SUPREME COURT OF THE SATE OF NEW YORK
COUNTY OF NEW YORK

JESSICA DENSON Plaintiff, v. DONALD J. TRUMP FOR PRESIDENT, INC. Defendant.	Index No. 101616-17 **MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO VACATE ARBITRATION AWARD, STAY FURTHER ARBITRATION, AND FOR TEMPORARY RESTRAINING ORDER**

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I. SUMMARY

Plaintiff Jessica Denson ("Plaintiff" or "Ms. Denson") respectfully moves the Court to stay arbitration proceedings improperly brought and continued by defendant Donald J. Trump for President, Inc. (the "Campaign") and to vacate a partial award entered by Arbitrator Paul Kehoe (the "Arbitrator" or "Mr. Kehoe").[1] The arbitration should be stayed, and the partial award vacated, because the arbitration was in violation of the Decision and Order dated August 9, 2018 (the "Decision") denying the Campaign's motion to compel arbitration.

Ms. Denson, former Director of Hispanic Engagement for the Campaign, initiated this action for sex discrimination, harassment and other tortious conduct on November 13, 2017 (the "Action"). Ms. Denson's sex discrimination and harassment claims arise under the New York City Human Rights Law, NYC Admin. Code §8-101, et seq. ("NYCHRL"). In retaliation, on December 20, 2017 the Campaign initiated the Arbitration, claiming that Ms. Denson had breached a non-disparagement and nondisclosure agreement (the "NDA") by bringing this lawsuit. The NDA runs in favor of the Campaign and various "Trump Persons" and "Trump Companies." The Campaign failed to serve Ms. Denson with its Demand for Arbitration per New York Civil Practice Law and Rules ("CPLR") 7503, and Ms. Denson has not participated in the Arbitration.

Several months later, on March 19, 2018, the Campaign moved to stay the Action in favor of the Arbitration. In the August 9, 2018 Decision, the Court denied the Campaign's motion emphatically, holding that the "narrow arbitration clause" of the NDA did not require arbitration of any of Plaintiff's employment law claims, noting that "[i]t isn't even a close question." The Decision should have put an end to the Arbitration, since the Arbitration's sole

[1] The arbitration is captioned Donald J. Trump for President, Inc. v. Denson, American Arbitration Association ("AAA") Case No. 01-17-0007-6454 (the "Arbitration").

reason for being is retaliation against Ms. Denson's filing of this lawsuit, including her NYCHRL claim. Remarkably, however, the Campaign continued the Arbitration, and tried to do so without Plaintiff's knowledge.

Until now, Ms. Denson has acted entirely as a *pro se* litigant. She has not participated in the Arbitration, except for sending the Arbitrator a letter noting that the Court had decided that its subject matter is non-arbitrable. Nonetheless, the Campaign persisted in arbitration, even in Plaintiff's absence. As of the date of this motion, the Arbitrator has already issued a "partial award" finding the NDA to be "valid and enforceable" and assessing nearly $25,000 against Plaintiff (the "Partial Award"), and is in the process of issuing a final award (to which the Campaign's costs and attorneys' fees will be added) of even more.

The Partial Award should be vacated on at least three grounds. First, the Partial Award covers a non-arbitrable dispute per the Decision, exceeds Mr. Kehoe's authority, and is a product of corruption, fraud or misconduct in that Mr. Kehoe and the Campaign continued the Arbitration even after this Court found matters pertaining to Ms. Denson's sexual harassment claims not arbitrable. The Campaign should have stopped the arbitration as soon as this Court issued the Decision. Second, the Arbitrator's determination that the NDA is valid and enforceable exceeded his authority by deciding an issue that no party had raised (the Partial Award acknowledges Mr. Kehoe took up the issue sua sponte). Third, the Partial Award conflicts with strong public policies of the State of New York and City of New York because it sanctions use of the NDA as a cudgel to retaliate against and impose liability on a plaintiff for the sole reason that the plaintiff has pursued a lawsuit that includes a claim under NYCHRL, in direct violation of the anti-retaliation provisions contained in NYCHRL and the New York State Human Rights Law, Executive Law §290, et seq. ("NYSHRL").

Further, the Arbitration should be permanently stayed. The Court has already determined that the subject matter of the Arbitration is properly before this Court, and is not arbitrable. The Campaign should have stopped the Arbitration as soon as it saw the Court's decision. It did not, but further proceedings should be stayed.

Finally, given that the arbitrator appears to be on the verge of issuing a final award in the Arbitration, a temporary restraining order is appropriate, so as to allow all parties to fully brief and argue these issues.

II. STATEMENT OF FACTS

a. The Court Previously Held the Subject Matter of this Lawsuit Non-Arbitrable

Ms. Denson commenced the Action with a *pro se* complaint (the "Complaint"). Affirmation of David K. Bowles ("Bowles Aff.") Exhibit ("Ex.") A.[2] The Complaint, arising in part under NYCHRL, alleges that officers of the Campaign discriminated against Ms. Denson based on sex and imposed a hostile work environment on her, and asserts common law claims, including defamation. The officers include Camilo Jaime Sandoval (currently the Executive-in-Charge for the Office of Information and Technology for the Veterans Administration) and Jeffrey DeWit (currently the Chief Financial Officer of NASA).

Seeking to retaliate and impose damages on Ms. Denson for filing the Action, the Campaign responded by filing a Demand for Arbitration with the AAA. Bowles Aff. Ex. B (the "Demand"). It failed, however, to serve the Demand in the manner required by the CPLR (as if it were a summons). Affidavit of Jessica Denson ("Denson Aff.") at ¶ 3-4.

[2] Ms. Denson amended the Complaint via cross-motion dated May 17, 2018, which the Court granted in the Court's August 9, 2018 Decision. The amendments are not relevant to this motion.

The Demand shows on its face that the Action and Arbitration arise from the same subject matter – Ms. Denson's allegations of sex discrimination and harassment. The Demand plainly states that the Campaign is suing Ms. Denson in arbitration for bringing this lawsuit:

> Respondent breached confidentiality and non-disparagement obligations contained in a written agreement she executed during her employment with claimant Donald J. Trump for President, Inc. She breached her obligations by publishing certain confidential information and disparaging statements in connection with a lawsuit she filed against claimant in New York Supreme Court. Claimant is seeking compensatory damages, punitive damages; and all legal fees and costs incurred in connection with this arbitration.

Bowles Aff. At Ex. D (emphasis added). The Demand does not allege any other ground for the Campaign's suit against Ms. Denson other than her filing of the Action; accordingly, without Ms. Denson's complaint of sex discrimination and harassment, there would be no Arbitration.

On March 19, 2018, Defendant filed a motion to compel arbitration and stay the Action in favor of the Arbitration. Bowles Aff. at Ex. B. On August 9, 2018, the Court issued the Decision emphatically rejecting the Campaign's motion. Bowles Aff. Ex. C (the "Decision"). The Court noted that the NDA's arbitration clause at issue is narrow, permitting the Campaign to sue only over five specific kinds of conduct by Plaintiff, and cannot preclude her claims of sex discrimination and harassment prohibited by NYCHRL and other common law claims relating to her employment. Decision at 2-3.[3] As the Court noted, the arbitration clause "*does not* require arbitration for any 'dispute between the parties' or even 'any dispute arising out of plaintiff's employment.'" Id. at 3.

The Court concluded, "[t]here is simply no way to construe this arbitration clause in this agreement to prevent plaintiff from pursing harassment claims in court . . . The clause cannot be

[3] The "five prohibited acts" under the agreement were "no disclosure of confidential information, no disparagement, no competitive services, no competitive solicitation and no competitive intellectual property claims." Id. at 3.

interpreted to apply to plaintiff's *affirmative* claims arising out of her employment." Decision at 3-4 (emphasis in original). The Court further concluded that the arbitrator did not, in this matter, get to decide arbitrability, stating:

> It isn't even a close question. The narrow arbitration clause, which only applies to the narrow agreement, simply does not cover the claims asserted in this case. Defendant's behavior, which is the subject of this litigation, is not subject to arbitration; only plaintiff's behavior as it relates to those five categories can be arbitrated.

Decision at 4. The Court thereupon denied Campaign's motion to compel arbitration. Accordingly, Ms. Denson believed, reasonably enough, that her case – including any claim that she somehow did something wrong just by filing it – would continue in this Court.

b. Despite the Court's Order, the Campaign Continues the Arbitration Regarding the Subject Matter of This Lawsuit

Although the Court indisputably ruled that Ms. Denson's employment claims are not arbitrable and could be brought in the Action, the Campaign continued the Arbitration without Ms. Denson's participation. It did so even though the Arbitration is part and parcel of the Action and its subject matter, since the Arbitration seeks to do nothing more than impose liability on Ms. Denson for raising the subject matter covered by the Action, including sex discrimination and harassment.

In the meantime, Ms. Denson – still *pro se* – was trusting that she would not be compelled to arbitrate, and that the Court would allow her to continue in open court, a belief the Decision vindicated. Denson Aff. at ¶ 7. Accordingly, she – still acting *pro se* – continued to refuse to participate in the Arbitration. Denson Aff. at ¶ 7. At the same time, remarkably, but not surprisingly, it appears that the Campaign did its best to keep Ms. Denson in the dark about its continuation of the Arbitration. A document obtained from the Arbitration, dated August 20, 2018, indicates that Mr. Kehoe had "denied . . . an application by Claimant [the Campaign] that its written application for an award not be provided to Respondent [Ms. Denson]." Bowles Aff.

Ex. E at first paragraph (emphasis added). Notably, this August 20 order is 11 days after the Court's Decision that the matters asserted by Plaintiff were not arbitrable. Id.

Ms. Denson, becoming aware of the continuing arbitration, wrote the AAA on September 7, 2018, and forcefully objected, stating:

> Apparently, [the Campaign] has carried on a threatening and wasteful proceeding over the past several months, for which they claim I bear the cost and by which they have attempted to obtain judgement without my knowledge of the underlying application . . . . None of these proceedings . . . should have occurred.

Bowles Aff. Ex. F.

