SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA
1601 K Street, N.W.
Washington, DC 20006
(202) 778-9000

C/O Guy G. Brenner, Esq.
DC Bar No. 491964
Proskauer Rose, LLP
10001 Pennsylvania Ave, N.W.
Suite 600 South
Washington DC 20004
(202) 416-6800
gbrenner@proskauer.com

Plaintiffs,

v.

WILLIE E. DENNIS,
P.O. Box 872
New York, NY 10150
(646) 418-3229
woc2020@gmail.com
ruleethics50@gmail.com

Defendant.

No. 2020 CA 004740 B

PLAINTIFFS' MOTION TO COMPEL ARDITRATION

Plaintiffs K&L Gates LLP ("K&L Gates" or the "Firm"), David Tang, James Segerdahl, Jeffery Maletta, Michael Caccese, Annette Becker, Pallavi Wahi, John Bicks, and Charles Tea (collectively, "Plaintiffs"), by their undersigned counsel, hereby commence this Action and file

this Motion to Compel Arbitration, pursuant to D.C. Code § 16-4405(b) and D.C. Rule of Civil Procedure 12-1.

For the reasons set forth in the accompanying Memorandum of Points and Authorities in Support of this Motion to Compel Arbitration and the exhibits attached thereto, Plaintiffs request an order compelling Defendant Willie E. Dennis to arbitrate his claims against the Firm and its partners, as alleged in *Willie E. Dennis v. K&L Gates LLP, et al.*, Case. No. 1:20-cv-09393-UA (S.D.N.Y, filed Nov. 9, 2020), in an arbitration to be held in the District of Columbia, in accordance with the terms of the K&L Gates Partnership Agreement.

Dated: Washington, D.C.
November 18, 2020

/s/Guy G. Brenner
Guy G. Brenner
D.C. Bar No. 491964
PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, D.C. 20004-2533
(202) 416-6800
(202) 416-6899 (Fax)
gbrenner@proskauer.com

Kathleen M. McKenna (*pro hac vice* forthcoming)
Rachel S. Fischer (*pro hac vice* forthcoming)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
(212) 969-3000
(212) 969-2900 (Fax)
kmckenna@proskauer.com
rfischer@proskauer.com
Attorneys for Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA, **Plaintiffs,** **v.** **WILLIE E. DENNIS,** **Defendant.**	**No.** 2020 CA 004740 B

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION TO COMPEL ARDITRATION

PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, D.C. 20004-2533

Attorneys for Plaintiffs

PRELIMINARY STATEMENT

Plaintiffs K&L Gates LLP ("K&L Gates" or the "Firm"), David Tang, James Segerdahl, Jeffrey Maletta, Michael Caccese, Annette Becker, Pallavi Wahi, John Bicks, and Charles Tea (collectively, "Plaintiffs"), by their undersigned counsel, hereby file this Memorandum of Points and Authorities in Support of the Motion to Compel Arbitration, pursuant to the Revised Uniform Arbitration Act, D.C. Code §§ 16-4401, *et seq.* and D.C. Rule of Civil Procedure 12-1, compelling Defendant Willie E. Dennis ("Defendant" or "Mr. Dennis") to arbitrate the claims asserted in his *Pro Se* Complaint against them filed in the United States District Court for the Southern District of New York on November 9, 2020, in flagrant breach of the arbitration provision in the parties' Partnership Agreement (defined below).

As a former equity partner of K&L Gates, Mr. Dennis voluntarily executed a Partnership Agreement containing a broad arbitration provision, in which he expressly agreed to arbitrate "any controversy, claim, or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership." Mr. Dennis further agreed that any such disputes "shall be finally settled by a single arbitrator in an arbitration to be held in the District of Columbia" and be strictly confidential. Notwithstanding this clear requirement to assert any disputes exclusively in confidential arbitration in the District of Columbia, and having been reminded of this requirement multiple times by the Firm, Mr. Dennis filed his *Pro Se* Complaint in the Southern District of New York, alleging claims stemming entirely from his disputes with Plaintiffs.

Mr. Dennis's *Pro Se* Complaint is utterly baseless, is rife with false and defamatory allegations and was intentionally wrongly filed in the Southern District of New York for the improper purpose of smearing Plaintiffs through expected publicity. It also represents just the

latest chapter in Mr. Dennis's nearly two-year campaign of relentless harassment targeting the Firm and its partners. There is no question that the claims Mr. Dennis alleges in his *Pro Se* Complaint—all of which fail at the pleading stage and otherwise lack merit—are subject to mandatory arbitration because: (i) the arbitration provision in the Partnership Agreement is valid and enforceable; (ii) Mr. Dennis's claims unquestionably fall within the scope of the arbitration provision in the Partnership Agreement; and (iii) this Court has personal jurisdiction over Mr. Dennis and is the forum expressly specified in the Partnership Agreement to issue an order compelling Mr. Dennis to arbitrate his claims.

Notably, both this Court and a unanimous D.C. Court of Appeals previously have held that the arbitration and forum-selection clauses in the K&L Gates Partnership Agreement are valid and enforceable. *K&L Gates LLP v. Parker*, No. 2010 CA 009371 B, 2011 WL 13315720 (D.C. Super. Ct. Sept. 6, 2011) (Jackson, J.) (requiring a former K&L Gates partner, who had commenced suit in California state court, to arbitrate his claims against the Firm in the District of Columbia in accordance with the Partnership Agreement and the RUAA), *aff'd by Parker v. K&L Gates LLP*, 76 A.3d 859, 867 (D.C. 2013) ("we conclude that the arbitration and forum-selection clauses [in the K&L Gates Partnership Agreement] are valid and enforceable against Mr. Parker").

Because it is clear that the Revised Uniform Arbitration Act ("RUAA") requires arbitration of Mr. Dennis's claims, and in view of the above precedent and controlling authority, K&L Gates respectfully requests that this Court compel Mr. Dennis – as he agreed – to arbitrate any claims he believes he has against the Plaintiffs in confidential arbitration in the District of Columbia.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

K&L Gates is a law firm with offices in major cities throughout the United States, including at 1601 K Street, NW, Washington, D.C. 20006. The individually named plaintiffs are partners of K&L Gates.

Mr. Dennis is an attorney and former equity partner at K&L Gates. Mr. Dennis joined K&L Gates as an equity partner resident in the Firm's New York office in 2005, and remained with the Firm until May 13, 2019, when he was expelled pursuant to a vote of the partnership. Mr. Dennis's expulsion from the Firm was the consequence of an extensive and documented record of erratic, harassing and other improper behavior, which he refused to stop despite repeated warnings.

In the year-and-a-half since his expulsion, Mr. Dennis has intensified his misconduct, sending literally thousands of unwanted emails, text messages, faxes and voicemails to numerous Firm lawyers – often in rapid succession and at all hours of the day and night – many of which clearly are intended to harass, humiliate, intimidate or stoke fear in his targeted victims. Perhaps most offensive – while Mr. Dennis purports to have been an advocate for women in the Firm, he has directed some of his most vicious harassment at the Firm's women lawyers – particularly women of color – repeatedly calling them racist and degrading names and attacking them in vulgar sexual terms.

When considering this Motion, it is important for the Court to understand that the *Pro Se* Complaint filed by Mr. Dennis, in addition to being frivolous and vexatious in its own right, is inseparable from, and in furtherance of, his campaign of harassing Firm lawyers that continues to this day. He is not motivated in any principled way to attempt in good faith to litigate any genuine dispute he may believe he has with the Firm. If he were, he would have sought long ago

to arbitrate in accordance with the terms of the Firm's Partnership Agreement. As demonstrated below, Mr. Dennis knows full well he is required to arbitrate any disputes with the Firm – and the only reason he flagrantly disregarded that obligation by filing a Complaint in New York federal court was to disseminate publicly his outrageous lies and smears. As his own voluminous communications establish, Mr. Dennis is a serial harasser, not a victim, and his Complaint is nothing more than a pretext to further torment innocent people – several of whom are diverse – and divert attention from his appalling misconduct.

Conspicuously absent from Mr. Dennis's Complaint is any mention of the thousands of messages he has directed at Firm lawyers over nearly two years. While some of his messages are merely bizarre – such as accusing the Firm of employing advanced technologies acquired from China to intercept and record his calls, clone his text messages, and otherwise interfere with his electronic communications – others are much more disturbing, and have included numerous vile, sexist, racist, anti-Semitic and physically threatening statements. For example, Mr. Dennis has sent messages:

- Threatening the children of Firm lawyers, stating in one case: *"I need your kids contact information. Can i get it through [their school] It is going to be a long winter ..bitch I am going to chase them down and inflict such ... the sins of the father ... is real"* [ellipses in original];

- Telling a Jewish lawyer to *"Start the ovens,"* and separately threatening to *"kill u and or your kids"*;

- Calling Black and other diverse women lawyers racist, misogynistic and demeaning epithets, such as *"cotton head", "cottonseed", "biscuit head", "gutter rat", "filthy one", "idiot", "trash", "clown", and "garbage"*;

- Repeatedly referring to an Asian-American lawyer as *"Wuhan,"* and accusing him of being a sleeper cell for the Chinese Communist Party and a grave threat to U.S. national security;

- Repeatedly threatening lawyers in ominous religious terms: *e.g., "U just did not know that God intends for you to be a 'biblical symbol' ... during these unholy times"*

/ *"It must be a biblical solution for a biblical sin during a biblical moment"* / and circulating to several lawyers a photo of a Biblical passage which reads *"Fret not thyself because of evildoers, neither be thou envious against the workers of iniquity. For they shall soon be cut down like the grass, and wither as the green herb."* / *"the wicked He will destroy"*;

- Targeting a lawyer in a profane, racist-laden threat: *"You spat on God's words. Over children U piece of shit"* / *"All a big fuckkng ni**er game .. right [] taping my cousins phone call on the day she died ... that was May bitch"* / *"When this is over you are going to wish you 'never .. ever ..' met my Lord of the Old Testament"*;

- Taunting a lawyer in a series of crude texts attacking his wife: *"What is your wife's name? Where did you meet her? Sex on the first date? How many guys before you?"*

- Humiliating a married Black woman lawyer in a series of vulgar emails, copied to several others, falsely insinuating her involvement in a sexual relationship with three male lawyers, which included such perverted comments as: *"Is [name omitted] big"*, *"Was it good?"*, *"Maybe [name omitted] could join and make it a three some"*, and *"i know it must have been a 'hard' but exciting discussion 😀"*.

McKenna Decl., at ¶ 6. Additional examples of Mr. Dennis's extensive harassment and other improper conduct are contained in the Firm's email to him dated August 18, 2020. *See* McKenna Decl., Ex. B.

In response to Mr. Dennis's harassment, the Firm has taken, and continues to take, appropriate measures to protect the security and well-being of its personnel, including reporting his conduct to authorities.

B. The Partnership Agreement

While a member of the partnership at K&L Gates, Mr. Dennis executed and agreed to be bound by the terms of a Partnership Agreement, which sets forth the obligations of partners at the Firm, including a requirement to exclusively submit all disputes between any partner (or former partner) and any other partner(s) or with the Firm to confidential binding arbitration before the American Arbitration Association in the District of Columbia. *See* Declaration of

Kathleen M. McKenna ("McKenna Decl."), at Ex. A, attaching, in relevant part, the "K&L Gates Amendment to and Restatement of Partnership Agreement, as amended effective May 16, 2016", bearing Mr. Dennis's signature (heretofore and hereafter, the "Partnership Agreement").

Section 12.01(a) of the Partnership Agreement provides:

> ***Any controversy, claim or dispute between or among the Partners, including but not limited to any former partners, and any controversy, claim or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership,*** directly or indirectly concerning this Agreement or the breach hereof or the subject matter hereof, including questions concerning the scope and applicability of this Section 12.01, ***shall be finally settled by a single arbitrator in an arbitration to be held in the District of Columbia***, in accordance with the Uniform Arbitration Act of the State of Delaware, as amended and from time to time in effect, and the rules of commercial arbitration then followed by the American Arbitration Association or any successor to the functions thereof. The arbitrator shall be an attorney duly admitted or licensed to practice law in at least one of the states of the United States or the District of Columbia and a member in good standing of the American Law Institute. The arbitrator shall have the right and authority to determine how his or her decision or determination as to each issue or matter in dispute may be implemented or enforced, including the use of remedies legal and equitable, specific performance and injunctions, temporary, preliminary and permanent. Any decision or award of the arbitrator shall be final and conclusive on the Partners, including but not limited to any former partners, and the Partnership, and there shall be no appeal therefrom.

Id. (emphasis supplied).

In addition, Section 12.01(b) of the Partnership Agreement specifically states:

> ***Each of the Partners agrees that any action to compel arbitration pursuant to this Agreement that may be required shall be brought in the Superior Court of the District of Columbia***, or any successor to the jurisdiction thereof. Application for confirmation of any decision or award of the arbitrator, for an order of enforcement of such legal or equitable remedies determined by the arbitrator or for any other remedies which may be necessary to effectuate such decision or award shall also be brought in such Superior Court. ***Each of the Partners, including but not limited to any former partners, hereby consents to the jurisdiction of the arbitrator and of such***

> ***Court and waives any objection to the jurisdiction of such arbitrator and Court.***

Id. (emphasis supplied). The Partnership Agreement further provides that "[a]ll proceedings in . . . arbitration under this Agreement shall be confidential" with the exception of motions to compel arbitration or the submission of the dispute to confidential mediation. (Partnership Agreement, at § 12.02).

C. Mr. Dennis Files a *Pro Se* Complaint in the Southern District of New York, Disregarding Repeated Warnings Regarding the Requirement to Arbitrate

In mid-September 2020, Mr. Dennis threatened to file a lawsuit in federal court in New York if the Firm did not agree to settle with him. He made the threat while simultaneously continuing to target Firm lawyers with harassing text messages of the type described above. Both before and after his threat of litigation, the Firm had advised Mr. Dennis **no less than six times in writing** that any claims he believed he had against the Firm or any of its partners were required to be asserted exclusively in arbitration in accordance with the Partnership Agreement. (*See, e.g.*, McKenna Decl., at ¶ 7 and Ex. B).

Notwithstanding his express contractual agreement to arbitrate, and the Firm's repeated reminders, on November 9, 2020, Mr. Dennis intentionally and wrongfully filed a 46-page, 20-count *Pro Se* Complaint against Plaintiffs in the Southern District of New York. *See Willie E. Dennis v. K&L Gates LLP, et al.*, No. 1:20-cv-09393-UA, [Dkt. 1], attached to McKenna Decl., at Ex. C (the "Complaint"). Mr. Dennis's *Pro Se* Complaint is frivolous and vexatious and must be seen as inseparable from, and in furtherance of, his contemporaneous and historical conduct of harassing Firm lawyers (examples of which are provided above). Mr. Dennis knows full well he is required to arbitrate – and the only reason he flagrantly disregarded his obligation to do so by filing in court was to disseminate publicly his outrageous lies and smears.

That Mr. Dennis's claims are subject to mandatory arbitration is clear from the face of the Complaint. In Paragraph 1 of the Complaint, under the heading "NATURE OF THE ACTION," Mr. Dennis alleges that he "was improperly terminated in bad faith, and contrary to the Firm's partnership agreement." Compl., at ¶ 1. Because Mr. Dennis's allegations relate to a "*controversy, claim or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership, directly or indirectly concerning th[e Partnership] Agreement or the breach hereof or the subject matter hereof,*" (Partnership Agreement, at § 12.01(a)), this Court should require Mr. Dennis to comply with the terms of Partnership Agreement and compel arbitration of his claims.

ARGUMENT

I. THE REVISED UNIFORM ARDITRATION ACT REQUIRES ARDITRATION OF THE CLAIMS ASSERTED IN MR. DENNIS'S *PRO SE* COMPLAINT

In the District of Columbia, arbitration agreements are governed by the Revised Uniform Arbitration Act ("RUAA") located at Title 16, Chapter 44 of the D.C. Code. *See* D.C. Code §§ 16-4401-16-4432 (2001). Under the RUAA, "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is *valid, enforceable, and irrevocable* except upon a ground that exists at law or in equity for the revocation of a contract." *See* D.C. Code § 16-4406(a) (emphasis added). The RUAA, much like the similar Federal Arbitration Act (the "FAA"), embodies the strong federal policy favoring arbitration that "requires courts rigorously to enforce arbitration agreements." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (internal quotation and citation omitted); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (discussing the "liberal federal policy favoring arbitration").

"When presented with a motion to compel arbitration, the RUAA instructs a court to consider, first, 'whether the parties have an enforceable agreement to arbitrate,' and second, 'whether the underlying dispute between the parties falls within the scope of the agreement,' i.e., whether the disputes falls within the ambit of the arbitration clause." *K&L Gates*, 2011 WL 13315720, at *3 (quoting *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005)). Where the arbitration agreement is enforceable and applicable, the Court is required to compel the parties to arbitrate as long as: (1) the Court is the appropriate forum to issue such an order; and (2) has valid personal jurisdiction over the party being compelled to arbitrate. 2011 WL 13315720, at *3. To that end, on a motion to compel arbitration, "the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." D.C. Code § 16-4407(a)(2).[1] Furthermore, "[t]he court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established." *Id.* at § 16-4407(b). Here, application of these factors compels arbitration of all claims pleaded in Mr. Dennis's *Pro Se* Complaint.

A. Defendant Entered into a Valid and Enforceable Agreement to Arbitrate.

The Partnership Agreement is unquestionably a valid and enforceable written contract in which Mr. Dennis agreed to arbitrate "[a]ny controversy, claim or dispute between or among the Partners" or "between or among one or more Partners, including but not limited to any former partners, and the Partnership." *See* Partnership Agreement, at § 12.01(a). This Court and the D.C. Court of Appeals previously have held the arbitration and forum selections provisions in the

[1] Pursuant to the RUAA, a party may file a motion seeking an order to compel arbitration in the event of a dispute involving an agreement to arbitrate. *See* D.C. Code § 16-4405(b). Where a civil action is not already pending in this Court, as is the case here, a party may commence an action through a motion to compel arbitration and serve the motion upon the responding party "in the manner provided by law for the service of a summons in a civil action." *Id.*

Firm's Partnership Agreement to be valid and enforceable against another former K&L Gates partner who, like Mr. Dennis, sought to pursue alleged discrimination claims against the Firm in court. *See K&L Gates LLP, v. Parker*, Case No. 2010 CA 009371 B, 2011 WL 13315720 (D.C. Super. Sep. 6, 2011) (Jackson, J.), *aff'd by Parker v. K&L Gates LLP*, 76 A.3d 859 (D.C. 2013), attached to McKenna Decl., at Exs. D and E.

In the D.C. Superior Court case, Judge Jackson held that the arbitration provision in the Partnership Agreement "clearly and unambiguously demonstrates the existence of an arbitration agreement." *K&L Gates*, 2011 WL 13315720, at *4. In affirming Judge Jackson's order compelling arbitration, a unanimous D.C. Court of Appeals agreed that the arbitration clause was valid and enforceable against the former partner who was "a seasoned attorney, which further supports holding Mr. Parker to his agreement." *Parker*, 76 A.3d 859, at 866-67. Likewise, Mr. Dennis is a seasoned attorney – who, according to his own *Pro Se* Complaint, is admitted to practice law in New York, New Jersey *and the District of Columbia* – and there can be no legitimate dispute that he knowingly and voluntarily entered into a valid and enforceable agreement to arbitrate any dispute, with the Partnership or any of its partners, in the District of Columbia.

B. The Arbitration Clause in the Partnership Agreement Encompasses the Claims in the Complaint.

The arbitration clause in the Partnership Agreement, which provides for arbitration of "*any controversy, claim or dispute"* between or among the Partners, or between a partner and the Partnership, is entitled to "a presumption of arbitrability" of all claims. *See Parker*, 76 A.3d 859, at 867 (citing *Lopata v. Coyne*, 735 A.2d 931, 936 (D.C. 1999)). Indeed, to determine whether a particular claim is covered by an arbitration clause, the Court "inquire[s] merely whether the

arbitration clause is susceptible of an interpretation that covers the dispute." *Id.* (quoting *Haynes v. Kuder*, 591 A.2d 1286, 1289 (D.C. 1991)).

Mr. Dennis's claims in the *Pro Se* Complaint stem from grievances about the manner in which he was compensated and expelled from the Firm pursuant to the Partnership Agreement. Specifically, Mr. Dennis alleges that: (i) he was undercompensated and underutilized as compared to white partners; (ii) the practice of using "origination credit" towards the calculation of partner compensation is systemically racist; and (iii) "[e]very aspect of [his] expulsion [from the partnership] was inconsistent with the Firm's by-laws." As such, Mr. Dennis's claims fall squarely within the broad scope of the arbitration provision in the Partnership Agreement.

When previously addressing the arbitration provision in the Firm's Partnership Agreement, the D.C. Court of Appeals agreed that the "broad" language evinced the parties' intent to arbitrate all employment-related disputes, including federal and state tort and statutory claims:

> The clause does not limit coverage to contractual claims or exclude tort and statutory claims; rather, it explicitly covers any claim concerning the subject matter of the partnership agreement. Accordingly, we conclude that any claim—whether sounding in contract, tort, or statute—that arises out of Mr. Parker's employment relationship with K&L Gates is covered by the arbitration clause.
>
> . . .
>
> Mr. Parker's employment relationship with K & L Gates is part of the "subject matter" of the partnership agreement, and all of Mr. Parker's contractual and non-contractual claims concern that relationship. In fact, Mr. Parker himself describes his claims as "arising from termination of his K & L Gates partnership." We therefore conclude that the trial court did not err in interpreting the arbitration clause to apply to tort and statutory claims as well as contract claims.

Parker, 76 A.3d at 867-68.

Thus, applying precedent and controlling authority, this Court should find that the claims asserted by Defendant, also a former equity partner of the Firm, are encompassed within the scope of the Partnership Agreement's broad arbitration clause to which he agreed to be bound.

C. The District of Columbia is an Appropriate Venue and this Court has Personal Jurisdiction over Defendant.

The District of Columbia is the appropriate and proper venue to resolve disputes related to the Partnership Agreement, because the forum-selection clause, which specifies the District of Columbia as the forum to resolve all disputes, is valid and enforceable. *See Forrest v. Verizon Communications, Inc.*, 805 A.2d 1007, 1010 (D.C. 2002) (holding that forum selection clauses are prima facie valid and enforceable). This Court and the D.C. Court of Appeals previously have held that the forum-selection clause contained in the K&L Gates Partnership Agreement is enforceable. *See K&L Gates*, 2011 WL 13315720, at *7 ("Because the forum-selection clause, naming the District of Columbia as the appropriate forum to resolve disputes, is valid and enforceable, this Court finds itself to be an appropriate forum to entertain, and adjudicate on, the present motion."); *Parker*, 76 A.3d at 867 ("we conclude that the arbitration and forum-selection clauses are valid and enforceable against Mr. Parker.").

Similarly, personal jurisdiction is present because Mr. Dennis consented to this Court's jurisdiction in the Partnership Agreement. *See K&L Gates*, 2011 WL 13315720, at *7 ("the valid forum-selection clause in the partnership agreement... is sufficient to provide this Court with valid personal jurisdiction. Accordingly, this Court must order the parties to submit to arbitration pursuant to Section 16-4407(a)(2) of the D.C. Code."). In the prior case involving K&L Gates, this Court held that it had personal jurisdiction over the former partner, even though he was a resident of California, because he had consented to this Court's jurisdiction through the Partnership Agreement's forum-selection clause. *See id.* (noting that "federal jurisprudence

supports the notion that 'a valid forum selection clause … may act as a waiver of objections to personal jurisdiction.'" (quoting *Consulting Eng'rs Corp. v. Geometries, Ltd.*, 561 F.3d 273, 282 n.11 (4th Cir. 2006)); *see also D.H.Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 103 (2d. Cir. 2006) ("Parties can consent to personal jurisdiction through forum-selection clauses in contractual agreements."). Additionally, Mr. Dennis states in his Complaint that he is admitted to practice law in the District of Columbia, *see* Compl. at ¶ 12, further demonstrating that he is subject to the jurisdiction of this Court and that this forum is appropriate.

As the District of Columbia is a valid forum for this dispute and this Court has personal jurisdiction over Mr. Dennis, an order compelling arbitration is just and proper.

II. THE COURT SHOULD AWARD ATTORNEYS' FEES AND COSTS TO PLAINTIFFS BECAUSE DEFENDANT COMMENCED THIS ACTION IN BAD FAITH.

In addition to compelling arbitration, this Court should award attorneys' fees and costs to Plaintiffs, pursuant to Superior Court Civil Rule 54(d) and its equitable powers, because Defendant acted in bad faith by commencing an action in the Southern District of New York rather than through arbitration in the District of Columbia. It is well-established in the District of Columbia that the Superior Court may assess attorneys' fees when the losing party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Jung v. Jung*, 844 A.2d 1099, 1107 (D.C. 2004). The D.C. Court of Appeals has held that a claim is brought in "bad faith" when it is "entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons." *See Synanon Found., Inc. v. Bernstein,* 517 A.2d 28, 40 (D.C. 1986) (quoting *Browning Debenture Holders' Comm. v. DASA Corp.*, 560 F.2d 1078, 1088 (2d Cir. 1977), *aff'd*, 605 F.2d 35 (2d Cir. 1978)).

The Firm repeatedly informed Mr. Dennis that his alleged claims were required to be resolved through binding and confidential arbitration, pursuant to the Partnership Agreement. Nonetheless, Defendant persisted in commencing an action, *pro se*, in the Southern District of New York in a transparent effort to attract media attention and harm the Firm and its partners through the false and defamatory allegations asserted in his *Pro Se* Complaint. Additionally, continuing his pattern of targeted harassment, Defendant frivolously named individual partners at K&L Gates as defendants in his *Pro Se* Complaint. Even if these individuals were proper defendants, which they are not, Mr. Dennis would still have been required to resolve any claims through binding arbitration under the terms of the Partnership Agreement.

As Defendant could not have reasonably believed that he had a right to pursue his claims in federal court, and his *Pro Se* Complaint is for the improper purpose of embarrassing and harassing the Firm and its partners, the Court should exercise its equitable powers to award attorneys' fees and costs associated with this Motion to Compel Arbitration.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the Motion to Compel Arbitration, award attorneys' fees and costs associated with this motion, and order all other relief that the Court may deem just and proper.

Dated: Washington, D.C.
November 18, 2020

/s/Guy G. Brenner
Guy G. Brenner
D.C. Bar No. 491964
PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, D.C. 20004-2533
(202) 416-6800
(202) 416-6899 (Fax)
gbrenner@proskauer.com

Kathleen M. McKenna (*pro hac vice* forthcoming)
Rachel S. Fischer (*pro hac vice* forthcoming)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
(212) 969-3000
(212) 969-2900 (Fax)
kmckenna@proskauer.com
rfischer@proskauer.com
Attorneys for Plaintiffs

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA,	**No. 2020 CA 004740 B**
Plaintiffs,	
v.	
WILLIE E. DENNIS,	
Defendant.	

DECLARATION OF KATHLEEN M. MCKENNA
IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARDITRATION

I, KATHLEEN M. MCKENNA, an attorney duly admitted to practice before the Courts of the States of New York and New Jersey, pursuant to District of Columbia Civil Rule 9-I, hereby declare the following in support of Plaintiffs' Motion to Compel Arbitration:

1. I am a member of the law firm Proskauer Rose LLP, attorneys for Plaintiffs K&L Gates LLP ("K&L Gates" or the "Firm"), and for individual partners of the Firm, David Tang, James Segerdahl, Jeffery Maletta, Michael Caccese, Annette Becker, Pallavi Wahi, John Bicks, and Charles Tea, (collectively, "Plaintiffs"), in the above-referenced action. I am fully familiar with the facts and circumstances recited herein from personal knowledge and from my review of the file and other documents in this matter.

2. I submit this Declaration in Support of Plaintiffs' Motion to Compel Arbitration. The grounds for Plaintiffs' motion are set forth in detail in the accompanying Memorandum of Points and Authorities.

3. Attached hereto as **Exhibit A** are true and correct copies of relevant excerpts from the K&L Gates LLP Amendment to and Restatement of Partnership Agreement, Effective as of January 1, 2013, as amended effective May 16, 2016 (the "Partnership Agreement"). As an equity partner of K&L Gates, Defendant Willie E. Dennis signed and executed the Partnership Agreement on page 65. Specifically, Exhibit A attaches true and correct copies of the following portions of the Partnership Agreement: (a) the cover page; (b) the table of contents; (c) the provision titled "Article XII. Arbitration," at pages 31-33; and (d) the signature page on which Willie Dennis executed the Partnership Agreement, at page 65.

4. On May 13, 2019, Mr. Dennis was expelled from the K&L Gates partnership as a consequence of an extensive and documented record of erratic, harassing, and improper behavior which he refused to stop despite repeated warnings.

5. In the year-and-a-half since his expulsion, Mr. Dennis has intensified his misconduct, sending literally thousands of unwanted emails, text messages, faxes, and voicemails to Firm lawyers – at all hours of the day and night – many of which clearly are intended to harass, humiliate, intimidate, or stoke fear in his targeted recipients.

