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

ANDREA TANTAROS, Plaintiff, - against - FOX NEWS NETWORK, LLC, ROGER AILES, WILLIAM SHINE, DIANNE BRANDI, IRENA BRIGANTI, and SUZANNE SCOTT, Defendants.	Index No. 157054/2016

MEMORANDUM OF LAW OF DEFENDANTS FOX NEWS NETWORK, LLC, WILLIAM SHINE, DIANNE BRANDI, IRENA BRIGANTI, AND SUZANNE SCOTT IN SUPPORT OF THEIR MOTION TO COMPEL ARBITRATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

A. CASES

B. STATUTES AND OTHER AUTHORITIES

Defendants Fox News Network, LLC ("Fox News"), William "Bill" Shine, Dianne Brandi, Irena Briganti and Suzanne Scott (collectively "Defendants") hereby move to compel the arbitration of Plaintiff Andrea Tantaros's complaint at the American Arbitration Association (the "AAA") in New York City in accordance with the arbitration provision in her Employment Agreement (the "Agreement") with Fox News, which initiated a related an already pending arbitration against Tantaros more than three months ago.

PRELIMINARY STATEMENT

Over the last few weeks, 21st Century Fox (Fox News' parent company) has made clear its commitment to providing a safe and dignified workplace at Fox News: by immediately launching an investigation in which women were encouraged to report their experiences under conditions of confidentiality, and by committing to make things right with those women who were not treated with the respect that they and every employee deserve. But Tantaros is not a victim; she is an opportunist.

Tantaros was suspended months ago by Fox News for breaching her Employment Agreement by writing an unauthorized book and is a party to a pending arbitration proceeding before the AAA. After shopping her supposed harassment story directly to the media without much success, she decided simply to ignore her obligation to proceed in arbitration, just as she ignored her other contractual commitments at Fox News, leading to her suspension. Tantaros's unverified complaint of August 22 in this Court bears all the hallmarks of the "wannabe": she claims now that she too was victimized by Roger Ailes, when, in fact, contrary to her pleading, she never complained of any such conduct in the course of an investigation months ago. Not to be outdone by anyone, she contends that she was sexually harassed by an ever-shifting collection of employees at Fox News; she charges that outside counsel retained by 21st Century Fox

deliberately ignored her purportedly important harassment story (actually, her lawyer, Joseph C. Cane, Jr., failed to return a telephone call from the law firm, Paul Weiss, retained to conduct the investigation); and she claims retaliation even though she concedes that she has not been terminated and remains on Fox News' payroll.

Tantaros's complaint is filled with falsehoods, but for present purposes, what matters most is that her foundational allegation – that her lawsuit has been properly filed in this Court – is demonstrably wrong. Every claim in Tantaros's baseless complaint is subject to the broad and unambiguous provision in her Employment Agreement governing all disputes arising out of or relating to her employment.[1] The fact that arbitration may not present the opportunities for public vilification that she and her counsel seem to favor does not excuse ignoring the express terms of her Employment Agreement. This Court should compel Tantaros to proceed in the arbitration proceeding that is already underway.

STATEMENT OF FACTS

A. Tantaros's Employment and Employment Agreement.

In April 2010, Tantaros joined Fox News as a contributor. In 2011, she was named as one of several co-hosts on *The Five*, a weekday afternoon show that airs at 5:00 p.m. She later became the regular co-host of *Outnumbered*, Fox News' show that airs at 12 noon on weekdays. Tantaros also appeared at times on other Fox News programming.

On or about September 17, 2014, Fox News entered into a three-year Employment Agreement with Tantaros. The Agreement contains a broad and unambiguous arbitration provision. It states, in pertinent part, that:

[1] Attached to this brief is an addendum concerning Tantaros's gratuitous public attacks on nonparties that litter her complaint. Defendants will respond to the falsehoods directed at them at the AAA, but the baseless attacks on the non-parties merit a brief response here.