The Arbitrator ignored Ms. Denson's objection. Ms. Denson recently learned that the Arbitrator issued the Partial Award without her participation (except her protest letter). Bowles Aff. Ex. G. Rather than taking Ms. Denson's *pro se* letter as an invitation to caution, the Arbitrator took it as a pretext for subjecting her to an exceptional negative finding on an issue she did not raise in the Arbitration (and that the Campaign does not appear to have raised either): that the NDA is a valid and enforceable agreement. To do this, Mr. Kehoe completely misread and misused Ms. Denson's September 7 letter, stating:

> Although it does not expressly do so, I will consider Respondent's letter of September 7, 2018 as raising the claim that she asserted in the Federal Action, *i.e.*, that the Agreement "is void and unenforceable." . . . respondent has not submitted any law or argument that would support a finding by me that the Agreement "is void an unenforceable." I find that the Agreement is valid and enforceable.

Partial Award at 3.

This is remarkably misleading, since Ms. Denson's September 7 letter offered *not a word* of argument about the NDA's validity or enforceability. See generally Bowles Aff. Ex. F. Mr. Kehoe even used that fact against her by inventing the pretext that Ms. Denson had asserted the argument but then offered no support for it. Mr. Kehoe astonishingly used a straw-man tactic to

maneuver a dispute that Ms. Denson had not put before him (nor had, for that matter, the Campaign) in order to rule against her. Partial Award at 3.

The Partial Award states that the Campaign had demanded $84,575.71 for "reasonable attorneys' fees and costs Claimant incurred in the state and federal court actions" (Partial Award at 4) (emphasis added), confirming that that the Campaign was seeking damages for Plaintiff's bringing of this very action – an action that the Court, in its Decision, resoundingly said could be brought here. Mr. Kehoe proceeded to award $24,808.20 for damages. Id. Currently the Campaign has applied for a further award of fees. Id. Under the terms of the Partial Award, such a further award may be sub judice in the Arbitration as of on or about November 28, 2018. The instant motion therefore requires the Court's urgent attention, and supports Plaintiff's application for a temporary restraining order.

III. ARGUMENT

a. The Partial Award Should be Vacated

1. Mr. Kehoe Issued the Partial Award Even after this Court Determined the Matter Is Not Arbitrable

Ms. Denson properly moves to vacate the Partial Award. CPLR 7511(b)(2) provides that an arbitration award "shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that … a valid agreement to arbitrate was not made." Ms. Denson did not participate in the Arbitration in this case (other than to send a cursory letter advising Mr. Kehoe that the dispute had been held non-arbitrable) and was not served with the Demand in the same manner as provided for a Summons, or by registered or certified mail, as required by CPLR 7503(c). In the Decision, this Court held that the parties did not agree to arbitrate the subject matter of the Action and the Arbitration, *i.e.* all of Ms. Denson's employment claims, including claims of sex discrimination,

harassment and other tortious conduct. The Partial Award should therefore be vacated pursuant to CPLR 7511(b)(2).

Ms. Denson properly challenges arbitrability on this motion to vacate. United Fed'n of Teachers, Local 2 v. Bd. of Educ., 1 NY3d 72, 79 [2003] (stay motion required only if movant "participates in the arbitration") (the "Local 2 Decision"); Lynbrook v. Lynbrook Police Benevolent Assoc., 87 Misc. 2d 57, 61 [Sup. Ct. Nassau Co. 1976] (refusal to participate in arbitration preserves challenge to arbitrability for motion to vacate). The fact that Ms. Denson wrote her September 7, 2018 letter to inform Mr. Kehoe of the Court's Decision does not alter the analysis. A special appearance to inform an arbitration tribunal of an objection to arbitrability is not participation that triggers waiver. Lynbrook, 87 Misc. 2d at 61. Moreover, as set forth in Point III.b., infra, Ms. Denson also timely moves to stay.

Indeed, even if the non-participation and non-service prong of CRLR 7511(b)(2) is held inapplicable, the Campaign, having moved to compel arbitration and lost, waived any claim that arbitrability may not be raised on a motion to vacate – a motion made necessary only by its continuation of the Arbitration against a *pro se* party even after the Decision had been entered. The Campaign, by continuing an arbitration over non-arbitrable matter in Ms. Denson's absence, and attempting to do so even while asking the AAA not to even send its application for an Award to Ms. Denson, procured the Partial Award by "corruption, fraud or misconduct." CPLR 7511(b)(1)(i). The Partial Award should be vacated on this ground as well.

2. Mr. Kehoe Exceeded His Authority by Ruling on the Validity of the NDA and Awarding Legal Fees in Another Action

The arbitrator clearly exceeded his authority here. "Where arbitrators rule on issues not presented to them by the parties, they have exceeded their authority and the award must be vacated." Colorado Energy Mgt., LLC v. Lea Power Partners, LLC, 114 AD3d 561, 564 [1st Dept 2014] (emphasis added); see also Fahnestock & Co. v. Waltman, 935 F2d 512, 515 [2d Cir.

1991] (same); Melun v. Strange, 898 F. Supp. 990, 992 [SDNY 1990] ("courts will vacate an award where the arbitrator has ruled on issues not presented to him by the parties") (collecting cases); CPLR 7511(b)(1)(iii). In this case, Mr. Kehoe vastly exceeded his authority by ruling on the validity and enforceability of the NDA, and by awarding damages for Ms. Denson's pursuit of the Federal Action. The Partial Award should accordingly be vacated.

In rendering the Partial Award, Mr. Kehoe went to unexplainable lengths to rule against Ms. Denson, a non-participating *pro se* litigant, on issues not before him in the Arbitration. Chief among these is his use of Ms. Denson's September 7, 2018 letter as a basis for indicating that Ms. Denson had raised the validity and enforceability of the NDA in the Arbitration, then going on to rule "the [NDA] is valid and enforceable" because "[Ms. Denson] has not submitted any law or argument" in support of such a finding. Partial Award at 3.

The Arbitrator's thought process rejects reality: the letter does not submit law or argument because Ms. Denson was not participating in the Arbitration and was writing to inform the tribunal of this Court's non-arbitrability ruling. The letter does not by its words, and Ms. Denson did not by her words, intend to place the issue of the validity or enforceability of the NDA before Mr. Kehoe for decision. At minimum, if that is what Mr. Kehoe believed Ms. Denson's letter had done, an invitation to the parties to brief this important issue should have ensued before issuing the Partial Award, which itself validates the NDA in cursory fashion, without any authority or analysis.[4]

[4] The Partial Award's treatment of the validity of the NDA rests on the additional faulty premise that "the District Court held that the validity of the agreement was an issue to be decided in this arbitration." Partial Award at 3 (emphasis added). Mr. Kehoe's reference is to a decision by District Judge Jesse Furman that a claim by Ms. Denson to contest the validity of the NDA must first be brought in arbitration. Judge Furman did not, however, direct that such a contest be joined in this Arbitration; indeed, nothing in Judge Furman's decision even indicates he had been made aware of the pendency of this Arbitration. See Denson v. Donald J. Trump for President, Inc., 18-CV-2690 (the "Federal Action"), 2018 U.S. Dist. LEXIS 148395 (SDNY Aug. 30, 2018).

The Partial Award decides yet an additional issue not referenced in the Demand. As noted, the Demand seeks only to impose damages for Ms. Denson's pursuit of the instant Action. Nevertheless, Mr. Kehoe awarded $24,808.20 to the Campaign for its legal fees and expenses to defend the Federal Action. Partial Award at 4. The Partial Award should therefore be vacated for far exceeding the arbitrator's authority.

3. The Partial Award Violates Public Policy

The Partial Award should also be vacated because it violates public policy. The Partial Award was clearly sought and rendered in retaliation for Ms. Denson's original lawsuit – that is what it says in the arbitration demand – and retaliation for filing claims of sex discrimination and harassment violates public policy.

New York's Court of Appeals has long held that an arbitration award that violates a strong public policy will be vacated. *See, generally*, Local 2 Decision, 1 NY3d at 78-80; Exercycle Corp. v. Maratta, 9 NY2d 329, 336 [1961] (arbitration will be enjoined "where the performance which is the subject of the demand for arbitration is prohibited by statute"). Under the Local 2 Decision, the public policy analysis can encompass either or both of two areas of public policy concern under which an arbitrator's award may be vacated. Under the first, "where a court can conclude without engaging in any extended factfinding or legal analysis that a law prohibits, in an absolute sense, the particular matters to be decided by arbitration, an arbitrator cannot act." Local 2 Decision, 1 N.Y.3d at 80 (internal citation and quotation marks omitted). Under the second, "an arbitrator cannot issue an award where the award itself violates a well-defined constitutional, statutory or common law of this State." Id. (internal citation and quotation marks omitted). The Partial Award fails in both areas of concern and should therefore be vacated on public policy grounds.

The context and application of the NDA resulting in the Partial Award illustrates the Partial Award's noxiousness to public policy under the Local 2 analysis. The instant action by Ms. Denson is in large measure for sex discrimination and harassment in violation of NYCHRL, considered to be one of the most progressive anti-discrimination statutes in the nation. Romanello v. Intesa Sanpaolo, S.p.A., 22 NY2d 881 [2013] quoting Albunio v. City of New York, 16 NY3d 472, 477-78 [2011]. Ms. Denson's allegations also more than forcefully support a claim for sex discrimination and harassment in violation of NYSHRL.

Ms. Denson's complaints in the Action thus seek to further the City's and State's strong public policies prohibiting discrimination based on sex. Further, both NYCHRL and NYSHRL expressly prohibit retaliation by the Campaign against Ms. Denson for bringing her sex discrimination and harassment claims.[5]

Retaliation for filing the Action, however, is exactly what the Campaign did by filing the Arbitration, and what the Partial Award carries out on the Campaign's behalf. This is clear on the face of the Demand. The Demand alleges, as the sole basis for the Campaign's claims, that Ms. Denson "breached confidentiality and non-disparagement obligations contained in a written agreement she executed during her employment . . . by publishing certain confidential information and disparaging statements in connection with a lawsuit she filed against claimant in New York Supreme Court." Bowles Aff. Ex. D (at Ex. A thereto).

[5] *See* N.Y.C. Admin. Code §8-107(7) (NYCHRL anti-retaliation provision: "It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has … commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter"); Exec. Law §296(7) (NYSHRL retaliation provision: "It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has … filed a complaint, testified or assisted in any proceeding under this article").