6. Some of his messages are bizarre, such as accusing the Firm of employing advanced technologies acquired from China to intercept and record his calls, clone his text messages, and otherwise interfere with his electronic communications. But others are much more disturbing, and have included numerous vile, sexist, racist, anti-Semitic and physically threatening statements. For example, Mr. Dennis has sent messages:

- Threatening the children of Firm lawyers, stating in one case: *"I need your kids contact information. Can i get it through [their school] It is going to be a long winter ..bitch I am going to chase them down and inflict such … the sins of the father … is real"* [ellipses in original];

- Telling a Jewish lawyer to *"Start the ovens,"* and separately threatening to *"kill u and or your kids"*;

- Calling Black and other diverse women lawyers racist, misogynistic and demeaning epithets, such as *"cotton head", "cottonseed", "biscuit head", "gutter rat", "filthy one", "idiot", "trash", "clown", and "garbage"*;

- Repeatedly referring to an Asian-American lawyer as *"Wuhan,"* and accusing him of being a sleeper cell for the Chinese Communist Party and a grave threat to U.S. national security;

- Repeatedly threatening lawyers in ominous religious terms: *e.g., "U just did not know that God intends for you to be a 'biblical symbol' ... during these unholy times" / "It must be a biblical solution for a biblical sin during a biblical moment"* / and circulating to several lawyers a photo of a Biblical passage which reads *"Fret not thyself because of evildoers, neither be thou envious against the workers of iniquity. For they shall soon be cut down like the grass, and wither as the green herb." / "the wicked He will destroy"*;

- Targeting a lawyer in a profane, racist-laden threat: *"You spat on God's words. Over children U piece of shit" / "All a big fuckkng ni**er game .. right [] taping my cousins phone call on the day she died ... that was May bitch" / "When this is over you are going to wish you 'never .. ever ..' met my Lord of the Old Testament"*;

- Taunting a lawyer in a series of crude texts attacking his wife: *"What is your wife's name? Where did you meet her? Sex on the first date? How many guys before you?"*

- Humiliating a married Black woman lawyer in a series of vulgar emails, copied to several others, falsely insinuating her involvement in a sexual relationship with three male lawyers, which included such perverted comments as: *"Is [name omitted] big", "Was it good?", "Maybe [name omitted] could join and make it a three some",* and *"i know it must have been a 'hard' but exciting discussion 😀"*.

7. During that time, K&L Gates repeatedly reminded Mr. Dennis (both directly and through his previously retained counsel), on at least six separate occasions, that any disputes Mr. Dennis had with the firm or any of his former partners were required to be submitted exclusively to arbitration. True and correct copies of correspondence evincing these repeated reminders are attached hereto as **Exhibit B** and/ or excerpted as follows:

- Email from Kathleen M. McKenna – Tuesday, September 29, 2020, 6:22pm
  - *"[W]hile Mr. Dennis has no viable employment discrimination claims,* ***should he nonetheless choose to assert any against the firm and/or any of its current or former lawyers, he is again reminded of the requirement that he do so exclusively in accordance with the mandatory confidential arbitration procedure set out in Section 12.01 (Arbitration) of the firm's Partnership Agreement to which, as a former equity partner, he remains bound.*** *You appeared to acknowledge that arbitration is the required venue for Mr. Dennis' claims. If Mr. Dennis were truly interested in peace and moving forward, it is puzzling why – for nearly two years – he has avoided availing himself of the arbitration process that could have addressed his claims expeditiously. Regardless, that process remains available to him."*

- Email from Charles Tea – August 18, 2020, 3:51pm
  - *"****But if you do choose to file a claim against the firm, you are again reminded of the requirement that you do so in accordance with the mandatory confidential arbitration procedure set out in Section 12.01 (Arbitration) of the Partnership Agreement to which, as a former equity partner, you remain bound.*** *You will recall that, at your request, we previously provided you with a copy of the Partnership Agreement."*

    …

    "But if, notwithstanding the foregoing, you choose to file a claim, you are again reminded that <u>any</u> disputes you may have with the firm or its partners, including based on alleged discrimination, ***are subject to mandatory arbitration as the exclusive forum for dispute resolution as provided in Section 12.01 (Arbitration) of the Partnership Agreement*** *to which, as a former equity partner, you remain bound."*

- Email from Charles Tea – June 13, 2019, 4:37pm
  - *"Indeed, your recent actions - including your continued sending of numerous harassing emails to multiple lawyers in the Firm and your deeply disturbing and menacing behavior at the Corporate Counsel Men of Color Conference, rather than utilizing* ***the mandated arbitration procedure for the resolution of disputes*** *- only reinforces the justification for your expulsion."*

- Expulsion Letter from James Segerdahl – May 13, 2019
  - *"You are again reminded that* ***any dispute you may have with the Firm or any of its Partners, including with respect to your expulsion, is subject to mandatory arbitration as provided in Section 12.01 (Arbitration) of the Partnership Agreement****."*

- Email from Charles Tea – May 6, 2019, 5:45pm
  - *"Also, and as we have advised you several times,* ***any disputes between you and the Firm … are subject to mandatory arbitration under the requirements of the***

> ***Partnership Agreement.*** *This mandatory arbitration expressly applies even after you are no long affiliated with the Firm through expulsion or otherwise."*

- Email from Charles Tea – April 18, 2019, 2:38pm
  - *"Finally, you are reminded that* ***any dispute you may have with the firm or any of its partners, including with respect to expulsion, is subject to mandatory arbitration as provided in Section 12.01*** *(Arbitration) of the Partnership Agreement."*

(Emphasis supplied).

8. Notwithstanding his express contractual agreement to arbitrate any disputes with the Firm and its partners, and the Firm's repeated reminders, on November 9, 2020, Mr. Dennis filed a 46-page, 20-count *Pro Se* Complaint in the United States District Court for the Southern District of New York. *Willie E. Dennis v. K&L Gates LLP, et al.*, No. 1:20-cv-09393-UA, [Dkt. 1]. A true and correct copy of Mr. Dennis's Pro Se Complaint is attached hereto as **Exhibit C**.

9. In *K&L Gates LLP v. Parker*, Case No. 2010 CA 009371 B, 2011 WL 13315720 (D.C. Super. Ct. Sept. 6, 2011) (Jackson, J.), the Superior Court of the District of Columbia previously compelled a former partner of K&L Gates to arbitrate his disputes with the Firm pursuant to the arbitration provision in the Firm's Partnership Agreement; the same provision at issue in this action. A true and correct copy of this decision is attached hereto as **Exhibit D**.

10. Following the D.C. Superior Court's finding that the arbitration provision in the K&L Gates Partnership Agreement was valid and enforceable against the former partner, the District of Columbia Court of Appeals affirmed the Superior Court's order compelling arbitration in *Parker v. K&L Gates LLP*, 76 A.3d 859 (D.C. 2013). A true and correct copy of this decision is attached hereto as **Exhibit E**.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of November, 2020.

/s/Kathleen M. McKenna
Kathleen M. McKenna (*pro hac vice* forthcoming)
Licensed in New York and New Jersey
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
(212) 969-3000
(212) 969-2900 (Fax)
kmckenna@proskauer.com

11-16-20 MCKENNA DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARBITRATION

EXHIBIT A

K&L GATES LLP

AMENDMENT TO AND RESTATEMENT OF PARTNERSHIP AGREEMENT

Effective as of January 1, 2013
As Amended Effective May 16, 2016

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attorney-in-fact, and such writing or writings shall be delivered to the Management Committee for the records of the Partnership. Any amendment voted upon affirmatively, executed and delivered in accordance with this Section 11.01 shall be binding on all the Partners from and after its effective date which, unless otherwise stated therein, shall be the date of the favorable vote therefor.

Section 11.02 Merger and Consolidation. At any time and from time to time, the Management Committee may propose to the Partners at a meeting thereof the merger or consolidation of the Partnership with or into one or more other partnerships or one or more other business entities pursuant to the provisions of DRUPA. At such meeting, the merger or consolidation proposed by the Management Committee shall be approved upon the favorable vote of two-thirds (2/3rds) of the Partners, each of whom shall have one vote; provided that the procedures relating to documentation, execution, delivery, binding effect and effective date set forth in Section 11.01 hereof with respect to an amendment of this Agreement shall be followed in connection with and to effect the approval of any such merger or consolidation.

ARTICLE XII

ARBITRATION

Section 12.01 Arbitration.

(a) Any controversy, claim or dispute between or among the Partners, including but not limited to any former partners, and any controversy, claim or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership, directly or indirectly concerning this Agreement or the breach hereof or the subject matter hereof, including questions concerning the scope and applicability of this Section 12.01, shall be finally settled by a single arbitrator in an

arbitration to be held in the District of Columbia, in accordance with the Uniform Arbitration Act of the State of Delaware, as amended and from time to time in effect, and the rules of commercial arbitration then followed by the American Arbitration Association or any successor to the functions thereof. The arbitrator shall be an attorney duly admitted or licensed to practice law in at least one of the states of the United States or the District of Columbia and a member in good standing of the American Law Institute. The arbitrator shall have the right and authority to determine how his or her decision or determination as to each issue or matter in dispute may be implemented or enforced, including the use of remedies legal and equitable, specific performance and injunctions, temporary, preliminary and permanent. Any decision or award of the arbitrator shall be final and conclusive on the Partners, including but not limited to any former partners, and the Partnership, and there shall be no appeal therefrom.

(b) Each of the Partners agrees that any action to compel arbitration pursuant to this Agreement that may be required shall be brought in the Superior Court of the District of Columbia, or any successor to the jurisdiction thereof. Application for confirmation of any decision or award of the arbitrator, for an order of enforcement of such legal or equitable remedies determined by the arbitrator or for any other remedies which may be necessary to effectuate such decision or award shall also be brought in such Superior Court. Each of the Partners, including but not limited to any former partners, hereby consents to the jurisdiction of the arbitrator and of such Court and waives any objection to the jurisdiction of such arbitrator and Court.

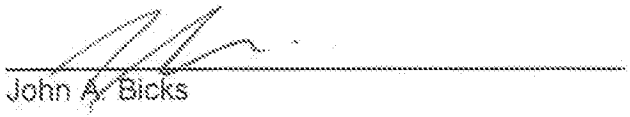
(c) Upon appointment of the arbitrator he or she may direct that the arbitrable issues be submitted to a sixty day period of mediation to be held in the District of Columbia in accordance with the rules of commercial mediation then followed by the American Arbitration Association or any successor to the functions thereof. During the mediation period, the arbitrator shall retain jurisdiction to issue such interim orders which justice may require. The mediator shall be an attorney duly admitted or licensed to practice law in at least one of the states of the United States or the District of Columbia and a member in good standing of the American Law Institute.

Section 12.02 Confidentiality. All proceedings in mediation or arbitration under this Agreement shall be confidential; except as otherwise required by applicable law or by the provisions of Section 12.01(b) and Section 12.01(c) hereof, none of the Partners, including but not limited to any former partners, shall, without the prior written consent of the Management Committee, disclose any information concerning such proceedings or the controversy, claim or dispute which shall be the subject thereof to any person other than (a) any of the Partners, including but not limited to any former partners who are parties thereto, or the duly authorized representatives thereof, (b) any mediator or arbitrator designated hereunder, or (c) the American Arbitration Association or any successor to the functions thereof.

ARTICLE XIII

INTEGRATION, INTERPRETATION AND GOVERNING LAW

Section 13.01 Integration. This Agreement, together with Exhibits "A" and "B," constitutes the entire understanding of the Partners with respect to the subject matter hereof and supersedes all prior understandings. Except as expressly provided herein, no termination, revocation, waiver, modification or amendment of this Agreement shall



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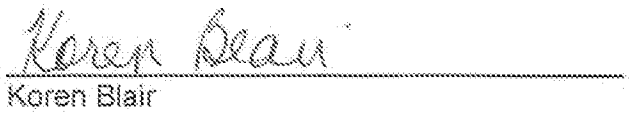

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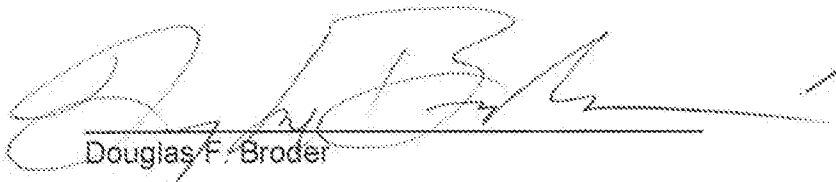

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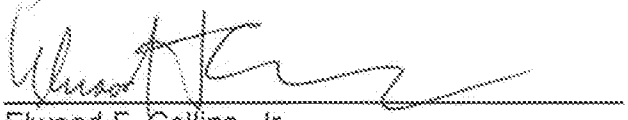
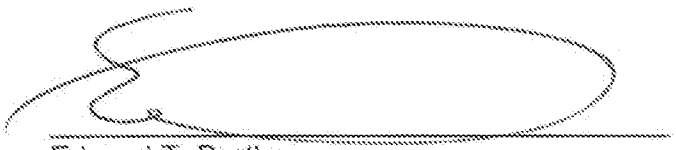
Michael G. Chalos



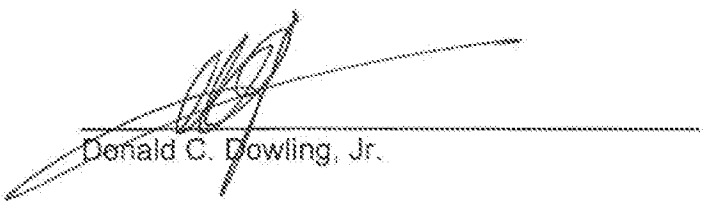
Elwood F. Collins, Jr.

Roger R. Crane, Jr.

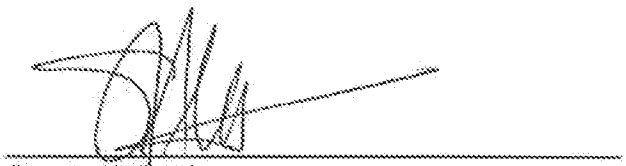


Edward T. Dartley

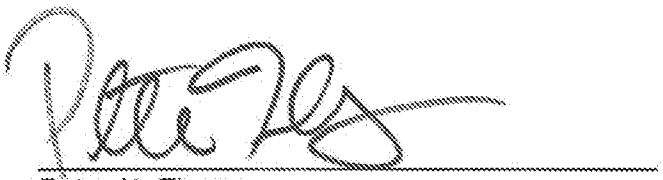
Willie E. Dennis



Donald C. Dowling, Jr.

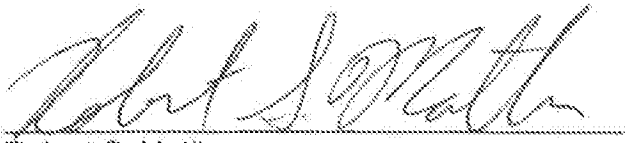


Sandy K. Feldman



Peter N. Flocos

Bruce W. MacLennan



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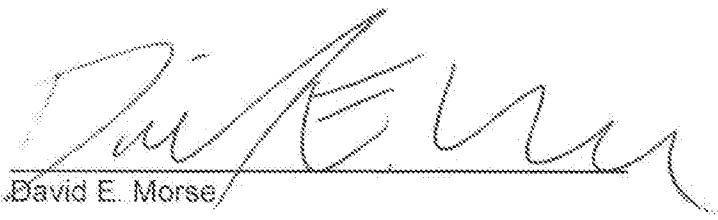

David E. Morse

11-16-20 MCKENNA DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARBITRATION

EXHIBIT B

From: McKenna, Kathleen M.
Sent: Tuesday, September 29, 2020 6:22 PM
To: Steven Seltzer
Cc: Fischer, Rachel S.
Subject: RE: Willie Dennis Follow Up

Dear Steve:
I thank you for taking my call the other day, but am confused by your follow up email from Thursday (below). The purpose of my call to you – which was the first time you and I had spoken – was to get your perspective on the situation with Mr. Dennis, not discuss settlement. While you did state that Mr. Dennis would like peace with the firm, as I explained to you I am not sure how the firm could be expected to have any confidence that Mr. Dennis would cease his abusive conduct considering he has sent several hundred harassing text messages and emails just since earlier this month when you indicated to Mr. Tea that you would advise him to stop. And his abusive conduct continues: Even as you were emailing me on Saturday evening, Mr. Dennis was in the midst of sending more than 100 harassing text messages just over that weekend. He continues in his harassing campaign; *as recently as last evening* Mr. Dennis sent additional text messages to firm members now including to new victims of his attacks.

Further, to the extent your Thursday email implies that the August 18 email from Mr. Tea to Mr. Dennis was an invitation for Mr. Dennis to have his counsel reach out to discuss settlement, that is inaccurate. Mr. Tea's email contained nothing about settlement. Rather, it was to caution Mr. Dennis that his alleged claims were baseless and, in any event, were required to be asserted exclusively in arbitration – and that, if he were represented, his counsel should be in touch with Mr. Tea so as to be fully apprised of the material facts surrounding Mr. Dennis's extensive misconduct before proceeding with any action.

Your more recent email from Saturday evening (also below) is even more confusing, and frankly very disturbing. In it you state that Mr. Dennis's criminal counsel has reviewed with you facts corroborating irregularities with Mr. Dennis's electronic communications that were concerning to you – and that "along these lines" Mr. Dennis has stated his belief that the firm is interfering in his electronic communications. By sharing this with me, you seem to be accusing the firm of involvement in the supposed irregularities. If so, the accusation is utterly false and could not possibly be based on any reasonable good faith belief – just as I previously advised you when Mr. Dennis had falsely accused the firm of intercepting and recording a conversion he supposedly had with his therapist. Considering the seriousness of such an accusation, please provide me with the facts you say corroborate irregularities with Mr. Dennis's electronic communications and the firm's involvement therewith.

There are a few points I shared with you during our call that I believe are worth repeating, so that there can be no misunderstanding.

First, as a matter of law, Mr. Dennis has no viable claim under the discrimination statutes cited in his draft complaint – those laws simply do not apply to him as a former equity partner of the firm. Should Mr. Dennis, or anyone on his behalf, attempt to assert such clearly inapplicable employment discrimination claims against the firm and/or any of its current or former lawyers, we would regard them as baseless and respond accordingly.

Second, even if the cited discrimination statutes applied to Mr. Dennis, which they clearly do not, the measures taken by the firm about which Mr. Dennis complains were entirely reasonable and appropriate in response to his well-documented misconduct, including his extensive unlawful harassment which continues to this day. His conduct toward the firm's lawyers of color, particularly Black women lawyers, has been especially egregious – with many of his emails and text messages clearly intended to demean, humiliate, intimidate and/or stoke fear in his targeted recipients. I have provided you with examples. There are many more.

Third, Mr. Dennis's draft complaint, for which I understand you may not take responsibility, is replete with outrageous and baseless lies and other malicious false statements. Any meaningful pre-filing investigation would reveal that there is absolutely no good faith basis whatsoever for many of the allegations. Let there be no misunderstanding: The draft complaint, if filed, would be not only sanctionable but separately actionable, and the firm would seek to hold accountable all those associated with it.

Fourth, while Mr. Dennis has no viable employment discrimination claims, should he nonetheless choose to assert any against the firm and/or any of its current or former lawyers, he is again reminded of the requirement that he do so exclusively in accordance with the mandatory confidential arbitration procedure set out in Section 12.01 (Arbitration) of the firm's Partnership Agreement to which, as a former equity partner, he remains bound. You appeared to acknowledge that arbitration is the required venue for Mr. Dennis' claims. If Mr. Dennis were truly interested in peace and moving forward, it is puzzling why – for nearly two years – he has avoided availing himself of the arbitration process that could have addressed his claims expeditiously. Regardless, that process remains available to him.

I appreciate your efforts to keep communications open and remain interested in your perspectives on these matters. One such issue, which I repeatedly raised during our call, is: How could the firm be expected to have any confidence in a commitment by Mr. Dennis to cease his harassing conduct when he continues to flagrantly engage in harassment despite his advisors' instructions to stop? This is a crucial issue on which I would appreciate receiving your thoughts.

As previously advised, in view of Mr. Dennis's continuing harassment, the firm and its lawyers reserve their rights to pursue any and all lawful courses of action in response to Mr. Dennis's conduct.

Regards, Kathleen

Kathleen M. McKenna
Partner

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3130
f 212.969.2900
kmckenna@proskauer.com

From: Steven Seltzer
Sent: Saturday, September 26, 2020 8:50 PM
To: McKenna, Kathleen M.
Cc: Fischer, Rachel S.
Subject: Re: Willie Dennis Follow Up

This email originated from outside the Firm.

Dear Kathleen:

I have delved deeper into this matter and was able to confer with criminal counsel, who reviewed with me facts corroborating irregularities with my client's electronic communications that were

concerning to him. Along these lines, Mr Dennis has stated his belief that the firm is interfering in his electronic communications. If true, numerous issues are created.

In envisioning a settlement that achieves finality for everyone, an agreement that there will be no interference with Mr. Dennis' electronic communications would go a long way toward fostering a true and final parting of the ways. My client would like to hear from the firm about specifically what it proposes as to him in order to achieve complete separation (neither he nor I can guess at this), including a monetary offer. He wants to move on and, as I anticipated, has expressed his frustration that after more than a month there has been no counter offer to his proposal or significant movement in settlement negotiations. My goal is to keep working at this in an effort to reach consensus, but I do need to give him a reason to think this is possible.

I hope everything is well on the personal front and look forward to speaking again with the aim of bringing this unusual matter to an end.

Best,

Steve

PLEASE NOTE OUR NEW OFFICE ADDRESS.

Steven Seltzer

The Seltzer Law Group P.C.
125 Maiden Lane, Suite 507, New York, NY 10038
Main: 646-863-1909 | Direct: 646-863-1854 | Fax: 646-863-1877

From: Steven Seltzer <SSeltzer@slg-ny.com>
Date: Thursday, September 24, 2020 at 10:48 PM
To: "McKenna, Kathleen M." <KMcKenna@proskauer.com>
Cc: "Fischer, Rachel S." <rfischer@proskauer.com>
Subject: Willie Dennis Follow Up

Dear Kathleen:

Thanks again very much for our call yesterday. I have initially discussed the issues that you asked me to discuss with my client. He is willing to enter into a settlement with effective non-disparagement and confidentiality clauses. He is also willing to enter into a settlement that involves significant restrictions on direct contact between the appropriate parties/individuals. I can also share with you Mr. Dennis' dismay that, since Chip Tea recommended that he have counsel make contact regarding the matter approximately one month ago, that the dialogue as to resolution is only now beginning. I share this only in the hope of fostering appreciation that my client earnestly wants to end the matter quickly and conclusively and decisively. To that end, Mr. Dennis is willing to listen to a concrete proposal from the firm.

I am continuing to work at this and will be speaking with my client's criminal counsel regarding our discussion. I am hopeful of having that conversation shortly and will be in touch in an effort to help the parties move on.

Thank you,

Steve

PLEASE NOTE OUR NEW OFFICE ADDRESS.

Steven Seltzer

The Seltzer Law Group P.C.
125 Maiden Lane, Suite 507, New York, NY 10038
Main: 646-863-1909 | Direct: 646-863-1854 | Fax: 646-863-1877

From: Tea, Charles <Charles.Tea@klgates.com>
Sent: Tuesday, August 18, 2020 3:51 PM
To: ruleethics50@gmail.com; woc2020@gmail.com; wd66644@gmail.com; pmglm71947@gmail.com; bllj4848@gmail.com; htdr123@gmail.com
Subject: EEOC Charge

Willie:

We received a notice from the EEOC that it has closed its file with respect to your charge of employment discrimination against the firm and has issued a Notice of Right to Sue.

We urge you to think carefully and consult any advisers you may have before filing any claim against the firm, as you have no chance of prevailing in view of the indisputable record of your extensive misconduct. If you are assisted by counsel, we also urge you to have that lawyer contact us to discuss this matter and review the pertinent documents, including those described below, before you take any further action, as the lawyer has ethical and legal obligations to apprise himself or herself of the material facts before proceeding and could face jeopardy for failing to do so.

But if you do choose to file a claim against the firm, you are again reminded of the requirement that you do so in accordance with the **mandatory confidential arbitration procedure set out in Section 12.01 (Arbitration) of the Partnership Agreement** to which, as a former equity partner, you remain bound. You will recall that, at your request, we previously provided you with a copy of the Partnership Agreement.

* * * *

Notwithstanding the Notice of Right to Sue, which appears to have been issued upon your request and before the EEOC was even able to consider the merits of your charge, the employment discrimination laws asserted in your charge do not apply to you as a former equity partner of the firm. *See, e.g., Von Kaenel v. Armstrong Teasdale, LLP*, 8th Cir., No. 18-2850 (Dec. 3, 2019) (holding that as an equity partner of a law firm, the plaintiff attorney was not an "employee" under discrimination laws and therefore not covered by the ADEA). Should you attempt to assert such clearly barred employment discrimination claims against the firm, we would regard them as baseless and respond accordingly.

In addition to the legal bar to any discrimination claims you might seek to assert, the firm would vigorously respond to your allegations by laying out the full litany of facts, including the entire scope of your extensive misconduct, which fully explains, justifies and reaffirms the firm's actions of which you complain. Your misconduct includes, but is hardly limited to, hundreds if not thousands of harassing emails and text messages you directed at dozens of lawyers in the firm, despite having been told repeatedly to stop. Your conduct toward the firm's lawyers of color, particularly African American women, has been especially egregious. Many of your emails and text messages clearly were intended to demean, humiliate, intimidate and/or stoke fear in your targeted recipients. While you are of course well aware of your own actions, below are some examples of your misconduct the firm would point to in response to any claim you might seek to assert:

• In a series of vulgar emails, which you copied to several male lawyers, you taunted a married African American female lawyer in the firm by falsely insinuating that she was engaged – or should become engaged – in a sexual relationship with three male lawyers. The following are excerpts from those emails, redacted as appropriate to protect the identities of those you smeared:

Tell me about you and [male lawyer 1]....and don't lie ....now !

* * * *

btw
When was the last time you two "caught up " ?
My kids would love to know

* * * *

Pure and innocent
yeah ...right

* * * *

What is your husband's first name ?

* * * *

Is [male lawyer 1] big ?

* * * *

Hi [targeted female lawyer]
Are you with [male lawyer 1] today ?

* * * *

Are u guys meeting today ?

* * * *

Was it good ?

* * * *

[Male lawyer 2] did you have a taste ? 😬

* * * *

What mischief have you gotten yourself into today ?
Any new friends ? 😊

* * * *

Do you know [male lawyer 3] better than you know [male lawyer 1] ?
We need to explore that some

* * * *

[targeted female lawyer / male lawyer 3],
Are you guys doing drinks after work today ?

* * * *

Maybe [male lawyer 1] could join and make it a three some.
[targeted female lawyer] you good with that ?

** * * **

If [male lawyer 2] is in [the city] maybe he could join as well 😀

** * * **

And [a second female lawyer] can oversee all 😂

** * * **

How was the evening ?
Fun 😀

** * * **

Did anyone else join the group ?
i know it must have been a "hard "but exciting discussion 😀

• To another African American female lawyer in the firm, you sent the following string of insulting and demeaning emails:

So tough ...mouth always open (wonder why) Post
** * * **

[name of male lawyer]

please please please pet me
** * * **

[name of same male lawyer]

Look what i have for you.

What else did you give him ?
** * * **

I am thinking this woman is a complete idiot Big Law [ ] Style
** * * **

Tell [targeted female lawyer's son] who Mommy really is

** * * **
Airhead did not learn a damn thing at "[ ] Law School "

** * * **

Test me biscuit head

• In a series of menacing text messages, you threatened to confront and harass another of the firm's African American female lawyers at the Corporate Counsel Women of Color (CCWC) conference in Chicago. The following are excerpts from those text messages, again redacted as appropriate:

Hey [targeted female lawyer],
CCWC-Chicago
i cannot wait to see you come floating in [redacted] 😀

** * * **

How does that sound 😀
i am gentleman so i am going to save a seat for you at every .
Nice ?
Real leadership needs to publicized !
" Tell [targeted female lawyer] I am saving a seat for her 😀*"*

** * * **

Do you like it clown
Your legacy ..Now own it !

** * * **

He brings me the Conference and the [ ] ...and i spit on him and laugh with a glass of wine in hand.

Chicago cannot come fast enough
or you can commit perjury like the rest of your partners and say " It never happened ".

[Targeted female lawyer] i will hit him with some body blows to get him ready for the boys to take him out ...and my comp will go up. hooray cause i am "the shit"
U need to go to church
or maybe too late
Wake up

Maybe they will convince you to testify... i would love that What else do you do for them 😀*?*
Here is a napkin ... 😀
Despite my suits ...u know i am from Harlem ..right ?
Pls feel free to share ..could provide some good material to build around ..and share after trying help hurt my kids and smear my reputation
ok smart ass

• In an email string to that same African American female lawyer, with the subject line "*Humiliation of Me*", you threatened retaliation for your perceived slight:

Now you have time to make amends …otherwise u know i owe you one in
Chicago 😀

** * * **

Your humiliation of me in front of [ ] for the [ ]
conference was to get me prepared for this round …right?
Lesson learned.

• In emails to another female lawyer in the firm, you called her *"a real loser"* and a *"clown"*, told her *"U r a joke"*, and said that you would assume a nonresponse from her *"is a request for me to turn the voltage higher to accommodate you."* You also told her to *"Go back to Georgia where you fit it perfectly"*.

• While sending numerous emails complaining about perceived mistreatment and disrespect, particularly by female lawyers in the firm (many of whom are African American), you also forwarded news headlines about mass shootings and other violence that had nothing to do with firm business and clearly were intended to stoke fear in the recipients of serious physical harm. In one email, you forwarded an article from USA Today with the headline *"At least 4 dead, 2 injured in Southern California stabbing rampage; suspect arrested",* and then added *"The suspect's motive appears to be robbery, anger and hate"* – making a point to emphasize *"anger and hate"*.