> Any controversy, claim or dispute arising out of or relating to this Agreement or your employment shall be brought before a mutually selected three-member arbitration panel and held in New York City in accordance with the rules of the American Arbitration Association then in effect. … Such arbitration, all filings, evidence and testimony connected with the arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence. … Breach of confidentiality by any party shall be considered to be a material breach of this Agreement.

(Garland Aff. Ex. A).

The Agreement also contains a provision requiring Tantaros to receive approval from Fox News before writing and publishing books. (*Id.*) Finally, Paragraph 8 of her Agreement contains a so-called "Pay or Play" provision that states: "Nothing herein contained shall ever obligate Fox to utilize Performer's services or disseminate Programs for which Performer has rendered services and Fox's only obligation to Performer is to make the payments as herein provided, subject to any rights relieving Fox of such obligation." (*Id.*)

B. Fox News' Demand for Arbitration.

Tantaros suggests that her suspension for ignoring her employment obligations in connection with publishing a book was a pretext in retaliation for her complaints of supposed sexual harassment. The opposite is true: Tantaros's allegations about sexual harassment are a smokescreen to obscure her violation of her employment contract.

In 2013, Brandi explained to Tantaros her obligations to clear with her employer any book that she was planning to write while employed at Fox News, following established procedures. Tantaros ignored those instructions. In February 2016, with her book apparently far along, Tantaros complained to Scott and Brigette Boyle of Fox News's Human Resources Department that three men (not including Ailes) had made inappropriate comments to her.

Tantaros's then-attorney Cane wrote to Brandi stating that Tantaros should be contacted only through him.

On March 1, 2016, upon learning that Tantaros had written a book that was about to be published, Brandi told Tantaros that she had breached her Agreement by, among other things, not obtaining permission from Fox News to write the book. That day, Brandi asked Tantaros to discuss the problem with her. Specifically, Tantaros had written a book called "*Tied Up in Knots … How Getting What We Wanted Made Women Miserable*" in which she appears on the cover in a submissive and sexualized position with her arms tied over her head. (See Garland Aff. Ex. B). Tantaros never submitted a manuscript of the book to Fox News for approval, and only submitted through her agent more than two years before the final release of the book a "rough and tentative" preliminary outline with a different title and no cover art.

Tantaros's response to Brandi's request came in a letter, 15 days later, dated March 16, 2016, from Cane. Cane denied in conclusory terms that Tantaros had breached her Agreement and alleged, among other things, that Tantaros feared for her personal safety when she observed unidentified persons on the set of her show, that a female colleague had threatened her, and that four men, whom she identified, had sexually harassed her. Again, Ailes was not among them.

Pursuant to Fox News policy, Brandi notified Tantaros and Cane that she and Denise Collins, Senior Vice President for Human Resources, wanted to interview her to obtain the details concerning her allegations. Cane refused to permit Tantaros to be interviewed. After that refusal, Brandi and Collins interviewed 13 persons who were either mentioned in Cane's March 16 letter or were witnesses to events alleged in the letter. None of the persons interviewed supported any of Tantaros's claims. The four men accused of sexual harassment vehemently denied it.

When Brandi notified Cane in early April that the investigation was nearing its conclusion, she again told Cane that she and Collins still wanted to interview Tantaros. The interview occurred on April 7 and addressed the allegations in Cane's letter. Tantaros did not state before or during the interview that Ailes had sexually harassed her. Because Tantaros had great difficulty describing the alleged sexual harassment by the other four men, she was twice asked: "Can you recall any specific statements of a sexualized nature that anyone said to you?" Both times she replied that she did not recall.

At the conclusion of the interview, Brandi again encouraged Tantaros to try to recall what sexually harassing statements had been made to her and asked her to return in a few days to discuss the statements and complete the interview. Cane subsequently told Brandi that his client would not appear again.

On April 25, 2016, Fox News suspended Tantaros with pay in accordance with the terms of her Employment Agreement because of her failure to obtain approval of her book.

