleadings stage that give rise to a plausible inference that a defendant willfully violated the FLSA for the three-year exception to apply."). In the Second Amended Complaint, Ahmad merely states that he had to work over sixty hours a week and/or on weekends with no overtime pay; he does not attribute this extra work or lack of pay to any Defendant, let alone allege that any Defendant was knowingly or recklessly disregarding the FLSA's overtime pay requirements. *See* SAC 13-14, ¶¶ 14, 17. Thus, the two-year statute of limitations applies to Ahmad's FLSA claims.

In any event, substantially for the reasons articulated by Defendants, *see* Defs.' Mem. 10, Ahmad's FLSA claims are wholly conclusory and fail as a matter of law. He alleges that he often worked over sixty hours a week, including on weekends, without overtime pay, SAC 13- 14, ¶¶ 14, 17, but he does not provide any specific factual details from which "the Court can reasonably infer that there was indeed one or more particular workweek(s) in which the plaintiff suffered an overtime violation." *Bustillos v. Acad. Bus, LLC*, No. 13-CV-565 (AJN), 2014 WL 116012, at *4 (S.D.N.Y. Jan. 13, 2014); *accord Lundy v. Cath. Health Sys. of Long Island Inc.*, 711 F.3d 106, 114 (2d Cir. 2013) ("[I]n order to state a plausible FLSA

overtime claim, a plaintiff must sufficiently allege 40 hours of work in a given workweek as well as some uncompensated time in excess of the 40 hours."). The conclusory nature of his FLSA claims thus provides an independent basis for dismissal.

C. Misappropriation of Intellectual Property Claims

Next, Ahmad brings claims against Defendants for allegedly misappropriating a social networking platform, Jobtrail, that Ahmad allegedly created. *See* SAC 14, 20-21 ¶¶ 19-21, 44-45, 48. What claim Ahmad asserts is not entirely apparent from the Second Amended Complaint, but the most natural fit is for violation of the DTSA.[10] To state a claim under the DTSA, a plaintiff must allege "(1) the existence of a trade secret, defined broadly as information with independent economic value that the owner has taken reasonable measures to keep secret, and (2) misappropriation of that secret, defined as the

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[10] To the extent that the Second Amended Complaint could be construed to allege claims for copyright, patent, or trademark infringement, the claims would fail as a matter of law for failure to allege ownership of a valid copyright, patent, or trademark. See Defs.' Mem. 26-28; see also Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991) (holding that a plaintiff must prove, inter alia, "ownership of a valid copyright" in order to establish copyright infringement); Markman v. Westview Instruments, Inc., 517 U.S. 370, 384 (1996) (noting that the first element of most patent infringement cases is "construing the patent," thus presupposing the existence of a patent); 1-800 Contacts, Inc. v. WhenU.Com, Inc., 414 F.3d 400, 406-07 (2d Cir. 2005) ("In order to prevail on a trademark infringement claim . . . a plaintiff must establish that . . . it has a valid mark that is entitled to protection.").

knowing improper acquisition and use or disclosure of the secret." *Danping Li v. Gelormino*, No. 18-CV-442, 2019 WL 1957539, at *8 (D. Conn. May 2, 2019) (internal quotation marks omitted). Ahmad fails to allege either. First, Ahmad fails to allege the existence of a trade secret. Under the DTSA, the term "trade secret" includes "all forms and types of financial, business, scientific, technical, economic, or engineering information" if (1) "the owner thereof has taken reasonable measures to keep such information secret" and (2) "the information derives independent economic value . . . from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information." 18 U.S.C. § 1839(3). Ahmad's admission that he voluntarily shared the relevant information with Defendants without any reasonable measures to protect the secrecy of the information — such as a confidentiality or non-disclosure agreement — is thus fatal to his claim. SAC 14, ¶ 19; *see, e.g.*, *Zabit v. Brandometry, LLC*, 540 F. Supp. 3d 412, 424 (S.D.N.Y. 2021) (granting a motion to dismiss a DTSA claim where "Plaintiffs' own allegations in the [complaint] make plain that they failed to take reasonable measures to protect the secrecy of' their trade secrets). Moreover, Ahmad's purported trade secret is too "vague and indefinite" to be protected. *Broker Genius, Inc. v. Zalta*, 280 F. Supp. 3d 495, 515 (S.D.N.Y. 2017) (internal quotation marks omitted). He describes it as a "web based social networking pre release platform," SAC 14, ¶ 20, but does not provide any details as to the actually

secret information within his job pitch. Without that, the operative complaint merely alleges a trade secret "at the highest level of abstraction," which is insufficient to plead a misappropriation claim. *Lawrence v. NYC Med. Prac., P.C.*, No. 18-CV-8649 (GHW), 2019 WL 4194576, at *5 (S.D.N.Y. Sept. 3, 2019); *see also Elsevier Inc. v. Dr. Evidence, LLC*, No. 17-CV-5540 (KBF), 2018 WL 557906, at *6 (S.D.N.Y. Jan. 23, 2018) ("[A]lleging that a trade secret exists requires much more specificity as to the information owned by the claimant.").