• In other emails you were more direct in your threats. In one to another female lawyer in the firm you wrote:

Watch all ..because u r up next.
People try to help you and you disrespect their assistance.
Ok..u need to know what that feels like ..
a teaching moment for you.

** * * **
It is going to be thrilling

• And in another, you wrote:

Liar, Liar ,Liar
I am going to pay you back big time.
U will never forget

• In several emails you referenced religion in ominous and menacing ways. For example, you forwarded an article from ABC News with the headline "*At least 9 dead, 16 injured in mass shooting in downtown Dayton, police say*" and then added "*Heading to service now and will pray on this as well as our issues*". To conflate a mass shooting with whatever you perceive to be your issues with the firm – or women lawyers at the firm – is clearly threatening. You also referred to taking directions from God ("*I am going to attend [worship service] to try to ensure that all actions taken by me are not those of mine (pettiness) but rather directions of God*"), while also warning just two days earlier that "*time is running out*". In addition, you sent emails to several of the firm's personnel attaching a photo of a Biblical passage which reads:

Fret not thyself because of evildoers, neither be thou envious against the workers of iniquity. ***For they shall soon be cut down like the grass, and wither as the green herb.***"
(Bold in original).

In one of those emails, again to a diverse female lawyer in the firm, you added for no apparent legitimate reason: *"but what problems do we have …a lot of innocent people are being killed on US soil."* And in yet another email, you quoted a scripture passage ending: "*the wicked He will destroy*" after which you wrote "*Amen*".

• You sent many other menacing and threatening emails, including ones containing references to the families of firm personnel – asking lawyers to disclose the names of their spouses, where they live, and if their children are safe. In one string to three of the firm's African American female lawyers, you wrote: *"You have ' spat upon ' me and my family",* followed with *"I hope all your families are feeling safe and sound tonight."* You also sent links to news articles

that have nothing to do with the business of the firm or any of its personnel, but rather are exploited by you as veiled cover to cause fear by referencing death and violence (e.g., *"Seems like a few more people will die"*, *"Just a mess and heading toward physical conflict"*, *"A few more needless deaths"* and *"People dying all over"*).

• You sent a string of over 40 emails, many in rapid succession, to a lawyer of color in the firm who you called *"an idiot"*, falsely accused of being *"grossly negligent"*, insisted that "*claims against [him] to be investigated immediately"*, who you claimed ***"You hurt my family."*** (bold in original), and in an email to another in the firm implied physical violence against him (*"Given your good relationship with [the diverse lawyer], it is best for you to step out of the room, I want no collateral damage").*

• Around the same time, you sent dozens of other emails to an African American lawyer in the firm accusing him – also falsely – of having been grossly negligent with regard to client development and severely damaging the firm. You asked permission to sue him personally and have the firm not defend or indemnify him. You also insisted, without legitimate basis, that this lawyer resign. In one string, which consisted of numerous emails again sent in rapid succession, your messages took on a threatening tone - excerpts of which include the following:

Which church do you attend ?

** * **

Hollywood

Nothing's real just all show

** * **

And enjoyed the pushing.

Maliciously and intentionally try to hurt my family knowing all that is going on and that your caused and u think i would do nothing ...really ?

** * **

[You're] on the side of the Angels right ?

** * **

You like games,let's play one today

• Your harassment has not been limited to written communications. You have physically confronted lawyers outside the office in a manner that was unwelcome and caused them to feel uneasy. In one case, you repeatedly confronted an African American lawyer in the firm, despite his having asked you to stop, ultimately forcing him to depart early from an important conference he had traveled out of town to attend.

• And, as you know, there was other misconduct which lead to your expulsion, including:

• Having forwarded numerous internal firm emails containing proprietary and confidential information to your unsecure personal email account outside the firm – some of which you subsequently forwarded to third parties outside

the firm, including opposing counsel in your family court proceeding and a court official, in clear violation of firm policies. The firm was forced to respond to those breaches to mitigate the risk of harm posed by your improper actions.

• In connection with your family court proceeding, you falsely accused the firm of preventing you from making timely support payments, failing to make required disclosures to the court, exercising unauthorized powers over you, destroying documents, and restricting access to your funds. The firm repeatedly insisted that you correct these misrepresentations, though we are not aware that you have ever done so. You also had been admonished by at least two court officials that emails you were sending to them were "inappropriate" and "must stop".

• According to your own statements, you failed to comply with your own agreed upon, court-ordered support obligations, which led to the service of an income execution order on the firm.

• According to your own statements, you have been the subject of contempt proceedings for failure to comply with court-ordered support obligations.

• On May 3, 2019, you informed the firm that the court *"may sentence me to 3 months in jail (service to begin May 13, 2019)"*, presumably for contempt for failure to abide by court-ordered support obligations.

• You had failed to pay all or some portion of your taxes, which led to the service of a garnishment on the firm.

• You billed just 41 hours for all of 2018, but claim to have devoted over 1,850 non-billable hours for *"Client Meetings - Substantive - Not Entertainment"* – which on its face is highly suspect and, if untrue, could constitute fraud on the firm.

As the foregoing amply demonstrates, the actions taken by the firm of which you complain were not only warranted, but were necessary to address objectively offensive and disruptive conduct after repeated warnings; protect the firm's personnel from your harassment, unfair false personal attacks and threats; preserve the firm's professional standing and reputation; and uphold the values of mutual respect, cordiality, cohesion and trust essential to a partnership. The firm did not discriminate against you in any way, and the charge you filed with the EEOC is demonstrably false and pretextual. Any claims of discrimination you might attempt to assert against the firm will fail both as a matter of law and based on the facts – much of which come from your own written statements. But if, notwithstanding the foregoing, you choose to file a claim, you are again reminded that any disputes you may have with the firm or its partners, including based on alleged discrimination, **are subject to mandatory arbitration as the exclusive forum for dispute resolution as provided in Section 12.01 (Arbitration) of the Partnership Agreement** to which, as a former equity partner, you remain bound.

Finally, by having submitted a charge against the firm with the EEOC, we assume you complied at that time, and will continue to comply, with your legal obligation to preserve all potentially relevant documents in whatever form, including emails and text messages. If you failed to do so then, you must do so immediately, and continue to preserve them. Your destruction of emails and text messages, including but not limited to those described above, would be a serious matter. We reserve all of our rights in this regard.

Again, if you are assisted by counsel, we urge you to have that lawyer be in touch with us to discuss this matter so that counsel may be fully apprised of the facts.

K&L GATES

Charles M. Tea
Deputy General Counsel
K&L Gates LLP

K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
Phone: 412.355.6256
Fax: 412.355.6501
charles.tea@klgates.com
www.klgates.com

Cc: Tea, Melissa J.[Melissa.Tea@klgates.com]
To: Tea, Charles[Charles.Tea@klgates.com]
From: Willie Dennis[woc2020@gmail.com]
Sent: Thur 6/13/2019 4:48:46 PM (UTC-04:00)
Subject: Re: Reinstatement/Vacated Order

External Sender:

Mr Tea,

Please provide the documents you provided to Mr Muller without my consent or knowledge in violation of the ethic laws of the bar.

Such behavior is unacceptable from someone in the General Counsel's office.

Please provide immediately

Finally what is going on with the sexual harassment investigations

Were all the claims without merit ?

Best

Willie

Sent from my iPad

> On Jun 13, 2019, at 4:37 PM, Tea, Charles <Charles.Tea@klgates.com> wrote:
>
> Willie,
>
> I am responding on behalf of the Firm to your email below to Mike and Jim.
>
> Your expulsion from the Firm was not based on any one reason in particular, but rather many - all of which were set out in the confidential memorandum we provided you in advance of the vote. Only one of those reasons was that you had allowed a contempt order to be entered against you and that you waited until you were threatened by the court with incarceration before complying. Your efforts after the fact (and after your expulsion) to address conditions that you willfully created do not change matters.
>
> Again, you were given multiple opportunities prior to the vote to engage with the Firm to reach a consensual resolution that would have avoided expulsion. You chose not to do so. Your expulsion from the Firm is final and will not be reconsidered. Indeed, your recent actions - including your continued sending of numerous harassing emails to multiple lawyers in the Firm and your deeply disturbing and menacing behavior at the Corporate Counsel Men of Color Conference, rather than utilizing the mandated arbitration procedure for the resolution of disputes - only reinforces the justification for your expulsion. If your harassing conduct continues, the Firm will take steps to protect itself and its personnel. And to be clear, you are not permitted onto the premises of any of the Firm's offices.
>
> If you wish to communicate with the Firm, please contact Jeff Maletta or me.
>
> Sincerely,
>
> Chip
>
>
> Charles M. Tea

> Deputy General Counsel
> K&L Gates LLP
> K&L Gates Center
> 210 Sixth Avenue
> Pittsburgh, PA 15222
> Phone: 412.355.6256
> Fax: 412.355.6501
> charles.tea@klgates.com
> www.klgates.com
>
>
> -----Original Message-----
> From: Willie Dennis <woc2020@gmail.com>
> Sent: Wednesday, June 12, 2019 12:21 PM
> To: Caccese, Michael S. <Michael.Caccese@klgates.com>; Segerdahl, James <James.Segerdahl@klgates.com>
> Subject: Reinstatement/Vacated Order
>
>
>
> Mike/Jim
>
> The Order, which was the prinicipal reason set forth in the memo for the expulsion vote, was vacated on May 23, 2019.
>
> i am requesting the immediate reinstatement of all my rights as a partner of the Firm.
>
> Please advise me as to when I can return to our offices.
>
> Best,
>
> Willie
>
>
> Sent from my iPhone
>
> This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Charles.Tea@klgates.com<mailto:Charles.Tea@klgates.com>.-4
>

K&L GATES

May 13, 2019

James R. Segerdahl
Global Managing Partner
james.segerdahl@klgates.com

T +1 412 355 6784
F +1 412 355 6501

PERSONAL AND CONFIDENTIAL

Willie E. Dennis, Esquire
P.O. Box 872
New York, NY 10150-0872

Dear Willie:

As we advised you on May 6, 2019, the Management Committee of K&L Gates LLP, a Delaware limited liability partnership (the "Firm"), voted unanimously to recommend to the Partners that you be expelled from the Firm. We now further advise you that, on the determination by vote of the Partners in accordance with Section 6.02 of the Firm's Partnership Agreement, as amended ("Partnership Agreement"), you have been expelled as a Partner from the Firm, with immediate effect, as of today--May 13, 2019 (the "Effective Date").

As provided for in Sections 6.03 and 7.02 of the Partnership Agreement, and subject only to the Firm's payment of the amounts specified herein, if any, from and after the Effective Date, you shall have no further right or interest of any nature in the Firm or any of its assets, clientele, files, records or affairs. You may not hold yourself out in any respect as a Partner of the Firm or as having any other affiliation with the Firm. We remind you that you remain bound by ongoing duties of confidentiality to the Firm and its clients. Someone from the Firm will be in contact with you shortly to make arrangements for the delivery of your personal effects and retrieval of any property of the Firm you may still have.

As also provided for in Sections 6.03 and 7.02 of the Partnership Agreement, the Firm would ordinarily pay to you, within ninety (90) days of the Effective Date, any balance in your capital account constituted as of the Effective Date after deducting (a) your Permanent Capital, as defined in Section 7.02 and including for these purposes your Algorithm/Bonus Capital which will be treated as Permanent Capital pursuant to the Management Committee's February 2017 "Resolutions Relating To Extraordinary Success Fee"; (b) any amounts you owe to the Firm, including provisional advances previously credited to your capital account pursuant to Section 3.03 of the Partnership Agreement, and any expenses that may be chargeable to your capital account subsequent to the Effective Date in accordance with the Firm's usual practice, such as any non-resident tax liabilities, insurance premiums and expense items which may be reimbursable to the Firm; (c) $36,500, representing your 2018 profit sharing contribution to the Firm's 401(k) Plan for which you are responsible; (d) $5,000, representing your 2018 contribution to the Firm's Partner Pension Program for which you are responsible; and (e) any outstanding

amounts your repayment of which the Firm has assured. However, since there are no funds in your capital account as computed in accordance with this paragraph (exclusive of your Permanent Capital determined as set forth above), no payment is owed to you at this time. On December 1, 2020 and on December 1 of each of the following two years, the Firm will pay to you an amount equal to one-third of your Permanent Capital determined as set forth above, less (i) any outstanding amounts still owed by you to the Firm, including any provisional advances still retained by you; and (ii) any outstanding amounts as to which the Firm has assured your repayment.

Any balance in your capital account and your Permanent Capital, each determined as provided for in the second paragraph hereof, will earn interest from the Effective Date until the date of payment at the same rate of interest that the Firm earns on its invested funds.

Payments to you with respect to 2018 will be subject to US state non-resident taxation in certain of the jurisdictions in which K&L Gates has US offices. You have previously elected to participate in our US state composite non-resident tax filings for all such jurisdictions until such time as you revoke your election to participate. Any estimated tax payments that the Firm has previously made on your behalf are reflected in your capital account. You may continue to participate in the Firm's US state composite non-resident tax return filings relating to any payment you receive with respect to 2018 if you choose to do so. In that case, we will advise you of any required payments for subsequent quarters, to the extent they have not previously been deducted from your capital account, and you will need to forward to us funds to cover such payments in a timely fashion, and the Firm agrees to refund to you any amounts previously paid by you in excess of any final non-resident tax liability with respect to any state where you have participated in our US state composite non-resident tax filings. We will deem your failure to forward such payments in a timely fashion a decision to terminate your participation in the US state composite non-resident filings. Alternatively, you may choose to terminate your participation in the Firm's US state composite non-resident tax filings and file as an individual non-resident in each state where taxes are owed. If you choose this option, the Firm will issue to you a non-resident K-1 indicating your final share of non-resident income for each such state. You will then be obligated to satisfy any tax obligation you may have yourself and to file non-resident tax returns as an individual non-resident taxpayer in each relevant state.

Your allocation of net profits with respect to 2018 is subject to non-resident taxation in certain of the non-US jurisdictions in which K&L Gates LLP has offices. Any estimated payments and/or final payments/refunds of such taxes that the Firm previously made/received on your behalf are reflected in your capital account. You have previously authorized the Firm to handle such foreign tax matters on your behalf via Powers of Attorney. Accordingly, you agree that the Firm will continue to handle all such tax matters with applicable non-US jurisdictions on your behalf. In conjunction with the handling of such tax matters on your behalf, you also agree to pay/reimburse the Firm for your share of any previously unpaid final non-US non-resident tax liabilities and the Firm agrees to refund to you any amounts previously paid by you in excess of any final non-US non-resident tax liability.

You are again reminded that any dispute you may have with the Firm or any of its Partners, including with respect to your expulsion, is subject to mandatory arbitration as provided in Section 12.01 (Arbitration) of the Partnership Agreement

It is our intention to keep this letter confidential. We expect that you will treat it in a similar manner.

Very truly yours,

James R. Segerdahl
Global Managing Partner

11-16-20 MCKENNA DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARBITRATION

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

WILLIE E. DENNIS,

Plaintiff,

v.

K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA.

Defendants.

----------X

Civil Action No.:

COMPLAINT
Jury Trial Demanded

Plaintiff, WILLIE E. DENNIS ("Plaintiff"), appearing pro se, brings this lawsuit against Defendants K&L GATES LLP ("K&L GATES" or "the Firm"), DAVID TANG ("Tang"), JAMES SEGERDAHL ("Segerdahl"), JEFFREY MALETTA ("Maletta"), MICHAEL CACCESE ("Caccese"), ANNETTE BECKER ("Becker"), PALLAVI WAHI ("Wahi"), JOHN BICKS ("Bicks"), and CHARLES TEA ("Tea"), (collectively, the "Individual Defendants" and together with K&L GATES, the "Defendants"), and hereby alleges the following:

NATURE OF THE ACTION

1. Plaintiff was employed by the Firm as an attorney for seventeen (17) years and was improperly terminated in bad faith, and contrary to the Firm's partnership agreement, in retaliation for his simply raising concerns that the Firm was discriminating against Plaintiff on the basis of his race and in retaliation for his merely raising concerns that the Firm was discriminating against its members and employees on the basis of

gender and race and allowing its members to sexually harass the Firm's members and employees.

2. Plaintiff proceeds pursuant to 42 U.S. Code § 1981, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, et seq., as amended ("Title VII"), the New York State Human Rights Law, N.Y. Executive Law §§ 290 *et seq.* ("NYSHRL") and the New York City Human Rights Law, Administrative Code §§ 8-101 *et seq.* ("NYCHRL").

3. As set forth below, Plaintiff, an African American attorney, was a member of K&L GATES in the New York office for 17 years. He was the victim of systemic racism and discriminatory barriers to equal treatment, which were widely known to exist within the global law firm of K&L GATES and which has included the unlawful denial of bonuses, compensation commensurate with fellow White partners, and fairness with respect to the terms and conditions of his employment.

4. The Firm was under intense scrutiny from legal publications such as Law.com due to allegations of a culture of sexual misconduct (See https://www.law.com/thelegalintelligencer/2018/12/12/at-kl-GATES-women-alleged-misconduct-and-left-as-accused-partners-stayed-on/). When Plaintiff attempted to discuss the issue with certain partners of the Firm to mitigate the damage and create a better sexual harassment process internally, K&L GATES and a small group of leaders (i.e., the Individual Defendants) subjected Plaintiff to unlawful retaliation, including reducing his compensation and violating the Firm's partnership agreement by expelling him from the Firm. The Firm terminated his employment after Plaintiff repeatedly demanded that his fellow White partners refrain from discriminating against African American lawyers and from sexually harassing women lawyers including law student summer interns.

5. The Firm also created a racially hostile work environment that was severe and/or pervasive.

6. Plaintiff repeatedly complained internally to Firm Management about all of the allegations above. When Firm partners and associates learned of the Individual Defendants' conduct, they did not honor their ethical and legal obligations to bring the discrimination, hostile work environment, and retaliation to an end.

7. As a result of Plaintiff's race and protected activity of complaints about discrimination, harassment and retaliation, the Individual Defendants, who were well aware and knowledgeable of this, subjected Plaintiff to materially adverse employment actions.

8. Defendants progressively increased the pressure on him, and added to the harms and losses being suffered by Plaintiff by continuing to diminish the terms and conditions of his employment (including compensation) compared to his White partner counterparts, and ultimately terminated him.

JURISDICTION AND VENUE

9. This action involves federal questions regarding the deprivation of Plaintiff's rights under Section 1981 and Title VII of the Civil Rights Act. This Court has original jurisdiction over Plaintiff's Section 1981 claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). The Court has original jurisdiction over Plaintiff's Title VII claims pursuant to those two provisions as well as 42 U.S.C. §2000e-5(f)(3). Furthermore, the Court has supplemental jurisdiction over Plaintiff's related claims arising under State and local laws pursuant to 28 U.S.C. § 1367(a).

10. Pursuant to 28 U.S.C. § 1391(c) and 42 U.S.C. §2000-5(f)(3), venue is proper in this district because a substantial part of the events or omissions giving rise to this action, including the unlawful discriminatory and unlawful retaliatory practices alleged herein, occurred in this district. Additionally, the relevant employment records were maintained, in whole or in part, at K&L GATES's offices located in this district, which employs over 100 attorneys.

11. Plaintiff timely filed a formal complaint with the U.S. Equal Employment Opportunity Commission (EEOC) on March 3, 2020. The EEOC issued a right to sue letter dated August 10, 2020. Plaintiff has filed this action within 90 days of the date of his receipt thereof.

PARTIES

PLAINTIFF

12. Plaintiff is a resident of New York, New York and is an African American attorney licensed to practice in the States of New York, New Jersey, and the District of Columbia.

13. Plaintiff was employed by K&L GATES for seventeen (17) years as a partner in the New York Office located at 599 Lexington Avenue, New York, New York 10022. At all relevant times, Plaintiff was employed by, associated with and/or a member/partner of the Firm and met the definition of an "employee" under all applicable statutes.

DEFENDANTS

14. Defendant K&L GATES is a global law firm with over 1,800 lawyers and 45 offices worldwide. Defendant generated over $1 billion in revenues in 2019. The Firm

has a principal place of business at 599 Lexington Avenue, New York, New York, 10022. At all relevant times, Defendant K&L GATES has met the definition of an "employer" under all applicable statutes.

15. Defendant Tang is a resident of Seattle, Washington and at all times relevant herein served, and continues to date to serve as a Member of the Executive Committee and Managing Partner of the Asia Offices of K&L GATES. At all relevant times, Defendant Tang directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

16. Defendant Segerdahl is a resident of Pittsburgh, Pennsylvania and at all times relevant herein served, and continues to date to serve as the Global Managing Partner of K&L GATES. At all relevant times, Defendant Segerdahl directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

17. Defendant Maletta is a resident of Washington, D.C. and at all times relevant herein served, and continues to date to serve as the General Counsel of K&L GATES. At all relevant times, Defendant Maletta directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

18. Defendant Caccese is a resident of Boston, Massachusetts and at all times relevant herein served, and continues to date to serve as the Chairman and Practice Area

Leader Asset Management and Investment Funds. At all relevant times, Defendant Caccese directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

19. Defendant Becker is a resident of Seattle, Washington and at all times relevant herein served, and continues to date to serve as a Partner and Practice Area Leader Corporate. At all relevant times, Defendant Becker directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

20. Defendant Wahi is a resident of Seattle, Washington and at all times relevant herein served, and continues to date to serve as the Co-Managing Partner of the United States; Managing Partner in the Seattle office; Chair of the Firm-wide Diversity Committee; and Co-Chair of the Firm-wide India practice. At all relevant times, Defendant Wahi directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

21. Defendant Bicks is a resident of New York, New York and at all times relevant herein served, and continues to date to serve as the Managing Partner in the New York Office. At all relevant times, Defendant Bicks directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

22. Defendant Tea is a resident of Pittsburgh, Pennsylvania and at all times relevant herein served, and continues to date to serve as a Partner and serves as the Deputy General Counsel of the Firm. At all relevant times, Defendant Tea directly participated in the discriminatory, retaliatory, and otherwise unlawful employment decisions and actions taken against Plaintiff and was a "covered employer" and/or "aider" or "abettor" under all relevant statutes.

FACTUAL ALLEGATIONS

EXAMPLES OF THE SYSTEMIC RACISM THAT PERMEATED AT K&L GATES TO CREATE A RACIALLY HOSTILE WORK ENVIRONMENT TOWARDS AFRICAN AMERICAN ATTORNEYS INCLUDING THE PLAINTIFF

23. At all relevant times, systemic racism permeated at K&L GATES, creating unlawful discriminatory barriers to equal treatment, which resulted in the widespread and constant loss of opportunities for African American lawyers as well as the Plaintiff.

24. Though K&L GATES held itself out as a leader of diversity by supporting minority-focused legal bar organizations such as the National Bar Association, the Minority Corporate Counsel Association, and Corporate Counsel Women of Color, internally K&L GATES practiced systemic racism and sexism.

25. At the Firm, African American attorneys faced minimal career opportunities, limited training and development opportunities, a denial of access to substantive and high-profile legal work, and significant roadblocks to partnership.

26. In terms of compensation, African American lawyers employed by the Firm as associates are paid less compensation than their White counterparts.

27. African American partners are compensated significantly less by the Firm than the compensation paid to White partners due to race.

28. African American partners are regularly denied origination credit.

29. The Firm has failed to provide equal opportunity for African American lawyers, especially in terms of salary, bonuses, training, development, access to clients, and billable hours.

30. The Firm has not been able to retain African American attorneys because of its discriminatory culture. Within a short period of time after arrival at the Firm, highly-qualified African American lawyers have departed:

- John Doe 1 (African American)
- John Doe 2 (African American)
- John Doe 3 (African American)
- John Doe 4 (African American)
- John Doe 5 (African American)
- Jane Doe 1 (African American)
- Jane Doe 2 (African American)
- Jane Doe 3 (African American)
- Jane Doe 4 (African American)
- Jane Doe 5 (African American)
- Jane Doe 6 (African American)
- Jane Doe 7 (African American)
- Jane Doe 8 (African American)
- Jane Doe 9 (African American)
- Jane Doe 10 (African American)
- Jane Doe 11 (African American)

- Jane Doe 12 (African American)
- Jane Doe 13 (African American)

31. In response to each and every departure, Plaintiff would complain internally to Firm Management and the Individual Defendants about the departure of African American attorneys. Plaintiff expressed his concern about the unfair treatment experienced by African American lawyers with respect to opportunities for advancement compared to White attorneys.

32. Though the public explanation offered by the Firm for each departure was "they left for better opportunities," in fact the Firm did not foster an equitable work environment for these African Americans.

33. When Plaintiff continually raised concerns about this high attrition rate of African American attorneys, Firm Management would repeatedly respond to Plaintiff by saying:

    a. *"**African American lawyers cannot handle Big Law**";*

    b. ***"African American lawyers are not ready to work at AMLAW 250 Firms"**;*

    c. ***"Black lawyers don't have what it takes to succeed at K&L GATES";***

    d. "Black lawyers cannot bring big clients to the Firm";

    e. ***"Black lawyers don't fit in"**;*

    f. *"**Black lawyers can't cut the mustard and their legal skills are substandard";***

    g. *"**African American lawyers are not our preference for our clients…We prefer White and Asian lawyers to be staffed on our clients' matters**"*; and

h. "***Black partners are not expected to be good lawyers. We need them to make it rain.***"

34. Each year, Plaintiff was subjected to these racist responses and racist sentiments. Plaintiff was also subjected to a hostile work environment and suffered mental pain and anguish.

35. Since Defendant Caccese became the Chairman of the Firm in 2017, he has systemically "counseled out" African American partners and ended the tenure of the only African American partner on the Executive Management Team.

36. Currently, there are no African Americans on the Executive Committee.

37. The African American partner who served on the Executive Management Committee was removed from the Executive Committee in 2017.

38. Jane Doe 1, who is African American, graduated from Harvard Law School, speaks six languages, and the daughter of a civil rights leader and icon, was the Firm's former Chief Diversity Officer. Defendant Caccese forced Jane Doe 1 out of the Firm in 2019, without any explanation.

39. John Doe 1 was the first and only African American partner in the Firm's largest office, Seattle. He was forced out of the Firm in 2005. There has not been another African American partner in the Seattle office since 2005.

40. With respect to compensation, the Firm has different standards for Black and White attorneys. The Firm hired White lateral partners, like Defendant Bicks, who never met any of the financial representations he made to the Firm prior to joining. Yet, the Firm still promoted these partners into senior management positions and provided them with compensation significantly above that of African American partners.

African American partners who met their commitments and brought in new business, were not given full origination credit or promoted to senior management positions.

41. As a result of discriminatory hiring practices as well as discriminatory promotion practices, in 2020, the Seattle, Pittsburgh, and Boston offices, three of the largest offices of K&L GATES, do not have a single African American male partner. The Boston and Pittsburgh offices do not have a single African American partner. The Firm hides this by listing some African American partners, such as John Doe 7, who resides in New Jersey, in two different offices (New York and Pittsburgh).

42. As a result of discriminatory hiring practices as well as discriminatory promotion practices, the Boston office, where the Chairman of K&L GATES is based and controls the hiring and staffing, has never had an African American male partner. The Chairman of the Firm is attempting to make the rest of the Firm look like the Boston office.

43. As a result of discriminatory hiring practices as well as discriminatory promotion practices, K&L GATES has only one African American partner in the State of California. K&L GATES has offices in Los Angeles, San Francisco, Palo Alto and Orange County. It is expected that the only African American partner of K&L GATES in California will retire in 2021.

PLAINTIFF'S INVOLVEMENT IN THE AFRICAN AMERICAN COMMUNITY AND AWARDS

44. Plaintiff, who is an African American, is a graduate of Columbia Law School, Columbia College, and Choate Rosemary Hall.

45. Plaintiff is licensed to practice law in New York, New Jersey, and the District of Columbia.

46. Plaintiff has practiced corporate law for over 30 years in New York City working at AMLAW 250 law firms and representing Fortune 500 companies including Microsoft, Goldman Sachs, DuPont, MetLife, CBRE, American Express, Tyco, Toys-R-Us, and Darden Restaurants.

47. Shaped by his background and experience, Plaintiff has always supported gender and racial diversity including:

- Supporting national organizations with diversity and inclusion missions for minority lawyers including the Minority Corporate Counsel Association, the National Bar Association, and Corporate Counsel Women of Color.
- Serving on the Board of Directors of the Upper Manhattan Empowerment Zone for eight years, working closely with the Honorable Charles Rangel—a former, extraordinarily long-serving Congressman, civil rights leader, and the "dean" of New York's Congressional delegation for many years.
- Sitting on the Board of Directors for Junior Achievement of New York.
- Counseling numerous political figures and participating in the presidential campaigns of former President Barack Obama in 2008 and 2012, former United States Secretary of State Hillary Clinton in 2016, and President-Elect Joe Biden in 2020.

48. Plaintiff has received numerous awards related to his legal and philanthropic efforts. He was named by *Black Enterprise* magazine as one of the nation's best lawyers and by *Savoy* magazine as one of the top African American lawyers in America.

PLAINTIFF'S EMPLOYMENT AT K&L GATES LLP

49. Plaintiff worked at prestigious AMLAW 250 law firms including Akin Gump Strauss Hauer & Feld LLP and Thelen Reid and Priest. Plaintiff had a multi-million-dollar book of business, which was developed over the years through Plaintiff's hard work, board of directors and community work, and relationships in the minority community and with diversity bar associations.

