AMERICAN ARBITRATION ASSOCIATION

DONALD J. TRUMP FOR PRESIDENT, INC.
a Virginia not-for-profit corporation,

Claimant,

-vs-

OMAROSA MANIGAULT NEWMAN,
an individual,

Respondent,

DECISION AND ORDER ON RESPONDENT'S MOTIONS FOR SUMMARY JUDGMENT

T. Andrew Brown - Arbitrator
AAA-Case No.: 01-18-0003-0751

INTRODUCTION AND CASE HISTORY

Claimant Donald J. Trump for President, Inc. ("Claimant") filed A Demand to Arbitrate and a Statement of Claim for Breach of Written Contract against Respondent Omarosa Manigault-Newman ("Respondent") on August 14, 2018. The Statement of Claim alleged that Respondent had breached a non-disclosure agreement ("the Agreement") that Respondent had entered into with Claimant during the course of Respondent's employment with Claimant. Claimant alleges that Respondent violated the Agreement by disclosing confidential information and making disparaging remarks in statements Respondent made on the television program "Celebrity Big Brother" and in various other media appearances, by releasing a recording of former White House Chief of Staff John F. Kelly, and by statements made in Respondent's book *Unhinged.* Respondent answered the Statement of Claim with a Response to Statement of Claim for Breach of Written Contract, dated September 14, 2018, challenging the validity of the Agreement and denying all liability.

Respondent filed three Motions to Dismiss on the grounds of arbitrability, arguing, first, that the subject matter of the dispute was not arbitrable; second, that the matter was not arbitrable because the Demand to Arbitrate violated federal whistleblower protection laws; and third, that the case was not arbitrable based upon Claimant's alleged violation of Respondent's First Amendment rights. During oral argument of these motions, Claimant withdrew any claims for any statements Respondent made relating to her employment in the White House. In the Arbitrator's April 20, 2020 Decision and Order, the claims relating to statements Respondent made on the television program "Celebrity Big Brother" and the release of a recording alleged to be of former White House Chief of Staff John F. Kelly were dismissed. The motion was denied as to statements made in Respondent's book *Unhinged,* excluding any statements made regarding Respondent's time serving in the White House.

Subsequently, Claimant's motion to amend its claim to include additional statements Respondent made in various media appearances and on social media was granted. By Decision and Order of the Arbitrator on April 20, 2020, Claimant was permitted to amend its Statement of Claim to particularize the statements from Respondent's book Unhinged which were alleged to violate the Agreement. By Decision and Order of the Arbitrator dated May 22, 2020, Claimant was permitted to amend its Statement of Claim to include various statements made by Respondent after the date of the filing of the Demand to Arbitrate. Claimant thereafter filed an Amended Statement of Claim.

Currently before the Arbitrator are four motions filed by Respondent asking for summary judgment and an award of attorney's fees and costs pursuant to Section 8(c) of the Agreement. The first is Respondent's Motion for Final Summary Judgment Based on Arbitrability – Subject Matter of Dispute, submitted on April 29, 2021. The second is Respondent's Motion for Final Summary

Judgment Based on Arbitrability – First Amendment, submitted on April 29, 2021. The third is Respondent's Motion for Final Summary Judgment on the Issue of Whistleblower Protection, submitted on May 26, 2021. The fourth is Respondent's Motion for Final Summary Judgment Based on the Southern District of New York Ruling, submitted on May 26, 2021.In opposition to the two arbitrability motions based on subject matter and First Amendment, Claimant submitted Claimant Donald J. Trump for President, Inc.'s Opposition to Motions for Summary Judgment; Declaration of Justin Clark in Support Thereof, submitted on June 18, 2021. In opposition to the arbitrability motion based upon whistleblower protections and the summary judgment motion based on the Southern District of New York's *Denson* ruling, Claimant submitted Claimant Donald J. Trump for President, Inc.'s Opposition to Motions for Summary Judgment; Declaration of Justin Clark in Support Thereof, submitted on August 16, 2021.

Upon consideration of the parties' submissions, the Arbitrator hereby grants Respondent's Summary Judgment Motion declaring the Agreement invalid under New York contract law.