Thus, the *only* claimed breach of the NDA was filing the current lawsuit. Simply put, under the Campaign's theory of the Arbitration, Ms. Denson cannot pursue statutory sex discrimination and harassment claims without running afoul of the NDA. As a result, for no reason other than bringing a lawsuit that asserts claims under NYCHRL and NYSHRL, Ms. Denson has opened herself up to an award of "compensatory damages, punitive damages, and all legal fees and costs incurred in connection with" the Arbitration. To use the language of Exercycle, "the performance which is the subject of the demand for arbitration" is that Ms. Denson either forego her NYCHRL and NYSHRL sex discrimination and harassment claims or pay the Campaign for the privilege of doing so.

The NYSHRL and NYCHRL anti-retaliation provisions at n. 5, by their terms, prohibit use of the NDA in the manner sought by the Campaign: to impose debilitating costs on an individual for no reason other than that the individual has filed a civil action protesting sex discrimination and harassment. The resulting Partial Award therefore violates the first area of public policy concern addressed in the Local 2 Decision. The Partial Award also carries out unlawful retaliation against Ms. Denson by awarding damages against her in an Arbitration brought because she commenced this Action, thereby violating the second area of public policy concern addressed in the Local 2 Decision. The Partial Award should therefore be vacated as it violates the strong public policies of the State and City of New York prohibiting unlawful employment discrimination and protecting those who pursue such claims from retaliation for doing so.

b. Further Arbitration Should Be Stayed

1. Standard for a Motion to Stay Arbitration

Section 7503(b) of the CPLR allows Ms. Denson to bring a motion to stay an arbitration. The relevant section, in relevant part, is as follows:

> Application to stay arbitration. Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied . . .

CPLR 7503(b) (McKinney). Courts have regularly stayed arbitrations where the dispute at issue is outside the scope of an arbitration clause. See, e.g., New York Mirror v Potoker, 5 AD2d 423, 430 [1st Dept 1958] (stay was proper where the dispute was outside the scope of the arbitration clause). "A court may stay an arbitration on the ground, inter alia, that the particular claim sought to be arbitrated does not fall within the scope of the parties' arbitration agreement." New York City Tr. Auth. v Amalgamated Tr. Union of Am., AFL-CIO, Local 1056, 284 AD2d 466, 468 [2d Dept 2001]. "Absent a clear agreement to arbitrate such matters, a stay was proper." Triborough Bridge and Tunnel Auth. v Local 1931, Dist. Council 37, Am. Fedn. of State, County and Mun. Employees, 184 AD2d 377, 378 [1st Dept 1992]; Bd. of Co-op. Educ. Services of Nassau County v Cent. Council of Teachers, 59 AD2d 942, 942 [2d Dept 1977] (arbitration was properly stayed where the dispute was outside the arbitration clause).

CPLR 7503(c) imposes a 20-day deadline for moving to stay arbitration. CPLR 7503(c). However, the same section requires that a notice of intent to arbitrate be served upon the respondent "in the same manner as a summons or by registered or certified mail, return receipt requested." CPLR 7503(c). In this case the arbitration demand (Bowles Aff. Ex. D) was not served on Plaintiff in any of these manners – it came to her via Federal Express. Denson Aff. at ¶ 4. The effect of the failure of the Campaign to properly serve Plaintiff is that she is relieved of the 20-day deadline for filing a motion to stay. In re Town of Ticonderoga (United Fedn. of Police Officers, Inc.), 15 AD3d 756, 757 [3d Dept 2005]. Accordingly, Plaintiff's application for a stay is timely.

2. The Court Has Already Determined That The Subject Matter Of The Arbitration Is Outside The Scope Of The Arbitration Clause And Therefore The Arbitration Should Be Stayed

As discussed above in Section II.a, the Court has already determined that the issues in the arbitration are outside the scope of the agreement, and therefore should not be arbitrated. The demand for arbitration could not be clearer that it was made "in connection with a lawsuit she filed against claimant in New York Supreme Court." Bowles Aff. Ex. D at Exhibit A thereto. Likewise, the Court, in its Decision, could not have been clearer that "[i]t isn't even a close question. The narrow arbitration clause, which only applies to the narrow agreement, simply does not cover the claims asserted in this case." Decision at 4. The Campaign's error lies in not immediately stopping the arbitration upon learning of the Court's Decision. Instead, as discussed above, the Campaign sought to pursue the arbitration in secret from Plaintiff. The August 20, 2018 order indicates that the Campaign had made a written application and asked that the application not be provided to Plaintiff. Bowles Aff. Ex. E at first paragraph. This is willful disobedience of the Court's Decision.

The Court need undertake no new analysis here: the Court already decided that the entire suit now before the Court is outside the scope of the NDA, and therefore outside the scope of the arbitration clause. Decision at 4. The demand for arbitration, made before the Court's decision, is about the Action and nothing more. Bowles Aff. Ex. D at Exhibit A thereto. Accordingly, it should not be arbitrated, and should be stayed.

c. A Temporary Restraining Order Is Appropriate

Plaintiff also seeks a temporary restraining order ("TRO") pending the hearing of this motion to stay arbitration. This request is made pursuant to CPLR 6313, which states:

> If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice.

CPLR 6313(a).

While the current motion is one under CPLR 7503 to stay arbitration, rather than one under CPLR 6311 for preliminary injunction, the same principle applies: Plaintiff will be subject to immediate and irreparable injury should a temporary order not be emplaced pending the resolution of this motion. Courts have held that such temporary relief is appropriate where a party can show the traditional elements of (1) irreparable injury; (2) likelihood of success on the merits, and (3) a balancing of the equity in the movant's favor. Winter v Brown, 49 AD3d 526, 529 [2d Dept 2008]; (TBC) Inc. v Soundview Broadcasting L.L.C., 33 Misc 3d 1231(A) [Sup Ct 2011] (injunctive relief appropriate in a motion to compel arbitration). As will be shown below, all these elements are met here.

1. Irreparable Injury

Plaintiff will be irreparably injured in the absence of an order granting a stay. The arbitrator has already issued a partial award in favor of the Campaign. Bowles Aff. Ex. G. The arbitrator indicated in his October 19, 2018 order that the Campaign had 20 days from that date to apply for fees, and that Plaintiff would have 20 days from that date to submit a written response. Id. That combined 40 days will expire on or about November 28, 2018. Should the arbitrator issue a final award, the Campaign will be able to confirm that award in court under CPLR 7510, and Plaintiff's rights to obtain a stay and challenge that arbitration award will be, in effect, extinguished with very little hope of revival.

2. Likelihood of Success

Plaintiff is likely to succeed on the merits of her motion to stay. As stated above, the Court has already ruled on this issue: Plaintiff's employment law claims may not be arbitrated. Decision at 4. The assertion of such claims, including a statutory NYCHRL claim, is clearly the basis of the Campaign's arbitration, as stated in its arbitration demand. Bowles Aff. Ex. D at

Exhibit A thereto. Plaintiff is likely to succeed on this issue because, in effect, the Court has already ruled that she should succeed. This matter should not be arbitrated, and the Campaign should have folded its tent in arbitration and returned to court as soon as the Court issued the Decision.

3. Balancing of the Equities

Finally, the equities here easily tip in Plaintiff's favor. Without a stay, Plaintiff may lose all her rights regarding whatever matters were arbitrated outside her view, and indeed, that award would compromise whatever relief Plaintiff ultimately obtains from the Court in this matter. By contrast, the stay would cost the Campaign nothing but time, and force it to return to the forum in which these issues should have been resolved to begin with: the Court. The equities here clearly favor Plaintiff.

IV. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests the Court to vacate the Partial Award or, to the extent it does not do so, to grant a TRO and a stay of the arbitration pending decision of this motion.

Dated: New York, New York
November 26, 2018

THE LAW OFFICE OF DAVID K. BOWLES, PLLC

David K. Bowles
14 Wall Street, 20th Floor
New York, New York 10005
Tel. (212) 390-8842
Fax (866) 844-8305
DKB@LawDKB.com

THE LAW OFFICE OF MAURY B. JOSEPHSON, P.C.

For Maury B. Josephson, Esq.
626 RXR Plaza
Uniondale, New York 11556
Tel. (516) 343-0090
Fax (516) 977-1315
Email: mbjlaw@verizon.net

Attorneys for the Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JESSICA DENSON Plaintiff, v. DONALD J. TRUMP FOR PRESIDENT, INC. Defendant.	Index No. 101616-17 **AFFIRMATION OF DAVID K. BOWLES IN SUPPORT OF ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**

David K. Bowles, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following under the penalties of perjury pursuant to CPLR § 2106:

1. I am an attorney for plaintiff Jessica Denson ("Plaintiff"). I make this affirmation in support of Plaintiff's Order to Show Cause seeking a stay of arbitration and a temporary restraining order.

2. In compliance with CPLR § 2217(b), I state that there has been no prior motion for similar relief in this matter.

3. I attach a true and correct copy of Plaintiff's November 13, 2017 complaint as Exhibit A hereto.

4. I attach a true and correct copy of a March 19, 2018 Notice of Motion to Compel Arbitration filed by the Defendant Donald J. Trump for President, Inc. (the "Campaign") as Exhibit B hereto.

5. I attach a true and correct copy of the Court's August 9, 2018 Order denying the Campaign's motion to compel arbitration as Exhibit C hereto.

6. I attach a true and correct copy of the December 20, 2017 demand for arbitration filed by the Campaign as Exhibit D hereto.

7. I attach a true and correct copy of an August 20, 2018 Order from an arbitrator in

the related arbitration as Exhibit E hereto.

8. I attach a true and correct copy of a September 7, 2018 letter from Plaintiff to the arbitrator as Exhibit F hereto.

9. I attach a true and correct copy of a letter and partial award from the arbitrator in the related arbitration, dated October 19, 2018, as Exhibit G hereto.

WHEREFORE, I respectfully request that this motion be granted, and that Plaintiff have such other and further relief as may be just and proper.