50. Plaintiff was recruited by K&L GATES and joined the Firm in 2005, where he joined its corporate group as a partner.

51. When Plaintiff joined K&L GATES's New York Office in 2005, he entered into a partnership agreement with the Firm.

52. In addition to the agreement, the Firm's policy enumerated terms for compensation and remuneration around origination credit for clients Plaintiff and others brought to the Firm. Per the policy, the partner who establishes the initial client relationship determines the allocations of credit and compensation for the following categories:

- *Origination Credit*: Principal client contact partner. Notably, compensation is higher for origination credit.
- *Responsible Matter Credit*: Partners performing the work for the client.
- *Billing and Inventory Credit*: Partner responsible for billing and collecting fees for the client.

53. With respect to many clients, Plaintiff, due to his race, was denied the opportunity to participate in the allocation process or was instructed by K&L GATES as to what the allocation would be without explanation or opportunity for input or appeal.

54. K&L GATES recruited Plaintiff, in part, because of the decades of goodwill Plaintiff built in the African American community, which K&L GATES believed would provide the opportunity to develop new clients for the Firm.

55. Also, the Firm was aware of Plaintiff's long-standing advocacy for both fairness in gender and racial diversity. K&L GATES believed this would enhance the Firm's brand and market position.

56. Plaintiff nevertheless was subjected to mistreatment for promoting diversity and fairness at the Firm.

57. K&L GATES recruited Plaintiff to gain access to his business contacts, clients, and associations, with no intention of keeping the gender and diversity commitments made to Plaintiff.

58. The Firm used Plaintiff's client contacts and market penetration arising from his support for gender, orientation, and racial diversity, to divert the fees Plaintiff brought to the Firm to solely benefit White partners.

59. Plaintiff complained internally about the failure of K&L GATES to use fees and work generated by Plaintiff to promote diversity and gender equality within the Firm. Plaintiff also complained about discrimination, harassment, and retaliation.

60. Plaintiff's concerns intensified over a period of three years beginning in 2017, during which Plaintiff expressed to the Defendants including the Firm's Chair, Executive Committee, Diversity Committee, Chief Diversity Officer, and numerous individual partners concerns about the Firm's indifference, and in some cases hostility towards African American attorneys.

61. Specifically, Plaintiff expressed that the Firm was discriminating against him in his compensation, denial of origination credit, and access to office services and support staff. Also, Plaintiff was aware that some of the White partners with the same tenure, experience, and less client revenues were paid more than Plaintiff.

62. In addition, Plaintiff complained to Firm Management and the Individual Defendants that the Firm was failing to adhere to its own equal employment opportunity policy as well as federal, state, and local prohibitions against racial discrimination.

63. Plaintiff further complained that the Firm's African American revolving door and poor diversity record were hurting the Firm's brand and hampering its ability to create and maintain quality client relationships.

64. Plaintiff experienced retaliation after bringing these discriminatory practices to the attention of the Firm's management.

65. To combat the Firm's racism and poor diversity record, Plaintiff took the initiative to spearhead many diversity efforts to foster change and, while his advocacy was well received externally and supported by groups that are typically marginalized in the legal profession and workplace setting as well as some of the Firm's most elite clients, it was ill received by the Firm.

66. At all times, Plaintiff satisfactorily performed the requirements imposed upon him by the partnership agreement including partnership capital contributions.

67. However, and despite Plaintiff's performance, K&L GATES continuously discriminated and retaliated against Plaintiff and breached the partnership agreement by interfering with his client relationships and also by failing to compensate him in his base pay and bonus pay per the agreed upon terms of the Firm's compensation policy.

68. On May 13, 2019, Plaintiff was wrongfully terminated because of his race and in retaliation for his protected activity (*i.e.,* (i) internal complaints about discrimination, harassment, and retaliation Plaintiff was subjected to; (ii) internal complaints about K&L GATES's discrimination against other African American lawyers; and (iii) internal complaints about the mistreatment of women at the Firm who were being sexually harassed by senior management.

69. Even though Plaintiff is no longer at K&L GATES, the clients he brought to the Firm remain clients of the Firm. Hence, K&L GATES's White attorneys continue to be unjustly enriched by clients that Plaintiff brought into the Firm who continue to generate multi-million dollars in revenue every year.

a. PLAINTIFF IS DENIED ORIGINATION CREDIT

70. One of Plaintiff's main clients while at K&L GATES was Microsoft.

71. Although Plaintiff expanded the Firm's relationship with Microsoft, an iconic global company and brand, on the strength of his close personal relationships with Microsoft's President and Chief Legal Officer, and a senior Microsoft lawyer who is African American, Plaintiff was cheated out of and denied full origination credit during his employment at K&L GATES.

72. K&L GATES breached Plaintiff's partnership agreement and its policy of crediting firm partners such as the Plaintiff for introducing new clients and matters to the Firm. For example, even though Microsoft was Plaintiff's client, he was never given origination credit or compensation for the business revenues generated from Microsoft's legal work. He was also denied origination credit for bringing PepsiCo and Starbucks in as clients of the Firm as well.

73. Plaintiff, who was qualified, performed and met his obligations.

74. K&L GATES repeatedly breached Plaintiff's partnership agreement and its policy, by not allowing Plaintiff origination credit.

75. The practice of denying Plaintiff origination credit continued over a 17-year period, with credits diverted to White partners without notice or explanation, which drastically reduced his compensation from that of an equity partner to a junior associate causing Plaintiff lost wages and harm.

76. All of K&L GATES's actions have caused Plaintiff mental anguish.

77. The practice of denying African American partners origination credit at K&L GATES was institutionalized.

78. White partners, who were Plaintiff's counterparts such as Defendant Bicks, were allocated origination credit, which they had not earned.

b. PLAINTIFF AND AFRICAN AMERICAN ATTORNEYS ARE DISCRIMINATED AGAINST IN MICROSOFT MATTERS

79. In addition, the Firm, discriminated against Plaintiff and other African American partners and associate attorneys by interfering with and preventing Plaintiff and those attorneys from working on new Microsoft matters that were originated. This practice by K&L GATES intentionally kept the compensation of African American attorneys lower than White attorneys at the Firm. As a result, many African American attorneys left the firm "voluntarily," rather than K&L GATES's having to discharge them.

80. Of particular importance, African American attorneys were denied opportunities to work on Microsoft matters. These African American lawyers at K&L GATES who were excluded and denied opportunities include:

- Jane Doe 1 (African American)
- Jane Doe 2 (African American)
- Jane Doe 3 (African American)
- Jane Doe 14 (African American)
- John Doe 6 (African American)
- John Doe 7 (African American)

81. When Plaintiff questioned K&L GATES and the Individual Defendants as to why and for the reason, they were denying him and other African American attorneys from servicing Microsoft, Plaintiff was told by Firm Management that even though Microsoft requested the participation of African American attorneys on its matters, **"Black lawyers don't fit in, and Asian lawyers are preferred."**

82. Plaintiff found this response and all the others to be unacceptable, blatantly racist, and against the federal, state and local laws.

83. All of Plaintiff's internal complaints of racism and discrimination went ignored and uncorrected.

    a. This racism against African American lawyers is one of the reasons why Jane Doe 1, former Head of Diversity, left the Firm less than 60 days after Plaintiff was pushed out.

    b. This racism against African American lawyers is one of the reasons why Jane Doe 2 (Partner) left the Firm this year (2020).

    c. This racism against African American lawyers is one of the reasons why Jane Doe 3 (Partner) left the Firm at the end of 2019.

84. Defendants took yet further action against Plaintiff in reprisal for his complaints, including, but not limited to barring Plaintiff's access to work on Microsoft matters and failing to include him in client strategy phone calls, meetings, staffing reports, strategy sessions, and origination credit.

85. When Plaintiff requested Defendants Caccese, Segerdahl, and Zanic meet with the African American Microsoft lead relationship attorney, who is based on the East Coast (New York and Washington, D.C.), all three who are White, refused and said that the African American Microsoft relationship attorney should fly across country to Seattle to meet with Defendant Becker.

86. Defendant Becker, who is a White partner at the Firm became the point person on all Microsoft matters.

87. Defendant Becker repeatedly told Plaintiff, ***"White associates understand the Microsoft contracts better than the Black attorneys."***

88. The Firm barred the African American attorneys and Plaintiff from meeting with the African American Microsoft lead relationship attorney.

89. Plaintiff was incensed that the Individual Defendants refused to meet with the in-house lead, who is African American. Plaintiff raised concerns that they were treating the African American lead attorney differently than White in-house leads.

90. When Plaintiff pressed the matter and voiced more concerns about the Firm losing the Microsoft business, the Firm's leadership team threatened Plaintiff with reduced compensation if he did not cease such conversations. These threats yet furthered a hostile work environment and caused Plaintiff mental anguish.

91. Shortly thereafter, Defendant Bicks assaulted Plaintiff in the hallway near the elevator. Defendant Bicks pushed Plaintiff, yelled at him, and spit in his face. This conduct was threatening, offensive, intimidating, and abusive.

92. The Firm punished Plaintiff by reducing his compensation.

c. PLAINTIFF IS REMOVED AS POINT PERSON FOR CORPORATE COUNSEL WOMEN OF COLOR AND BUSINESS GENERATION IS GIVEN TO NON-AFRICAN AMERICAN PARTNER WHO DIVERTED CONTACTS TO WHITE PARTNERS

93. Another overt act of discrimination related to the relationship Plaintiff brought to the Firm with diversity-focused bar association, Corporate Counsel Women of Color ("CCWC").

94. Through Plaintiff, the Firm's brand was significantly enhanced as the elite title sponsor of CCWC's annual conference for 14 years. For over a decade, the Firm's affiliation with CCWC and the exposure the Firm gained at CCWC's annual conference brought the Firm multi-million dollars in revenues by connecting the Firm with prominent in-house decision-making lawyers who awarded business to law firms that valued and championed diversity.

95. The Firm interfered with Plaintiff's business relationship with CCWC by barring Plaintiff from participating internally in the strategic development of the relationships that Plaintiff had created and had brought to the Firm.

96. Each year, Plaintiff would request to be included and was denied.

97. The Firm's removal of Plaintiff as CCWC's point person because of his race, and denial of this opportunity because of his race, in essence hindered his ability to develop new Clients throughout the year and at the annual conference with Fortune 1000 and Forbes 2000 legal departments.

98. Instead, Plaintiff was replaced by Defendant Wahi, a South Asian partner, as the point person for the CCWC conference. When Plaintiff complained to Defendant Wahi, she responded, "**Black lawyer diversity is not what the Firm is interested in. The Firm is interested in Asian diversity.**"

99. Defendant Wahi became the diversity "face" of the Firm at the CCWC annual event. Defendant Wahi would collect all the contacts at the conference for business generation and then funnel all those contacts back to White partners.

100. Defendant Wahi and others made multi-million dollars from this practice, while Plaintiff was completely shut out and undercompensated.

101. For successfully directing business contacts from CCWC to White partners, the Firm promoted Defendant Wahi to Co-Managing Partner of the US Offices and appointed her to the Executive Management Committee.

102. Defendant Wahi's appointment to the Executive Management Committee would cost the only African American on the Executive Management Committee, John Doe 6, his seat. John Doe 6 was removed from the Executive Management Committee because of his race (John Doe 6 was the only African American partner on the Executive Management Committee).

103. Since the Firm replaced John Doe 6 with Defendant Wahi, there have been no African Americans on the Executive Management Committee.

d. PLAINTIFF IS EXPELLED AFTER PLAINTIFF ENGAGED IN PROTECTED ACTIVITY OF ADVOCATING FOR AFRICAN AMERICAN LAWYERS AND WOMEN ATTORNEYS WHO HAD BEEN SEXUALLY HARASSED BY MANAGEMENT

104. Some of the Firm's discriminatory practices were publicly exposed in 2018, when the plight of several women who were sexually harassed by partners with power at the Firm was raised in the national internet publication Law.com on December 12, 2018. See *At K&L Gates, Women Alleged Misconduct Left, as Accused Partners Stayed On* (Law.com, December 12, 2018) (https://www.law.com/thelegalintelligencer/2018/12/12/at-kl-GATES-women-alleged-misconduct-and-left-as-accused-partners-stayed-on/). This article brought the Firm negative attention.

105. It was known Firm-wide that some of the male partners on the Executive Management Committee would "date" women lawyers in the Firm and then make determinations about their compensation.

106. In response to the December 12, 2018 article, on December 20, 2018, Plaintiff sent over 300 partners in the Firm, which included Firm Management, the Head of Diversity, and the members of the Management Committee, and others an email addressing the issue.

107. Plaintiff suggested new policies and procedures for preventing similar behavior in the future. As a result of this e-mail, the Executive Management Committee began more aggressive and retaliatory actions against Plaintiff.

108. Shortly thereafter, on January 30, 2019, Plaintiff was notified that the Firm was barring his access to the office and suspending his access to emails and secretarial services.

109. In doing so, Defendants also breached Section 6.03 of the K&L GATES, LLP Amendment to and Restatement of Partnership Agreement, effective as of January 1,

2013, and as amended effective May 16, 2016, which provides a process to expel a partner that requires a vote by the partnership, after a recommendation is made by the Management Committee.

110. The Firm's action on January 30, 2019 constituted a de facto expulsion in violation of Section 6.03.

111. Defendants further violated the process by proposing financial incentives designed to facilitate Plaintiff's "overall separation from the Firm," including that he "withdraw" as a partner. This action circumvented the Management Committee recommendation and vote of the partnership.

112. The reason the Firm gave Plaintiff for his expulsion (*i.e.,* that he was involved in a divorce proceeding), was pretextual.

113. No White partners who had gone through divorce proceedings have been expelled. To the contrary, even White partners who have engaged in serious misconduct (e.g., spousal abuse; drunk driving; substance abuse; etc.) have not been expelled, or even disciplined by the Firm.

114. Plaintiff, an African American, was indeed the first partner ever in the history of the Firm to be expelled from K&L GATES.

115. The Firm never provided Plaintiff an opportunity to present a full record, defense, or any other process or opportunity to be heard.

116. The Firm refused to advise how the vote was conducted, if it was conducted, and who had voted to expel him.

117. Every aspect of Plaintiff's expulsion was inconsistent with the Firm's partnership agreement.

118. This cited reason by the Firm and inconsistent application to White partners who have engaged in egregious conduct merely highlights the discriminatory nature of the Firm's actions.

119. Plaintiff engaged in protected activity. The Individual Defendants and K&L GATES LLP were aware of the protected activity. As a result of race discrimination and retaliation, shortly thereafter, on May 19, 2019, the Firm took a materially adverse employment action against Plaintiff in an unprecedented step to expel Plaintiff from the Firm.

120. Plaintiff was officially terminated on May 19, 2019.

e. K&L GATES WEAPONIZES RACE AND HARASSES PLAINTIFF WITH PRIVATE INVESTIGATORS AND ON AND OFF DUTY POLICE OFFICERS AFTER HIS TERMINATION

121. The retaliation and harassment did not stop on Plaintiff's termination date.

122. The Firm has embarked on a campaign of intimidating Plaintiff.

123. After improperly and unlawfully expelling Plaintiff, Defendants engaged third-party armed individuals to follow Plaintiff to yet further intimidate and bully him, including at a conference of Black attorneys in Chicago in September 2019 at the Chicago Marriott Downtown Magnificent Mile.

124. On the orders of the Firm and the Individual Defendants, the private investigators and on and off duty police officers have harassed Plaintiff and his family.

125. Said individuals have frequently appeared at Plaintiff's home, brandished their weapons, and otherwise caused Plaintiff and his family significant and severe mental anguish and emotional distress.

126. The Firm's unlawful conduct and intimidation tactics are ongoing.

127. To protect himself and his family, Plaintiff has filed complaints against the Firm with the District Attorney's Office for the City of New York, the New York City Policy Department, and the Chicago Marriott Downtown Magnificent Mile. However, as of the date of this filing, Defendants threats and tactics of intimidation continue.

FIRST CAUSE OF ACTION
(Race Discrimination in Violation of Section 1981)
(Against All Defendants)

128. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

129. By the actions described above, among others, Defendants have discriminated against Plaintiff on the basis of his race in violation of Section 1981. Defendants have treated Plaintiff less favorably than White employees by denying him the same terms and conditions of employment available to employees who are White, including, but not limited to, subjecting him to a hostile work environment, and disparate working conditions, and denying him the terms and conditions of employment equal to those of the employees who are White.

130. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff suffered and will continue to suffer monetary and/or economic harm, including, but not limited to, loss of future income, compensation, and benefits for which he is entitled to an award of damages.

131. As a direct and proximate cause of Defendants' discriminatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

132. As a result of Defendants' violation of Section 1981, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

133. Moreover, Defendants' unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under Section 1981 for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendants' unlawful employment practices.

134. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Retaliation in Violation of Section 1981)
(Against All Defendants)

135. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

136. By the actions described above, among others, Defendants retaliated against Plaintiff for making protected complaints regarding discrimination by denying him compensation, breaching his partnership agreement, and expelling him shortly after Plaintiff engaged in protected activity by complaining of unfair treatment.

137. As a direct and proximate result of Defendants' retaliatory conduct in violation of Section 1981, Plaintiff has suffered, and will continue to suffer, harm and pecuniary losses for which he is entitled to an award of compensatory damages.

138. As a direct and proximate cause of Defendants' retaliatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

139. As a result of Defendants' violation of Section 1981, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

140. Moreover, Defendants' unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under Section 1981 for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendants' unlawful employment practices.

141. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION
(Race Discrimination in Violation of Title VII)
(Against K&L Gates)

142. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

143. By the actions described above, among others, Defendant K&L GATES has discriminated against Plaintiff on the basis of his race in violation of Title VII.

144. Defendant K&L GATES has treated Plaintiff less favorably than White employees by denying him the same terms and conditions of employment available to employees who are White, including, but not limited to, subjecting him to a hostile work environment, and disparate working conditions and denying him the terms and conditions of employment equal to that of the employees who are White.

145. As a direct and proximate result of Defendant K&L GATES's discriminatory conduct, Plaintiff suffered and will continue to suffer monetary and/or economic harm, including, but not limited to, loss of future income, compensation, and benefits for which he is entitled to an award of damages.

146. As a direct and proximate cause of Defendant K&L GATES's discriminatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

147. As a result of Defendant K&L GATES's violation of Title VII, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

148. Moreover, Defendant K&L GATES's unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under Title VII for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

149. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of Title VII)
(Against K&L Gates)

150. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

151. By the actions described above, among others, Defendant K&L GATES retaliated against Plaintiff for making protected complaints regarding discrimination by denying him compensation, breaching his partnership agreement, and expelling him shortly after Plaintiff engaged in protected activity by complaining of unfair treatment.

152. As a direct and proximate result of Defendant K&L GATES's retaliatory conduct in violation of Title VII, Plaintiff has suffered, and will continue to suffer, harm and pecuniary losses for which he is entitled to an award of compensatory damages.

153. As a direct and proximate cause of Defendant K&L GATES's retaliatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

154. As a result of Defendant K&L GATES's violation of Title VII, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

155. Moreover, Defendant K&L GATES's unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under Title VII for which Plaintiff is

entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

156. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION
(Discrimination in Violation of the NYSHRL)
(Against K&L Gates)

157. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

158. Defendant K&L GATES has discriminated against Plaintiff on the basis of his race in violation of the NYSHRL by denying him the same terms and conditions of employment available to employees who are White, including, but not limited to, subjecting him to disparate working conditions and compensation, and ultimately terminating Plaintiff's employment.

159. As a direct and proximate result of Defendant K&L GATES's unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

160. As a direct and proximate cause of Defendant K&L GATES's discriminatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

161. As a result of Defendant K&L GATES's violation of the NYSHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five

Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

162. Moreover, Defendant K&L GATES's unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYSHRL for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

163. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION
(Retaliation in Violation of the NYSHRL)
(Against K&L Gates)

164. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

165. By the actions described above, among others, Defendant K&L GATES has retaliated against Plaintiff on the basis of his protected activities in violation of NYSHRL by, *inter alia*, ignoring his protected complaints about the discriminatory treatment of non-White employees, by subjecting him to increased scrutiny and harassment and ultimately terminating his employment.

166. As a direct and proximate result of Defendant K&L GATES's unlawful and discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

167. As a direct and proximate cause of Defendant K&L GATES's retaliatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and loss of enjoyment in the ordinary pleasures of everyday life.

168. As a result of Defendant K&L GATES's violation of the NYSHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

169. Moreover, Defendant K&L GATES's unlawful and retaliatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYSHRL for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

170. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
(Aiding and Abetting Discrimination and Retaliation in Violation of the NYSHRL)
(Against the Individual Defendants)

171. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

172. The NYSHRL provides that it shall be an unlawful discriminatory practice "[f] or any person to aid, abet, incite, compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

173. By the actions described above, among others, the Individual Defendants engaged in an unlawful discriminatory and retaliatory practice in violation of NYSHRL by aiding, abetting, inciting, compelling, and coercing the unlawful discrimination by Defendant K&L GATES in violation of the NYSHRL.

174. By the actions described above, among others, the Individual Defendants engaged in an unlawful and retaliatory practice in violation of NYSHRL by aiding, abetting, inciting, compelling, and coercing the unlawful retaliation in violation of the NYSHRL.

175. As a direct and proximate result of the Individual Defendants' unlawful discriminatory and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

176. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

177. As a result of Defendants' violation of the NYSHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

178. Moreover, Defendants' unlawful actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYSHRL for which Plaintiff is entitled to an award of punitive

damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendants' unlawful employment practices.

179. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

EIGHTH CAUSE OF ACTION
(Discrimination in Violation of the NYCHRL)
(Against K&L Gates)

180. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

181. Defendant K&L GATES has discriminated against Plaintiff on the basis of his race in violation of the NYCHRL by denying him the same terms and conditions of employment available to employees who are White, including, but not limited to, subjecting him to disparate working conditions and compensation, and ultimately terminating Plaintiff's employment.

182. As a direct and proximate result of Defendant K&L GATES's unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

183. As a direct and proximate cause of Defendant K&L GATES's discriminatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

184. As a result of Defendant K&L GATES's violation of the NYCHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five

Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

185. Moreover, Defendant K&L GATES's unlawful and discriminatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

186. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

NINTH CAUSE OF ACTION
(Retaliation in Violation of the NYCHRL)
(Against K&L Gates)

187. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

188. By the actions described above, among others, Defendant K&L GATES has retaliated against Plaintiff on the basis of his protected activities in violation of NYCHRL by, *inter alia*, ignoring his protected complaints about the discriminatory treatment of non-White employees, by subjecting him to increased scrutiny and harassment and ultimately terminating his employment.

189. As a direct and proximate result of Defendant K&L GATES's unlawful and discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

190. As a direct and proximate cause of Defendant K&L GATES's retaliatory conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

191. As a result of Defendant K&L GATES's violation of the NYCHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

192. Moreover, Defendant K&L GATES's unlawful and retaliatory actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendant K&L GATES's unlawful employment practices.

193. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

TENTH CAUSE OF ACTION
(Aiding and Abetting Discrimination and Retaliation in Violation of the NYCHRL)
(Against the Individual Defendants)

194. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

195. By the actions described above, among others, the Individual Defendants engaged in an unlawful discriminatory and retaliatory practice in violation of NYCHRL by aiding, abetting, inciting, compelling, and coercing the unlawful discrimination in violation of the NYSHRL.

196. As a direct and proximate result of the Individual Defendants' unlawful discriminatory and retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

197. As a direct and proximate result of the Individual Defendants' unlawful conduct in violation of the NYCHRL, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

198. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

199. As a result of Defendants' violation of the NYCHRL, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

200. Moreover, Defendants' unlawful actions were intentional, and done with malice and/or showed a deliberate, willful, wanton, and reckless indifference to Plaintiff and his rights under the NYCHRL for which Plaintiff is entitled to an award of punitive damages in the amount of Five Million Dollars ($5,000,000) to punish and deter continuation of Defendants' unlawful employment practices.

201. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

ELEVENTH CAUSE OF ACTION
(Negligent Hiring, Training, Retention and Supervision)
(As Against K&L GATES)

202. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

203. As a result of Plaintiff's complaints, Defendant K&L GATES knew or should have known by the exercise of diligence and reasonable care of the racially based hostile work environment and discrimination perpetuated by Defendant K&L GATES's management employees.

204. Defendant K&L GATES failed to properly select, train and supervise its managers such that incidents of discrimination, retaliation, harassment, hostile work environment, are properly investigated and promptly prevented and/or corrected.

205. As a direct and proximate result of Defendant K&L GATES's negligent conduct, Plaintiff has suffered and will continue to suffer monetary and/or economic harm for which he is entitled to an award of damages.

206. As a direct and proximate cause of Defendant K&L GATES's negligent conduct, Plaintiff also suffered extreme mental anguish, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

207. As a result of Defendants' negligent conduct, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

208. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for

compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

TWELFTH CAUSE OF ACTION
(For Breach of Contract)
(As Against K&L Gates)

209. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

210. Plaintiff entered into a partnership agreement in 2005 in the County of New York, State of New York with Defendant K&L GATES.

211. At all times, the plaintiff performed all conditions, covenants, and promises required by him on his part to be performed in accordance with the terms and conditions of the partnership agreement and K&L GATES's policies.

212. Throughout Plaintiff's tenure, Defendant K&L GATES continuously breached the said partnership agreement by failing to fulfill its obligations thereunder.

213. Among other things, Defendant K&L GATES failed to provide Plaintiff with full compensation credit for clients he brought to the Firm and failed to pay Plaintiff origination credit and compensation per the partnership agreement.

214. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

215. Plaintiff is further entitled to pre-judgment interest on all monies awarded, as well as reasonable attorneys' fees and costs.

THIRTEENTH CAUSE OF ACTION
(Tortious Interference with Contract/Prospective Economic Advantage)
(As Against Defendants Becker, Segerdahl, and Wahi)

216. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

217. A valid agreement existed between Plaintiff and K&L GATES.

218. Defendants Becker, Sergerdahl, and Wahi were well aware of the existence of the agreement between Plaintiff and K&L GATES.

219. Defendants Becker, Sergerdahl, and Wahi intentionally induced the breach of the contract by interfering with Plaintiff and by taking steps to effectuate the breach without justification.

220. The agreement was breached.

221. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

FOURTEENTH CAUSE OF ACTION
(Unjust Enrichment)
(As Against All Defendants)

222. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

223. Defendants have been substantially and materially enriched by Plaintiff's efforts, contacts, associations, affiliations, and work.

224. The Firm, to this date, continues to reap the benefits of Plaintiff's efforts, contacts, associations, affiliations, and work.

225. Plaintiff has contributed years of his own personal finances that have helped to enrich Defendants.

226. It is against equity and good conscience to permit Defendants to retain the benefit of Plaintiff's efforts, contacts, associations, affiliations, and work without properly and fully compensating Plaintiff therefor.

227. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

FIFTEENTH CAUSE OF ACTION
(Quantum Meruit)
(Against K&L GATES)

228. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

229. Plaintiff performed services for K&L GATES in good faith including bringing clients to the Firm and helping to generate revenues for K&L GATES.

230. K&L GATES accepted the services performed and rendered by Plaintiff.

231. Plaintiff expected to be compensated for his services performed, especially as it related to receiving annual compensation increases, bonuses, and origination credit.

232. Plaintiff was not properly and fully compensated for his services performed.

233. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

SIXTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
(As Against All Defendants)

234. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

235. By the actions described above, among others, Defendants engaged in extreme and outrageous conduct.

236. Among other things, Defendant Bicks engaged in extreme and outrageous conduct.

237. The Firm and the Individual Defendants sending private investigators and on and off duty police officers after Plaintiff and his family is extreme and outrageous conduct.

238. This conduct by Defendants was intended to cause Plaintiff mental anguish and severe emotional distress.

239. As a direct and proximate cause of Defendants' conduct, Plaintiff suffered extreme mental anguish including severe emotional distress, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

240. As a result of Defendants' conduct, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

241. Plaintiff is further entitled to reasonable attorneys' fees and costs.

SEVENTEENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
(As Against All Defendants)

242. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

243. Defendants owed Plaintiff, as their employee, a duty of care.

244. Defendants, by the actions described above, breached their duty to Plaintiff.

245. This conduct by Defendants was intended to cause Plaintiff mental anguish and severe emotional distress.

246. As a direct and proximate cause of Defendants' conduct, Plaintiff suffered extreme mental anguish including severe emotional distress, depression, severe disruption of his personal and emotional life, and of enjoyment in the ordinary pleasures of everyday life.

247. As a result of Defendants' conduct, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000) for compensatory damages, emotional distress, adverse effects on his career, and diminished earning capacity.

248. Plaintiff is further entitled to reasonable attorneys' fees and costs.

EIGHTEENTH CAUSE OF ACTION
(Fraud)
(As K&L Gates)

249. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

250. K&L GATES made statements.

251. K&L GATES's statements were false.

252. K&L GATES had scienter to deceive Plaintiff.

253. Plaintiff relied on the statements made by K&L GATES.

254. As a result of the foregoing and Plaintiff's reliance on Defendant K&L GATES's false statements, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

NINETEENTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
(As K&L Gates)

255. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

256. A fiduciary relationship existed between Plaintiff and Defendant K&L GATES.

257. Defendant K&L GATES engaged in misconduct.

258. As a result of the foregoing and Defendant K&L GATES's misconduct, Plaintiff has been damaged in an amount to be determined at trial but not less than Five Million Dollars ($5,000,000).