DISCUSSION

POINT I

SUMMARY JUDGMENT STANDARD

New York Civil Practice Law and Rules Section 3212 states that a motion for summary judgment:

> shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.

New York Civil Practice Law and Rules § 3212(b). The New York Court of Appeals has held that, "The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of

fact from the case." *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985); *see also*, *Ayotte v. Gervasio*, 186 A.D.2d 963 (3rd Dept. 1992). "[S]ummary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue." *Moskowitz v. Garlock*, 23 A.D.2d 943, 944 (3rd Dept. 1965).

POINT II

RESPONDENT'S SUMMARY JUDGMENT MOTION BASED ON THE DECISION OF THE SOUTHERN DISTRICT OF NEW YORK IN DENSON v. DONALD J. TRUMP FOR PRESIDENT, INC.

Respondent moves for summary judgment on the grounds that the Agreement is so overbroad, vague, and unduly burdensome that it cannot be enforced under New York contract law. Respondent relies upon the reasoning of the March 30, 2021 Memorandum Opinion and Order in *Denson v. Donald J. Trump for President, Inc.*, 2021 WL 1198666, which held the confidentiality and non-disparagement provisions of a similar agreement unenforceable. While the decision of the *Denson* case is not binding precedent, the Arbitrator finds it persuasive and in line with principles of New York contract law. The Arbitrator further finds that the terms of the Agreement pertaining to confidential information and non-disparagement are vague and unenforceable, upon which Respondent's motion for summary judgment is granted.

1. The *Denson* Case

The plaintiff in the *Denson* case is a former employee of the Claimant herein and alleged that she was asked to sign an employment agreement containing confidentiality and non-disparagement provisions. The *Denson* plaintiff brought a declaratory judgment action seeking to have the employment agreement declared invalid, both on her behalf and on behalf of a putative class of similarly situated employees or former employees who signed a similar agreement. As of the date of the writing of this Decision, no class has been certified in the *Denson* action.

Respondent herein has filed a motion to intervene in the *Denson* action, which motion is still pending before the court.

While the entire employment agreement signed by the plaintiff in the *Denson* action was not included in the March 30, 2021 Order, the sections pertaining to confidential information and non-disparagement were quoted at length. The quoted provisions of that agreement are identical to the provisions in the Agreement signed by Respondent. Both parties to this action cite to and discuss relevant sections of the *Denson* case in their respective papers on the instant motions.

Claimant argues that the reasoning of the *Denson* court should not be followed because Jessica Denson and Respondent are not similarly situated, in that Jessica Denson was a low-level employee with limited or no interaction with Mr. Trump or the higher levels of the campaign, while Respondent was a senior employee who regularly interacted with Mr. Trump, his family, and senior executives, and gained access to sensitive information as a result. Claimant also argues that Respondent's past history of association with Mr. Trump through appearances on his reality television show *The Apprentice* warranted a strict confidentiality provision as a term of her employment, since Respondent was known to be "nasty" and "confrontational" on the television show.

The Arbitrator does not find this argument attempting to distinguish Ms. Denson and Respondent persuasive. Claimant offers no basis for drawing this distinction. No such past history of Ms. Denson being "confrontational" or otherwise is proffered in either Claimant's motion papers or in the March 30, 2021 Order of the Southern District of New York. Yet Ms. Denson signed an agreement containing identical terms to the Agreement Respondent signed. And there has been no proof offered that the terms of the Agreement at issue were negotiated as unique and exclusive between Claimant and Respondent. Claimant argues, however, that the terms were

justified because of Respondent's prior association with Mr. Trump. Such an after-the-fact attempt at justification does not serve to establish a distinction between Ms. Denson and Respondent.