Dated: New York, New York
November 26, 2018

David K. Bowles

Exhibit A

[Print in *black* ink all areas in bold letters. This summons *must* be served with a complaint.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

Jessica Denson,

[your name(s)] Plaintiff(s)

- against -

Donald J. Trump for President, Inc.,

[name(s) of party being sued] Defendant(s)

----------X

SUMMONS

Index Number

101616-17 M/F

Date Index Number purchased

11/14, 2017

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: November 9, 2017
[date of summons]

[sign your name]

Jessica Denson
[print your name]

1060 W. Pipeline Road
Suite 110
Hurst, TX 76053 (972)249-8253
[your address(es), telephone number(s)]

FILED
NOV. 14 2017
COUNTY CLERK'S OFFICE
NEW YORK

Defendant(s) Donald J. Trump for President, Inc.
725 Fifth Ave.
New York, NY 10022

[address(es) of defendant(s)]

Venue: Plaintiff(s) designate(s) New York County as the place of trial. The basis of this designation is: **[check box that applies]**

- ☐ Plaintiff(s) residence in New York County
- ☑ Defendant(s) residence in New York County
- ☐ Other **[See CPLR Article 5]**: _____

7-06

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK

----------x

JESSICA DENSON,

Plaintiff,

Index No.

-against-

COMPLAINT

DONALD J. TRUMP FOR PRESIDENT, INC.

Defendant.

----------x

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, Jessica Denson ("Denson" or "Plaintiff"), respectfully shows and alleges as follows:

PARTIES

1. The plaintiff herein, Jessica Denson, was employed by the Donald J. Trump for President campaign during the 2016 presidential election.

2. Denson is a summa cum laude graduate of the George Washington University, an award-winning journalist, and a member of SAG-AFTRA with film and TV credits, and a lifelong advocate for the bullied and voiceless, both human and animal.

3. The defendant herein, Donald J. Trump for President, Inc. ("the campaign"), has a principal place of business at 725 Fifth Avenue, New York, NY 10022.

NATURE OF THE CASE

4. This case arises from violations by the campaign of New York state law prohibiting defamation and defamation per se; New York City Human Rights Law, New York City Administrative Code § 8-107; and the torts of intentional and negligent infliction of emotional distress. The campaign has unlawfully protected the harassment and sexual discrimination of a

former male superior of the Plaintiff, Camilo Jaime Sandoval, who targeted the plaintiff because she was a woman who received a promotion out from under his control by the campaign CEO. The campaign compounded a slander crusade executed by Sandoval against Denson, including the claim that she was responsible for an illegal leak of Donald Trump's taxes, and extended his assault, step-by-step thwarting and eliminating her very ability to perform the tasks she had been given, and perpetuating a climate of fear and terror for the extent of her employment and beyond.

5. When Denson reported Sandoval's severe and pervasive slander, aggravated harassment, attempted theft, cyberbullying, and sexual discrimination and harassment based on disturbance with her promotion, the campaign retaliated against Denson by severely diminishing the conditions and scope of her employment and preventing her from career advancement.

6. Throughout and beyond her employment, the campaign further harassed and discriminated against Denson, and endorsed and extended the defamatory characterization of her as one who is a threat and danger to her colleagues, future members of the White House administration, and the President of the United States.

CLAIM

7. On August 18, 2016, plaintiff Jessica Denson was hired as a national phone bank administrator on the Donald J. Trump for President campaign by data director Camilo Jaime Sandoval.

8. Beginning work on August 22, 2016, Sandoval routinely overworked Denson, requiring that she arrive in the morning, but allowing her to sit idle for hours, even outright ignoring her requests for tasks to work on, and then coming up with assignments at the end of the work day that would require her to stay late into the evening hours. Under Sandoval's

supervision, Denson was required to work seven days per week at an average of ten hours per day, more than any other staffer in her position.

9. Denson also assumed a full-time assignment for campaign manager Kellyanne Conway shortly after her hire.

10. On September 1, 2016, a Spanish-speaker was needed to translate for a critical campaign event. Sandoval (a Spanish-speaker himself) deferred to Denson (also a Spanish-speaking Hispanic) to complete the task, saying that he preferred to "stay behind the scenes."

11. As a result of the Plaintiff's excellent work on this task, on September 3, 2016, campaign CEO Stephen Bannon, removed the Plaintiff from the data department to mobilize the campaign's Hispanic engagement effort, making her the only staffer dedicated to this task on a national level.

12. When Denson informed Sandoval of her promotion, he asked her male supervisor Ron Wilson in front of her, "Why are you letting your sheep wander?" - referring to the Plaintiff as Wilson's "sheep." Sandoval also stated with teeth clenched and in a threatening, domineering and intimidating manner, "I hired you and I can fire you."

13. At least this early on, the campaign was aware of Sandoval's harassment, which resulted in the female who replaced Denson being removed from data as well, only days after she was hired, after she reported being subjected to a hostile tirade from Sandoval.

14. On September 16, 2016, after contributing to various critical tasks as directed by Bannon, Denson received a significant salary increase and assumed the role of Hispanic Engagement Director.

15. Between September 8 and September 26, 2016, Denson launched the campaign's

Hispanic engagement effort: fueling a Spanish-language digital ad campaign, successfully advocating for critical foreign policy stances, assembling a team effort among Spanish-speaking staffers, coming up with the official Spanish campaign slogan (¡Vive el Sueño Americano!), developing bilingual campaign literature, launching an official Team Trump Twitter account in Spanish, supporting Hispanic engagement events in targeted states, and providing a crucial link between the national campaign and ground efforts for Hispanic engagement. Denson became acquainted with and began to work collaboratively with Arlene (AJ) Delgado, a more recently hired campaign surrogate and senior advisor. During this time and since her hiring, Denson enjoyed growing mutual respect among her colleagues in Trump Tower, and exceptionally positive feedback from the field.

16. During the week of September 26, 2016, Delgado displayed a sudden shift in behavior and subsequently usurped the Plaintiff's position in the campaign, henceforth calling herself, "Hispanic Outreach Director."

17. On October 1, 2016, upon arrival to Colorado for campaign travel, the Plaintiff was urgently alerted by two data staffers, one of whom witnessed a phone call placed on speaker by Sandoval in the campaign's data office, that an aggressive conspiracy was underway between Sandoval and Delgado to sabotage her personally and professionally, including "tracking" Denson's whereabouts, trying to "find dirt" on her, "getting Secret Service involved," and finding a way to "get her fired." The staffer also disclosed at that time that since Denson's promotion Sandoval would routinely make derogatory and demeaning comments about her to others in the data department. That evening Denson sent a brief, urgent email to Conway and Bannon notifying them of the phone call, but neither replied.

18. The following day, October 2, 2016, Sandoval executed an assault that included:

a. starting a rumor that she was responsible for the October 2016 leak of Donald Trump's taxes, a crime against the very candidate whom she was working to elect;

b. attempting to have another staffer be complicit in theft of the Plaintiff's personal laptop and personal files that she had left at the home of a friend she had worked with in the data department for safe keeping. Sandoval and Wilson told this friend to bring these items to work with her because, "Jessica is in trouble and you should separate yourself from her;"

c. blocking the Plaintiff's access to the national supporter database that she used to support Hispanic coalitions;

d. and cyberbullying the Plaintiff by making multiple unauthorized attempts to reset the password on the Spanish Twitter account solely authorized to the Plaintiff by campaign officials and registered to her phone.

19. On October 2, 2016, Denson reported the above and made urgent and repeated attempts to receive aid from senior campaign officials, including COO Jeff DeWit, but was ignored.

20. On the morning of October 3, 2016, a GOP colleague driving Denson to the rally she had travelled to Colorado for, was contacted and told that he should abandon her at her hotel and keep her away from the candidate at the rally.

21. On the evening of October 3, 2016, DeWit ordered that Denson fly back to New York to address "serious allegations," and on October 4, 2016 Denson did so.

22. On the morning of October 5, 2016, in an obligatory meeting with human resources director Lucia Castellano, Castellano was antagonistic towards Denson from the outset. Denson

came accompanied by the other female staffer who was bullied by Sandoval to explain the similar nature of his sexual discrimination and harassment, but Castellano exclaimed, "Not her!" and instead required that Denson speak with her in the presence of two other male staffers.

23. Denson specifically recounted Sandoval's assault and harassment, and answered Castellano's questions, which were primarily concerned with how she was hired, why she was promoted, and the depth of her relationships with friends on the campaign. Castellano argued the Plaintiff was not qualified for her position, and demanded to know if she was meeting with campaign donors. When Denson said she was not, but had only been videotaping supporters for digital ads, Castellano was determined to make a fact of the slanderous accusation of unauthorized donor meetings, and quipped back, "You can't meet with donors!!"

24. Castellano did not express concern over Sandoval's attempts to illegally obtain the Plaintiff's personal belonging. She rather expressed great alarm while reading a transcript of a voicemail left by the Plaintiff's mother warning Sandoval that if he did not cease his attempts the law would be invoked (only after the campaign had failed to respond to her daughter's pleas for help), and said of the voicemail message, "That's bad!!"

25. Following her meeting with the Plaintiff, Castellano, instead of making it clear that Sandoval's attempted criminal activity, slander, and harassment was not to be tolerated in a presidential campaign, retaliated against the Plaintiff with further harassment, discrimination, and marginalization:

a. excusing and covering up Sandoval's unauthorized attempts to access a Twitter account solely assigned to the Plaintiff, and the compromising of that account that occurred simultaneously while the Plaintiff experienced irregular and repeated remote rebooting of her

iPhone;

b. failing to squash Sandoval's broader false characterization of the Plaintiff to all possible campaign staff, including to a relative of Governor Pence, as one whom they should be "careful of" and "distance themselves from," the full scope and substance of which is not to this day even fully known by the Plaintiff;

c. eviscerating the Plaintiff's scope of work and ordering that she spend the remainder of the campaign in Colorado, even after confirming other arrangements;

d. humiliating the Plaintiff and causing her to be ostracized by her colleagues;

e. prohibiting any possible future contact between the Plaintiff and the candidate, who on previous occasions had shown great respect and appreciation for the Plaintiff and her work.

26. On October 9, 2016, a week after Denson's reporting of the coordinated assault, in response to none other than Denson's request for this flight change as directed by Conway in the presence of deputy campaign manager David Bossie, COO Jeff DeWitt published a libelous email to at least four other staffers that Denson had "wasted campaign money" and was banned from Trump Tower effective immediately, without *any* explanation. The Plaintiff *never once* wasted campaign money, but on the contrary saved the campaign money on multiple occasions.