On May 11, 2016, in accordance with the arbitration provision in Tantaros's Agreement, Fox News filed a Demand for Arbitration with the AAA in New York City. In the arbitration, Fox News seeks a declaratory judgment that Tantaros breached her Agreement by publishing the book without consent. To date, Tantaros has not filed an Answer to the Demand for Arbitration.

In July, Paul Weiss attorneys, conducting an investigation into allegations of sexual harassment, received a call from Tantaros's attorney, Joseph Cane. They returned the call but he never called back. It does not appear that Tantaros had any interest in answering the questions that she had left unanswered during her interview. Nor, apparently, is she interested in explaining her breach at the AAA proceeding.

On August 22, 2016, Tantaros filed the complaint initiating this lawsuit. The complaint contains allegations of workplace sexual harassment and retaliation through adverse employment actions. Ailes, who went unmentioned by Tantaros over weeks of letters and hours of interviews, is prominently featured. Although this Court is not in a position to pass judgment on the merits of Tantaros's latest claims, one thing is clear: all of them belong before the AAA.[2]

ARGUMENT

I. THIS COURT SHOULD ORDER THAT TANTAROS'S CLAIMS AGAINST FOX NEWS MUST BE ARBITRATED.

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2 (the "FAA"), states that a contract provision "evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction … shall be valid, irrevocable and enforceable save upon such grounds as exist at law or in equity for the revocation of such contract." *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20, 24-25 (1991). By enacting the FAA, Congress established an arbitration policy that "is to be advanced by rigorous judicial enforcement of arbitration agreements." *Smith Barney Harris Upham & Co. v. Luckie*, 85 N.Y.2d 193, 200-01 (1995). Both the U.S. Supreme Court and the New York Court of Appeals have instructed that arbitration is strongly favored as a matter of policy. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25 (1983); *Luckie*, 85 N.Y.2d at 201; *Westinghouse Elec. Corp. v. N.Y.C. Transit Auth*., 82 N.Y.2d 47, 53 (1993).

[2] Paragraph 68 of the complaint purports to describe privileged settlement discussions. While the Fox News Defendants will not describe the substance of these discussions, we can disclose that Tantaros's new lawyer, Judd Burstein, repeatedly advised that he had recommended settlement to Tantaros along the lines proposed, lamented that Tantaros would not follow his advice, reported that she was "difficult and unreasonable," and indicated that he probably would not represent her if there were no settlement. For now, it appears that Burstein remains as counsel.

To decide whether to compel an action to arbitration, a New York court must determine: (1) "whether the parties have entered into a binding agreement to arbitrate[;]" and (2) "whether the controversy sought to be litigated falls within the terms of the broad arbitration clause at issue." *Liberty Mgmt. & Constr. Ltd. v. Fifth Ave. & Sixty-Sixth St. Corp.*, 208 A.D.2d 73, 77, 79 (1st Dep't 1995). Fox News easily satisfies that standard here.

First, the arbitration provision in Tantaros's Employment Agreement is signed by her and by Fox News. And it is crystal clear. It provides in plain and unambiguous language that "any controversy, claim or dispute arising out of or relating to this Agreement or your employment" shall be settled by AAA arbitration. (*See* Garland Aff. Ex. A).

Second, the 37-page complaint contains a litany of alleged events arising out of or related to Tantaros's employment. As just some examples, it pleads that she was sexually harassed during her employment and contends that the alleged harassment "affected a term, condition, and the privileges of her employment." And it pleads that she was retaliated against as an employee of Fox News because she repeatedly was subjected "to adverse actions in relation to her employment that was based on her protected activity." (Cmpt., ¶¶ 75-98). Simply put, the complaint itself proves that it falls entirely within the broad scope of Tantaros's Agreement's arbitration provision.