2. New York Contract Law Requires that Contract Terms Be Definite In Order for There to Be Mutual Assent Regarding the Material Terms

The New York Court of Appeals has held that in order for a contract to be formed, the terms that are agreed to must be clear and definite; if they are not, there is no binding contract. "[B]efore the power of law can be invoked to enforce a promise, it must be sufficiently certain and specific so that what was promised can be ascertained...Thus, definiteness as to material matters is the very essence of contract law. Impenetrable vagueness and uncertainty will not do." *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105, 109 (1981). "[U]nless a court can determine what the agreement is, it cannot know whether the contract has been breached, and it cannot fashion a proper remedy." *Cobble Hill Nursing Home, Inc. v. Henry & Warren Corp.*, 74 N.Y.2d 475, 482 (1989), citing *Restatement [Second] of Contracts § 33(2).* "If the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." *Restatement [Second] of Contracts § 33, Comment [a].*

Recognizing that there can always be some uncertainty in the terms of a contract and desiring to enforce an agreement freely entered into whenever possible, the Court of Appeals has held, "Before rejecting an agreement as indefinite, a court must be satisfied that the agreement cannot be rendered reasonably certain by reference to an extrinsic standard that makes its meaning clear." *Cobble Hill Nursing Home, Inc. v. Henry & Warren Corp., supra* at 483. A court is permitted to find in favor of a contract's validity, even if some of the terms are not fixed, "if some objective method of determination is available, independent of either party's mere wish or desire. Such objective criteria may be found in the agreement itself, commercial practice or other usage and custom. If the contract can be rendered certain and complete, by reference to something

certain, the court will fill in the gaps.'" *Metro-Goldwyn-Mayer, Inc. v. Scheider*, 40 N.Y.2d 1069, 1071 (1976).

3. The Agreement's Confidentiality Provision is Vague and Uncertain

In applying the above principles to the Agreement at issue, I find that the confidentiality provisions fail as vague and indefinite. The Agreement entered into between the parties provides, in pertinent part:

> No Disclosure of Confidential Information. During the term of your service and at all times thereafter you hereby promise and agree:
>
> a. Not to disclose, disseminate or publish, or cause to be disclosed, disseminated or published, any Confidential Information;
>
> b. Not to assist others in obtaining, disclosing, disseminating or publishing Confidential Information
>
> c. not to use any Confidential Information in any way detrimental to the Company, Mr. Trump, any Family Member, any Trump Company or any Family Member Company;
>
> d. not to save, store or memorialize any Confidential Information (including, without limitation, incorporating it into any storage device, server, internet site or retrieval system, whether electronic, cloud based, mechanical or otherwise) except as may be expressly required in connection with the performance of services to the Company.

(Agreement, Section 1).

Confidential information is defined in the Agreement as follows:

> "**Confidential Information**" means all information (whether or not embodied in any media) of a private, proprietary or confidential nature or that Mr. Trump insists remain private or confidential, including, but not limited to, any information with respect to the personal life, political affairs, and/or business affairs of Mr. Trump or of any Family Member, including but not limited to, the assets, investments, revenue, expenses, taxes, financial statements, actual or prospective business ventures, contracts, alliances, affiliations, relationships, affiliated entities, bids, letters of intent, term sheets, decisions, strategies, techniques, methods, projections, forecasts,

> customers, clients, contacts, customer lists, contact lists, schedules, appointments, meetings, conversations, notes, and other communications of Mr. Trump, any Family Member, any Trump Company or any Family Member Company.

(*Agreement, Section 6(a)*).

"Family Member" is defined in the Agreement as "any member of Mr. Trump's family, including, but not limited to Mr. Trump's spouse, each of Mr. Trump's children and grandchildren and their respective spouses...and Mr. Trump's siblings and their respective spouses and children, if any." (*Agreement ¶ 6(b)*). "Trump Company" is defined in the Agreement as "any entity, partnership, trust or organization that, in whole or part, was created by or for the benefit of Mr. Trump or is controlled or owned by Mr. Trump. (*Agreement ¶ 6(f)*). "Family Member Company" is defined in the Agreement as "any entity, partnership, trust or organization that, in whole or in part, was created by or for the benefit of any Family Member or is controlled or owned by any Family Member." (*Agreement ¶ 6(c)*).

Defining confidential information as "all information (whether or not embodied in any media) of a private, proprietary or confidential nature or that Mr. Trump insists remain private or confidential" is so indefinite that there is no way for Respondent to know what information should be kept confidential under the Agreement. As stated in the *Restatement [Second] of Contracts, § 33* and by the Court of Appeals in *Cobble Hill Nursing Home, Inc. v. Henry & Warren Corp., supra*, there is no way here to tell if a breach has occurred, since the determination of whether there is a breach is left to the sole determination of Mr. Trump. While a court may "fill in the gaps" of a contract which contains an indefinite term if there is some objective method of doing so, such as industry standards, that can be readily ascertained, in this case, there is no objective standard that could be inserted to make the meaning clear to the parties. The information that is supposed to be protected under the Agreement is not spelled out, but rather is left to the subjective

determination of one person. Consequently, there would be no way for Respondent to know if she was in breach of the Agreement.