27. On October 9, 2016 Denson immediately reached out to Conway and Bossie for intervention, and was ignored by both.

28. During the week of October 10, 2016, and in fact until her employment ended, Denson was both physically ill and greatly distressed due to the dismissal of her serious report of violations in her workplace - a presidential campaign, and subsequent retaliation by the

campaign, specifically Castellano and DeWit. After multiple ignored requests for this behavior to be explained and answered, the Plaintiff maintained her employment with the campaign under duress for the sole purpose of protecting the candidate, presuming that he was not aware of or endorsing these actions, and fearing that seeking outside aid may harm his chances in the election.

29. Castellano or DeWit at no point terminated the Plaintiff's at-will employment, but retaliated against the Plaintiff, perpetuating a climate of fear and torment for the Plaintiff and her family whilst treating her as a threat and danger to Donald Trump for the duration of the campaign, by:

a. Narrowing Denson's scope of work to one minor task, effectively eliminating her ability to continue any legitimate contribution to Hispanic engagement, expand the progress made thus far, or continue any meaningful professional development;

b. Repeatedly changing the travel arrangements agreed upon for Denson, and then portraying her questioning of these changes as an inability to "follow direction" and characterizing her as "disrespectful and unprofessional."

c. Causing new superiors to prohibit Denson from attending campaign events, in particular where a member of the Trump family was present;

d. Disabling Denson's ability to perform even the limited task she had been reduced to by permitting Sandoval to continue to block her access to the supporter database.

e. Conway and Bannon made apparent subsequent attempts to have Denson join the campaign's women's tour, spearhead other projects, and regain a healthy and positive role in the campaign, but both allowed Castellano and DeWit to trump their authority and restrain

Denson in a feckless and degrading - virtually non-existent - position for the remainder of the campaign;

30. Castellano also specifically engaged in menacing and inconsistent communications and threats to the Plaintiff, including:

a. notifying an excessive number of staffers of her private hotel accommodations;

b. telling the Plaintiff, while she was driving her campaign-provided rental car, that it was about to be reported stolen, putting the Plaintiff in fear of arrest for possession of a stolen vehicle. This was false as verified by the rental company;

c. suggesting that the Plaintiff was in possession of a campaign phone distributed by Sandoval that never existed;

d. when Denson refuted the defamation being made about her by Sandoval to another staffer, threatening Denson not to make any such defense or comment about Sandoval; and

e. Failing to investigate the disappearance of a laptop charger that may have implicated one or more individuals in unauthorized access to Denson's personal laptop in Trump Tower, and refusing to reimburse Denson for the loss of that item.

31. In the morning hours of November 9, 2016, the campaign's defamation spread to a Secret Service agent, who approached the Plaintiff at the election night victory party and told her she had to leave, after three hours in attendance, just prior to the candidate's victory and arrival. Only because the brother of the candidate, who had been in the Plaintiff's company for much of the night, stepped in and said, "She's with us," did the Secret Service agent finally leave her alone.

32. On November 10, 2016, the last day of Denson's employment, she sent emails from her work account requesting from Castellano that she be able to recover items left on her desk before she was banned from Trump Tower, as well as a non-spoilation notice to preserve the surveillance camera footage from the night her personal laptop charger went missing. Immediately after sending that notice, the Plaintiff's access to her work email ceased, a discriminatory act against her, whereas all other staffer's access continued into the following week by means of which they received invitations to apply for administration positions.

33. On November 16, 2016, Denson again reached out to Bannon, who responded that Denson had done "great work" and he had given her name to the Presidential Transition Team.

34. On November 22, 2016, Bannon offered Denson a job on the Transition Team in an email copied to a leading member of the transition. That individual immediately responded confirming that they would "find the right fit" for Denson and speak the next day, but the offer vaporized. Despite multiple attempts in the following days, weeks, and month to reach this individual, he never responded, confirming that the campaign's defamation of her reputation had at some point on or after November 23, 2016 reached this individual as well, and Denson was successfully blocked from assuming any position.

35. Denson made only positive, legal and uplifting contributions to the campaign, yet her prospect for work-reward was definitively annihilated and her character defamed on all possible levels. The sexual discrimination and harassment of a domineering male superior who targeted her because she was a woman, referring to her as another man's "sheep," was allowed to prevail even after she was promoted, and his hostile work environment was concealed, validated and extended by the human resources of the campaign, which served as an instrument to further

defame and intentionally torment the Plaintiff through shame and fear at every opportunity. Sandoval's hostility, assaults and defamation were not only fully supported during the campaign, but he was further rewarded with a personnel position on the Presidential Transition Team, and Sandoval subsequently acquired a senior post in the Treasury department of the Trump administration. Castellano received a similar post in the Small Business Administration.

36. DeWit's defamatory statements and actions, which became known to a large number of campaign staffers, the United States Secret Service, and future members of the Trump administration, served to extend the character assassination launched by Sandoval and Delgado, falsely portraying the Plaintiff as wasteful, distrustful, and as a danger and threat in the eyes of these individuals and organizations.

37. By reason of the facts and circumstances stated above, the campaign caused Denson severe emotional distress, fear of continued cyber-invasion and unwarranted invasion of privacy, and immense loss of opportunity - derailing her professional work and defaming her character.

38. Denson was specifically prohibited from assuming a position she was offered on the Presidential Transition Team, and deprived of every natural progression of personal and professional relationships resulting from her positive and substantial contributions to the campaign of the future President of the United States. Furthermore, due to the wanton and reckless acts committed under the auspices of a presidential campaign, the Plaintiff fears, including but not limited to,

unknown damage to her reputation in official records that could cause arbitrary and significant harm to her regardless of her career path moving forward.

39. WHEREFORE, Plaintiff demands judgment against the campaign in the sum of $25,000,000.00, to include:

A. Compensatory damages, including lost compensation, lost opportunity, damage to career path, damage to reputation and pain and suffering damages;

B. Damages for mental anguish;

C. Punitive damages;

D. Attorneys fees and costs of suit;

E. Such other relief as the court may deem equitable and just.

Dated: November 9, 2017

Jessica Denson
Pro Se
1060 W. Pipeline Rd, Suite 110
Hurst, TX 76053
972-249-8253

VERIFICATION

Jessica Denson, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on the information and belief and as to those matters I believe them to be true.

Jessica Denson
11/10/2017

State of New York) ss
County of New York)
Sworn to before me this
10 day of 11 2017

Notary Public

LILY YONG ZHENG
NOTARY PUBLIC
STATE OF NEW YORK
Qualified in Queens County
01ZH6362341
MY COMMISSION EXPIRES 07/31/2021

Exhibit B

Supreme COURT OF THE STATE OF NEW YORK

COUNTY OF New York

Jessica Denson, Plaintiff(s),

against

Donald J. Trump For President, Inc., Defendant(s).

Index No. 101616/17

(, J.)

Notice of Motion

Affirmation and Affidavit in Support

REDACTION COVER PAGE

☑ The document filed contains no confidential personal information, as defined in **22 NYCRR 202.5(e)**.

☐ *The document contains the following (CHECK ANY THAT APPLY)*:

- ☐ Social Security Number.
- ☐ Confidential Personal Information (CPI) that is **REDACTED** in accordance with **22 NYCRR 202.5(e).**
- ☐ Confidential Personal Information (CPI) that is **UN-REDACTED** and seeks a remedy in accordance with **22 NYCRR 202.5(e)(2) OR (3).**
- ☐ Confidential Personal Information (CPI) that is **UN-REDACTED** as required or permitted by a specific rule or law;

  Specify the rule or law _____.
- ☐ Confidential Personal Information (CPI) that is **UN-REDACTED** as directed by court order; and I hereby specify:

  DATE of such court order: _____ & DATE filed: _____.

  Other identifying information for such order: _____.

Does the court order direct that this **UN-REDACTED** document be **visible to all participating parties?** ☐ **yes /** ☑ **no.**

A court order is being filed with the document: ☐ **yes /** ☑ **no.**

Signature of filer: _____

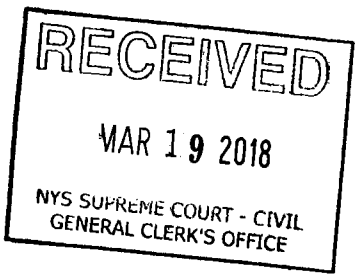
Print Name: Lawrence S. Rosen

Counsel appearing for: Defendant **(name of party)**

Filer is Unrepresented: ☐ **yes** ☑ **no**

Date: 3/19/18

Revised 01/2016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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

JESSICA DENSON,

Index No. 101616/17

Plaintiff,

-against-

NOTICE OF MOTION

DONALD J. TRUMP FOR PRESIDENT, INC.,

Defendant.

----------X

PLEASE TAKE NOTICE that, upon the Affirmation of Lawrence S. Rosen, dated March 19, 2018, with exhibits, the Affidavit of Michael S. Glassner, sworn to on March 19, 2018, with exhibit, the points and authorities set forth in the accompanying memorandum of law, dated March 19, 2018, and all prior proceedings, Defendant Donald J. Trump for President, Inc. will move this Court at the Motion Submission Part, Room 130, at the County Courthouse located at 60 Centre Street, New York, New York, on April 9, 2018, at 9:30 a.m., for an Order: (i) pursuant to CPLR 2201, 7501, and 7503, compelling arbitration and staying this action as to plaintiff's common law claims (i.e. her claims for defamation, defamation *per se*, intentional infliction of emotional distress, and negligent infliction of emotional distress), pending the completion of arbitration; (ii) pursuant to CPLR 3211(a)(7), dismissing plaintiff's remaining claims for gender discrimination under the New York City Human Rights Law or, alternatively, pursuant to CPLR 2201 and 7503, staying those claims pending the completion of arbitration; and (iii) granting Defendant all such other relief as the Court deems just and proper.

Pursuant to CPLR 2214(b), movant demands that answering papers, if any, be served at least seven days prior to the return date set forth herein.