TWENTIETH CAUSE OF ACTION
(Accounting)
(As K&L Gates)

259. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

260. A fiduciary relationship existed between Plaintiff and Defendant K&L GATES.

261. Defendant K&L GATES engaged in misconduct and breached the fiduciary relationship.

262. As a result of the foregoing and Defendant K&L GATES's misconduct and breach of the fiduciary relationship, Plaintiff has been damaged.

263. Plaintiff requires an accounting from K&L GATES.

264. Plaintiff has the right to inspect K&L GATE's books and records.

PRAYER FOR RELIEF

Wherefore, the Plaintiff prays that the Court grant the following relief:

(a) Enjoin Defendants from: (i) subjecting employees to discrimination and harassment including a hostile work environment based on race; and (ii) retaliating against employees who engage in activity protected under Section 1981, Title VII, the New York State Human Rights Law, and New York City Human Rights Law;

(b) Enjoin Defendants from harassing Plaintiff including sending private investigators and on and off duty police officers after Plaintiff and his family and to his home;

(c) Order Defendants to develop and implement appropriate and effective measures designed to prevent discrimination, harassment, and retaliation, including but not limited to policies and training for employees and managers;

(d) Order Defendants to develop appropriate and effective measures to receive complaints of discrimination, harassment, and retaliation as well as a process for investigating such complaints;

(e) Order Defendants to make whole Plaintiff by providing appropriate backpay with pre-judgment interest, and other affirmative and equitable relief necessary to eradicate the effects of their unlawful employment practices;

(f) Order Defendants to make Plaintiff whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including but not limited to medical expenses in amounts to be determined at trial but not less than Five Million Dollars ($5,000,000);

(g) Order Defendants to make whole Plaintiff by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and humiliation in amounts to be determined at trial but not less than Five Million Dollars ($5,000,000);

(h) Order Defendants to pay Plaintiff punitive damages for their malicious reckless conduct described above, in amounts to be determined at trial but believed not to exceed Five Million Dollars ($5,000,000);

(i) Award Plaintiff pre-judgment interest on each and every amount owed to Plaintiff;

(j) Award Plaintiff all attorneys' fees, expert fees, and other costs; and

(k) Award any and all other relief as is or may be awardable or recoverable under applicable law.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all claims triable by a jury.

Dated: November 9, 2020
New York, New York

Yours truly

s/Willie E. Dennis/

WILLIE E. DENNIS
Plaintiff Pro Se
P.O. Box 872
New York, New York 10150
(646) 418-3329

11-16-20 MCKENNA DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARBITRATION

EXHIBIT D

2011 WL 13315720 (D.C.Super.) (Trial Order)
Superior Court of the District of Columbia.
Civil Division

K&L GATES LLP, et al., Plaintiff,
v.
Robert "Ted" PARKER, Defendant.

No. 2010 CA 009371 B.
September 6, 2011.

Order Granting K&L Gates' Rule 59(e) Motion to Alter or Amend this Court's April 18, 2011 Order Dimissing their Motion to Comepl Arbitration

Mark W. Foster (DC Bar No.: 42978), Thomas B. Mason (DC Bar No.: 413345), Lisa J. Stevenson (DC Bar No.: 457628), Zuckerman Spaeder LLP, 1800 M Street, NW, Washington, DC 20036, for plaintiff K&L Gates, et al.

Robert Parker, 7 Mira Loma Rd., Orinda, CA 94563, Defendant Pro Se.

Gregory E. Jackson, Judge.

***1** This matter is before the Court upon plaintiff K&L Gates LLP's Rule 59(e) Motion to Alter or Amend Judgment, filed May 5, 2011, and defendant Robert "Ted" Parker's opposition thereto, filed May 12, 2011. Upon consideration of the parties' motions, oppositions, replies, and the case record as a whole, the Motion to Alter or Amend Judgment is GRANTED.

I. Facts and Procedural History.

On January 1, 2007, plaintiff K&L Gates LLP opened for business following the merger of several constitute law firms, *viz.*, Kirkpatrick & Lockhard, Nicholson, Graham LLP and Preston, Gates & Ellis LLP, a Seattle-based firm. (Parker's Cal. Compl. against Lehman Brothers Real Estate, at 2 (Oct. 21, 2010) (attached to Pl.'s R. 59(e) Mot. to Alter or Am. J. (May 5, 2011)) ("Pl.'s Ex. B").) Defendant Robert "Ted" Parker was a partner of Preston, Gates & Ellis and became an equity partner of K&L Gates after the January 1 merger. (*Id.*) Plaintiffs Peter Kalis[1] and Edward Sangster[2] "have been[,] and now are[,] partners at K&L Gates." (Pl.'s Mem. of P. & A. in Supp. of Am. Mot. to Compel Arbitration, at 2 (Jan. 10, 2011) ("Pl.'s Mot. to Compel Arb.").)

Immediately preceding his resignation from K&L Gates, Parker "had represented a group of 58 investors who suffered damages in Lehman Brothers real estate investments." (Def.'s Opp. B. on Mot. to Compel Arbitration, at 1 (Mar. 2, 2011) ("Def.'s Opp. to Mot. to Compel Arb.").) That action was the third in a series of three against the investment firm. (*Id.*) Notwithstanding that third action, Parker alleges that "a Lehman in-house attorney contacted K&L's New York office … to suggest that a substantial amount of legal business involving distressed property workouts could be available to K&L if it did not file suit against Lehman." (Pl.'s Ex. B, at 5-6.)

The supposed communication between Lehman and K&L Gates' partners ignited a chain of events that resulted in K&L Gates dropping the suit against Lehman, and Parker's resignation. (*Id.* at 5-10.) As a result, Parker filed his seven-count complaint[3] against K&L Gates in the Superior Court of California, County of San Francisco, (*see generally id.*) Following a flurry of motions and oppositions by the parties, the California Superior Court issued an order granting a stay pending the resolution of arbitration. (Case Summary of *Parker v. Lehman Brothers Real Estate Assocs. III, L.P.*, No. CGC-10-504779 (Super. Ct. of Cal., Cnty. of San Francisco 2011) (attached to Pl.'s R. 59(e) Mot. to Alter or Am. J. (May 5, 2011)) ("Cal. Case Summary").)

***2** The California court issued the stay because K&L Gates filed a motion to compel arbitration with the Superior Court of the District of Columbia, relying on section 12.01 (a forum-selection clause) of the partnership agreement adopted by K&L Gates, as amended. (*See* First Amendment to the P'ship Agreement, at 3-4 (attached to Pl.'s R. 59(e) Mot. to Alter or Am. J. (May 5, 2011).) Upon receiving K&L Gates' motion to compel arbitration and an opposition from Parker, this Court issued an order denying K&L Gates' motion. In the order, this Court's principle concern was whether it was the appropriate forum in which to resolve the dispute, regardless of the forum-selection clause.

Following the entry of that judgment, K&L Gates filed a Rule'59(e) motion to alter or amend judgment. In light of that motion, and Parker's reply thereto, this Court reconsiders its April 18, 2011 Order.

II. Legal Standard: Rule 59(e).

In the District of Columbia, a party may petition the Superior Court to reconsider an adverse judgment by way of a Rule 59(e) "motion to alter or amend a judgment." Super. Ct. Civ. R. 59(e). The ultimate decision whether to grant or deny a party's motion to alter or amend the judgment lies within the broad discretion of the trial court. *Wallace v. Warehouse Emps. Union No. 730*, 482 A.2d 801, 810 (D.C. 1984). Rule 59(e), by its own language, requires such a motion to "be filed no later than 10 days after entry of the judgment." *Id.* Reading the rule in conjunction with Superior Court Rule 6, sections (a) and (e), however, imputes a degree of flexibility into Rule 59(e) and erodes a strict reading of its ten-day deadline.

Rule 6(a) provides in pertinent part: "When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays *shall be excluded in the computation.*"' Super. Ct. Civ. R. 6(a) (emphasis added). Furthermore, "3 days are added after the prescribed period would otherwise expire" whenever service is made by, for example, electronic means. Super. Ct. Civ. R. 6(e).[4] Moreover, the Court of Appeals has clearly intimated that "the mailing extension of Rule 6(e) applies to motions for a new trial under Rule 59(e), at least where … judgment is rendered outside the presence of the parties or counsel." *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 997 A.2d 65, 71 (D.C. 2010); *see also*, *Wallace, supra*, 482 A.2d at 807 n.16 ("We have examined the contrary authorities holding that Rule 6(e) does not apply to judgments and therefore does not extend the time for filing a Rule 59 motion, but find them less persuasive than local precedent.").[5]

***3** Applying this fusion of timing principles, this Court finds that K&L Gates' Rule 59(e) Motion was timely filed. This Court's initial order denying the motion to compel was entered on April 18, 2011. Ten days from April 18, excluding Saturdays, Sundays, and legal holidays as mandated by Rule 6(a), extends the deadline to May 2, 2011. Finally, adding the three additional days awarded by Rule 6(e) pushes the cutoff date for K&L Gates' Rule 59(e) motion forward to May 5, 2011. Because K&L Gates did in fact file their motion on May 5, it was timed filed. Having established that K&L Gates' Rule 59(e) motion was timely filed, this Court moves on to the merits of the dispute.

III. Discussion.

A. Agreements to Arbitrate.

In the District of Columbia, arbitration agreements are governed by the Revised Uniform Arbitration Act ("RUAA") located at Title 16, Chapter 44 of the D.C. Code. *See* D.C. Code §§ 16-4401-16-4432 (2001).[6] Specifically, § 16-4407[7] governs motions to compel arbitration: "If the refusing party opposes the motion [to compel arbitration], the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." *Id.* § 16-4407(a)(2). Furthermore, "[t]he court may *not* refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established." *Id.* § 16-4407(b) (emphasis added).

Today, there exists a "national policy favoring arbitration." *Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 130 S.Ct. 2847, 2855 (2010); *see, e.g.*, *Shama Rest. Corp., supra* note 7, 613 A.2d at 922 (recognizing that arbitration agreements are strongly favored in the law). The "legislative and judicial climate in which the judiciary's past parochial prejudice against enforcing arbitration agreements has been consigned to well-earned historical oblivion." *Shama Rest. Corp., supra* note 7, 613 A.2d at 922 (citation omitted).[8] When presented with a motion to compel arbitration, the RUAA instructs a court to consider, first, "whether the parties have an enforceable agreement to arbitrate,"[9] and second, "whether the underlying dispute between the parties falls within the scope of the agreement," *i.e.*, whether the disputes falls within the ambit of the arbitration clause. *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005).

i) The Arbitration Agreement.

***4** To answer the first prong of this inquiry, the court must rely on the "'objective law' of contracts," *id.*, and "apply state-law principles applicable to the formation of contracts," *Lopata v. Coyne*, 735 A.2d 931, 939 (D.C. 1999). "Mandatory arbitration is essentially enforcement of a contract between the parties, whereby they have agreed that the disputes between them will be resolved in an arbitral, and not judicial, forum." *2200 M Street LLC v. Mackell*, 940 A.2d 143, 150 (D.C. 2007) (hereinafter *Mackell*). Expressed another way, "[b]ecause arbitration becomes mandatory only by mutual consent of the parties, there must be an agreement between them – interpreted and governed by normal principles of contract law – which provides for arbitration." *Menna*, supra note 6, 987 A.2d at 463.

In the District of Columbia, "the written language embodying the terms of the agreement governs the rights and liability of the parties," and the court must) "give that language its plain meaning." *Meshel, supra*, 869 A.2d at 361. Furthermore, "[no] magic words such as 'arbitrate' or 'binding arbitration' or 'final dispute resolution' are needed." *Mackell, supra*, 940 A.2d at 151. Here, the contractual language clearly and unambiguously demonstrates the existence of an arbitration agreement. The First Amendment to the Partnership Agreement provides in pertinent part:

> Any controversy, claim or dispute between or among the Partners, including but not limited to any former partners, and any controversy, claim or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership, directly or indirectly concerning this Agreement or the breach hereof or the subject matter hereof, including the scope and applicability of this Section 12.01, *shall be finally settled by a single arbitrator in an arbitration* to be held in the District of Columbia....

(Pl.'s Ex. A, at 3 (emphasis added).)

ii) The Arbitrability of Issues and Scope of the Arbitration Clause.

Moving on to the second prong of the test articulated in *Meshel*, "[a]n arbitrability dispute is over *what* the parties have agreed to submit to the arbitrator's authority, that is, the scope … of an arbitration clause." *Keeton v. Wells Fargo Corp.*, 987 A.2d 1118, 1122 (D.C. 2010) (footnotes omitted). This Court acknowledges the maxim that upon finding an enforceable arbitration clause, *i.e.*, the first prong, "a [rebuttable] presumption in favor of arbitration attaches." *Lopata, supra*, 735 A.2d at 936. "This presumption is essentially a generalized inference of the parties intent" and "courts will presume that an arbitration clause agreed upon by the parties was intended to foreclose judicial involvement" in the dispute. *Mackell, supra*, 940 A.2d at

151. Furthermore, despite the liberal policy favoring arbitration agreements espoused by the Supreme Court, it remains the province of the lower courts to answer "whether the parties have submitted a particular dispute to arbitration, *i.e.*, the *question of arbitrability*, … unless the parties clearly and unmistakably provide otherwise. " *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002). [10]

To successfully navigate the ephemeral line between the judicial presumption in favor of arbitration and the courts' converse "reluctance to force an unwilling party into unconsented arbitration," the Supreme Court counsels this Court to, consider:

> ***5** where the contract contains an arbitration clause, there, is a presumption of arbitrability in the sense that "[a]n order to arbitrate the particular grievance should not be denied *unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.*"

AT&T Techs. v. Commc'ns Workers, 475 U.S. 643, 650 (1986) (emphasis added); *see also* *Mackell, supra*, 940 A.2d at 151. Any doubts, however, should be resolved in favor of arbitration. *Mackell, supra*, 940 A.2d 151. The presumption in favor of arbitrability is particularly weighty where the arbitration clause is broad. *See* *AT&T Techs., supra*, 475 U.S. at 650 ("Such a presumption is particularly applicable where the clause is as broad as the one employed in this case ...."). [11]

Based on fundamental principles of contractual interpretation and case precedent, this Court finds that all the issues raised by Parker fall within the scope of the arbitration agreement, *i.e.*, are arbitrable. First, the text employed by the parties in the First Amendment to the Partnership Agreement is manifest:

> *Any controversy, claim or dispute* between or among the Partners … any controversy, claim or dispute between or among one or more partners … directly or indirectly concerning this Agreement … including questions concerning the scope and applicability of [this section], *shall be finally settled by a single arbitrator* ....

(Pl's Ex. A, at 3 (emphasis added).) "[T]he Court must construe [the parties'] rights on the basis of the contract as written," *Tsintolas Realty Co. Mendez*, 984 A.2d 181, 190 (D.C. 2009), because "the ultimate issue is whether, by their choice of language … , [the parties] *objectively* manifested a mutual intent to be bound contractually," *Dyer v. Bilaal*, 983 A.2d 349, 357 (D.C. 2009). Thus, this Court should not, and does not, controvert the expressed language of the parties' agreement "unless there is fraud, duress, or mutual mistake," which is not evident by the present record. *Id.* at 355.

Second, finding that the issues raised are encompassed within the scope of the parties' arbitration clause is in accord with case precedent. Unlike *Murphy*, *supra* note 11, and *Navajo Nation*, *supra* note 11, where the language of the arbitration agreement clearly limited the scope of arbitration, here, the arbitration clause is broad, encompassing "[a]ny controversy, claim or dispute," (Pl.'s Ex. A, at 3.)

Furthermore, this Court rejects Parker's assertions that certain claims, *viz.*, for violating the Age Discrimination in Employment Act ("ADEA"), are categorically barred from arbitration. Parker's reliance on Supreme Court jurisprudence is misplaced and contrary to the actual language of the opinions. First, in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26-27 (1991), the Supreme Court clearly intimated that "nothing in the text of the ADEA or its legislative history explicitly preclude arbitration." [12] More recently, in *14 Penn Plaza LLC v. Pyett*, 129 S.Ct. 1456, 1465 (2009), the Court reiterated that the "ADEA does not preclude arbitration of claims brought under the statute."

***6** Finding an enforceable agreement to arbitrate the claims asserted, D.C. Code § 16-4407(a)(2) requires this Court to order arbitration so long as it is (1) the appropriate forum to issue such an order, (see *infra* part (B)(i)), and (2) has valid personal jurisdiction over Parker to compel him to submit to arbitration, (see *infra* part (B)(ii)).

B. Other, Jurisdictional Considerations: Venue and Personal Jurisdiction.

i) The District of Columbia is an Appropriate Venue.

In *Forrest v. Verizon Communications, Inc.*, 805 A.2d 1007, 1010 (D.C. 2002), the Court of Appeals adopted, in accordance with pervasive authority in other jurisdiction, the modern rule that forum-selection clauses "are [now] prima facie valid and [will] be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." [13] "The rationale most often used to support application of the modern rule is that it comports with traditional concepts of freedom of contract and recognizes the present nationwide and worldwide scope of business relations which generate potential multi-jurisdictional litigation." *Id.* at 1013, n.13. Moreover, "forum selection clauses enhance contractual and economic predictability, while conserving judicial resources ...." *Id.* at 1015. To answer whether a forum-selection clause is enforceable under the circumstances, a court must resolve two queries: (1) "whether the existence of the clause was reasonably communicated" to the resisting party, *id.* at 1010; and, if so, then (2) whether "enforcement of the clause would be unreasonable," *id.* at 1011.

First, it is clear to this Court that Parker had adequate notice of the forum-selection clause in the partnership agreement. The Court finds the Court of Appeals logic in *Forrest* persuasive and controlling on the present dispute:

> The general rules is that absent fraud or mistake, one who signs a contract is bound by a contract which he has an opportunity to read whether he does or not. In reading through the Agreement before it was accepted, appellant (and other consumers) would have inevitably discovered the forum selection clause. *

Id. at 1010-11. Here, Parker is a seasoned attorney of over twenty years. As such, regardless of whether he, in fact, read the partnership agreement (and its supplements), knowledge of the forum-selection clause may be imputed.

Second, enforcement of the forum-selection clause would not be unreasonable. To properly adjudicate this prong, a court must consider whether:

> (i) [the clause] was induced by fraud or overreaching, (ii) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy or of its day in court, or (iii) enforcement would contravene a strong public policy of the [forum] where the action is filed.

Id. at 1012. The resisting party, *i.e.*, Parker, bears the burden of proving unreasonableness. Here, the record is insufficient to support a finding of unreasonableness on any of three enumerated bases. In *Forrester*, the Court of Appeals upheld the forum-selection clause, which was part and parcel to an online, contractnal agreement. To complete online purchases, consumers were required to click an "Accept" button after, presumably, reading the purchase agreement. *Id.* at 1010. Relying on *Forrester* as a barometer for assessing reasonableness, this Court finds it inappropriate to invalidate the forum-selection clause in the case at bar. Unlike the online consumers in *Forrester*, Parker is an experienced attorney and had the ability to negotiate the terms

of his employment contract. Thus, invalidating this forum-selection clause would be incongruous with the Court of Appeals' holding in *Forrester.*

***7** Because the forum-selection clause, naming the District of Columbia as the appropriate forum to resolve disputes, is valid and enforceable, this Court finds itself to be an appropriate forum to entertain, and adjudicate on, the present motion. The Court's analysis is not, however, at an end.

ii) Personal Jurisdiction is Satisfied.

Personal jurisdiction is rooted in the Due Process Clause of the U.S. Constitution. *See* *J. McIntyre Mack. Ltd. v. Nicastro*, No. 09-1343, 2011 WL 2518811, at *5 (June 27, 2011). "Questions of personal jurisdiction go to whether the controversy or defendant has sufficient contact with the forum to give the court the right to exercise judicial power over the defendant." *District of Columbia Metro. Police Dep't*, 997 A.2d at 72. The consideration is, in essence, "a restriction on judicial power as a matter of individual liberty." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999). Subjecting an out-of-state and unwilling defendant to judgment shonld not "offend 'traditional notions of fair play and substantial justice."' *J. McIntyre Mach., Ltd., supra*, No. 09-1343, at *5.

In the District of Columbia, a "court may assert personal jurisdiction over a foreigu defendant if [1] jurisdiction is authorized by statute[, *see* D.C. Code § 13-423 (2001) (the District of Columbia's long-arnı-statute),] and [2] the exercise of jurisdiction is consistent with the due process clause," *Kissi v. Hardesty*, 3 A.3d 1125, 1129 (D.C. 2010). The plaintiff bears the burden of demonstrating that the court has valid personal jurisdiction over the out-of-state defendant. *See* *Harris v. Omelon*, 985 A.2d 1103, 1105 (D.C. 2009). The defendant must, however, be cognizant of personal jurisdiction concerns, too, because an objection to the court's personal jurisdiction may be waived. Super. Ct. Civ. R. 12(h)(1); *see, e.g.*, *Ins. Corp. of Ir., Ltd v. Compagnie des Bauxities de Guinee*, 456 U.S. 694, 703 (1982) ("Because the requirement of personal jurisdiction represents, first of all, an individual right, it can, like other such rights, be waived."). Furthernıore, parties may, via written agreement or otherwise, consent to a particular court's jurisdiction. *See J. McIntyre Mack, Ltd., supra*, No. 09-1343, at *6 (recognizing "explicit consent" as a means for a defendant to submit to a court's jurisdiction); *see also* *Ins. Corp. of Ir., Ltd.*, 456 U.S. at 703-04 ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court. …"); *Rates Tech. Inc. v. Nortel Networks Corp.*, 399 F.3d 1302, 1309 (Fed. Cir. 2005) ("[A] party may consent to personal jurisdiction by extensively participating in litigation without timely seeking dismissal....")

In the present case, it is unnecessary for this Court to delve into the two-step, personal jurisdiction analysis as articulated in *Kissi*, because Parker consented to the Superior Court's jurisdiction. [14] Although the District of Columbia Court of Appeals has not squarely addressed the issue, federal jurisprudence supports the notion that "a *valid forum* selection clause … may act as a waiver of objections to personal jurisdiction.", *Consulting Eng'rs Corp. v. Geometries, Ltd.*, 561 F.3d 273, 282 n.11 (4th Cir. 2006); *see* *D.H.Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 103 (2d. Cir. 2006) ("Parties can consent to personal jurisdiction through forum-selection clauses in contractnal agreements."). Hence, the valid forum-selection clause in the partnership agreement (see *supra* part (lll)(B)(i)), is sufficient to provide this Court with valid personal jurisdiction. Accordingly, this Court must order the parties to submit to arbitration pursuant to Section 16-4407(a)(2) of the D.C. Code.

***8** For the aforementioned reasons, it is hereby

ORDERED, that plaintiff K&L Gates' Rule 59(e) Motion to Alter or Amend Judgment is GRANTED, and it is further

ORDERED, that the parties are to submit to arbitration in the District of Columbia.

SO ORDERED.

Date: September 6, 2011.

<<signature>>

Judge Gregory E. Jackson

Associate Judge

Copies to:

Mark W. Foster (DC Bar No.: 42978)

Thomas B. Mason (DC Bar No.: 413345)

Lisa J. Stevenson (DC Bar No.: 457628)

Zuckerman Spaeder LLP

1800 M Street, NW

Washington, DC 20036

Counsel for Plaintiff K&L Gates, et al.

Robert Parker

7 Mira Loma Rd.

Orinda, CA 94563

Defendant Pro Se

Footnotes

1 Since the merger on New Year's Day 2007, Kalis has held the titles "Chairman and Global Managing Partner" of K&L Gates. (Pl.'s Ex. B, at 2.)

2 Sangster "is the Administrative Partner of K&L's San Francisco office and a member of the firm's Management Committee." (Pl.'s Ex. B, at 3.) According to Parker, "Sangster acts a doorkeeper for new commercial cases referred by K&L offices in other locations." (*Id.*)

3 They are: (1) intentional interference with contract; (2) intentional interference with economic advantage; (3) breach of fiduciary duty; (4) wrongful termination; (5) breach of contract; (6) conspiracy; and (7) age discrimination. (*See id* at 11-16.)

4 Superior Court Rule 6(e) contains a cross reference to, among others things, Rule 5(b)(2)(D). Rule 5(b)(2)(D) permits service to be made by "[d]elivery of a copy by any other means, *including electronic means.*"

5 This principles was originally announced by the Court of Appeals in *Wallace*, in regard to standard (non-electronic) mail. With the advent and proliferation of electronic mediums for Communication, the court was forced to consider whether the *Wallace* bright-line rule would apply to electronic forms of correspondence as well. Hence, when the issue was raised in *District of Columbia Metropolitan Police Department*, the court answered in the affirmative reasoning that "it is better to follow *Wallace*… than to create a rule under which the applicability of Rule 6(e) turns on whether service is made electronically or by ordinary mail." *District of Columbia Metro. Police Dep't, supra*, 997 A.2d at 71. The court continued: "Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important. Otherwise the courts and parties must expend great energy not on the merits of dispute settlement, but on simply deciding whether a court has the power to hear a case." *Id.*

6 "The RUAA went into effect in the District of Columbia on February 17, 2008. … [A]s of July 1, 2009, Chapter 44 – the RUAA – would govern[] an agreement to arbitrate *whenever made.*" *Menna v. Plymouth Rock Assurance Corp.*, 987 A.2d 458, 462-63 (D.C. 2010) (emphasis added).

7 The analogous provision in the Federal Arbitration Act, *i.e.*, 9 U.S.C. § 2, "contains materially identical language." *Hercules & Co., Ltd. v. Beltway Carpet Serv., Inc.*, 592 A.2d 1069, 1072 (D.C. 1991). The Court of Appeals has intimated that it "find[s] the federal courts' application of the federal statute instructive as to how [it] should construe" the relevant provision of the D.C. Code. *Hercules & Co., Ltd. v. Shama Rest. Corp.*, 613 A.2d 916, 922 (D.C. 1992). Accordingly, this Court will give due consideration to federal jurisprudence regarding arbitration agreements.

8 The Supreme Court's attitude towards arbitration has change so much so that in *Allied-Bruce Terminix Cos., Inc. v. Dodson*, 513 U.S. 265 (1995), it upheld an arbitration agreement although such agreements were statutorily unenforceable under controlling state law. The Supreme Court mentioned that the federal arbitration act was enacted to, among other things, "overcome courts' refusals to enforce agreements to arbitrate." *Id.* at 270.

9 "Ordinarily, this threshold questions is also the end of the court's inquiry. The RUAA expressly states that '[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable."' *Menna, supra* note 6, 987 A.2d at 463-64 (quoting D.C. Code § 16-4406(c)).

10 The language employed by the Supreme Court in *Howsam* is substantially similar to the language employed by the drafter of the Uniform Arbitration Act of 2000: *"[I]n the absence of an agreement to the contrary*, issues of substantive arbitrability, *i.e.*, whether a dispute is encompassed by an agreement to arbitrate, are for a court to decide." *Menna, supra* note 6, 987 A.2d at 464 (emphasis added).

11 *See, e.g., 2200 M Street LLC v. Murphy*, No. 05-7035, 2005 WL 3843646, at *1 (D.C. Cir. Nov. 29, 2005) (finding certain, disputed issues outside the scope of an arbitration clause that was "narrow in scope and reach[ing] only certain issues") (hereinafter *Murphy*); *Navajo Nation v. Peabody Holding Co., Inc.*, Nos. 02-7083, 02-7090, 2003 WL 21000930, at *1 (D.C. Cir. Apr. 23, 2003) (finding certain issues outside the scope of arbitration because "[t]he arbitration clauses [were] *unambiguous in limiting the arbitrators' authority*" (emphasis added)).

12 The Supreme Court reasoned that "Gilmer ha[d] not met his burden of showing that Congress, in enacting the ADEA, intended to preclude arbitration of claims under that Act." *Gilmer*, 500 U.S. at 35.

13 "Historically, [forum-selection] clauses were not favored by American courts." *Forrest, supra*, 805 A.2d at 1009-10. The Supreme Court's seminole decision in *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), however, altered the justice system's attitude towards such clauses. *Id.* at 1010.

14 Nonetheless, this Court would have resolved the first prong of the personal jurisdiction inquiry in favor of finding jurisdiction. "A District of Columbia court may exercise jurisdiction over a person … as to a claim for relief arising from the person's … agreement located, executed, or *to be performed within the District of Columbia* at the time of contracting." D.C. Code § 13-423(a)(6). Here, although the contract was neither created nor entered into in the District

of Columbia, it expressly contemplates "performance" in the District of Columbia. (*See* Pl.'s Ex. A, at 3,4.) The second step, however, would require further supplementation by the parties.

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11-16-20 MCKENNA DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL ARBITRATION

EXHIBIT E

sion. *Id.* at 582 n. 3. We therefore conclude that ownership—not a property interest—is an element of the felony threats statute. The felony threats statute does not protect victims with interests in, but not ownership of, the threatened property.

[17] In summary, we have established, first, that the context of the felony threats statute indicates that its use of "person" is limited to natural persons, thereby excluding threats to property owned by artificial entities—particularly the District of Columbia; and, second, that the statute does not criminalize threats that impinge upon possessory property interests. Our conclusion is supported by the Supreme Court's admonition, which the Ninth Circuit recently recited in its factually-analogous *Havelock* decision, that " '[b]ecause of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity.' " 664 F.3d at 1292 (quoting *United States v. Bass*, 404 U.S. 336, 348, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971)). We therefore hold that appellant did not violate the felony threats statute by threatening to break the windows of a police vehicle owned by the District of Columbia.