Claimant argues that it is reasonable that certain sensitive information necessarily involved in the operation of a political campaign would be the subject of a nondisclosure agreement and so the provision should be upheld. While the Arbitrator agrees that a more narrowly drawn agreement may have been enforceable on those grounds, the provisions of the contract at issue are so overbroad and indefinite that the Arbitrator can see no way to save them absent substantial rewriting of the agreement, which the Arbitrator cannot do. From the history of this proceeding, it's impossible for the Arbitrator to rewrite the terms of the Agreement to leave the parties with what they mutually bargained for. The Court of Appeals has stated that the principle of definiteness in contracts is essential because, "[o]therwise a court, in intervening, would be imposing its own conception of what the parties should or might have undertaken, rather than confining itself to the implementation of a bargain to which they have mutually committed themselves." *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, *supra*, at 109. The Arbitrator cannot retroactively rewrite the agreement to impose on the parties the terms which would have been reasonable in the circumstances under which they contracted. To do so would be to dismiss the will of the parties.

Moreover, although Claimant suggests that the Arbitrator can easily "blue pencil" the Agreement, Claimant does not offer any alternative language or proposed limitations to the very broad terms of the Agreement. The Arbitrator has given serious consideration to whether any narrowing of the terms would be possible here, but this is not a matter akin to a standard non-compete agreement which can be "blue penciled" relatively easily by narrowing a time limit or geographical scope in the restrictive covenant. The nexus of the disputed language concerns which information must be held confidential, and this is a matter to which the Arbitrator cannot readily

assign a scope. Such determinations can only be made by the parties, who are the ones possessing detailed knowledge of their own operations and are in best position to mutually agree on what must be held confidential.

Moreover, although Claimant argues in its motion papers that Respondent engaged in numerous disclosures of confidential information, Claimant fails to discuss specific examples. In its motion papers, Claimant points generally to the chart attached as Exhibit D to the Harder Declaration submitted with Claimant's Opposition to Motions to Dismiss. The chart details the exact statements Respondent is alleged to have made in her book and in various media appearances and Twitter posts which are alleged to violate the Agreement. But in its opposition to the present motion, Claimant fails to discuss how a single statement contained in the chart contained confidential information or disclosed sensitive campaign secrets. Upon review of the chart, the statements contained therein are largely statements of Respondent's personal opinion on the character of Mr. Trump and various of his family members, statements about her dealings with Mr. Trump prior to the time she worked on the campaign, and statements of her general recollection of conversations she had with various campaign officials. Given the general nature of many of these statements, it is hard to see how Respondent could have known that they would be considered "confidential information" under the terms of the Agreement. The statements do not disclose hard data such as internal polling results or donor financial information. Rather, they are for the most part simply expressions of unflattering opinions, which are deemed "confidential information" based solely upon the designation of Mr. Trump. This is exactly the kind of indefiniteness which New York courts do not allow to form the terms of a binding contract.

4. The Agreement's Confidentiality Provisions Also Fail the *Ashland* Test Regarding the Enforcement of Restrictive Covenants