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New York County Clerk's Office
Paym 549524 03/19/2018 2:50p
Cashier CHARRELL Register # 10

Tr.719875 $95.00
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101616/2017 DENSON JESSICA vs. DONALD J TRU
MP FOR PRESIDENT INC

Tr.719876 $45.00
Notice of motion/Cross Motion ----311066
101616/2017 DENSON JESSICA vs. DONALD J TRU
MP FOR PRESIDENT INC

Total: $140.00

Check $95.00
Check $45.00

Dated: New York, New York
March 19, 2018

LAROCCA HORNIK ROSEN
GREENBERG & BLAHA LLP

By: _____

Lawrence S. Rosen
40 Wall Street, 32nd Floor
New York, New York 10005
T: (212) 530-4822
E: LROSEN@LHRGB.COM
Attorneys for Defendant
Donald J. Trump for President, Inc.

To: Jessica Denson
1060 W. Pipeline Road, Suite 110
Hurst, Texas 76053
Plaintiff Pro Se

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

I, Nicole Grant being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in Richmond County, New York.

On March 19, 2018, I served the within **"NOTICE OF MOTION", "AFFIRMATION OF LAWRENCE S. ROSEN" (with exhibits), "AFFIDAVIT OF MICHAEL S. GLASSNER" (with exhibit), MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO STAY THIS ACTION AND COMPEL ARBITRATION OF PLAINTIFF'S COMMON LAW CLAIMS AND TO DISMISS PLAINTIFF'S EMPLOYMENT DISCRIMINATION CLAIM UNDER THE NEW YORK CITY HUMAN RIGHTS LAW" and " REQUEST FOR JUDICIAL INTERVENTION"** by depositing a true copy of same, enclosed in a post-paid wrapper addresses as shown below, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to the following persons at the addresses set forth below:

To: Jessica Denson
1060 W. Pipeline Road, Suite 110
Hurst, Texas 76053
Plaintiff Pro Se

Nicole Grant

Sworn to before me this
19 day of March 2018

Notary Public

ERIC BLAHA
Notary Public, State of New York
No. 02BL5029385
Qualified in Westchester County
Commission Expires June 20, 20

JESSICA DENSON,

Plaintiff,

-against-

DONALD J. TRUMP FOR PRESIDENT, INC.,

Defendant.

NOTICE OF MOTION, AFFIRMATION OF LAWRENCE ROSEN AND AFFIDAVIT OF MICHAEL S. GLASSNER

LaROCCA HORNIK ROSEN GREENBERG & BLAHA LLP
Attorneys for Defendant Donald J. Trump for President, Inc.
40 Wall Street, 32nd Floor
New York, New York 10005
(212) 530-4822

To

Service of a copy of the within is hereby admitted.

Dated: .....

Attorney(s) for .....

Check Applicable Box

☐ Certification By Attorney

certify that the within has been compared by me with the original and found to be a true and complete copy.

☐ Attorney's Affirmation

state that I am the attorney(s) of record for in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF COUNTY OF ss.:

I, being duly sworn, depose and say: I am

Check Applicable Box

☐ Individual Verification

the in the within action: I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

☐ Corporate Verification

the of a corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

.....
The name signed must be printed beneath

STATE OF COUNTY OF ss.: (If both boxes are checked—indicate after names, type of service used.)

I, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On I served the within

Check Applicable Box

☐ Service By Mail

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within this State, addressed to each of the following persons at the last known address set forth after each name:

☐ Personal Service on Individual

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as *a party therein:*

Sworn to before me on

.....
The name signed must be printed beneath

Exhibit C

EA
8/8/18
JE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice PART 32

Index Number : 101616/2017
DENSON, JESSICA
vs
TRUMP, DONALD J. FOR
Sequence Number : 001
COMPEL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for compel arbitration

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is and cross-motion are decided in accordance with the accompanying memorandum decision and order.

RECEIVED
AUG 08 2018
...ME COURT - CIVIL
...AL CLERK'S OFFICE

FILED
AUG 09 2018
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 8/7/18

HON. ARLENE P. BLUTH J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

---------- X

JESSICA DENSON

Plaintiff,

-against-

DONALD J. TRUMP FOR PRESIDENT, INC.,

Defendant.

---------- X

Index No. 101616/2017
Motion Seq: 001

DECISION & ORDER

HON. ARLENE P. BLUTH

The motion by defendant to compel arbitration is denied. The cross-motion by plaintiff, who is self-represented, to amend her complaint is granted.

Background

This action arises out of plaintiff's employment with defendant during the 2016 presidential election. Plaintiff was hired by defendant in August 2016 as a national phone bank administrator. She claims she was routinely overworked by her initial supervisor Camilo Jaime Sandoval– this included working seven days per week and ten hours per day. As the election approached, plaintiff was eventually assigned to work on the campaign's Hispanic outreach efforts. Plaintiff contends that Sandoval did not like this promotion and subjected plaintiff to a hostile tirade.

Plaintiff alleges that she worked in a horrible work environment from late September 2016 through the election. Plaintiff makes numerous allegations about this time period and

accuses Sandoval and other supervisors of tracking plaintiff's whereabouts, trying to "find dirt on her," cyberbullying and harassment.

Defendant moves to compel arbitration and argues that plaintiff signed an employment agreement in which she expressly agreed to arbitrate any disputes arising out of or relating to her employment. Defendant argues that because all of plaintiff's allegations relate to her employment, they should be subject to arbitration. In opposition, plaintiff claims that defendant relies on an arbitration provision in a non-disclosure agreement, not an employment agreement. In reply, defendant acknowledges that plaintiff's New York City Human Rights Law ("NYCHRL") claims are not subject to arbitration and that defendant intends to respond to those claims when a responsive pleading is due.

Discussion

"It is a well settled principle of law in this state that a party cannot be compelled to submit to arbitration unless the agreement to arbitrate 'expressly and unequivocally encompasses the subject matter of the particular dispute. Where . . . there is no agreement to arbitrate 'all disputes' arising out of the parties' relationship but, rather, a limited arbitration clause relating to a specific type of dispute, the clause must be read conservatively if it is subject to more than one interpretation" (*Trump v Refco Properties, Inc.*, 194 AD2d 70, 74, 605 NYS2d 248 [1st Dept 1993]).

Here, the arbitration clause states that:

> "Without limiting the Company's or any other Trump Person's right to commence a lawsuit in a court of competent jurisdiction in the State of New York, any dispute arising under or relating to this agreement may, at the sole discretion of each Trump

> Person, be submitted to binding arbitration in the State of New York pursuant to the rules for commercial arbitrations of the American Arbitration Association, and you hereby agree to and will not contest such submissions. Judgment upon the award rendered by an arbitrator may be entered in any court having jurisdiction" (plaintiff's cross-motion, exh A, ¶ 8b).

As an initial matter, the Court observes that the arbitration clause confines arbitration to "any dispute arising under or relating to this agreement." *It does not* require arbitration for any "dispute between the parties" or even "any dispute arising out of plaintiff's employment." And the agreement itself only includes a specific list of five prohibited acts on plaintiff's part: no disclosure of confidential information, no disparagement, no competitive services, no competitive solicitation and no competitive intellectual property claims (*id.* ¶¶ 1-5). Moreover, the agreement is simply titled "Agreement" – not "Employment Agreement"– and it contains nothing about plaintiff's job responsibilities, terms of her employment, salary, benefits, or her ability to pursue her own claims.

The Court reads the arbitration clause to allow this defendant or a Trump Person[1] to decide whether to commence a lawsuit or an arbitration if plaintiff violated a term of the agreement. There is simply no way to construe this arbitration clause in this agreement to prevent plaintiff from pursuing harassment claims in court. The arbitration clause could have been written to require any disputes arising out of plaintiff's employment to go to arbitration or that any claims brought by plaintiff against defendant must be sent to arbitration. But it did not. Instead, the clause is much narrower: it allows defendant to choose whether to arbitrate any dispute that arises out of the agreement: that is, the list of plaintiff's five prohibited actions. The

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[1]"'Trump Person' means each of Mr. Trump, each Family Member, each Trump Company (including but not limited to the Company) and each Family Member Company" (*id.* ¶ 6g).

clause cannot be interpreted to apply to plaintiff's *affirmative* claims arising out of her employment.

Put simply, the subject agreement was limited to plaintiff's conduct with respect to five specific categories and defendant had the option of court or arbitration if it claimed plaintiff violated its terms. In this case, no one claims that plaintiff violated the terms that governed plaintiff's conduct in those five categories; this case is about defendant's conduct in the employment context. Therefore, neither the agreement nor its arbitration provision has any application here.

While the Court recognizes that the rules of the American Arbitration Association ("AAA") provide that the arbitrator shall decide questions of arbitrability (*see* Rule 7), the circumstances of this case do not require this Court to send this matter to an arbitrator. It isn't even a close question. This narrow arbitration clause, which only applies to the narrow agreement, simply does not cover the claims asserted in this case. Defendant's behavior, which is the subject of this litigation, is not subject to arbitration; only plaintiff's behavior as it relates to those five categories can be arbitrated.

"[A]bsent clear and unmistakable evidence that the parties entered into an agreement that the arbitrators would decide the arbitrability of their claims, it is a question for the courts" (*Smith Barney, Inc. v Hause,* 238 AD2d 104, 105-106, 655 NYS2d 489 [1st Dept 1997] [internal quotations and citations omitted]). Although the invocation of the AAA rules would ordinarily require the arbitrator to decide arbitrability (*see e.g., 21st Century N. America Ins. Co. v Douglas*, 105 AD3d 463, 963 NYS2d 170 [1st Dept 2013] [holding that incorporating AAA rules requires an arbitrator to decide questions of arbitrability]), the fact is that the Court cannot find clear and

unmistakable evidence that the parties agreed to have an arbitrator decide arbitrability for all disputes between them. Indeed, they only agreed that defendant could choose to arbitrate if it claimed plaintiff's conduct violated the agreement in those five categories.

Otherwise, the existence of an arbitration clause between two parties which invokes the AAA rules, regardless of an agreement's limited scope or applicability, would require an arbitrator to decide arbitrability. It would create clearly unintended situations. For instance, if a residential lease contains an arbitration provision with respect to the applicable rent on a renewal term and the lease invokes the AAA rules, then would an arbitrator have to decide questions of arbitrability if the tenant fell on the sidewalk because it was improperly maintained? Of course not. In certain situations, it is clear that the limited agreement is not applicable to the current dispute. And this is one of those times. Here, the issue is defendant's conduct. With the instant agreement, which governs five specific aspects of *plaintiff's* conduct, the Court would be abdicating its responsibility if it deferred the question of arbitrability of *defendant's* conduct to an arbitrator.