IV. Conclusion

For the foregoing reasons, we reverse appellant's APO conviction and felony threat conviction that was based on his threat to damage the police vehicle. Further, we remand to the trial court to vacate appellant's sentence for committing a burglary while on release—a crime for which he was not convicted.[19]

So ordered.

Robert Ted PARKER, Appellant,

v.

K & L GATES, LLP, et al., Appellees.

No. 11–CV–1578.

District of Columbia Court of Appeals.

Argued Jan. 8, 2013.

Decided Sept. 19, 2013.

Background: Former partner brought foreign action against law firm employer and two other partners alleging breach of contract, breach of fiduciary duty, wrongful termination, age discrimination, and other claim. Firm and partners filed motion to compel arbitration. The Superior Court, District of Columbia, Gregory E. Jackson, J., granted motion. Former partner appealed.

Holdings: The Court of Appeals, McLeese, Associate Judge, held that:

(1) order granting motion to compel arbitration was final, appealable order;

(2) partner was bound by partnership agreement;

(3) enforcement of forum-selection clause was not unreasonable;

19. It appears from the sentencing transcript that, when the trial judge imposed a consecutive 12–month sentence for committing an offense during release pursuant to Count 5 of the indictment, he was unaware that the Count 5 specified that the predicate crime for the charge of committing an offense during release charge was burglary, rather than appellant's felony threats against Officer Pena and the MPD vehicle. The sentencing order specified that appellant was sentenced pursuant to Count 5. In its brief, the government states that it "agrees with appellant the trial court imposed an illegal sentence on Count 5 of the indictment."

(4) arbitration clause applied to tort and statutory claims;

(5) arbitration clause applied to Age Discrimination in Employment Act (ADEA) claim;

(6) District of Columbia, rather than California, choice-of-law rules applied;

(7) California law governing stay of arbitration was procedural, rather than substantive law, and

(8) applying District of Columbia, rather than California, procedural law did not violation full and credit clause or due process.

Affirmed.

Ferren, Senior Judge, filed concurring opinion in which Easterly, J., joined.

McLeese, J., filed concurring opinion.

1. Alternative Dispute Resolution ⇐213(1)

Former employee's post-judgment motion to alter or amend was timely, and therefore tolled the time to appeal trial court's grant of law firm employer's and partners' motion to compel arbitration in employment dispute, where motion was filed 11 days after trial court's order compelling arbitration was served. Civil Rule 59(e).

2. Alternative Dispute Resolution ⇐213(3)

Trial court's order granting motion to compel arbitration in employment dispute was a final, appealable order, where order disposed of the entire case on the merits and left no part of it pending before the trial court.

3. Partnership ⇐82

Partner was bound by arbitration and forum-selection clauses in partnership agreement, where partnership agreement was amended before partner signed it to include clauses, partner had opportunity to review full agreement, and partner was a seasoned attorney.

4. Contracts ⇐93(2)

The general rule is that absent fraud or mistake, one who signs a contract is bound by a contract which he has an opportunity to read whether he does so or not.

5. Partnership ⇐123

Partner forfeited argument that arbitration and forum-selection clauses in partnership agreement were void due to fraud in employment dispute, where partner alleged fraud for the first time in motion to alter or amend following trial court's order granting partnership's motion to compel arbitration.

6. Partnership ⇐82

Enforcement of forum-selection clause in partnership agreement was not unreasonable under the circumstances of the case in employment dispute between partner and partnership, where partner failed to make any valid claim of fraud, although partner asserted that arbitrating in the District of Columbia would have been inconvenient because he and most of the potential witnesses lived in California, he made no effort to explain why that inconvenience would have prevented him from obtaining a remedy or effectively deprived him of his day in court, and partner did not assert that enforcing the forum-selection clause would have violated a strong public policy of the District of Columbia.

7. Contracts ⇐127(4)

To establish unreasonableness of enforcement of a forum-selection clause, a party must show either (1) that his consent was obtained through fraud; (2) that requiring the party to arbitrate and to defend the motion to compel in the selected forum would be so unfair as to deprive him of a remedy or deprive him of his day in

court; or (3) that enforcement of the clause would violate a strong public policy of the state where the action was filed.

8. Alternative Dispute Resolution ⚿210

Upon a finding of a valid agreement to arbitrate, a presumption arises in favor of arbitrability.

9. Alternative Dispute Resolution ⚿143

To determine whether a particular claim is covered by an arbitration clause, courts inquire merely whether the arbitration clause is susceptible of an interpretation that covers the dispute.

10. Partnership ⚿82

Arbitration clause in partnership agreement was not limited to contractual claims, but rather covered partner's tort and statutory claims as well in employment dispute between partner and partnership, where the broad language of the clause covered "any controversy, claim or dispute directly or indirectly concerning the agreement or the breach hereof or the subject matter hereof," and clause did not limit coverage to contractual claims or exclude tort and statutory claims, rather, it explicitly covered any claim concerning the subject matter of the partnership agreement.

11. Partnership ⚿82

Partner's claim against partnership under the Age Discrimination in Employment Act (ADEA) was covered by arbitration clause in partnership agreement, where, although ADEA claims were not explicitly covered by arbitration clause, partnership agreement was not a collectively bargained contract, and clause expressly applied to all claims stemming from employment relationship with partnership. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.

12. Alternative Dispute Resolution ⚿121

The general rule is that federal statutory claims can be submitted to arbitration.

13. Alternative Dispute Resolution ⚿121

An individual's agreement to arbitrate federal statutory claims need not be stated clearly and unmistakably in order to be covered by agreement.

14. Alternative Dispute Resolution ⚿116

Forum state's choice-of-law rules applied to choice-of-law questions, and therefore District of Columbia law, rather than California law, applied in determining whether California law or District of Columbia law applied to determination of whether trial court should have stayed arbitration proceedings pending the outcome of litigation in California court in employment dispute between partner and partnership.

15. Federal Courts ⚿1066

The Court of Appeals generally reviews choice-of-law determinations de novo.

16. Action ⚿17

The forum state's choice-of-law rules apply to choice-of-law questions, unless contract explicitly provides otherwise.

17. Alternative Dispute Resolution ⚿116

California law governing stay of arbitration proceedings was procedural, rather than substantive, and therefore did not apply in employment dispute between partner and partnership filed in District of Columbia pursuant to forum-selection clause in partnership agreement, where courts had repeatedly treated the California statute as procedural, treating statute

as procedural was consistent with line between procedure and substance drawn in previous choice-of-law cases, and court's authority under statute to stay arbitration pending outcome of litigation could have affected order and timing of proceedings, but did not directly alter substantive entitlements or standards of conduct or directly determine enforceability of arbitration clause.

18. Action ⇐17

Under choice-of-law rules, procedures of the forum normally apply.

19. Contracts ⇐206

In some circumstances, a foreign jurisdiction may enforce procedural provisions of a different jurisdiction if a contract explicitly provides that another set of procedures shall govern.

20. Alternative Dispute Resolution ⇐186

Constitutional Law ⇐4476

States ⇐5(2)

Trial court's failure to apply California law and stay arbitration pending the outcome of California litigation did not violate the Full Faith and Credit Clause of federal constitution or partner's due process rights in employment dispute between partner and partnership, where California law permitting the stay of arbitration proceedings was a procedural, rather than a substantive, law. U.S.C.A. Const. Art. 4, § 1; U.S.C.A. Const.Amend. 14.

21. Courts ⇐92

For purposes of binding precedent, a "holding" is a narrow concept, a statement of the outcome accompanied by one or more legal steps or conclusions along the way that are "necessary" to explain the outcome; other observations are dicta. (Per Ferren, Senior Judge, for a majority of the court.)

See publication Words and Phrases for other judicial constructions and definitions.

Robert Ted Parker, Washington, DC, pro se.

Mark W. Foster, with whom Michael R. Smith, Washington, DC, and Susan Dudley Klaff were on the brief, for appellees.

Before Easterly and McLeese, Associate Judges, and Ferren, Senior Judge.

McLEESE, Associate Judge:

Robert Parker filed suit in California state court against several defendants, including his former employer, law firm K & L Gates, LLP, and two of its partners. Invoking arbitration and forum-selection clauses in the firm's partnership agreement, the K & L Gates defendants moved in the District of Columbia Superior Court to compel arbitration. The Superior Court ordered the parties to arbitrate their dispute, and Mr. Parker appealed. We affirm.

I.

Kirkpatrick & Lockhart Nicholson Graham, LLP and Preston Gates & Ellis, LLP merged in 2006 to form K & L Gates. The new firm required all former partners of Preston Gates & Ellis who wished to become partners at K & L Gates to sign a supplement to the firm's partnership agreement. Mr. Parker had been a partner at Preston Gates & Ellis, and he chose to join K & L Gates as a partner. Mr. Parker signed the supplement.

The supplement states that new partners agree to be bound by K & L Gates's partnership agreement "as amended." One of the amendments to the partnership agreement contains an arbitration clause. That amendment had been added to the partnership agreement before Mr. Parker signed the agreement.

A dispute later arose between Mr. Parker and K & L Gates. As a result of the dispute, Mr. Parker stopped working at K

& L Gates and filed a lawsuit in California state court against K & L Gates, two partners of K & L Gates, and other parties. Mr. Parker's complaint alleges breach of contract, breach of fiduciary duty, wrongful termination, age discrimination, and other claims.

The K & L Gates defendants (referred to hereinafter as "K & L Gates") filed a motion to compel arbitration in Superior Court. The Superior Court directed the parties to proceed to arbitration. Mr. Parker filed a motion to alter or amend the judgment, pursuant to Super. Ct. Civ. R. 59(e). The trial court denied the motion, and this appeal followed.[1]

II.

At the outset, we address two jurisdictional issues: the timeliness of the appeal and the finality of the order on appeal. We conclude that the appeal was timely and that the order on review was final.

A.

[1] We first address whether Mr. Parker's appeal was timely. The answer to that question depends on whether Mr. Parker's post-judgment motion to alter or amend pursuant to Super. Ct. Civ. R. 59(e) was timely and therefore tolled the time to appeal. We conclude that Mr. Parker's Rule 59(e) motion was timely, and that the appeal was timely as well.

The trial court's order compelling arbitration was issued on September 6, 2011. The order was served both electronically and by mail. Mr. Parker submitted his Rule 59(e) motion to alter or amend electronically eleven days later, on September 21, 2011, and received an electronic confirmation. Although Mr. Parker's motion was subsequently rejected but then apparently accepted and docketed, we conclude that Mr. Parker's motion is properly understood to have been filed on September 21, 2011, the date that the electronic confirmation initially showed it as having been filed. Super. Ct. Civ. R. 5(e)(2)(A) ("Filing by electronic means is complete upon transmission, unless the party making the transmission learns that the attempted transmission was undelivered or undeliverable.").

Mr. Parker's Rule 59(e) motion therefore was timely. Allowing ten days for filing, adding three days because the order compelling arbitration was not served by hand, and excluding weekends and holidays, Mr. Parker could have timely filed his Rule 59(e) motion as late as September 23, 2011. *See* Super. Ct. Civ. R. 6(a), 6(e), 59(e); *Wallace v. Warehouse Emps. Union # 730,* 482 A.2d 801, 806–10 (D.C.1984) (three-day extension provided by Rule 6(e) applies to Rule 59(e) motions; three-day period under Rule 6(e) and ten-day period under Rule 59(e) are calculated separately and exclude weekends and holidays). Finally, because Mr. Parker filed the notice of appeal on December 5, 2011, thirteen days after the trial court denied the timely Rule 59(e) motion, the notice of appeal was also timely. *See* D.C.App. R. 4(a)(1); *Frain v. District of Columbia,* 572 A.2d 447, 450 (D.C.1990).

B.

[2] K & L Gates filed a motion to dismiss Mr. Parker's appeal as having been taken from a non-final and non-appealable order. A motions division of this court denied the motion to dismiss, but directed the parties to address in their briefs "whether this court has jurisdiction over an appeal from a trial court order compelling arbitration." K & L Gates la-

1. K & L Gates represents that the California court stayed the proceedings in that court pending the resolution of any appeals in this court related to the Superior Court's order compelling arbitration.

ter changed its position, and the parties now agree that the order compelling arbitration was an appealable order. We nonetheless must independently verify that we have jurisdiction. *See Murphy v. McCloud*, 650 A.2d 202, 203 n. 4 (D.C. 1994).

The Council of the District of Columbia adopted a version of the Revised Uniform Arbitration Act ("RUAA") in 2007.[2] *See* Arbitration Act of 2007, D.C. Law 17–111, 55 D.C.Reg. 1847 (Feb. 29, 2008); *Menna v. Plymouth Rock Assurance Corp.*, 987 A.2d 458, 462–63 (D.C.2010). As enacted, the RUAA provides that orders compelling arbitration are appealable. D.C.Code § 16–4427(a)(1) (2012 Repl.) ("An appeal may be taken from ... [a]n order ... granting a motion to compel arbitration."). The Home Rule Act, however, prohibits the Council from legislating "with respect to any provision of Title 11." D.C.Code § 1–206.02(a)(4) (2012 Repl.); Pub.L. No. 93–198, 87 Stat. 774, 813 (1973). Among other things, Title 11 defines the scope of this court's jurisdiction over appeals from Superior Court. *See* D.C.Code § 11–721(a) (2012 Repl.) (authorizing this court to review final orders and judgments of Superior Court). If the RUAA conferred jurisdiction to review orders that otherwise would not be appealable under Title 11, a potential issue would arise under the Home Rule Act. This court has already held, however, that orders compelling arbitration in the circumstances of this case are final and appealable under Title 11. *Carter v. Cathedral Ave. Coop., Inc.*, 658 A.2d 1047, 1051 n. 5 (D.C.1995) (per curiam); *see also Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 86–89, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (holding that order compelling arbitration and dismissing other claims was final because it "plainly disposed of the entire case on the merits and left no part of it pending before the court").[3] Because such orders are final and appealable under both Title 11 and the RUAA, we need not address the Home Rule Act issue that would arise in the event of a conflict between Title 11 and the RUAA. Thus, under this court's decision in *Carter*, the order compelling arbitration in this case is final and appealable.[4]

III.

[3] We review de novo the trial court's determination that the arbitration and forum-selection clauses at issue were valid and enforceable. *See Affordable Elegance Travel, Inc. v. Worldspan, L.P.*, 774 A.2d

2. By its terms, the RUAA now "governs an agreement to arbitrate whenever made." D.C.Code § 16–4403(e) (2012 Repl.). The parties, moreover, do not presently dispute the RUAA's applicability to their contract.

3. Mr. Parker and K & L Gates both asserted at oral argument that the appealability of the order compelling arbitration in this case was resolved by the Supreme Court's decision in *Green Tree*. Because we conclude that the order compelling arbitration in this case was final and appealable as a matter of local law, we need not address the question whether federal law would preempt contrary local law on that point. We also note that *Carter*, like this case, involved a motion to compel arbitration that was filed and decided in an independent proceeding. *Id.* at 1051 n. 5. *See generally Green Tree*, 531 U.S. at 87, 121 S.Ct. 513 (defining independent proceedings as "actions in which a request to order arbitration is the sole issue before the court"). Under federal law, orders compelling arbitration can be final even outside the context of independent proceedings. *Id.* at 86–87, 121 S.Ct. 513. Because this case arises in the context of an independent proceeding, we have no occasion to consider the appealability of orders compelling arbitration in other contexts.

4. In separate concurrences, the members of the division explain their reasons for concluding that the court is bound by *Carter* on this issue and not by the court's earlier decision in *American Fed'n of Gov't Emps., AFL–CIO v. Koczak*, 439 A.2d 478, 480 (D.C.1981).

320, 327 n. 8 (D.C.2001) ("Whether a contract is enforceable is a legal issue that this court considers *de novo*."); *Ticknor v. Choice Hotels Int'l, Inc.*, 265 F.3d 931, 936 (9th Cir.2001) ("We review *de novo* a district court's order denying a petition to compel arbitration, including its interpretation of the validity and scope of the arbitration clause."). We uphold the trial court's ruling.

[4] The supplement to the partnership agreement binds its signatories to K & L Gates's partnership agreement "as amended." One of the amendments, added before Mr. Parker signed the partnership agreement, contains the arbitration and forum-selection clauses. Therefore, by signing the supplement, Mr. Parker assented to those provisions. *Davis v. Winfield*, 664 A.2d 836, 838 (D.C.1995) ("Mutual assent to a contract ... is most clearly evidenced by the terms of a signed written agreement....").[5] Mr. Parker has not asserted that he was ever denied an opportunity to review the full partnership agreement; rather, Mr. Parker testified that after his separation from K & L Gates he requested a copy of the full partnership agreement and K & L Gates gave him a copy. Mr. Parker thus had an opportunity to read the arbitration and forum-selection clauses, and he received adequate notice of them. "The general rule is that absent fraud or mistake, one who signs a contract is bound by a contract which he has an opportunity to read whether he does so or not." *Nickens v. Labor Agency*, 600 A.2d 813, 817 n. 2 (D.C.1991).[6] Accordingly, Mr. Parker is bound by those terms. *See Brown v. Dorsey & Whitney, LLP.*, 267 F.Supp.2d 61, 80–81 (D.D.C.2003) (applying District of Columbia law, finding agreement to arbitrate enforceable where law firm's dispute-resolution policy contained an arbitration clause and where "plaintiff was presented with an employment agreement which called for her to agree to be bound by the law firm's dispute resolution policy. Not knowing what the exact policy was, and without requesting a copy of the policy even though she was told she could have access to it, plain-

5. The parties disagree about which substantive body of law governs their dispute. The only specific conflict of law that they assert, however, relates to Mr. Parker's claim that the trial court should have stayed the order to compel arbitration. Accordingly, we apply District of Columbia law to all other issues. *See, e.g., C & E Servs., Inc. v. Ashland, Inc.*, 498 F.Supp.2d 242, 255 n. 5 (D.D.C.2007) (finding it unnecessary to determine which state's substantive law governed and applying District of Columbia law, because plaintiff contended and defendant did not dispute that there was no substantive difference between D.C. law and Virginia law); *cf. International Bus. Machs. Corp. v. Bajorek*, 191 F.3d 1033, 1037 (9th Cir.1999) ("Though the parties disagree on whether to apply California or New York choice of law principles, the briefs set out no difference between them, so we need not decide, and can proceed to application of the principles in Restatement (Second) Conflict of Laws section 187."); *Duncan v. G.E.W., Inc.*, 526 A.2d 1358, 1363 (D.C.1987) ("because it would make no difference which jurisdiction's law is deemed controlling, we need not decide the choice-of-law issue in this case").

6. Because Mr. Parker consented to the District of Columbia as a forum, his objection to personal jurisdiction is not well founded. Although Mr. Parker appears to contend that constitutional due-process analysis must still be performed even where a party consents to jurisdiction, the law is to the contrary. *See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703–04, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982) (requirement of personal jurisdiction can be waived; for example, "parties to a contract may agree in advance to submit to the jurisdiction of a given court") (quoting *National Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964)); *see generally District of Columbia Metro. Police Dep't v. Fraternal Order of Police*, 997 A.2d 65, 76 (D.C.2010) ("An objection to the court's personal jurisdiction is waivable....").

tiff signed the Employment Agreement."); *cf. Forrest v. Verizon Commc'ns, Inc.*, 805 A.2d 1007, 1010 (D.C.2002) (enforcing forum-selection clause where clause had been reasonably communicated to objecting party). Moreover, the trial court found that Mr. Parker is a seasoned attorney, which further supports holding Mr. Parker to his agreement. *See Brown*, 267 F.Supp.2d at 73–74.

[5] Mr. Parker also argues on appeal that the trial court erred by failing to consider evidence that K & L Gates committed fraud at the time of contract formation. Because Mr. Parker alleged fraud for the first time in his Rule 59(e) motion, he has forfeited that defense. *See, e.g., Pacific Ins. Co. v. American Nat'l Fire Ins. Co.*, 148 F.3d 396, 404 (4th Cir.1998) (upholding trial court's determination that party could not assert new legal theory in opposition to opponent's Rule 59(e) motion and describing "overwhelming authority that a party should not be permitted to raise new arguments or legal theories of liability on a motion to alter or amend the judgment under Rule 59(e)"); *cf. Nuyen v. Luna*, 884 A.2d 650, 655 (D.C.2005) (Rule 59(e) motion "does not provide a vehicle for a party to undo its own procedural failures") (quoting *United States v. $23,000 in U.S. Currency*, 356 F.3d 157, 165 n. 9 (1st Cir.2004)). Therefore, even though the trial court did not explicitly address Mr. Parker's allegations of fraud in its order denying Mr. Parker's Rule 59(e) motion, that is not a basis for reversal.[7]

[6, 7] Mr. Parker further asserts that enforcement of the forum-selection clause is unreasonable under the circumstances of this case.[8] To establish unreasonableness, Mr. Parker must show either (1) that his consent was obtained through fraud; (2) that requiring Mr. Parker to arbitrate and to defend the motion to compel in the District of Columbia would be so unfair as to deprive him of a remedy or deprive him of his day in court; or (3) that enforcement of the clause would violate a strong public policy of the state where the action was filed. *Forrest*, 805 A.2d at 1011–12.

Mr. Parker fails to make any of these three showings. First, we have already explained that Mr. Parker forfeited any claim of fraud. Second, although Mr. Parker asserts that arbitrating in the District of Columbia would be inconvenient, because he and most of the potential witnesses live in California, he makes no effort to explain why that inconvenience would prevent him from obtaining a remedy or effectively deprive him of his day in court. *See M/S Bremen v. Zapata Off–Shore Co.*, 407 U.S. 1, 18, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972) ("it should be incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical

7. We note that Mr. Parker's allegations of fraud were cursory and inadequate to raise the issue; Mr. Parker failed to state or analyze the elements of fraud, and his main allegations were that K & L Gates engaged in forum-shopping, which is implausible for reasons stated *infra* at n. 9, and that he was not given a full copy of the Partnership Agreement until he requested it. Because we conclude that the issue of fraud was forfeited, we have no occasion to address K & L Gates's alternative argument that the arbitrator, not the trial court, should have addressed Mr. Parker's fraud allegation in the first instance.

8. Mr. Parker also alleges that K & L Gates selected the District of Columbia as the forum solely because the RUAA allows a motion to compel arbitration to be filed in Superior Court, even where the motion pertains to an action that is already pending in a different court. We find this allegation of forum shopping implausible. The initial effective date of the forum-selection clause was December 14, 2006, but the RUAA was not enacted until December 31, 2007. 55 D.C.Reg. at 1863.

purposes be deprived of his day in court"); *Yazdani v. Access ATM*, 941 A.2d 429, 431 n. 2 (D.C.2008) (granting challenges to forum-selection clauses based solely on inconvenience of traveling to remote location would "invalidate most such clauses"). Third, Mr. Parker does not assert that enforcing the forum-selection clause in this case would violate a strong public policy of the District of Columbia, and we see no reason why it would.[9] *Cf., e.g., Friend v. Friend*, 609 A.2d 1137, 1139 (D.C.1992) (District of Columbia has a "well-established preference for arbitration when the parties have expressed a willingness to arbitrate").

In sum, we conclude that the arbitration and forum-selection clauses are valid and enforceable against Mr. Parker.

IV.

A.

[8, 9] The trial court determined that all of Mr. Parker's claims come within the scope of the arbitration clause.[10] We review this determination de novo, *Giron v. Dodds*, 35 A.3d 433, 437 (D.C.2012), and we uphold the trial court's ruling. Upon a finding of a valid agreement to arbitrate, a presumption arises in favor of arbitrability. *Lopata v. Coyne*, 735 A.2d 931, 936 (D.C. 1999). To determine whether a particular claim is covered by an arbitration clause, we "inquire merely whether the arbitration clause is susceptible of an interpretation that covers the dispute." *Haynes v. Kuder*, 591 A.2d 1286, 1289 (D.C.1991) (internal quotation marks omitted).

[10] Mr. Parker asserts that the arbitration clause covers only his contractual claims, not his tort and statutory claims. The broad language of the clause, however, covers "[a]ny controversy, claim or dispute ... directly or indirectly concerning this Agreement or the breach hereof or the subject matter hereof...."[11] The clause does not limit coverage to contractual claims or exclude tort and statutory claims; rather, it explicitly covers any claim concerning the subject matter of the partnership agreement. Accordingly, we conclude that any claim—whether sounding in contract, tort, or statute—that arises out of Mr. Parker's employment relationship with K & L Gates is covered by the arbitration clause. *See Woodland Ltd. P'ship v. Wulff*, 868 A.2d 860, 865 (D.C.2005) (question whether defendants had waived right to compel arbitration was itself arbitrable; "the parties' broad agreement to arbitrate 'any dispute arising under or related to' the ... partnership

9. Mr. Parker argues that the relevant question is whether enforcement of the clause would violate a strong public policy of California. The law is to the contrary: the relevant question is whether enforcement of the clause would violate a strong public policy of the District of Columbia. *See, e.g., Forrest*, 805 A.2d at 1012 n. 11 ("Appellant has not demonstrated to us a statutory-based comparably strong *District* public policy against the enforcement of a Virginia forum selection clause.") (emphasis added).

10. We need not address whether the parties agreed to arbitrate questions related to the scope of the arbitration clause. Although the parties disputed this issue in the trial court, they no longer dispute it on appeal.

11. The full text of the relevant portion of the arbitration clause states:

> Any controversy, claim or dispute between or among the Partners, including but not limited to any former partners, and any controversy, claim or dispute between or among one or more Partners, including but not limited to any former partners, and the Partnership, directly or indirectly concerning this Agreement or the breach hereof or the subject matter hereof, including questions concerning the scope and applicability of this Section 12.01, shall be finally settled by a single arbitrator....

agreement dictates that this question incidental to their dispute ... under that agreement be submitted to the arbitrator"); *see also Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 617, 624–28, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985) (finding that statutory antitrust claims were covered by agreement that "[a]ll disputes, controversies or differences which may arise between [contracting parties] out of or in relation to Articles I–B through V of this Agreement or for the breach thereof, shall be finally settled by arbitration ..."); *Wolff v. Westwood Mgmt., LLC*, 503 F.Supp.2d 274, 281–83 (D.D.C.2007) (agreement to arbitrate "any dispute which may arise during construction and management of the office building complex" covers claim of breach of fiduciary duty and "derivative claims").

Mr. Parker's employment relationship with K & L Gates is part of the "subject matter" of the partnership agreement, and all of Mr. Parker's contractual and non-contractual claims concern that relationship. In fact, Mr. Parker himself describes his claims as "arising from termination of his K & L Gates partnership." We therefore conclude that the trial court did not err in interpreting the arbitration clause to apply to tort and statutory claims as well as contract claims.

B.

[11] Finally, Mr. Parker asserts that his claim under the Age Discrimination in Employment Act of 1967 ("ADEA"), Pub.L. No. 90–202, 81 Stat. 602 (1967) (codified as amended at 29 U.S.C. § 621 et seq. (2011)), is not arbitrable, because ADEA claims are not explicitly covered by the arbitration clause. Mr. Parker relies, however, on cases that apply only to collectively bargained contracts. *See Wright v. Universal Mar. Serv. Corp.*, 525 U.S. 70, 79–80, 119 S.Ct. 391, 142 L.Ed.2d 361 (1998) (intent "must be clear and unmistakable" for court to find that union-negotiated contract waives "employees' statutory right to a judicial forum for claims of employment discrimination"); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 251, 258–59, 129 S.Ct. 1456, 173 L.Ed.2d 398 (2009) (compelling union member to arbitrate ADEA claims because collectively bargained contract "clearly and unmistakably" required arbitration).

[12, 13] The general rule is that federal statutory claims can be submitted to arbitration. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991) ("It is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA. Indeed, in recent years we have held enforceable arbitration agreements relating to claims arising under the Sherman Act, ... the Securities Exchange Act of 1934, ... the Racketeer Influenced and Corrupt Organizations Act, and ... the Securities Act of 1933.") (citations omitted); *Cole v. Burns Int'l Sec. Servs.*, 323 U.S.App. D.C. 133, 146, 105 F.3d 1465, 1478 (1997) ("the Supreme Court now has made clear that, as a general rule, statutory claims are fully subject to binding arbitration, at least outside of the context of collective bargaining"). An individual's agreement to arbitrate such claims need not be stated "clearly and unmistakably." *See Wright*, 525 U.S. at 80–81, 119 S.Ct. 391 ("*Gilmer* involved an individual's waiver of his own rights, rather than a union's waiver of the rights of represented employees—and hence the 'clear and unmistakable' standard was not applicable."); *American Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 711 (5th Cir.2002) ("[T]he Supreme Court limited its holding in *Wright* to the context of a *collective bargaining agreement*, not to an *individual's* waiver of his own rights—a situation in which the 'clear and unmistakable' standard is not applicable. Thus, outside the area of collective bargaining, in which a third party (the union)

seeks to waive contractually the rights of an individual member (the employee), there is no requirement that an arbitration provision must clearly and unmistakably express the waiver of an individual's rights.") (citations omitted); *Williams v. Imhoff*, 203 F.3d 758, 763 (10th Cir.2000) ("Although the Court [in *Wright*] did not discuss in detail the standard applicable to agreements entered into by individual employees, it left little doubt that the 'clear and unmistakable' standard was inapplicable to such agreements."). The trial court therefore correctly concluded that Mr. Parker agreed to arbitrate his ADEA claims.