While the Arbitrator holds that the basic principle of contract law requiring a contract to be definite is sufficient by itself to invalidate the confidentiality provisions of the Agreement, the Arbitrator also finds that the contract fails to meet the standard in *Ashland Mgmt. Inc. v. Altair Invs. NA, LLC*, 59 A.D.3d 97 (1st Dept. 2008), *aff'd as modified*, 14 N.Y.3d 774 (2010) for the enforcement of restrictive covenants. "Restrictive covenants, such as the confidentiality agreements herein, are subject to specific enforcement to the extent that they are "reasonable in time and area, necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee."" *Supra,* at 102, citing *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 389 (1999). As already discussed, the scope of the Agreement is overbroad, indefinite, and unreasonable. Furthermore, the terms of what is protected in the Agreement go far beyond what would be reasonably expected to protect the Campaign's legitimate interests. Protected persons include any member of Mr. Trump's family, many of whom are not even named, and any company associated with Mr. Trump or his family members, which companies are likewise unnamed. As to the burden on the employee, as discussed above, under the terms of the Agreement, it is impossible for Respondent to know if any given statement related to Mr. Trump, any member of his family, or any business associated with Mr. Trump or any of his family members would be considered a breach of the Agreement. The Agreement effectively imposes on Respondent an obligation to never say anything remotely critical of Mr. Trump, his family, or his or his family members' businesses, for the rest of her life. Such a burden is certainly unreasonable.

The Arbitrator is not persuaded by Claimant's argument that other tribunals have determined the Agreement to be effective. Contrary to Claimant's assertions, the Appellate Division, First Department declined to analyze the Agreement on its merits in *Denson v. Donald*

J. Trump for President, Inc., 180A.D.3d 446 (1st Dept. 2020). That decision concerned a motion to overturn an arbitrator's award. The First Department said that non-disclosure agreements were not automatically invalid as a matter of law and declined to further consider arguments on the scope of the agreement in question, stating that any errors made by the arbitrator were at best mistakes of law which could not serve to overturn the arbitrator's award. *Id.* at 452. The decisions of the First Department and the Southern District of New York are the only decisions issued by a court concerning the agreement in question which the parties have brought to the Arbitrator's attention. While those cases have been cited to and argued upon by the parties, the Arbitrator is not bound by them. The parties have also brought to the Arbitrator's attention various decisions issued in other arbitration proceedings between the Campaign and other individuals, each side arguing that the reasoning in their offered decisions should be followed. Decisions made by arbitrators in other matters concerning a similar agreement are not binding in this proceeding, and I therefore decline to address any specific arbitrator's decision.

For the reasons stated herein, the Arbitrator finds that the confidentiality provisions of the Agreement are vague, indefinite, and therefore void and unenforceable.

5. The Non-Disparagement Provision is Vague and Uncertain

Respondent also moves for summary judgment on the grounds that the non-disparagement provision of the Agreement is vague and indefinite under New York contract law. The non-disparagement provision of the Agreement states:

> No Disparagement. During the term of your service and at all times thereafter you hereby promise and agree not to demean or disparage publicly the Company, Mr. Trump, any Trump Company, any Family Member, or any Family Member Company or any asset any of the foregoing own, or product or service any of the foregoing offer, in each case by or in any of the Restricted Means and Contexts and to prevent your employees from doing so.

(*Agreement,* ¶ *2*). "Company" means Donald J. Trump for President, Inc. As discussed in the preceding section, the terms "Trump Company," "Family Member," and "Family Member Company" are defined in Section 6 of the Agreement.

"Disparagement" is not defined in the Agreement, nor do the respective briefs of the parties contain any discussion of what constitutes disparagement. The plain and ordinary meaning of the word "disparagement" is "to depreciate by indirect means; speak slightingly about." *Merriam-Webster Dictionary.* In contrast, at least one New York court has held that "defamation and disparagement in the commercial context are allied in that the gravamen of both are falsehoods published to third parties." *Denson v. Donald J. Trump for President, Inc.*, 116 N.Y.S.3d 267, 276 (1st Dept. 2020), *citing Ruder & Finn Inc. v. Seaboard Sur. Co., 52 N.Y.2d 663, 670 (1981).* Other courts have looked to sources such as Black's Law Dictionary to supply a definition of the term "disparagement" when a contract has not expressly defined it. *See, e.g., Cortes v. Twenty-First Century Fox Am., Inc.*, 285 F. Supp. 3d 629, 637 (S.D.N.Y. 2018). While case law therefore does supply some guidance for how to define the term "disparagement," the Arbitrator does not find it necessary to determine the precise meaning of the term and does not consider that issue to be determinative of the current motion.

However, other terms in the provision are highly problematic when assessed under the standard discussed above which New York courts utilize when assessing whether contract terms are clear and definite. The Arbitrator finds that the Agreement is indefensibly vague and indefinite regarding the protected entities, namely, "the Company, Mr. Trump, any Trump Company, any Family Member, or any Family Member Company or any asset any of the foregoing own, or product or service any of the foregoing offer."