Summary

This Court's decision takes no position on the enforceability of any provisions of the agreement. Instead, this Court finds that the agreement was for a specific purpose– to prohibit plaintiff from doing certain things– and the arbitration clause states it only applies to that agreement. It does not apply to plaintiff's employment generally or to her ability to pursue the claims alleged in this lawsuit. To embrace that broad reading would be in contravention of the text of the agreement. Quite simply, the agreement only regulates plaintiff's behavior; it does not

address defendant's behavior. Therefore, it is not applicable to plaintiff's current claims.

Plaintiff's cross-motion to amend is granted.

Accordingly, it is hereby

ORDERED that defendant's motion is denied; and it is further

ORDERED that plaintiff's cross-motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the cross-motion shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that defendant shall serve an answer to the amended complaint or otherwise respond within 20 days from the date of said service; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in Room 432 at 60 Centre Street on October 4, 2018 at 2:15 p.m.

Dated: August 7, 2018
New York, New York

ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH

FILED

AUG 09 2018

COUNTY CLERK'S OFFICE
NEW YORK

Exhibit D

COPY

AAA Case No. 01-07-0007-6454

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

COMMERCIAL ARBITRATION RULES DEMAND FOR ARBITRATION

*For Consumer or Employment cases, please visit **www.adr.org** for appropriate forms.*

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: JESSICA DENSON	Name of Representative (if known):
Address: 1060 W. Pipeline Road, Suite 110	Name of Firm (if applicable):
	Representative's Address:
City: Hurst / State: TX / Zip Code: 76053	City: / State: / Zip Code:
Phone No.: 972-249-8253 / Fax No.:	Phone No.: / Fax No.:
Email Address:	Email Address:

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

A brief description of the dispute is attached as Exhibit A.

Dollar Amount of Claim: $ 1,500,000	Other Relief Sought: ☑ Attorneys Fees ☑ Interest ☑ Arbitration Costs ☑ Punitive/ Exemplary ☐ Other

Amount enclosed: $ 7,000.00 — In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☑ Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Commercial law qualifications.

Hearing locale: New York, NY — *(check one)* ☐ Requested by Claimant ☑ Locale provision included in the contract

Estimated time needed for hearings overall: hours or 3 days	Type of Business: Claimant: Corporation Respondent: Individual

Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? NO

Signature (may be signed by a representative):	Date: 12-20-17
Name of Claimant: Donald J. Trump for President, Inc.	Name of Representative: Lawrence S. Rosen
Address (to be used in connection with this case): 725 Fifth Avenue c/o LaRocca Hornik Rosen Greenberg & Blaha LLP	Name of Firm (if applicable): LaRocca Hornik Rosen Greenberg & Blaha LLP
	Representative's Address: 40 Wall Street, 32nd Floor
City: New York / State: NY / Zip Code: 10022	City: New York / State: NY / Zip Code: 10005
Phone No.: / Fax No.:	Phone No.: 212-530-4822 / Fax No.:
Email Address:	Email Address: LROSEN@LHRGB.COM

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

EXHIBIT A

Donald J. Trump for President, Inc. v. Jessica Denson

Respondent breached confidentiality and non-disparagement obligations contained in a written agreement she executed during her employment with claimant Donald J. Trump for President, Inc. She breached her obligations by publishing certain confidential information and disparaging statements in connection with a lawsuit she filed against claimant in New York Supreme Court. Claimant is seeking compensatory damages, punitive damages, and all legal fees and costs incurred in connection with this arbitration.

Exhibit E

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:	:	
DONALD J. TRUMP FOR PRESIDENT,	:	Case No. 01-17-0007-6454
CLAIMANT	:	
v.	:	
JESSICA DENSON,	:	
RESPONDENT	:	

The undersigned arbitrator having by Order dated August 11, 2018 denied, without prejudice, an application by Claimant that it's written application for an award not be provided to Respondent.

And Claimant not having submitted a motion for the relief requested in the application, it:

Ordered, that AAA shall immediately serve the application for an award on Respondent by regular and certified mail (signature not required); and

Ordered, that the parties are required to keep all documents and proceedings in this arbitration confidential pursuant to the rules of the American Arbitration Association; and

Ordered, that Respondent shall have 23 days from the date of mailing to submit a response in opposition to the application for an award.

Dated: August 20, 2018

L. Paul Kehoe Arbitrator

Exhibit F

JESSICA DENSON
3925 Big Oak Drive, #4
Studio City, CA 91604

American Arbitration Association
Northeast Case Management Center
1301 Atwood Avenue
Suite 211N
Johnston, RI 02919

September 7, 2018

ATTN: Michele Gomez; RE: Case 01-17-0007-6454

To the American Arbitration Association:

I am in receipt of a document from your organization anticipating response from me by September 12, 2018.

Apparently, the Donald J. Trump for President Campaign has carried on a threatening and wasteful proceeding over the past several months, for which they claim I bear the cost and by which they have attempted to obtain judgement without my knowledge of the underlying application.

None of these proceedings, pending judges' orders in two lawsuits which have only rendered orders in the past month, should have occurred.

Enclosed is New York Supreme Court Judge Arlene Bluth's order denying the Campaign's motion to compel arbitration, and stating clearly and indisputably that my employment lawsuit from which the Campaign initiated this arbitration action is fully exempt from the arbitration "Agreement" the Campaign has attempted to invoke as relevant. No prosecution of me for lawfully airing my employment grievances can legally proceed.

As to future attempts to use the "Agreement" at all to further inflict abuse or penalties on me or infringe on my rights, there is ongoing litigation as to the validity of the "Agreement" as a whole, which would necessarily preclude any enforcement of its terms. I am currently within my time limit to appeal a judge's order that the venue for challenging the validity of the "Agreement" should be decided by an arbitrator.

Respectfully,

Jessica Denson

Exhibit G

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

Northeast Case Management Center
Heather Santo
Assistant Vice President
1301 Atwood Avenue, Suite 211N
Johnston, RI 02919
Telephone: (866)293-4053
Fax: (866)644-0234

October 19, 2018

Patrick McPartland, Esq.
LaRocca Hornik Rosen Greenberg & Blaha, LLP
The Trump Building
40 Wall Street
32nd Floor
New York, NY 10005
Via Email to: pmcpartland@lhrgb.com

Jessica Denson
3925 Big Oak Drive, #4
Studio City, CA 91604
Via First Class Certified Mail
7017-0190-0000-9530-8303

Case Number: 01-17-0007-6454

Donald J. Trump for President, Inc.
-vs-
Jessica Denson

Dear Parties:

By direction of the Arbitrator we herewith transmit to you the duly executed Partial Award in the above matter. This serves as a reminder that there is to be no direct communication with the Arbitrator. All communication shall be directed to the American Arbitration Association (the AAA).

Sincerely,

Michele Gomez
Manager of ADR Services
Direct Dial: (401) 431-4848
Email: MicheleGomez@adr.org

cc: Lawrence S. Rosen, Esq.
Hon. L. Paul Kehoe

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Northeast Case Management Center
Heather Santo
Assistant Vice President
1301 Atwood Avenue, Suite 211N
Johnston, RI 02919
Telephone: (866)293-4053
Fax: (866)644-0234

October 16, 2018

Patrick McPartland, Esq.
LaRocca Hornik Rosen Greenberg & Blaha, LLP
The Trump Building
40 Wall Street
32nd Floor
New York, NY 10005
Via Email to: pmcpartland@lhrgb.com

Jessica Denson
3925 Big Oak Drive, #4
Studio City, CA 91604
Via First Class Certified Mail
7017-0190-0000-9530-8471

Case Number: 01-17-0007-6454

Donald J. Trump for President, Inc.
-vs-
Jessica Denson

Dear Parties:

The hearings are declared closed as of October 15, 2018, the date of receipt of the final briefs. Therefore, the arbitrator shall have until November 14, 2018 to render the Award.

Please be reminded any direct exchange with the Arbitrator is terminated. All communications shall be directed to the AAA.

Sincerely,

Michele Gomez
Manager of ADR Services
Direct Dial: (401) 431-4848
Email: MicheleGomez@adr.org

cc: Lawrence S. Rosen, Esq.
Hon. L. Paul Kehoe

AMERICAN ARBITRATION ASSOCIATION | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Northeast Case Management Center
Heather Santo
Assistant Vice President
1301 Atwood Avenue, Suite 211N
Johnston, RI 02919
Telephone: (866)293-4053
Fax: (866)644-0234

October 16, 2018

Patrick McPartland, Esq.
LaRocca Hornik Rosen Greenberg & Blaha, LLP
The Trump Building
40 Wall Street
32nd Floor
New York, NY 10005
Via Email to: pmcpartland@lhrgb.com

Jessica Denson
3925 Big Oak Drive, #4
Studio City, CA 91604
Via Mail

Case Number: 01-17-0007-6454

Donald J. Trump for President, Inc.
-vs-
Jessica Denson

Dear Parties:

This will acknowledge receipt of a letter dated October 15, 2018, from Respondent.

By copy of this letter we are transmitting the above to Claimant's counsel and the Arbitrator for consideration.

Sincerely,

Michele Gomez
Manager of ADR Services
Direct Dial: (401) 431-4848
Email: MicheleGomez@adr.org

Enclosure

cc: Lawrence S. Rosen, Esq.
Hon. L. Paul Kehoe

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of Arbitration Between:	:	
DONALD J. TRUMP FOR PRESIDENT,	:	Case No. 01-17-0007-6454
CLAIMANT	:	
v.	:	
JESSICA DENSON,	:	
RESPONDENT	:	

PARTIAL AWARD

I, the Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been duly sworn, and having duly read and consider the documents submitted by the parties, do hereby, **Find** and **Award**, as follows:

1. All Procedural History

This arbitration arises from a written agreement (the "Agreement") between Claimant, as employer, and Respondent, as employee. The Agreement provides that it is deemed to have been made in the State of New York and that all claims with respect to the enforceability of the Agreement must be interpreted and construed pursuant to the laws of the State of New York without regard to conflict of laws. The Agreement further provides that the employee consents to exclusive personal jurisdiction and venue in the State of New York with respect to any action or proceeding brought with respect to the Agreement, and that any dispute arising under the Agreement may, at the sole discretion of named parties, including Claimant, be submitted to binding arbitration in the State of New York pursuant to the rules for commercial arbitrations of the American Arbitration Association.