Courts routinely compel arbitration of discrimination, retaliation and tort claims. In *Oldroyd v. Elmira Savings Bank*, 134 F.3d 72, 74, 77 (2d Cir. 1998), the Second Circuit ruled that the plaintiff's retaliatory discharge claim could not be brought in court and could only be heard in arbitration. The arbitration provision there used identical language as here – any dispute "arising out of or relating to the agreement" shall be settled by arbitration. *Compare Oldroyd*, 134 F.3d at 74 *with* Tantaros's Agreement at 11 (Garland Aff. Ex. A). And in *Tong v. S.A.C.*

Capital Mgmt., LLC, 52 A.D.3d 386, 387 (1st Dep't 2008), the First Department held that an arbitration clause that required the arbitration of "any dispute or controversy arising out of or relating to this agreement, the interpretation thereof, and/or the employment relationship" covered the plaintiff's New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL") discrimination and retaliation claims because they "ar[ose] out of events that occurred in the course of his employment."

Likewise, in *Powers v. Fox Television Stations, Inc.*, 923 F. Supp. 21, 24 (S.D.N.Y. 1996), the court held that the plaintiff's NYSHRL and NYCHRL unlawful termination claims were arbitrable under his employment contract because it "provide[d] for arbitration of all disputes 'arising out of or in connection with this agreement'" and "his claim that his employment relationship was unlawfully terminated clearly 'ar[ose] out of or in connection with' this agreement." *See also Gateson v. ASLK-Bank, N.V.*, No. 94 Civ. 5849, 1995 U.S. Dist. LEXIS 9004, at *2, 15 (S.D.N.Y. Jun. 29, 1995) (compelling arbitration of the plaintiff's NYSHRL and NYCHRL discrimination claims based on the language that any controversy "arising out of or relating to this Agreement" shall be settled by arbitration). Numerous other courts hold the same. *See Fletcher v. Kidder, Peabody & Co.*, 81 N.Y.2d 623, 635-36 (1993); *South Huntington Jewish Center, Inc. v. Heyman*, 282 A.D.2d 684, 685 (2d Dep't 2001); *Shapiro v. Prudential Securities, Inc.*, 233 A.D.2d 384, 385 (2d Dep't 1996); *Valdes v. Swift Transp. Co.*, 292 F. Supp. 2d 524, 530 (S.D.N.Y. 2003).

Tantaros's tortious interference claim against Fox News also falls squarely within the scope of the arbitration provision. That claim, too, arises out of or relates to Tantaros's Employment Agreement; in fact, her Agreement is the focus of the claim. It alleges that Fox News improperly invoked Paragraph 8 of the Agreement to "decimate the sales of Tantaros's

book." (Cmpt., ¶ 65). *See Zuckerman v CB Richard Ellis Real Estate Servs.*, LLC, 2013 N.Y. Misc. LEXIS 1938 (Sup. Ct. N.Y. County May 3, 2013) (holding that an employee's tortious interference claim for losses incurred (by virtue of lost real estate clients) when he was forced to resign "'ar[o]se out or relat[ed] to' the Employment Agreement," and were arbitrable because the losses depended on his employer's obligation to pay brokerage commissions under the Employment Agreement).

Recognizing the settled law compelling arbitration of her claims, Tantaros alleges that "Fox News' leak of information about the arbitration [already filed against her by Fox News] was a material breach of the arbitration provision, and therefore permits [her] to proceed in this Court as opposed to in an arbitration." (Cmpt., ¶ 74). Tantaros cites no law in support of this legal conclusion, and none exists. Indeed, under the FAA, the law is to the contrary.

Under 9 U.S.C. § 3, a party seeking arbitration waives the right to have a case compelled to arbitration only if it is "in default in proceeding with such arbitration." *Apple & Eve, LLC v. Yantai North Andre Juice Co. Ltd.*, 610 F. Supp. 2d 226, 229 (E.D.N.Y. 2009). The Court of Appeals for the Second Circuit has held that this means a waiver occurs only "when [a party] engages in protracted litigation that prejudices the opposing party." *PPG Indus. v. Webster Auto Parts*, 128 F.3d 103 (2d Cir. 1997). Under this standard, the Second Circuit considers three factors: "(1) the time elapsed from the commencement of litigation to the request for arbitration, (2) the amount of litigation (including any substantive motions and discovery), and (3) proof of prejudice." *Id.* Of the three factors, prejudice is "[t]he key to a waiver analysis." *Thyssen, Inc. v. Calypso Shipping Corp.*, S.A., 310 F.3d 102, 105 (2d Cir. 2002). Prejudice "refers to the inherent unfairness—in terms of delay, expense, or damage to a party's legal position—that occurs when the party's opponent forces it to litigate an issue and later seeks to arbitrate that