V.

[14, 15] The parties raise one potential conflict-of-law issue: whether, under § 1281.2(c) of the California Code of Civil Procedure, the trial court should have stayed arbitration proceedings pending the outcome of the litigation in California state court.[12] Mr. Parker contends that the substantive law of California governs this dispute, and that the trial court therefore should have issued a stay pursuant to § 1281.2(c). K & L Gates argues that the trial court was correct to apply District of Columbia law. The trial court applied District of Columbia law, but did not discuss which body of law should be applied. We generally review choice-of-law determinations de novo. *See Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31, 40 (D.C. 1989).

[16] The forum state's choice-of-law rules apply to choice-of-law questions, unless the contract explicitly provides otherwise.[13] *See Adolph Coors Co. v. Truck Ins. Exch.*, 960 A.2d 617, 620 (D.C.2008) (applying District of Columbia choice-of-law rules); *Restatement (Second) of Conflict of Laws* § 186, cmt. b, at 559 (1971) ("Values of certainty of result and of ease of application dictate that the forum should . . . not concern itself with the complications that might arise if the forum were to apply [the selected] state's choice-of-law rules."). Accordingly, we apply District of Columbia law to resolve whether § 1281.2(c) is applicable to this dispute.

A.

[17–19] Under District of Columbia choice-of-law rules, procedures of the forum normally apply.[14] *See Huang v. D'Al-*

12. The relevant provision states:

> If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

Cal.Civ.Proc.Code § 1281.2(c) (West through 2013 Reg. Sess.).

13. Mr. Parker appears to agree that District of Columbia choice-of-law rules apply.

14. In some circumstances, however, a foreign jurisdiction may enforce procedural provisions of a different jurisdiction if a contract explicitly provides that another set of procedures shall govern. *See, e.g., Conteh v. Allstate Ins. Co.*, 782 A.2d 748, 752 (D.C.2001) ("Since the Virginia statute and its attendant obligations were expressly incorporated into the insurance policy, we need not address appellant's characterization of section 38.2–2206 as creating a merely procedural duty."); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 66, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995) ("if the parties intend that state procedure shall govern, federal courts must enforce that understanding"). Neither of the parties here argues that the partnership

bora, 644 A.2d 1, 4 (D.C.1994) ("Under customary choice of law principles, the laws of the forum ... apply to matters of procedure...") (internal quotation marks omitted; initial ellipses in *Huang*). *See generally Restatement (Second) of Conflict of Laws*, Introductory Note to Ch. 6, at 350 (1971) ("Commonly, it is said that the forum will apply its own local law to matters of procedure and the otherwise applicable law to matters of substance."). We conclude for several reasons that § 1281.2(c) is procedural, not substantive.

First, courts have repeatedly treated § 1281.2 as procedural. *See, e.g., Volt Info. Scis., Inc. v. Board of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (concluding that "[t]here is no federal policy favoring arbitration under a certain set of procedural rules" and that § 1281.2(c) was thus not preempted by procedural rules of FAA); *Security Ins. Co. of Hartford v. TIG Ins. Co.*, 360 F.3d 322, 326 (2d Cir.2004) ("*Volt* controls the present case. It compellingly tells us that section 1281.2(c)(4) is a procedural rule for arbitration and therefore is not preempted by the FAA."); *Cronus Invs., Inc. v. Concierge Servs.*, 35 Cal.4th 376, 25 Cal.Rptr.3d 540, 107 P.3d 217, 221 (2005) (describing § 1281.2(c) as part of "California procedural law"). Mr. Parker cites no case—and we are aware of none—describing § 1281.2(c) as substantive.

Second, treating § 1281.2(c) as procedural is consistent with the line between procedure and substance drawn in our previous choice-of-law cases. *See Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 463 (D.C. 2004) (applying time limits and substantive requirements of District of Columbia Superior Court Civil Rule 60(b) as part of forum procedural law, where Maryland substantive law governed and appellant had argued that Maryland Arbitration Act time limits should apply); *Fowler v. A & A Co.*, 262 A.2d 344, 347–48 (D.C.1970) (applying District of Columbia statute of limitations and Maryland substantive law; "the laws of the forum always apply to matters of procedure"); *Miller & Long Co. v. Shaw*, 204 A.2d 697, 699 (D.C.1964) (treating as substantive for choice-of-law purposes (1) applicable standard of conduct, and (2) whether plaintiff was licensee or invitee when he entered defendant's property); *Hardy v. Hardy*, 197 A.2d 923, 924–25 (D.C.1964) (whether evidence is sufficient to reach jury is procedural issue; standard of conduct for negligent conduct is substantive issue).

Third, classifying § 1281.2(c) as procedural comports with general definitions of the term "procedure." Although this court has not defined the terms "procedural" and "substantive" in the context of choice-of-law analysis, we have held in a different setting that a rule is procedural if it does not address "rights or liabilities" but merely "outlines the method by which the ... action may proceed...." *Nunley v. Nunley*, 210 A.2d 12, 14 (D.C.1965). The Supreme Court has described procedural law as relating to "the manner and the means by which the litigants' rights are enforced"; whereas substantive law "alters the rules of decision by which [the] court will adjudicate [those] rights." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 130 S.Ct. 1431, 1442, 176 L.Ed.2d 311 (2010) (citations and internal quotation marks omitted; alterations in original). The court's authority under § 1281.2(c) to stay arbitration pending the outcome of litigation could affect the order and timing of proceedings, but does not directly alter substantive entitlements or standards of conduct or directly determine the enforceability of the arbitration clause.

agreement contains a provision specifying that California procedures should govern.

Nor was § 1281.2(c) intended to directly affect substantive matters; the California Supreme Court has explained that § 1281.2(c) is designed to avoid "duplication of effort" and "conflicting rulings on common issues of fact and law amongst interrelated parties." *Cronus*, 25 Cal. Rptr.3d 540, 107 P.3d at 228.

Mr. Parker argues that the California Supreme Court, in *Cronus*, held that "application of California law necessarily include[s] ... § 1281.2." Even if Mr. Parker's characterization of the holding of *Cronus* were accurate, however, this court must apply its own choice-of-law rules. As we have explained, under those rules, forum procedures apply. Therefore the Superior Court would not have been required to apply § 1281.2(c) and stay the arbitration, even if California substantive law were applicable.[15]

We therefore conclude that the trial court was correct to apply District of Columbia procedural law, and we find it is unnecessary to determine which substantive body of law governs this case.[16]

B.

[20] Finally, Mr. Parker asserts that the trial court offended the Full Faith and Credit Clause and the Due Process Clause of the United States Constitution by failing to apply § 1281.2(c). We conclude that, even if California substantive law governed this dispute, applying District of Columbia procedures would not violate the Full Faith and Credit Clause. *See Sun Oil Co. v. Wortman*, 486 U.S. 717, 722, 108 S.Ct. 2117, 100 L.Ed.2d 743 (1988) ("The Full Faith and Credit Clause does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate. Since the procedural rules of its courts are surely matters on which a State is competent to legislate, it follows that a State may apply its own procedural rules to actions litigated in its courts.") (internal quotation marks and citation omitted). Nor would application of our procedural law violate Mr. Parker's rights under the Due Process Clause. *See id.* at 729–30, 108 S.Ct. 2117 (application of forum state's statute of limitations does not violate Due Process Clause). The cases which Mr. Parker cites in support of his constitutional claims are unhelpful to Mr. Parker, because they involve either the application of a state's substantive law or the invalidation of part of a contract.[17] The order compelling arbitration did not offend Mr. Parker's constitutional rights.

The judgment of the trial court is therefore

Affirmed.

15. Because we find § 1281.2(c) inapplicable as a matter of local choice-of-law rules, we do not address K & L Gates's argument that the FAA would preclude application of § 1281.2(c).

16. Accordingly, we deny K & L Gates's Motion to Correct or Modify the Record, which sought to provide the court with additional information potentially relevant to the choice-of-law issue.

17. *See Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312–13, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981) (interpreting Due Process Clause; "for a State's *substantive law* to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts...") (emphasis added); *John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182–83, 57 S.Ct. 129, 81 L.Ed. 106 (1936) (given limited contacts between forum state and underlying conduct, Due Process Clause precluded application of substantive part of forum law); *Home Ins. Co. v. Dick*, 281 U.S. 397, 409, 50 S.Ct. 338, 74 L.Ed. 926 (1930) (given limited contacts between forum state and underlying conduct, Due Process Clause precluded enforcement of forum statute invalidating contract provision requiring suit be brought within one year).

FERREN, Senior Judge, with whom EASTERLY, Associate Judge, joins, concurring:

We join the opinion of the court. Had we written it, however, we would have substituted the following footnote 4 (or equivalent in the text) for the footnote in the court's opinion that references the concurring opinions.

> 4. In *American Fed'n of Gov't Emps., AFL–CIO v. Koczak*, 439 A.2d 478, 479 (D.C.1981), this court opined: "We hold that under section 18 of the District of Columbia Uniform Arbitration Act [UAA], D.C.Code 1978 Supp., tit. 16 app., § 18," a trial court order compelling arbitration "is interlocutory and unappealable." The court reached this decision by noting, first, that the statutory list of final orders in § 18 omitted "an order to compel arbitration." *Id.* at 480. The court then applied a canon of statutory construction, "*expressio unius est exclusio alterius*," referenced the UAA's "meager legislative history" and found "no indication in either ... that the Council did not intend the Act's list of appealable final orders to be exhaustive." *Id.*
>
> In the midst of its discussion of the *expressio unius* canon, the court also noted that this "omission ... [was] consistent with the 'general rule that ... an order is final for purposes of appeal ... [when] it disposes of the entire case on the merits.'" *Id.* (quoting *Crown Oil and Wax Co. of Delaware v. Safeco Ins. Co. of America*, 429 A.2d 1376, 1379 (D.C.1981) (identifying and construing general rule of D.C.Code 1973 § 11–721(a)(1) (jurisdiction of appeals))). The court applied that rule, concluding that "[a]n order to compel arbitration does not dispose of the entire case on the merits." *Id.* (citing *School Committee of Agawam v. Agawam Educ. Ass'n*, 371 Mass. 845, 359 N.E.2d 956, 957 (1977) (holding non-final an order denying request to stay arbitration)).
>
> The court then concluded its statutory analysis, stating that "the Council's omission of an order to compel arbitration from the Act's list of orders deemed to be final means that such an order is interlocutory and, hence, unappealable." *Id.* The court added that its construction of the UAA was "in accord with the construction arrived at by all other jurisdictions which thus far have addressed this issue." *Id.* at 481.[1]
>
> *Koczak*'s reference to consistency with a "general rule" in the statute governing appeals, as applied to foreclose finality of an order to compel arbitration, was non-binding dictum because: (1) the decision in *Koczak* was limited to construction and application of the UAA; and (2) the referenced "consistent" general rule, as construed to bar finality, was not clearly "necessary" [2] or alternative [3] to

1. *Koczak* relied here on four state court decisions, all of which construed the UAA with *expressio unius* analysis (without citing the canon as such). None relied, in addition, on a statutory (or other) general rule of finality. *See Clark County v. Empire Electric, Inc.*, 96 Nev. 18, 604 P.2d 352, 353 (1980); *Harris v. State Farm Mut. Automobile Ins. Co.*, 283 So.2d 147, 148 (Fla.App.1973); *Maietta v. Greenfield*, 267 Md. 287, 297 A.2d 244, 246–47 (1972); *Roeder v. Huish*, 105 Ariz. 508, 467 P.2d 902, 903 (1970). In relying on these state court decisions, the *Koczak* court said, "[W]e thereby give effect to our legislature's intention ... that 'this Act shall be construed as to effectuate its general purpose of making uniform the law of the District of Columbia and those states which enact it.'" *Koczak*, 439 A.2d at 481 (statutory citation omitted).

2. *See Lee v. United States*, 668 A.2d 822, 827–28 (D.C.1995) (earlier division's articulation of "purported requirement" of punishment for lesser included offense "was not necessary for the disposition of the case, and thus constituted 'dictum' not binding on us under the doctrine of *M.A.P. v. Ryan*") (citation omitted); *see Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) ("When an opinion issues for the

the *expressio unius* rationale for non-finality under the UAA, relied on in *Koczak* and the other states cited. Accordingly, the decision that binds us here is not *Koczak* but *Carter v. Cathedral Ave. Coop.*, 658 A.2d 1047, 1050 n. 5 (D.C.1995)—the first decision to apply *in its holding* the general rule under Title 11 of the D.C.Code (then § 11–721(a)(1) (1989)) as to finality of an order compelling arbitration when a party sues only to compel arbitration.

Our reasons for this strictly-construed reading of *Koczak* are attributable to a concern that an expansive view of a "holding" in this jurisdiction—such as the view our colleague sponsors—is likely to obstruct orderly and appropriate development of the law, whereas this court should be able to advance the law freely unless a prior decision unambiguously stands in the way, permitting change only after en banc review.[4]

[21] When, therefore, does a prior decision of this court reflect a "holding" that binds the division hearing the case? This court has "equated binding precedent under *M.A.P.* with the rule of *stare decisis*," which "is never properly invoked unless in the decision put forward as precedent the judicial mind has been applied to and passed upon the precise question."[5] Accordingly, for purposes of binding precedent, a holding is a narrow concept, a statement of the outcome accompanied by one or more legal steps or conclusions along the way that—as this court and other have repeatedly held—are "necessary" to explain the outcome; other observations are dicta.[6]

In this case, we do not agree that *Koczak*'s characterization of the UAA as "consistent with" this jurisdiction's "general rule" of finality can reasonably be interpreted as part of *Koczak*'s holding. To us, *Koczak*'s statement that a reasoned, statutory ruling is merely "consistent with" some other rule of law falls outside the universe of "holdings"; it amounts, rather, to an observation that the court

Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound." (citations omitted)); *United States v. Science Applications Inter. Corp.*, —— F.Supp.2d ——, ——, 04–1543(RWR), 2013 WL 3791423, *7 (D.D.C. July 22, 2013) ("[T]he language was neither the result of the D.C. Circuit's opinion nor portions of the opinion necessary to that result. As such, it is dictum and is not controlling." (internal quotation marks, footnote, and citation omitted)).

3. *See, e.g., Woods v. Interstate Realty Co.*, 337 U.S. 535, 537–38, 69 S.Ct. 1235, 93 L.Ed. 1524 (1949) (stating that "where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*" and confirming that *Angel v. Bullington*, 330 U.S. 183, 67 S.Ct. 657, 91 L.Ed. 832 (1947) held a suit could not be maintained because of both *res judicata* and *Erie* doctrine); *Union Pac. R.R. Co. c. Mason City and Fort Dodge R.R. Co.*, 199 U.S. 160, 165–66, 26 S.Ct. 19, 50 L.Ed. 134 (1905) (affirming on both contractual and statutory grounds).

4. *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) ("[W]e have adopted the rule that no division of this court will overrule a prior decision of this court or refuse to follow a decision the United States Court of Appeals rendered prior to February 1, 1971, and that such result can only be accomplished by this court en banc." (footnote omitted)).

5. *United States v. Debruhl*, 38 A.3d 293, 298 (D.C.2012) (internal quotation marks, footnotes, and citation omitted). Our colleague stresses that in *Koczak*, when the "judicial mind [was] applied to and passed upon the precise question," *id.*, the question was "whether orders compelling arbitration are final and appealable under general principles of finality." *Post* at 51. Respectfully, and to the contrary, we believe that the precise question at issue is narrower: whether the general rule of finality under Title 11 of the D.C.Code was clearly necessary, or expressed as an alternative, to the court's interpretation of the UAA.

6. See *supra* note 2.

found it interesting, perhaps even comforting, to note the likelihood of another approach toward the same end, but not a statement confirming a "necessary" ingredient of the outcome. Put another way, the reference to the general rule is much like a "*cf.*" citation to the UAA holding, absent language indicating more clearly that the general rule was necessary, or expressed as an alternative, to the statutory interpretation.

We recognize that too crabbed a reading of a judicial decision can undermine the sound policy reflected in *M.A.P. v. Ryan* [7]; a later division of the court should not ignore the holding of an earlier division on which the public and the bar had good reason to rely. We further recognize that not all judicial decisions are crystal clear about the essentials inherent in the outcome; one person's clarity can be another's ambiguity. That said, however, we believe this court should be held to a high enough level of clarity about essentials that the court does not invite *Thomas* [8] inquiries so readily that the dynamic of decision-making focuses backward, not forward. At a minimum, therefore, as this court has held,[9] we must expect language from the court that communicates a clear understanding of the ingredients "necessary" to every "holding." The "consistent with" language of *Koczak* fails that test; it posits no more than a parallel legal universe, not an integrated component of a two-part holding. As our colleague himself acknowledges: "If only rulings essential to the outcome can constitute holdings, it is unclear at best whether the statement at issue in *Koczak* would properly be viewed as a holding." *Post* at 877.

This acknowledgment leads to our second disagreement. Our colleague's reasoning appears to turn on his belief that *Koczak*'s "consistent with" language can be part of the holding without being "necessary" to it. He stresses that "it is not accurate to say that only rulings essential to the outcome can constitute holdings." *Post* at 877. He offers three examples. First, he cites a judgment that "rests on two independent and alternative rationales." *Post* at 878. That can occur, but this example is inapposite here (as our colleague appears to agree). Moreover, if there were holdings truly in the alternative, each presumably would be fully developed and deemed necessary to the outcome in the absence of the other.[10] We do not believe one can credibly say that, without the *expressio unius* analysis that is the central focus of the opinion, *Koczak*'s general rule comments would alone have been sufficient to decide the case.

For the next two examples, our colleague observes that a successful defense of qualified immunity, or a ruling that preserves a conviction in the absence of plain error, reflects an outcome that would mask a significant ruling unless the holding were defined to include the threshold determination—the culpability or unpreserved trial court error—that the ultimate disposition erases. All this is true, but these examples, as our colleague would have it, do not negate the proposition that "only rulings essential to the outcome can constitute holdings." *Post* at 877. Both reflect sequential, fully developed, and thus necessary two-step rulings. Ordinarily, there would be no ruling of qualified immunity without a predicate ruling of misconduct, and there would be no deci-

7. See *supra* note 4.

8. *Thomas v. United States,* 731 A.2d 415, 420 n. 6 (D.C.1999) ("Where a division of this court fails to adhere to earlier controlling authority, we are required to follow the earlier decision rather than the later one.")

9. See *supra* note 2.

10. See *supra* note 3.

sion rejecting plain error absent a predicate ruling of trial court error.[11] If, on the other hand, the court were merely to assume misconduct but find it excusable, or to assume trial court error but find it neither plain nor harmful, there would be but one analysis with a dispositional holding. None of our colleague's examples, therefore, eliminates the requirement that a statement, to be part of the holding, must be "necessary for the disposition of the case." [12]

Finally, there can be no question that the *Koczak* court did not perceive a jurisdictional issue anterior to the UAA interpretive issue. Indeed, our colleague acknowledges that, if the *Koczak* court had recognized the Home Rule Act (and thus the full Title 11) implications of its decision, the court would have "thought it quite important," *post* at 877 n. 1, (we would say "felt compelled") to reconcile the UAA and general rule theories, which *Koczak*—by ignoring that larger analytic framework—did not correctly do. Moreover, if the court had attempted to do so, *Koczak* itself presumably would have come out differently, in favor of finality and appealability, as *Carter*'s interpretation of the general rule under Title 11 makes clear (a result the court reaffirms today).[13] But suppose instead that the *Koczak* court, in addition to its UAA interpretation, had identified the jurisdictional issue and expressly held in the alternative—without more analysis or citation than it offered—that the general rule of finality left the order to compel arbitration as a non-appealable interlocutory order. In that situation *Carter*, and thus this division, would have been bound to follow *Koczak*'s double holding [14] (absent intervening action by the en banc court). Fortunately, however, *Koczak* did not announce a double holding, but it would have amounted to that if the *Carter* court had taken an expansive view of *Koczak* and elevated its "consistent with" language to a necessary, independent component of the holding.

The sequence from *Koczak* to *Carter* to this case reveals the importance of making sure that statements claimed to be part of a holding that binds future divisions are assuredly necessary to resolution of the case in which they are made. This is especially true when, as in *Koczak*, the analysis underlying the "consistent with" statement not only is scanty but also omits attention to the threshold enabling legislation (Title 11), as limited by the Home Rule Act.[15] The correct analysis of Title 11, when applied to the precise issue here,[16] would have undermined the very holding that the *Koczak* opinion announced.[17] We

11. Contrary to our colleague's observation, see *post* at 52, *Koczak*'s reference to the general rule is not sequential in the sense used in his examples: building upon an essential predicate ruling.

12. *Lee*, 668 A.2d at 828.

13. In *Carter v. Cathedral Ave. Coop., Inc.*, 658 A.2d 1047 (D.C.1995), this court held that under Title 11 of the D.C.Code, "when a party sues only to compel arbitration, 'an order granting or denying relief' is an appealable final order." *Id.* at 1050 n. 5 (quoting *Brandon v. Hines*, 439 A.2d 496, 505 (D.C.1981)). Issued five days after *Koczak*, the *Brandon* decision construed and applied the District's general rule of finality under Title 11 by reference to the policy underlying the "federal appellate jurisdictional statute." *Brandon*, 439 A.2d at 509.

14. See *supra* note 3.

15. The Home Rule Act prohibits the Council of the District of Columbia from legislating "with respect to any provision of Title 11" of the D.C.Code. D.C.Code § 1–206.02(a)(4) (2012 Repl.).

16. See *supra* note 5.

17. After *Koczak*, this court held in *Carter*, see *supra* note 13, that under Title 11 of the D.C.Code an order to compel arbitration is an appealable final order when a party has sued only to compel arbitration. Therefore, had

therefore cannot believe that this court properly could, let alone would, take the mere "consistent with" language in *Koczak*, untested by Title 11 analysis in light of the Home Rule Act, and bootstrap that ambiguous observation into the holding—into a "necessary" component of the court's resolution.

We are concerned that, if this court were to take seriously our colleague's belief that *Koczak*'s "consistent with" language "may well" be part of the holding when "correctly interpreted," *post* at 879, we would spread wide the concept of a "holding" too far. There would be a danger that prior decisions can dictate the results of future ones (absent later en banc review) when in fairness to the instant cause the prior decision should be understood for no more than its outcome, based on explicit reasons applied with clarity to described facts. The prior decision should not be construed more broadly by reference to nonessential, often ambiguous, sentences that can trigger hours of discussion as to whether the earlier decision was a binding holding or dictum.

Our colleague's ruminations about the impact, if any, of *Koczak* are, without doubt, interesting. They discuss important questions that, in a proper case, would plumb the depths of what a holding is under *M.A.P. v. Ryan*, and whether a later court's interpretation of that holding is binding authority when the issue comes to the court a third time. In our judgment, however, this is not a close case that justifies the extensive, including speculative, analysis our colleague offers. We therefore decline to join that analysis, in order to help assure that the court will not send an improvident signal expanding the reach of this court's *M.A.P.* decision.

McLEESE, Associate Judge, concurring:

I write separately to explain why I conclude that we are bound by the holding of *Carter v. Cathedral Ave. Coop., Inc.*, 658 A.2d 1047 (D.C.1995), that orders compelling arbitration in independent proceedings are final and appealable under the general principles of finality reflected in D.C.Code § 11–721(a)(1). I find that issue somewhat complicated, because this court has previously stated that orders compelling arbitration in independent proceedings are non-final and non-appealable under general principles of finality. *See American Fed'n of Gov't Emps., AFL–CIO v. Koczak*, 439 A.2d 478, 480 (D.C.1981). For several reasons, however, I conclude that we are bound by the holding of *Carter* rather than the statement in *Koczak*.

In *Koczak*, the court was interpreting the District of Columbia Uniform Arbitration Act of 1977 ("UAA"), D.C. Law 1–117, 23 D.C. Reg. 9690 (Apr. 26, 1977), *repealed by* Arbitration Act of 2007, D.C. Law 17–111, 55 D.C.Reg. 1847, 1863 (Feb. 29, 2008). The UAA explicitly listed certain types of arbitration-related orders as final, but did not include orders compelling arbitration. *Koczak*, 439 A.2d at 480. Relying heavily on that omission, this court held that such orders were non-final and non-appealable. *Id.* Although *Koczak's* holding rested in substantial part on the specific wording of the UAA, *Koczak* also stated that its interpretation of the UAA was consistent with this court's general approach to determining the finality of or-

Koczak construed and applied Title 11, the court's enabling legislation, to the order to compel arbitration *before* interpreting the UAA, this court presumably would have recognized that Title 11 authorized the appeal, and thus that under the Home Rule Act, see *supra* note 15, the UAA would have to be construed accordingly, not to the contrary under *expressio unius* analysis.

ders. *Id.* ("Furthermore, the Council's omission of an order to compel arbitration from the list of orders deemed to be final set forth in [the UAA] is consistent with the 'general rule that . . . an order is final for purposes of appeal . . . [when] it disposes of the entire case on the merits.' ") (quoting *Crown Oil & Wax Co. of Del. v. Safeco Ins. Co. of Am.*, 429 A.2d 1376, 1379 (D.C.1981) (internal quotation altered by *Koczak*).)

Koczak 's conclusion that orders compelling arbitration are non-final under general principles of finality was not a stray comment. Rather, the court cited authority in support of its conclusion, and relied on that conclusion as part of the legal support for its ultimate determination that the Council intended such orders to be non-final under the UAA. *See Koczak*, 439 A.2d at 480. Moreover, it was appropriate for the court in *Koczak* to rely on general principles of finality when interpreting the UAA, because a well-settled canon of construction favors interpreting statutes so as to be consistent with, rather than contrary to, general background principles of law. *See, e.g., Rehberg v. Paulk*, —— U.S. ——, 132 S.Ct. 1497, 1502, 182 L.Ed.2d 593 (2012) ("statute[s] must be read in harmony with general principles of tort immunities and defenses rather than in derogation of them") (internal quotation marks omitted).

There is substantial authority for the principle that the legal reasoning upon which a court relies in support of a holding is itself also a holding. *See, e.g., Seminole Tribe v. Florida*, 517 U.S. 44, 67, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) ("As a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law.") (quoting *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 668, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989) (Kennedy, J., concurring and dissenting)); *United States v. Meyers*, 200 F.3d 715, 720 (10th Cir.2000) ("precedent . . . includes not only the very narrow holdings of those prior cases, but also the reasoning underlying those holdings, particularly when such reasoning articulates a point of law"); *see generally, e.g.*, Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 Stan. L. Rev. 953, 1065 (2005) ("A holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment."). Under such an approach, *Koczak* 's conclusion about general principles of finality would properly be viewed as a holding.

On the other hand, this court has often said that reasoning "not necessary for the disposition of the case . . . constitute[s] 'dictum' not binding on us. . . ." *Lee v. United States*, 668 A.2d 822, 827–28 (D.C. 1995); *see also, e.g., Burgess v. Square 3324 Hampshire Gardens Apts., Inc.*, 691 A.2d 1153, 1155 (D.C.1997). The statement at issue in *Koczak* is not explicitly labeled as essential to the court's reasoning, and if I were forced to speculate I would guess that the court in *Koczak* would have reached the same conclusion even leaving aside general principles of finality.[1]

If only rulings essential to the outcome can constitute holdings, it is unclear at best whether the statement at issue in *Koczak* would properly be viewed as a holding. In my view, however, it is not

1. If the court in *Koczak* had in mind possible Home Rule Act issues, see *ante* at 864, however, then the court could have thought it quite important that the opinion include an explicit statement that the court's interpretation of the UAA was consistent with its understanding of general principles of finality.

accurate to say that only rulings essential to the outcome can constitute holdings. Several lines of authority illustrate the point.

First, the Supreme Court has held that where a judgment rests on two independent and alternative rationales, both rationales are holdings rather than dicta, even though strictly speaking neither rationale would be essential to the resolution of the case. *See, e.g., Woods v. Interstate Realty Co.*, 337 U.S. 535, 537, 69 S.Ct. 1235, 93 L.Ed. 1524 (1949) ("[W]here a decision rests on two or more grounds, none can be relegated to the category of obiter dictum.") (citing cases); *Richmond Screw Anchor Co. v. United States*, 275 U.S. 331, 340, 48 S.Ct. 194, 72 L.Ed. 303 (1928) ("It does not make a reason given for a conclusion in a case obiter dictum, because it is only one of two reasons for the same conclusion.").

Second, the Supreme Court has also held that the conclusion that an official's conduct was unlawful constitutes a holding even if the court goes on to rule that the official was entitled to qualified immunity because the conduct at issue did not violate clearly established law. *See Camreta v. Greene*, — U.S. ——, 131 S.Ct. 2020, 2032, 179 L.Ed.2d 1118 (2011) (where public official asserts qualified-immunity defense, court's holding that challenged conduct violates Constitution is "[n]o mere dictum," but rather "creates law that governs the official's behavior," even where court also determines that official is entitled to immunity because unconstitutionality was not clearly established). Under a strict principle of necessity, the rule would be otherwise, because the court's ruling on qualified immunity renders the antecedent ruling that the conduct was illegal unnecessary to the outcome of the case.