Claimant commenced this arbitration by a Demand for Arbitration filed with the American Arbitration Association on December 20, 2017. Respondent was served with the Demand for Arbitration pursuant to AAA rules. She Has not submitted an answering statement.

Consequently, she is deemed to have denied the claim.

A scheduling conference was held by telephone on May 22, 2018. Claimant appeared by counsel. Respondent did not appear although she had been notified of the conference call pursuant to AAA rules. At the conference call the following rulings were made by the undersigned:

> "the parties shall submit in writing to the Association any documents pertaining to the arbitration, including a statement of facts together with any briefs, written arguments or other evidence you wish to submit by July 23, 2018."
> "Each party may file one written reply to the initial submission within 23 days from the date of transmittal of the statements and proofs by the other party(s)."
> "Failure of any party to make such a reply within a specified period of time is deemed to be a waiver of its right to reply."
> "When all the statements, proofs, and answers (if any) have been received by the Association, they will be transmitted to the arbitrator."
> "The arbitrator shall then examine the documents and request further evidence from the party (s), if necessary. Otherwise, the arbitration will be declared closed, and the time. For rendering the award begins on that date."
> "This is a reminder the arbitration may proceed in the absence of any party who fails to participate or fails to obtain a postponement."

Respondent was notified of the above rulings by letter from the Association dated May 22, 2018.

A second conference call by was held on August 20, 2018. Claimant appeared by counsel. Respondent did not appear although she had been notified of the conference call pursuant to AAA rules. Following the conference call, the undersigned issued an order which provides as follows:

> "**Ordered**, that AAA shall immediately serve the Application for an Award on Respondent by regular and certified mail (signature not required); and
>
> **Ordered**, that the parties are required to keep all documents and proceedings in this arbitration confidential pursuant to the rules of the American Arbitration Association; and
>
> **Ordered**, that Respondent shall have 23 days from the date of mailing to submit a response in opposition to the Application for an Award."

The Order was served upon Respondent by the Association with a letter dated August 20, 2018.

Respondent's first appearance in this matter was by a letter dated September 7, 2018 and filed with AAA on September 10, 2018, in response to claimant's Application for an

Award. The return address on Respondent's letter of September 7, 2018 is the address to which all notices and correspondence to her have been sent by AAA since the undersigned's appointment as arbitrator in this matter. Respondents letter does not contradict any of the factual allegations in the Application for an Award. Respondent's letter simply recites "ongoing litigation" and encloses a copy of Justice Bluth's Decision & Order of August 7, 2018 (hereinafter described in detail).

Respondent has commenced actions relating to her employment by Claimant in the Supreme Court of the State of New York, New York County (the "State Action"), and the U.S. District Court for the Southern District of New York (the "Federal Action").

Claimant moved in the State Action to compel arbitration. By Decision & Order dated August 7, 2018, Hon. Arlene P. Bluth, J.S.C., denied the motion, holding that the arbitration clause in the Agreement confines arbitration to "any dispute arising under or relating to this agreement" and that it does not require arbitration for any "dispute between the parties" or "any dispute arising out of plaintiff's employment." Justice Bluth further held that the agreement requires arbitration on claims relating to a specific list of five prohibited acts on Respondent's part: no disclosure of confidential information; no disparagement; no competitive services; no competitive solicitation; and no competitive intellectual property claims. Justice Bluth held that neither the Agreement nor its arbitration provision has any application to the affirmative claims asserted by Respondent in the State Action. The Decision in the State Action took no position on the enforceability of any provisions of the Agreement insofar as it relates to the five prohibited activities specifically listed above. No stay of this arbitration was granted in the State Action.

In the Federal Action Respondent sought a declaration that the Agreement "is void and unenforceable." Claimant moved to compel arbitration. The District Court held by Order dated August 30, 2018, that Respondent's claim that "the agreement is void and unenforceable" is a "dispute that arises out of the agreement," and is covered by the arbitration clause of the Agreement. Claimants motion to compel arbitration was granted and the Federal Action was dismissed.

DISCUSSISON

Although it does not expressly do so, I will consider Respondent's letter of September 7, 2018 as raising the the claim that she asserted in the Federal Action, *i.e.*, that the Agreement "is void and unenforceable." The District Court held that the validity of the agreement was an issue to be decided in this arbitration. Respondent has not submitted any law or argument which would support a finding by me that the Agreement "is void and unenforceable." I find that the Agreement is valid and enforceable.

Claimant's application requests an award: (1) finding that Respondent has breached her confidentiality, non-disparagement, and arbitration obligations under the agreement; (2) granting Claimant damages in the amount of $84,575.71 representing indemnification for the reasonable attorneys' fees and costs Claimant incurred in the state and federal court actions; (3) ordering Respondent to account for and disgorge to Claimant the total sum of all profits from her GoFundMe page; (4) granting Claimant an award of reasonable attorney's fees and costs incurred in this arbitration in an amount to be determined by the arbitrator upon a separate application by Claimant; and(5) granting Claimant all such further relief as the arbitrator deems proper and necessary. Respondent has had due notice of this arbitration and of the Application for an Award. Respondents only submissions in this matter are her letter of September 7, 2018 which enclosed a copy of Justice Bluth's Decision and Order of August 7, 2018, and a letter dated October 15, 2018 which challenges the Agreement as "*irrelevant and invalid.*" The letters do not assert facts contradicting the allegations relied upon by Claimant in its Application for an Award.

AWARD

I find that the evidence submitted by Claimant on its Application for an Award is sufficient for an understanding and determination of the dispute in this arbitration. I find that Respondent has breached the Agreement by disclosing, disseminating and publishing confidential information in the Federal Action, and by making disparaging statements about Claimant and the Agreement on the Internet on her GoFundMe page and on her Twitter account. Claimant has been damaged by Respondent's breach in the amount of $24,808.20 which I find it reasonably expended to defend the Federal Action commenced by Respondent. Claimant is awarded the sum of $24,808.20.

Claimants demand for damages for legal services in connection with the State Action, in the amount of $44,744.71 is denied based upon Justice Bluth's decision holding that the issues in that action are not subject to arbitration under the Agreement.

Claimant's request to disgorge any monies received by Respondent from a GoFundMe page is not authorized by New York law or the Agreement and is denied.

Claimant's request for an award of reasonable attorney's fees and costs incurred in this arbitration is authorized by paragraphs 7 (b) and 8 (c) of the Agreement. That request is granted in an amount to be determined by the undersigned upon a separate application by Claimant. Claimant shall submit its written application within 20 days of the date of this Award. Respondent shall have 20 days after service of the application to submit a written

response.

The parties are reminded that all documents and proceedings in this arbitration are confidential pursuant to AAA rules.

Dated: October 19, 2018

L. Paul Kehoe Arbitrator

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK

JESSICA DENSON Plaintiff, v. DONALD J. TRUMP FOR PRESIDENT, INC. Defendant.	Index No. 101616-17 **AFFIDAVIT OF JESSICA DENSON IN SUPPORT OF ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER**

NEW YORK:
)
NEW YORK:

I, Jessica Denson, swear under penalty of perjury the following:

1. I am the plaintiff in this proceeding, and I make this affidavit in support of the motion to stay the arbitration and vacate the partial award issued in the arbitration.

2. On November 13, 2017, I sued Donald J. Trump for President, Inc. (the "Campaign") for sex discrimination and harassment by filing the current lawsuit.

3. I became aware at some point after I filed this lawsuit that, on December 20, 2017, the campaign filed an arbitration against me based on my filing of this lawsuit. I refrained from participating in the arbitration, because I believed I should be in Court.

4. I received the demand for arbitration by Federal Express. It was not served on me by personal service, nor by registered or certified mail.

5. I believe that participating in the arbitration would legitimize an unlawful attempt to keep my matters out of court, so I refrained from participating pending this Court's order on the motion.

6. Soon thereafter, on March 19, 2018, the Campaign moved this Court to stop this lawsuit by compelling arbitration.

7. I did not believe that this was right, or that my case should be controlled by the nondisclosure agreement that I had signed, so I opposed the motion.

8. On August 9, 2018, this Court denied the Campaign's motion to compel arbitration, and allowed this lawsuit to continue.

9. Separately, in response to the Campaign's attempt to bring the arbitration and punish me for bringing my lawsuit, I filed a federal lawsuit to void the agreement on March 26, 2018. The federal court dismissed my lawsuit and ordered that any attempt by me to void the agreement must be accomplished in arbitration – though the federal court did not order me to participate in the existing arbitration brought by the Campaign.

10. I believed at that time and still believe that the matters that I am claiming – the horrible behavior by employees of the Campaign – should be brought in open court, not in a secret arbitration.

11. At some point I learned that the American Arbitration Association ("AAA") was sending notices to my address in California. Due to the demands of this litigation, I have been largely absent from California, but I had a friend periodically check my mail, and ultimately learned that the arbitration was still going on.

12. As I was not participating in the arbitration, on September 7, 2018, I sent a letter to the arbitrator for the sole purpose of informing him of this Court's decision of August 9, 2018, and that the arbitration had been wasteful in light of the Court's decision. My letter did not say, and I did not intend for my letter to say, that I was putting any issue before the arbitrator for decision. I was not asking and did not want the arbitrator to issue a decision on the validity or enforceability of the agreement one way or the other.

13. I retained counsel on October 30, 2018. Before that time, I was acting on my own behalf.

14. I now submit this affidavit in support of my counsel's attempt to stay the arbitration and vacate any arbitration award.

JESSICA DENSON

Sworn to me this 26th day of November 2018

State of District County of Columbia
Subscribed and sworn before me on 11/26/2018 (Date)

(Notary Signature)

JASON DIAZ NOTARY My Comm. Expires March 14, 2021 PUBLIC DISTRICT OF COLUMBIA