same issue." *Doctor's Associates, Inc. v. Distajo*, 107 F.3d 126, 134 (2d Cir. 1997). *See also Cusimano v. Schnurr*, 26 N.Y.3d 391, 401 (2015) ("when addressing waiver [under the FAA], courts should consider the amount of litigation that has occurred, the length of time between the start of the litigation and the arbitration request, and whether prejudice has been established").

Here, Tantaros alleged no such conduct, nor could she. No delay occurred in the filing of the Demand for Arbitration. Indeed, the arbitration to which this complaint responds was initiated by Fox News before Tantaros improperly filed this lawsuit. *See Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc.*, 252 F.3d 218, 224 (2d Cir. 2001) (finding no waiver where defendant moved to compel arbitration eight days after it had filed a separate lawsuit in London). Second, Defendants have not engaged in any litigation in the lawsuit other than the instant promptly filed motion to compel arbitration. Fox News' alleged breach of confidentiality, Tantaros's sole basis for her claim of waiver, does not demonstrate, as it must to constitute waiver, an intent to forgo arbitration in any way and therefore any alleged breach is of no moment. *See Ivax Corp. v. B. Braun of Am.*, 286 F.3d 1309, 1315-16 (11th Cir. 2002) (holding that a breach of contract "does not reflect an intent by [a plaintiff] to forego arbitration" and therefore cannot constitute a waiver under 9 U.S.C. § 3).

Third, Tantaros has not suffered any prejudice; there has been no delay, expense, or damage to her legal position. All that has happened here is that Tantaros and one of her lawyers, Burstein, went to the news media in violation of her Employment Agreement, and Fox News responded to their false accusations by factually reporting that Fox News had filed the Demand for Arbitration against Tantaros and that she had not responded to it. Accordingly, no waiver occurred. *See Gavlik Constr. Co. v. H. F. Campbell Co.*, 526 F.2d 777, 783 (3d Cir. 1975) (finding no waiver where a party moved to compel arbitration immediately after removal, where

discovery had not commenced and "[m]ost importantly, [where the plaintiff] failed to show any prejudice" resulting from the defendant's filing of a third party complaint).

Thus, pursuant to CPLR § 7503(a), Tantaros's claims against Fox News should be ordered to arbitration and this action should be stayed pending the outcome of the arbitration.

II. THIS COURT SHOULD ORDER THAT TANTAROS'S CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS MUST BE ARBITRATED.

Tantaros's claims against the individual defendants should also be compelled to arbitration for several reasons.

First, acts by employees or agents of an employer that is a party to an arbitration agreement are arbitrable "to the extent that the alleged misconduct relates to their behavior as officers or directors or in their capacities as agents of the corporation." *Hirschfield Productions, Inc. v. Mirvish*, 88 N.Y.2d 1054, 1056 (1996) (*citing Roby v. Corp. of Lloyd's*, 996 F.2d 1353, 1360 (2d Cir. 1993)). This rule permitting employee nonsignatories to invoke the arbitration clause of their employer is followed not only by the New York Court of Appeals but also by the majority of federal circuits, including the Second Circuit. *See Roby*, 996 F.2d at 1360 (stating that "employees or disclosed agents of an entity that is a party to an arbitration agreement are protected by that agreement"); *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 1121 (3d Cir. 1993) ("Because a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered under the terms of such agreements"); *Arnold v. Arnold Corp.-Printed Commc'ns for Bus.*, 920 F.2d 1269 (6th Cir. 1990) (same); *Lee v. Chica*, 983 F.2d 883 (8th Cir. 1993) (same); *Letizia v. Prudential Bache Securities, Inc.*, 802 F.2d 1185 (9th Cir. 1986) (same); *Amisil Holdings Ltd. v. Clarium Capital Mgmt. LLC*, 622 F. Supp. 2d 825, 833 (N.D. Cal. 2007) ("most courts seem to agree that

nonsignatory agents can enforce an agreement to arbitrate so long as the wrongful acts of the agents, for which they are sued, relate to their behavior as agent or in their capacities as agents").