Third, this court has written many opinions concluding that an error occurred but going on to conclude that the error did not warrant reversal. Under a strict principle of necessity, the conclusions of error in such cases are non-binding dicta, rather than holdings, because they are unnecessary to the disposition of the appeal in light of the conclusion that any error did not warrant reversal. But this court consistently treats such rulings as holdings. *See, e.g., Thomas v. United States*, 914 A.2d 1 (D.C.2006) (in criminal case, admission of drug-analysis report in absence of testimony from chemist who prepared report violated Confrontation Clause; error did not warrant reversal under plain-error standard); *Little v. United States*, 989 A.2d 1096, 1105 (D.C.2010) ("this case is similar to *Thomas* where we held that the Confrontation Clause error of admitting a DEA chemist's report without live testimony from the chemist who wrote it did not seriously affect the fairness, integrity or public reputation of the judicial proceedings. . . ."); *see also, e.g.*, Michael C. Dorf, *Dicta and Article III*, 142 U. Pa. L.Rev. 1997, 2045–46 (1994) (noting that, if necessity is required for rulings to be holdings, ruling that error occurred is dicta if court finds error harmless; arguing that under proper analysis such rulings should be viewed as holdings).

As the foregoing suggests, I agree with the observation that, "remarkably—considering how fundamental the distinction is to a system of decision by precedent—the distinction [between holding and dictum] is fuzzy not only at the level of application but at the conceptual level." Richard A. Posner, *The Federal Courts: Crisis and Reform* 252–53 (1985); *see also, e.g., Metropolitan Hosp. v. United States Dep't of Health & Human Servs.*, 712 F.3d 248, 258 (6th Cir.2013) ("[T]he line between holding and *dictum* is not always clear. . . .") (internal quotation marks omitted). I thus find it a difficult question whether the statement at issue in *Koczak* is better viewed as a holding or as dicta. Fortu-

nately, however, I do not find it necessary to definitively resolve that question. Either way, in my view, this court should properly follow the square holding of *Carter*.

If the court in *Carter* had simply overlooked *Koczak*, and if the general finality discussion in *Koczak* were correctly viewed as a holding, then we would be bound in this case to follow *Koczak* rather than *Carter*, because *Koczak* was the earlier decision. *See Thomas v. United States*, 731 A.2d 415, 420 n. 6 (D.C.1999) (holding that, where division of court is faced with two conflicting prior decisions of the court, "we are required to follow the earlier decision rather than the later one"). *Carter* did not overlook *Koczak*, however.

The contract at issue in *Carter* was entered into before the passage of the UAA, and the *Carter* court therefore was applying general principles of finality under D.C.Code § 11–721(a)(1) (1989), rather than the UAA, which was at issue in *Koczak*. 658 A.2d at 1050 n. 5. *Carter* quoted *Koczak* for the proposition that "[t]he provisions of the [UAA] are applicable only to agreements to arbitrate which were made subsequent to the adoption of the [UAA]," but *Carter* did not explicitly address the broader finality discussion in *Koczak*. *Id.* at 1051 n. 5. Rather, apparently treating *Koczak* as applicable only to contracts governed by the UAA, *Carter* analyzed the finality under Title 11 of orders to compel arbitration in independent proceedings as a question of first impression in this jurisdiction. *Id.* Adopting the general approach employed by federal courts, *Carter* concluded that such orders are final.

Id. ("[In an independent proceeding] in the federal courts . . . an order granting or denying relief is an appealable final decision. . . . Therefore, since this court finds persuasive the interpretation of the federal courts in determining their appellate jurisdiction, the order in the present case is a final order subject to appellate review.") (internal quotation marks and citation omitted).

For reasons I have already explained, I think that *Koczak*, correctly interpreted, may well have held that orders compelling arbitration in independent proceedings are non-final and non-appealable under general principles of finality. It thus is not clear to me that *Carter* correctly interpreted *Koczak*. That poses the question whether I am bound to follow *Koczak*, as the earlier decision, or instead am bound to follow *Carter*'s interpretation *of Koczak*, even if I would conclude that *Carter*'s interpretation of *Koczak* was incorrect and that *Carter* actually conflicts with *Koczak*. Framed more generally, the question is how a later court should proceed if it believes that there is a conflict between an initial binding precedent and a subsequent decision that interpreted the initial precedent.

I do not understand this court to have decided that general question. As previously noted, this Court held in *Thomas* that where a division of the court confronts two conflicting prior decisions of the court, the court is obliged to follow the earlier decision. 731 A.2d at 420 n. 6. But *Thomas*, and most of our cases applying *Thomas*, involved situations where the subsequent conflicting decision had not explicitly discussed the relevant part of the initial precedent. *See id.* ("there is no indication in *Townsend* [*v. United States*, 512 A.2d 994 (D.C.1986)] that *Proctor* [*v. United States*, 404 F.2d 819 (D.C.Cir.1986)] and *Brewster* [*v. United States*, 271 A.2d 409 (D.C.1970)] were brought to the attention of the court"); *see also, e.g., Wagley v. Evans*, 971 A.2d 205, 212 (D.C.2009) (following earlier line of cases, rather than *Hackes v. Hackes*, 446 A.2d 396 (D.C. 1982), and *Li v. Lee*, 817 A.2d 841 (D.C. 2003); neither *Hackes* nor *Li* cited to relevant holdings of earlier line of cases).

Where a division of this court has followed an initial precedent rather than a subsequent decision interpreting that precedent, the division either has not acknowledged that the subsequent decision attempted to distinguish the initial precedent, *see Taylor v. First Am. Title Co.*, 477 A.2d 227, 229–30 (D.C.1984), or has noted that the subsequent division's interpretation was dicta, *see Ellis v. United States*, 834 A.2d 858, 858–59 (D.C.2003) (per curiam). I thus view it as an open question how the court should proceed when faced with a perceived conflict between the holding of an earlier decision and the holding of a later decision that has expressly addressed the earlier decision.[2] Whatever the answer to that question may be in other circumstances, I conclude that in the circumstances of this case the proper course is to follow the square holding of *Carter* rather than the statement in *Koczak*. I reach that conclusion for two principal reasons.

First, as I have already noted, it is not in my view an easy question whether the statement in *Koczak* was a holding. It thus was not unreasonable for the division in *Carter* to conclude that *Koczak* did not preclude *Carter* from holding that an order compelling arbitration in an independent proceeding is final and appealable under general principles of finality law.

Second, the conclusion reached in *Carter* seems to me clearly correct as an original matter. We have held that an order is final "if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered." *In re Estate of Chuong*, 623 A.2d 1154, 1157 (D.C.1993) (en banc) (internal quotation marks omitted). Once the trial court issues an order compelling arbitration in an independent proceeding, it is natural to conclude that nothing remains to be done, because there are no other pending claims or requests for relief. *Cf. Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 86–89, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (holding that order compelling arbitration and dismissing other claims was final because it "plainly disposed of the entire case on the merits and left no part of it pending before the court"). Moreover, the holding of *Carter* maintains uniformity between the law of this jurisdiction and federal law, which is what was likely intended by Congress when it enacted Title 11 in 1970. District of Columbia Court Reorganization Act of 1970, Pub.L. No. 91–358, 84 Stat. 475, 480–81. At that time, federal courts consistently treated orders to compel arbitration in independent proceedings as final under 28 U.S.C. § 1291 (1970), the federal analogue to D.C.Code § 11–721(a)(1).[3] Pre-

2. Cases from other jurisdictions appear to take differing approaches to the question of how a court should proceed if it believes that there is a conflict between an initial binding precedent and a subsequent decision that interpreted the initial precedent. *Compare, e.g., Walton v. Bisco Indus., Inc.*, 119 F.3d 368, 371 n. 4 (5th Cir.1997) ("To the extent that Walton believes that we have construed [a prior Supreme Court opinion] incorrectly, we note that absent an intervening Supreme Court decision or a decision by this court sitting en banc, we are bound by a prior panel's interpretation."), *and Grabowski v. Jackson Cty. Pub. Defenders Office*, 47 F.3d 1386, 1400 n. 4 (5th Cir.1995) (Smith, J., concurring in part and dissenting in part) ("[A] panel cannot overrule, or declare void, a prior panel's *interpretation* of earlier circuit caselaw, even if it appears flawed."), *vacated on reh'g en banc*, 79 F.3d 478 (1996) (per curiam), *with, e.g., Walker v. Mortham*, 158 F.3d 1177, 1187–89 & n. 21 (11th Cir.1998) (declining to follow subsequent decision because it had misinterpreted initial decision).

3. *See, e.g., Farr & Co. v. Cia. Intercontinental De Navegacion De Cuba, S. A.*, 243 F.2d 342, 344–45 (2d Cir.1957) (holding that order compelling arbitration in independent proceeding is final under 28 U.S.C. § 1291); *Continental Grain Co. v. Dant & Russell Inc.*, 118 F.2d 967, 968 (9th Cir.1941) (same); *cf. Goodall–Sanford, Inc. v. United Textile Work-*

sumably, Congress would have intended the phrase "final orders" in § 11–721(a)(1) to similarly encompass orders compelling arbitration in independent proceedings. *Cf. Corley v. United States*, 416 A.2d 713, 714 (D.C.1980) ("we look to the interpretation of the federal statute for guidance in determining the construction of our own statute since it was based on the federal provision"). Thus, I conclude that *Koczak* erred in stating that its interpretation of the UAA was consistent with general principles of finality. In my view, that conclusion weighs in favor of following *Carter*'s holding rather than the statement in *Koczak*.

For these reasons, I believe that the proper course in this case is to follow *Carter* rather than *Koczak*.

In his concurring opinion, Judge Ferren concludes that the passage at issue in *Koczak* is clearly not a holding. I disagree with the reasoning in Judge Ferren's concurrence in four principal respects.

First, stressing the importance of being able to "advance the law," Judge Ferren's concurrence asserts that an earlier decision of this court should not be viewed as binding on later divisions unless that earlier decision "unambiguously stands in the way." *Ante* at 873; see also *ante* at 872–73 (statement in *Koczak* not holding because not "clearly" necessary). Judge Ferren's concurrence provides no authority, and I am not aware of any authority, for these assertions, under which ambiguity or lack of clarity about whether an earlier decision is a binding holding must be resolved in the negative. Such a "clear statement" rule would in my view be profoundly destabilizing to our law, given the frequency with which reasonable disputes arise about the line between dicta and holding. *See generally, e.g., United States v. Johnson*, 256 F.3d 895, 914–15 (9th Cir. 2001) (en banc) (Kozinski, J. concurring) ("[J]udges often disagree about what is and is not necessary to the resolution of a case.... If later panels could dismiss the work product of earlier panels quite so easily, much of our circuit law would be put in doubt. No longer would the question be whether an issue was resolved by an earlier panel. Rather, lawyers advising their clients would have to guess whether a later panel will recognize a ruling that is directly on point as also having been necessary. We decline to introduce such uncertainty into the law of our circuit.").

Second, also contrary to the implication in Judge Ferren's concurrence, *ante* at 873–74 & n. 5, in *Koczak* the "judicial mind [was] applied to and passed upon the precise question" whether orders compelling arbitration are final and appealable under general principles of finality. The court's discussion of that question was accompanied by citations to authority and stated an unambiguous and unequivocal conclusion. 439 A.2d at 480. The discussion also was comparable in length to the discussion of the court's other reasons for reaching its ultimate conclusion about the proper interpretation of the UAA. *Id.* at 480–81. The passage at issue thus is not a careless aside.

Third, Judge Ferren's concurrence is in my view internally inconsistent. On one hand, it asserts that a legal conclusion is a holding only if the legal conclusion is "necessary for the disposition of the case." *Ante* at 875. On the other hand, Judge Ferren acknowledges that subsequent divi-

ers of Am., A.F.L. Local 1802, *353 U.S. 550, 551–52, 77 S.Ct. 920, 1 L.Ed.2d 1031 (1957) ("Arbitration is not merely a step in judicial enforcement of a claim nor auxiliary to a main proceeding, but the full relief sought. A decree under [the Labor Management Relations Act] ordering enforcement of an arbitration provision in a collective bargaining agreement is, therefore, a 'final decision' within the meaning of 28 U.S.C. § 1291.").*

sions of the court are bound by alternative holdings, findings of error that do not warrant reversal, and determinations of official misconduct that do not provide a basis for liability because of official immunity. *Ante* at 874–75. As I have already noted, however, such rulings are not necessary for the disposition of the case. Judge Ferren's concurrence thus does not present a consistent theory of *stare decisis*. Judge Ferren's concurrence's only effort to explain this discrepancy is to describe the counter-examples as "sequential, fully developed, and thus necessary" rulings. *Ante* at 874. But Judge Ferren's concurrence does not-and could not-explain why a ruling that is sequential and fully developed is therefore necessary in the sense that Judge Ferren's concurrence is elsewhere using the word, i.e., "necessary for the disposition of the case." [4] Moreover, to the extent Judge Ferren's concurrence suggests that a legal conclusion need not be treated as a holding if a later division of the court is of the view that the legal conclusion is not "fully developed," such an approach seems even more destabilizing to our law than a "clear statement" requirement would be. Finally, if all that is required for a legal conclusion to be a holding is that the conclusion be "sequential" and adequately "developed," the passage at issue in *Koczak* would seemingly qualify.

Fourth, I do not agree with the suggestion that *Koczak*'s analysis is undermined by a failure to address Title 11 and the Home Rule Act. *Ante* at 875–76. As for Title 11, the court in *Koczak* cites and expressly discusses the pertinent provision of Title 11, D.C.Code § 11–721(a)(1). 439 A.2d at 479–80. That provision, in any event, simply uses the word "final," and thus adds nothing specific to the discussion in *Koczak* of general principles of finality. As for the Home Rule Act, the court's failure to address the issue in *Koczak* is entirely understandable: given the court's conclusion that orders compelling arbitration are non-final under both the UAA and general principles of finality embodied in Title 11, the court had no need to discuss the possible Home Rule Act issue that would have arisen if those provisions had pointed in opposite directions.[5]

4. Without citation to authority, Judge Ferren's concurrence states that "[o]rdinarily," a court would not either find qualified immunity without first finding official misconduct or find lack of prejudice without first finding error. *Ante* at 874–75. To the contrary, courts—including this one—often assume misconduct or error and affirm on the ground of immunity or lack of prejudice. *See, e.g., Camreta v. Greene*, —— U.S. ——, 131 S.Ct. 2020, 2031–32, 179 L.Ed.2d 1118 (2011) (courts have discretion whether to decide only issue of qualified immunity or whether instead to first decide whether official violated constitutional right and then consider whether official was protected by qualified immunity); *Harrison v. United States*, 76 A.3d 826, 842–43 n. 20, 2013 WL 4555711, *10 n. 20 (D.C. Aug. 29, 2013) (assuming error and holding that any error was harmless).

5. I am puzzled by the statement in Judge Ferren's concurrence that *Koczak* "presumably would have come out differently" if the court had considered the Home Rule Act when attempting to reconcile its analysis under the UAA with its analysis under general principles of finality. *Ante* at 875. In fact, the court in *Koczak* found no discrepancy to reconcile, because it concluded that its interpretation of the UAA was "consistent with" the court's understanding of general principles of finality. 439 A.2d at 480. There thus is no reason to suppose that explicit consideration of the Home Rule Act would have had any effect on the outcome of *Koczak*.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA,	**No. 2020 CA 004740 B**
Plaintiffs,	**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL ARDITRATION**
v.	
WILLIE E. DENNIS,	
Defendant.	

THIS MATTER comes before the Court upon Plaintiffs' Motion to Compel Arbitration, for the reasons set forth in the corresponding Memorandum of Points and Authorities, and good cause having been shown, it is on this ____ day of November, 2020, hereby ORDERED that Plaintiffs' Motion to Compel Arbitration is GRANTED and the parties are hereby COMPELLED pursuant to Section 16-4407(a)(2) of the D.C. Code to submit any disputes between them to arbitration to be held in the District of Columbia, in accordance with the terms of the K&L Gates Partnership Agreement.

JUDGE_____
SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA

Superior Court of the District of Columbia
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
Telephone: (202) 879-1133 Website: www.dccourts.gov

K&L GATES LLP, et al.
Plaintiff

vs.

Case Number **2020 CA 004740 B**

WILLIE E. DENNIS
Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Guy G. Brenner
Name of Plaintiff's Attorney

1001 Pennsylvania Ave, N.W., Suite 600 South
Address
Washington, D.C. 20001

202-741-5226
Telephone

Clerk of the Court

By _____
Deputy Clerk

Date **11/18/2020**

如需翻译,请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bài dịch, hãy gọi (202) 879-4828
번역을 원하시면, (202) 879-4828 로 전화주십시오 የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, *DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.*

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
Vea al dorso la traducción al español

TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
DIVISIÓN CIVIL
Sección de Acciones Civiles
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

K&L GATES LLP, et al.
Demandante

contra

Número de Caso: **2020 CA 004740 B**

WILLIE E. DENNIS
Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le require entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le require presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

Guy G. Brenner
Nombre del abogado del Demandante

1001 Pennsylvania Ave, N.W., Suite 600 South
Dirección
Washington, D.C. 20001

202-741-5226
Teléfono

SECRETARIO DEL TRIBUNAL

Por: _____
Subsecretario

Fecha **11/18/2020**

如需翻译,请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bài dịch, hãy gọi (202) 879-4828
(202) 879-4828 የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE OPONERSE A ESTA ACCIÓN, *NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO*.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedirayuda al respecto.

Vea al dorso el original en inglés
See reverse side for English original

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

K&L GATES LLP, DAVID TANG, JAMES SEGERDAHL, JEFFREY MALETTA, MICHAEL CACCESE, ANNETTE BECKER, PALLAVI WAHI, JOHN BICKS, and CHARLES TEA,

vs

WILLIE E. DENNIS

Case Number: **2020 CA 004740 B**

Date: 11/18/2020

☐ One of the defendants is being sued in their official capacity.

Name: *(Please Print)* GUY G. BRENNER	Relationship to Lawsuit
Firm Name: PROSKAUER ROSE LLP	☒ Attorney for Plaintiff
Telephone No.: 202 - 741 - 5226 Six digit Unified Bar No.: 491964	☐ Self (Pro Se)
	☐ Other:

TYPE OF CASE: ☒ Non-Jury ☐ 6 Person Jury ☐ 12 Person Jury

Demand: $ Other: ORDER TO COMPEL ARBITRATION, ATTORNEYS' FEES & COSTS

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: Judge: Calendar #:

Case No.: Judge: Calendar#:

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS

☐ 01 Breach of Contract
☐ 02 Breach of Warranty
☐ 06 Negotiable Instrument
☐ 07 Personal Property
☐ 13 Employment Discrimination
☐ 15 Special Education Fees

COLLECTION CASES

☐ 14 Under $25,000 Pltf. Grants Consent
☐ 17 OVER $25,000 Pltf. Grants Consent
☐ 27 Insurance/Subrogation Over $25,000 Pltf. Grants Consent
☐ 07 Insurance/Subrogation Under $25,000 Pltf. Grants Consent
☐ 28 Motion to Confirm Arbitration Award (Collection Cases Only)
☐ 16 Under $25,000 Consent Denied
☐ 18 OVER $25,000 Consent Denied
☐ 26 Insurance/Subrogation Over $25,000 Consent Denied
☐ 34 Insurance/Subrogation Under $25,000 Consent Denied

B. PROPERTY TORTS

☐ 01 Automobile
☐ 02 Conversion
☐ 07 Shoplifting, D.C. Code § 27-102 (a)
☐ 03 Destruction of Private Property
☐ 04 Property Damage
☐ 05 Trespass

C. PERSONAL TORTS

☐ 01 Abuse of Process
☐ 02 Alienation of Affection
☐ 03 Assault and Battery
☐ 04 Automobile- Personal Injury
☐ 05 Deceit (Misrepresentation)
☐ 06 False Accusation
☐ 07 False Arrest
☐ 08 Fraud
☐ 10 Invasion of Privacy
☐ 11 Libel and Slander
☐ 12 Malicious Interference
☐ 13 Malicious Prosecution
☐ 14 Malpractice Legal
☐ 15 Malpractice Medical (Including Wrongful Death)
☐ 16 Negligence- (Not Automobile, Not Malpractice)
☐ 17 Personal Injury- (Not Automobile, Not Malpractice)
☐ 18 Wrongful Death (Not Malpractice)
☐ 19 Wrongful Eviction
☐ 20 Friendly Suit
☐ 21 Asbestos
☐ 22 Toxic/Mass Torts
☐ 23 Tobacco
☐ 24 Lead Paint

SEE REVERSE SIDE AND CHECK HERE IF USED

CV-496/June 2015

Information Sheet, Continued

C. OTHERS

- ☐ 01 Accounting
- ☐ 02 Att. Before Judgment
- ☐ 05 Ejectment
- ☐ 09 Special Writ/Warrants (DC Code § 11-941)
- ☐ 10 Traffic Adjudication
- ☐ 11 Writ of Replevin
- ☐ 12 Enforce Mechanics Lien
- ☐ 16 Declaratory Judgment
- ☐ 17 Merit Personnel Act (OEA) (D.C. Code Title 1, Chapter 6)
- ☐ 18 Product Liability
- ☒ 24 Application to Compel Arbitration (DC Code § 16-4405)
- ☐ 29 Merit Personnel Act (OHR)
- ☐ 31 Housing Code Regulations
- ☐ 32 Qui Tam
- ☐ 33 Whistleblower

II.

- ☐ 03 Change of Name
- ☐ 06 Foreign Judgment/Domestic
- ☐ 08 Foreign Judgment/International
- ☐ 13 Correction of Birth Certificate
- ☐ 14 Correction of Marriage Certificate
- ☐ 15 Libel of Information
- ☐ 19 Enter Administrative Order as Judgment [D.C. Code § 2-1802.03 (h) or 32-151 9 (a)]
- ☐ 20 Master Meter (D.C. Code § 42-3301, et seq.)
- ☐ 21 Petition for Subpoena [Rule 28-I (b)]
- ☐ 22 Release Mechanics Lien
- ☐ 23 Rule 27(a)(1) (Perpetuate Testimony)
- ☐ 24 Petition for Structured Settlement
- ☐ 25 Petition for Liquidation
- ☐ 26 Petition for Civil Asset Forfeiture (Vehicle)
- ☐ 27 Petition for Civil Asset Forfeiture (Currency)
- ☐ 28 Petition for Civil Asset Forfeiture (Other)

D. REAL PROPERTY

- ☐ 09 Real Property-Real Estate
- ☐ 12 Specific Performance
- ☐ 04 Condemnation (Eminent Domain)
- ☐ 10 Mortgage Foreclosure/Judicial Sale
- ☐ 11 Petition for Civil Asset Forfeiture (RP)
- ☐ 08 Quiet Title
- ☐ 25 Liens: Tax / Water Consent Granted
- ☐ 30 Liens: Tax / Water Consent Denied
- ☐ 31 Tax Lien Bid Off Certificate Consent Granted

/s/ Guy G. Brenner

Attorney's Signature

11/18/2020

Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

K&L GATES LLP et al
Vs.
WILLIE E. DENNIS

C.A. No. 2020 CA 004740 B

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-I, it is hereby **ORDERED** as follows:

(1) This case is assigned to the judge and calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of service on each defendant of copies of (a) the summons, (b) the complaint, and (c) this Initial Order and Addendum. The court will dismiss the claims against any defendant for whom such proof of service has not been filed by this deadline, unless the court extended the time for service under Rule 4(m).

(3) Within 21 days of service (unless otherwise provided in Rule 12), each defendant must respond to the complaint by filing an answer or other responsive pleading. The court may enter a default and a default judgment against any defendant who does not meet this deadline, unless the court extended the deadline under Rule 55(a).

(4) At the time stated below, all counsel and unrepresented parties shall participate in a remote hearing to establish a schedule and discuss the possibilities of settlement. Counsel shall discuss with their clients **before** the hearing whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this hearing.**

(5) If the date or time is inconvenient for any party or counsel, the Civil Actions Branch may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. To reschedule the hearing, a party or lawyer may call the Branch at (202) 879-1133. Any such request must be made at least seven business days before the scheduled date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Anita M. Josey-Herring

Case Assigned to: Judge FLORENCE Y PAN
Date: November 19, 2020
Initial Conference: **REMOTE HEARING - DO NOT COME TO COURTHOUSE**
SEE REMOTE HEARING INSTRUCTIONS ATTACHED TO INITIAL ORDER

9:30 am, Friday, February 19, 2021
Location: Courtroom 415
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

D.C. Code § 16-2821, which part of the Medical Malpractice Proceedings Act of 2006, provides, "[a]fter action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ('ISSC'"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC."

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at https://www:dccourts.gov/pa/. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. Unrepresented plaintiffs who elect not to eFile must either mail the form to the Multi-Door Dispute Resolution Office at, Suite 2900, 410 E Street, N.W., Washington, DC 20001, or deliver if in person if the Office is open for in-person visits.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following people are required by D.C. Code § 16-2824 to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code§ 16-2826. Any Plaintiff who is unrepresented may mail the form to the Civil Actions Branch at [address] or deliver it in person if the Branch is open for in-person visits. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Anita M. Josey-Herring

Civil Remote Hearing Instructions for Participants

The following instructions are for participants who are scheduled to have cases heard before a Civil Judge in a **Remote Courtroom**

Option1: (AUDIO ONLY/Dial-in by Phone):

Toll 1 (844) 992-4762 or (202) 860-2110, enter the Meeting ID from the attachment followed by #, press again to enter session.

- *Please call in no sooner than 5 minutes before your scheduled hearing time. Once you have joined the session, please place your phone on mute until directed otherwise. If you should happen to get disconnected from the call, please call back in using the phone number and access number provided and the courtroom clerk will mute your call until the appropriate time.*

If you select **Option 2** or **Option 3** use the Audio Alternative

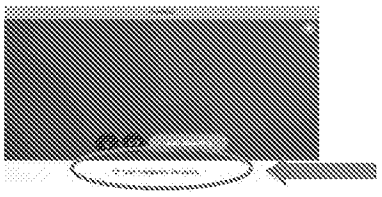
Option 2: (LAPTOP/ DESKTOP USERS 1):

Open Web Browser in Google Chrome and copy and paste following address from the next page:
https://dccourts.webex.com/meet/XXXXXXXXX

Option 3: (LAPTOP/ DESKTOP USERS 2):

Open Web Browser in Google Chrome and copy and paste following address
https://dccourts.webex.com Select **Join**, enter the Meeting ID from the next page

AUDIO ALTERNATIVE: Instead of automatically using **USE COMPUTER FOR AUDIO**, select **CALL-IN** and follow the **CALL-IN** prompt window. Use a cell phone or desk phone. You will be heard clearer if you **do not** place your phone on SPEAKER. It is very important that you enter the **ACCESS ID #** so that your audio is matched with your video.



Option 4: (Ipad/SMART PHONE/TABLET):

- Go to App Store, Download WebEx App (Cisco WebEx Meetings)
- Sign into the App with your Name and Email Address
- Select Join Meeting
- Enter address from the next page: https://dccourts.webex.com/meet/XXXXXXXXX
- Click join and make sure your microphone is muted and your video is unmuted (if you need to be
- seen). If you only need to speak and do not need to be seen, use the audio only option.
- When you are ready click "Join Meeting". If the host has not yet started the meeting, you will be placed in the lobby until the meeting begins.

For Technical Questions or issues Call: (202) 879-1928, Option #2

Superior Court of the District of Columbia
Public Access for Remote Court Hearings
(Effective August 24, 2020)

The current telephone numbers for all remote hearings are: 202-860-2110 (local) or 844-992-4726 (toll free). After dialing the number, enter the WebEx Meeting ID as shown below for the courtroom. Please click a WebEx Direct URL link below to join the hearing online.

Audio and video recording; taking pictures of remote hearings; and sharing the live or recorded remote hearing by rebroadcasting, live-streaming or otherwise are not allowed

Division	Courtroom	Types of Hearings Scheduled in Courtroom	Public Access via WebEx	
			WebEx Direct URL	WebEx Meeting ID
Auditor Master	206	Auditor Master Hearings	https://dccourts.webex.com/meet/ctbaudmaster	129 648 5606
Civil	100	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb100	129 846 4145
	205	Foreclosure Matters	https://dccourts.webex.com/meet/ctb205	129 814 7399
	212	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb212	129 440 9070
	214	Title 47 Tax Liens; and Foreclosure Hearings	https://dccourts.webex.com/meet/ctb214	129 942 2620
	219	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb219	129 315 2924
	221	Civil 1 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb221	129 493 5162
	318	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb318	129 801 7169
	320		https://dccourts.webex.com/meet/ctb320	129 226 9879

	400	Judge in Chambers Matters including Temporary Restraining Orders, Preliminary Injunctions and Name Changes	https://dccourts.webex.com/meet/ctb400	129 339 7379
	415	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb415	129 314 3475
	516		https://dccourts.webex.com/meet/ctb516	129 776 4396
	517		https://dccourts.webex.com/meet/ctb517	129 911 6415
	518		https://dccourts.webex.com/meet/ctb518	129 685 3445
	519		https://dccourts.webex.com/meet/ctb519	129 705 0412
	JM-4		https://dccourts.webex.com/meet/ctbjm4	129 797 7557
	A-47	Housing Conditions Matters	https://dccourts.webex.com/meet/ctba47	129 906 2065
	B-52	Debt Collection and Landlord and Tenant Trials	https://dccourts.webex.com/meet/ctbb52	129 793 4102
	B-53	Landlord and Tenant Matters including Lease Violation Hearings and Post Judgment Motions	https://dccourts.webex.com/meet/ctbb53	129 913 3728
	B-109	Landlord and Tenant Matters	https://dccourts.webex.com/meet/ctbb109	129 127 9276
	B-119	Small Claims Hearings and Trials	https://dccourts.webex.com/meet/ctbb119	129 230 4882