Second, Ahmad fails to allege misappropriation, as the Second Amended Complaint alleges only that Defendants came into possession of the purported trade secret because Ahmad voluntarily shared it as a purported investment opportunity. SAC 14, ¶ 19; *see also Kairam v. W. Side GI, LLC*, 793 F. App'x 23, 28 (2d Cir. 2019) (summary order) (affirming dismissal of a DTSA claim where the complaint "lacks any allegation about the circumstances under which" an alleged trade secret was misappropriated); *Principia Partners LLC v. Swap Fin. Grp., LLC*, No. 18-CV-7998 (AT), 2019 WL 4688711, at *3 (S.D.N.Y. Sept. 26, 2019) (dismissing a DTSA claim where plaintiff fails to plead a breach of a duty of secrecy or confidentiality). Moreover, Ahmad relies heavily on allegations about the actions of now-dismissed parties — naviHealth and Beacon — to support his misappropriation claim. *See* SAC 19-21, ¶¶ 42-45, 48, 50. Ahmad claims without support that these entities are affiliates of iCIMS, but without allegations tending to show some coordination between Defendants and the

dismissed parties, this Court is not bound by his conclusory allegation of an affiliate relationship. *See, e.g.*, *Lopez v. Bonanza.com, Inc.*, No. 17-CV-8493 (LAP), 2019 WL 5199431, at *17 (S.D.N.Y. Sept. 30, 2019) (refusing to credit a plaintiff's "generalized conclusory allegations lumping all 'Defendants' together").

Accordingly, Ahmad's claim under the DTSA must be and is dismissed.

D. NYCHRL Claims

Finally, Ahmad brings employment-discrimination claims under the NYCHRL. Claims brought under the NYCHRL are subject to a more liberal standard than claims under Title VII and the NYSHRL and, thus, must be analyzed separately. *See Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 109 (2d Cir. 2013). For instance, "the adverse action need not be material; instead, a plaintiff need only demonstrate differential treatment that is more than trivial, insubstantial, or petty." *Torre*, 493 F. Supp. 3d at 285 (internal quotation marks omitted). In light of the distinct standards for NYCHRL claims, and "because the law governing claims under the NYCHRL is still developing, [Ahmad's] NYCHRL claims present questions best left to the courts of the State of New York." *Maragh v. Roosevelt Island Operating Corp.*, No. 16-CV-7530 (JMF), 2021 WL 3501238, at *10 (S.D.N.Y. Aug. 5, 2021) (internal quotation marks omitted). Accordingly, Ahmad's NYCHRL claims — for discrimination and hostile work environment — are dismissed without prejudice to him refiling them in state court.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss must be and is GRANTED, and the Second Amended Complaint is dismissed, without prejudice to refiling the NYCHRL claims in state court. Ahmad's motions for a preliminary injunction, *see* ECF No. 212, for appointment of *pro bono* counsel, *see* ECF No. 232, to file certain documents under seal, *see* ECF No. 233, and to waive any injunction bond, *see* ECF No. 234, are therefore DENIED as moot. Further, because the Court previously granted Ahmad leave to amend, *see* ECF No. 187, and Ahmad neither suggests that he has additional facts that would cure the defects discussed above (some of which could not be cured), nor requests leave to amend again, the Court declines to *sua sponte* grant him another opportunity to amend, *see, e.g.*, *Roundtree v. NYC*, No. 19-CV- 2475 (JMF), 2021 WL 1667193, at *6 (S.D.N.Y. Apr. 28, 2021) (citing cases); *TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014) ("A plaintiff need not be given leave to amend if it fails to specify . . . how amendment would cure the pleading deficiencies in its complaint.").

Finally, the Court certifies, pursuant to Title 28, United States Code, Section 1915(a)(3), that any appeal from this decision would not be taken in good faith, so *in forma pauperis* status is denied. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to terminate ECF Nos. 197, 212, 232, and 233; to enter judgment in Defendants' favor consistent with this Opinion and Order; and to close the case.

June 6, 2023, New York, New York.

U.S. District Court, Southern District of New York 1:20-cv-04507, Order, April 02, 2024, motion to reopen case denied.

Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

U.S. District Court for the Southern District Court of New York Case No: 1:20-cv-04507

April 02,2024, Jesse M. Furman, United States District Judge:

This case is assigned to the undersigned, not to Chief Judge Swain. Be that as it may, Plaintiff's motion is DENIED as frivolous. The Court certifies, pursuant to Title 28, United States Code, Section 1915(a)(3), that any appeal from this Order would not be taken in good faith, and in forma pauperis status is thus denied. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to terminate ECF No. 244 and to mail this to Plaintiff. So, Ordered. April 02, 2024, New York, NY

United States Supreme Court, No. 23-6337, Petition for Writ of Certiorari Denied and Petition for Rehearing Denied

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Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

U.S. Supreme Court Case No. 23-6337

Orders, Feb. 20, 2024 & Mar. 25, 2024 — Petition for Writ of Certiorari Denied and Petition for Rehearing Denied.

United States Supreme Court, No. 24-6397, Petition for Writ of Certiorari Denied and Petition for Rehearing Denied

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Mahfooz Ahmad,

Plaintiff-Appellant,

v.

Colin Day, et al.,

Defendants-Appellees.

U.S. Supreme Court Case No. 24-6397

Orders, Apr. 7, 2024 & May 27, 2025 — Petition for Writ of Certiorari Denied and Petition for Rehearing Denied.