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

JODI RITTER,

Plaintiff,

-against-

WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP,

Defendant.

Index No. 159349/2014

AFFIRMATION IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND COMPEL ARBITRATION

THOMAS W. HYLAND, an attorney admitted to practice law in the courts of the State of New York hereby affirms the following to be true pursuant to the penalties of perjury:

1. I am a member of the law firm of **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**, attorneys of record for the defendant, **WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP** ("Wilson Elser" or "the firm"), and as such I am fully familiar with the facts and circumstances of this action. This affirmation is submitted in support of the defendant's N.Y. C.P.L.R. §§ 3211(a)(1) and 7503(a) motion to dismiss and compel arbitration. This motion is made in lieu of an answer.

2. Plaintiff, a former non-equity partner, has filed suit alleging violations of the New York State Human Rights Law ("NYSHRL") and the New York City Human Right Law ("NYCHRL"). Specifically, plaintiff claims that during the course of her employment by Wilson Elser she was subjected to discrimination and harassment on the basis of her sex and gender. Plaintiff's claims are wholly without merit and are precluded by the arbitration clause of her fully endorsed December 2001 partnership agreement. Paragraph seven (7) of that agreement states: "Any claim . . . arising out of or relating to . . . the partnership relationship, including without

limitation claims of discrimination . . . shall be resolved in accordance with the [arbitration] procedures specified below, which shall be the sole and exclusive procedures for the resolution of any such claims." Plaintiff, who was aware of this provision, as well as Wilson Elser's May 2014 demand for arbitration, nevertheless chose to file this lawsuit, necessitating the instant motion. Accordingly, Wilson Elser respectfully submits that dismissal of this matter is warranted now and requests That plaintiff's complaint be dismissed in its entirety pursuant to N.Y. C.P.L.R. §§ 3211(a)(1) and 7503(a), as plaintiff's claims are precluded by the arbitration clause of the December 2001 partnership agreement. (Annexed hereto as Exhibit "A" is plaintiff's Summons and Complaint).

STATEMENT OF UNDISPUTED RELEVANT FACTS

3. Plaintiff Jodi Ritter was a non-equity partner in the firm's White Plains office until the March 2013 termination of her at-will employment contract with Wilson Elser, a limited liability partnership. Plaintiff was hired as an Associate Attorney in September 1997 and promoted to non-equity partner on January 1, 2002. (Annexed hereto as Exhibit "B" is plaintiff's non-equity partnership agreement.)

4. As part of her at-will employment agreement, plaintiff agreed to arbitrate any and all claims arising out of or relating to the partnership relationship between her and Wilson Elser. The agreement to arbitrate states in pertinent part:

> Any claim in contract, tort or otherwise arising out of or relating to this Partnership Agreement or the partnership relationship, including without limitation claims of discrimination of federal or state statutes, shall be resolved in accordance with the procedures specified below, which shall be the sole and exclusive procedures for the resolution of any such claims. This Partnership Agreement and partnership relationship shall be interpreted, determined and controlled by the laws of the State of New York. This provision shall survive termination of the partnership relationship and shall apply to former partners and to the estate or

conservator of a former partner.

(Exhibit "B" at ¶ 7).

5. Plaintiff signed the at-will employment agreement on December 13, 2001. In so doing, she agreed to notify Wilson Elser of any dispute related to the agreement, to attempt to mediate that dispute if her initial discussion with the firm did not result in a resolution, and finally to submit the dispute to arbitration should mediation prove unsuccessful. (Exhibit B at ¶ 7).

6. Plaintiff's at-will employment contract was terminated in March 2013. In or around March 2014, plaintiff first notified Wilson Elser of the claims asserted in the instant complaint. On May 19, 2014, plaintiff and the firm attended mediation, which was unsuccessful in resolving this matter and on May 29, 2014, Wilson Elser sent plaintiff a letter demanding that this matter be submitted to arbitration. Plaintiff failed to respond to the firm's May 29th letter and instead commenced the instant lawsuit, violating the arbitration provision referenced above. (Annexed hereto as Exhibit "C" is the May 29, 2014 demand for arbitration).

ARGUMENT

POINT I

PLAINTIFF'S COMPLAINT IS PRECLUDED BY THE PARTIES' PARTNERSHIP AGREEMENT AND THE FEDERAL ARBITRATION ACT

7. Plaintiff's sex and gender discrimination claims must be dismissed as they are precluded by the December 2001 partnership agreement. In executing the partnership agreement, plaintiff voluntarily agreed to arbitrate any and all claims "arising out of" or related to the partnership, including without limitation any and all claims of employment discrimination. (*See* Exhibit C). Case law is clear, such an agreement necessitates dismissal of plaintiff's claims for arbitration. *See* N.Y. C.P.L.R. § 7501 (a written agreement to arbitrate is enforceable under