Tantaros's claims of harassment, retaliation and tortious interference against the individual defendants allege that they are employees of Fox News who acted in their capacity as employees of Fox News and that "all of the misconduct in issue alleged in this Complaint took place" at "Fox News's offices in Manhattan," where the individual defendants and Tantaros were employed. (Cmpt., ¶¶ 16-18). These claims are plainly subject to arbitration, as courts routinely hold. *See Dumnire v. Lee*, 14 Misc. 3d 813, 816 (Sup. Ct. N.Y. County 2006) (holding that "the arbitration agreement between [the] plaintiff and Morgan Stanley applie[d] to claims asserted against Lee" as they "related to Lee's conduct during the scope of his employment with Morgan Stanley"); *Brener v. Becker Paribas, Inc.*, 628 F. Supp. 442, 451 (S.D.N.Y. 1985) (holding that claims against employees acting on behalf of a corporate party to the arbitration agreement fell within the arbitrable scope of the agreement); *Gateson*, 1995 U.S. Dist. LEXIS 9004, at *15 (compelling to arbitration NYSHRL and NYCHRL claims against two employees (Smith and Thys) "because [the] Plaintiff's allegations against Smith and Thys ar[o]se out of Smith's and Thys' actions as ASLK employees in connection with Plaintiff's Employment Agreement").

Second**,** the subject matter of the dispute between Tantaros and Fox News is factually intertwined with the dispute between Tantaros and the individual defendants. It is long settled that a signatory to an arbitration agreement can be compelled to arbitrate claims with a nonsignatory "where a careful review of the relationship among the parties, the contracts they signed . . . , and the issues that had arisen among them discloses that the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed." *Merrill Lynch Intl. Fin., Inc. v. Donaldson*, 27 Misc. 3d 391, 396 (Sup. Ct. N.Y. County

2010) (quotations and citations omitted). *See also Ragone v. Atlantic Video*, 595 F.3d 115, 126-27 (2d Cir. 2010) ("[u]nder principles of estoppel, a non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate a dispute where … the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed" and where there is "a relationship among the parties of a nature that justifies a conclusion that the party which agreed to arbitrate with another entity should be estopped from denying an obligation to arbitrate a similar dispute with the adversary which is not a party to the arbitration agreement.") (quotations and citations omitted).

Courts have applied this principle to compel arbitration of employment-related claims brought under the NYSHLR and NYCHRL and for tortious interference against nonsignatories. In *DiBello v. Salkowitz*, 4 A.D.3d 230, 231 (1st Dep't 2004), a former announcer on a New York City radio station sued his former employer (Clear Channel) and supervisor (Salkowitz) after his contract was not renewed, pleading discrimination claims under the NYSHRL and NYCHRL and tortious interference. *Id.* at 231. The First Department held that "given the employment-related nature of the claims, Salkowitz, as an agent of Clear Channel, is entitled to demand arbitration of the claims." *Id.* at 232.

And in *Ragone*, plaintiff alleged under the NYSHLR and NYCHRL that a signatory to an arbitration agreement (the employer AVI) and a non-signatory (co-employer ESPN) and her supervisors "subjected [Ragone] to persistent and continuous sexual advancements and harassment." 595 F.3d at 119. The court held that ESPN as a co-employer could compel the arbitration of the claims against it because the alleged actions of both defendants were "substantially interdependent" and that "the subject matter of the dispute between Ragone and AVI [wa]s factually intertwined with the dispute between Ragone and ESPN." *Id.* at 120.