As discussed above, the terms "Trump Company," "Family Member," and "Family Member Company," are only vaguely defined in the Agreement. "Family Member" names five children of Mr. Trump but does not otherwise specify who is included in the protected category. No specific entity is named in the definitions of "Trump Company" and "Family Member Company." The Southern District of New York's March 30, 2021 Order references that Mr. Trump is affiliated with more than 500 companies. There is no way for Respondent to determine how many individuals or entities may be covered by the extremely broad scope of the Agreement. Analyzing the non-disparagement provision under the guidelines set forth by the New York Court of Appeals as discussed above, there is no objective standard set forth which could alert the Respondent as to whether she was in breach of the Agreement. *See Cobble Hill Nursing Home, Inc. v. Henry & Warren Corp.*, 74 N.Y.2d 475, 482 (1989); *Metro-Goldwyn-Mayer, Inc. v. Scheider*, 40 N.Y.2d 1069, 1071 (1976). As with the confidentiality clause in the Agreement, as discussed herein, the Arbitrator struggles with how the non-disparagement clause could be "blue penciled" or rewritten by the Arbitrator to include a meaningful non-disparagement clause to include what the parties assumed they were mutually bargaining for at the time of execution.

For the reasons stated herein, the Arbitrator finds that the non-disparagement provisions of the Agreement are vague, indefinite, and therefore void and unenforceable.

Respondent's Motion for Summary Judgment is therefore granted and the Amended Statement of Claim is dismissed in its entirety.

POINT III

RESPONDENT'S ARBITRABILITY MOTIONS

Respondent has also filed three summary judgment motions on arbitrability grounds based upon subject matter, the First Amendment, and federal whistleblower statutes.

Respondent had previously filed three motions to dismiss on arbitrability, on the same grounds as those in the present motions. Those motions were decided in the Arbitrator's April 20, 2020 Decision and Order. Claimant was permitted to file an Amended Statement of Claim subsequent to the April 20, 2020 Decision and Order, and Respondent now moves for summary judgment on the grounds that the Amended Statement of Claim is not arbitrable.

Claimant argues that the current arbitrability motions raise the same arguments as Respondent's previous arbitrability motions and should be denied for the same reasons set forth in my April 20, 2020 Decision and Order. The Arbitrator finds that the motions that the claim is not arbitrable under First Amendment and the federal whistleblower statues raise no new issues which were not present in the previously decided motions. Those two motions are denied for the same reasons set forth in the April 20, 2020 Decision and Order.

As to the subject matter motion, a proper analysis would necessitate reviewing the additional statements alleged to be breaches of the Agreement presented in the Amended Statement of Claim. Respondent does not address any specific statement alleged to be a breach of the Agreement in her motion papers, relying rather on sweeping, generalized statements that none of the alleged statements presents an arbitrable claim. However, in light of the decision on the summary judgment motion finding the Agreement to be vague and unenforceable under New York contract law, this issue is moot and the Arbitrator declines to engage in such an analysis.

POINT IV

RESPONDENT'S REQUEST FOR LEGAL FEES

Respondent's motions request that legal fees and the costs of this proceeding be awarded against Claimant. In their respective submissions on the instant motions, both parties cite to Section 8(c) of the Agreement, which provides that the prevailing party in any action or arbitration

is allowed a judgment for reasonable legal fees and costs. Respondent shall therefore submit a fee affirmation and any supporting documents she wishes to have considered in the making of such an award by October 12, 2021. Claimant shall submit any responsive papers by October 25, 2021.

CONCLUSION

Respondent's summary judgment motion to dismiss the Amended Statement of Claim on the grounds that the Agreement is vague and unenforceable under New York contract law is granted. Respondent's summary judgment motions as to arbitrability on First Amendment and whistleblower protection grounds are denied. Respondent's summary judgment motion on arbitrability related to subject matter is moot and not ruled upon. An award of legal fees and costs shall be determined upon the submission of papers by the parties in accordance with the schedule set forth above.

Dated: September 24, 2021

T. Andrew Brown, Arbitrator