New York law); *In the Matter of the City of Newburgh v. McGrane*, 2009 N.Y. Misc. LEXIS 1783, 2009 NY Slip Op 51463(U), at *9 (Sup. Ct. Orange Cty. May 27, 2009) ("the Court of Appeals has articulated on numerous occasions, its longstanding policy favoring arbitration as an expeditious and economical alternative to judicial adjudication and resolution of disputes.") (citations omitted); *Matter of Nationwide Fen. Ins. Co. v. Investors Ins. Co. of Am.*, 37 N.Y.2d 91, 95, 332 N.E.2d 333 (1975) (arbitration is a favored means of resolving disputes); *Soloway v. Morgan Stanley Smith Barney LLC*, 2012 N.Y. Misc. LEXIS 320, 2012 NY Slip Op 50123(U), at *9 (Sup. Ct. N.Y. Cty. Jan. 25, 2012) ("Under New York law, a broad arbitration clause creates a presumption of arbitrability with respect to disputes related to the underlying contract") (citing *Matter of Domansky v. Little*, 2 A.D.3d 132, 770 N.Y.S.2d 288, 289-90 (1st Dept. 2003)); *Liberty Mgt. & Constr. v. Fifth Ave. & Sixty-Sixth St. Corp.*, 208 A.D.2d 73, 620 NYS2d 827, 829 (1st Dept. 1995) ("[w]here there is no substantial question whether a valid agreement was made or complied with ... the court shall direct the parties to arbitrate.") (quoting N.Y. C.P.L.R. § 7503(a)); *see also, Nissan v. Tejas Securities Group, Inc.*, 2012 N.Y. Misc. LEXIS 6519, 2012 NY Slip Op 33544(U), at *7-8 (Sup. Ct. N.Y. Cty. Nov. 13, 2012) (dismissing plaintiff's NYSHRL and NYCHRL discrimination claims and compelling arbitration as the arbitration clause contained "arising out of" language and therefore encompassed plaintiff's employment related claims); *Tong v. S.A.C. Capital Management, LLC*, 52 A.D.3d 386, 860 N.Y.S.2d 84, 84-85 (1st Dept. 2008) (affirming dismissal of plaintiff's claims for arbitration as "plaintiff's claims arise out of events that occurred in the course of his employment" and "they all are subject to arbitration pursuant to the broad and unambiguous arbitration provision contained in his employment agreement, which covers 'any dispute or controversy arising out of or relating to this agreement, the interpretation thereof, and/or the employment relationship.'"); *In the Matter*

of PricewaterhouseCoopers L.L.P. v. Rutlen, 284 A.D.2d 200, 726 N.Y.S.2d 258, 258-59 (1st Dept. 2001) (affirming dismissal of plaintiff's employment claims as they were subject to the unambiguous arbitration provision contained in the parties' partnership agreement); *Board of Educ. Of Patchogue-Medford Union Free School Dist. v. Patchogue-Medford Congress of Teachers*, 48 N.Y.2d 812, 399 N.E.2d 1143, 1144 (1979) (once it has been determined that the claim sought to be arbitrated is properly before the arbitrator and that the arbitration of the dispute is not against the public policy of this State, "further judicial inquiry is foreclosed").

8. Plaintiff's complaint should also be dismissed pursuant to the Federal Arbitration Act ("FAA"). *See* 9 U.S.C. § 2 (the FAA applies to any arbitration agreement evidencing a transaction involving commerce); *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (the U.S. Supreme Court has "interpreted the term 'involving commerce' in the FAA as the functional equivalent of the more familiar term 'affecting commerce' – words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power"); *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) ("Employment contracts, except for those covering workers engaged in transportation, are covered by the FAA."); *Thomas James Assoc., Inc. v. Jameson*, 102 F.3d 60, 65 (2d Cir. 1996) (it is well settled that the "FAA embodies a strong federal policy favoring arbitration," and that, in accordance with this policy, doubts as to the arbitrability of a claim are to be resolved in favor of arbitrability) (citations omitted); *AT&T Mobility LLC v. Conception*, 131 S. Ct. 1740, 1744 (2001) ("Section 2 of the Federal Arbitration Act (FAA) makes agreements to arbitrate 'valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'") (quoting 9 U.S.C. § 2); *see also*, *Nissan v. Tejas Securities Group, Inc.*, 2012 N.Y. Misc. LEXIS 6519, 2012 NY Slip Op 33544(U), at *6, 8-9 (Sup. Ct. N.Y. Cty. Nov. 13, 2012) (granting dismissal for arbitration of

plaintiff's NYSHRL and NYCHRL discrimination claims pursuant to the FAA); *Mansberger v. Ernst & Young LLP*, 2011 N.Y. Misc. LEXIS 6892, 2011 NY Slip Op 33842(U), at *6, 8 (July 1, 2011) (granting defendants' motion to dismiss and compel arbitration pursuant to both the FAA and New York law).

CONCLUSION

9. For the foregoing reasons, it is respectfully requested that this Court grant Wilson Elser's motion to dismiss plaintiff's complaint and compel arbitration in its entirety and for whatever further relief this Court deems just and proper.

Dated: New York, New York
October 3, 2014

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: ______________________

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