Similarly in *Cicchetti v. Davis Selected Advisors*, 2003 U.S. Dist. LEXIS 20747 (S.D.N.Y. Nov. 17, 2003), the court held that an employee who brought sexual harassment claims under the NYSHRL and NYCHRL against a former employer (DSA) and her former supervisor (Zamot) had to arbitrate her claims against Zamot who was a non-signatory because her "claims against DSA and Zamot involve[d] the very same issues and circumstances." *Id.* at *9.

So, too, here.

For all these reasons, Tantaros's claims against the individual defendants should be compelled to arbitration. Indeed, "if a party 'can avoid the practical consequences of an agreement to arbitrate by naming nonsignatory parties as [defendants] in his complaint, or signatory parties in their individual capacities only, the effect of the rule requiring arbitration would, in effect, be nullified.'" *Dassero v. Edwards*, 190 F. Supp. 2d 544, 549 (W.D.N.Y. 2002) (quoting *v. Arnold Corp.*, 920 F.2d 1269, 1281 (6th Cir. 1990)); *see also Mosca v. Doctors Assocs.*, 852 F. Supp. 152, 155 (E.D.N.Y. 1993) ("This court will not permit plaintiffs to avoid arbitration simply by naming individual agents of the party to the arbitration clause and suing them in their individual capacity.").

CONCLUSION

For all the foregoing reasons, Defendants respectfully request that this Court compel Tantaros's claims to arbitration in accordance with her Employment Agreement and stay this action pending the outcome of the arbitration at the AAA.

Dated: August 29, 2016

Respectfully submitted,

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ADDENDUM

The complaint's gratuitous allegations concerning nonparties – Tantaros's former co-hosts and others – serve no purpose other than to embarrass these individuals, and require a response. In lieu of the racist and otherwise derogatory insults bandied about by Tantaros, the Fox Defendants offer facts:

- Kimberly Guilfoyle is a former Assistant District Attorney in both Los Angeles and San Francisco.

- Harris Faulkner is a recipient of six Emmy awards and the Amelia Earhart Pioneering Lifetime Achievement Award for her humanitarian efforts.

- Shannon Bream is an attorney whose legal acumen as Fox News' Supreme Court correspondent is known to viewers throughout the country.

- Monica Crowley's distinguished career includes 20 years as a journalist. Earlier, she worked for the White House when she was just 22 years old.

- Greg Gutfeld's career includes serving as Editor-in-Chief of two major magazines.

- Dana Perino is the former White House Press Secretary.

- Catherine Herridge is a graduate of both Harvard and Columbia and has distinguished herself through her coverage of national security matters.

- Maria Bartiromo is a graduate of New York University and a member of the Cable Hall of Fame.

- Eric Bolling served on the Board of Directors of the New York Mercantile Exchange and was selected in the Major League Baseball draft.

The complaint's allegations of sexual harassment by each of several men are false. Fox News has already investigated all of these accusations and found no evidence to support them. Again, the facts tell the real story:

- John Roberts has been a journalist for 40 years and was inducted into the Canadian Broadcast Hall of Fame. Tantaros's allegation that he asked her an improper question relating to in vitro fertilization is dishonest and takes Roberts's words entirely out of context (they occurred after several serious discussions with Roberts and his wife about his wife's forthcoming book on this subject).

- Scott Brown served as a United States Senator and as a Judge Advocate General in the Massachusetts Army National Guard. His interactions with Tantaros were professional and cordial, and in full view of other personnel and talent.

- Ben Collins is a former Green Beret. He was utterly stunned to learn of Tantaros's accusations, and vehemently denies them.

The Fox Defendants will respond to Tantaros's falsehoods – including the baseless allegations involving Bill Shine, Suzanne Scott, Dianne Brandi, and Irena Briganti and the Media Relations Department contained in Paragraph 6(b), 28-32, 24-41, 46-48 and 52-56 of the complaint – at the AAA arbitration. Tantaros's entirely gratuitous attacks on her former colleagues reveals more about her than about them.