UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AT&T MOBILITY SERVICES LLC, Plaintiff, -against- FRANCESCA JEAN-BAPTISTE, Serve: Francesca Jean-Baptiste 16 Maple Street, Floor 2 Bloomfield, NJ 07003 Defendant.	CIVIL ACTION NO.: 2:17-cv-11962 **Oral Argument Requested** **[Motion Date: December 18, 2017]** *Electronically Filed*

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL ARBITRATION AND FOR PRELIMINARY INJUNCTION

On the Brief:

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**pro hac vice* admission pending

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I. INTRODUCTION

Plaintiff AT&T Mobility Services LLC ("AT&T Mobility" or the "Company") respectfully submits this memorandum of law in support of its motion to compel arbitration of Defendant Francesca Jean-Baptiste's ("Jean-Baptiste") state court claims pending in *Jean-Baptiste v. AT&T Mobility Services, LLC., et al.*, Case No: L-6029-17 (the "State Court Action") [1] and its motion for a preliminary injunction to enjoin those state court proceedings.[2]

The Company notified Jean-Baptiste in March 2016 that if she continued her employment with the Company and did not opt out of a Management Arbitration Agreement (the "Agreement") by May 18, 2016, she and the Company were agreeing to arbitrate any disputes they had between them. Jean-Baptiste was then reminded of the terms of the Agreement, the method of acceptance, and her ability to opt out (without incurring any negative consequences to her employment) on two additional occasions in April 2016. In these emails, Jean-Baptiste was provided a link to a web page containing the Agreement itself, which she clicked

[1] Plaintiff is incorrectly named as "AT&T Mobility Services, LLC" in those state court proceedings.

[2] This Memorandum of Law is supported the Declaration of Sharon Knight ("Knight Decl."), located at Exhibit B of Plaintiff's Complaint; the Declaration of Jeremy ("Dunlap Decl."), located at Exhibit C of Plaintiff's Complaint; the Declaration of Julissa Fernandez ("Fernandez Decl."), located at Exhibit D of Plaintiff's Complaint; the Declaration of Katrina R. Johnson ("Johnson Decl."), located at Exhibit E of Plaintiff's Complaint; and the Declaration of Kenneth W. Gage ("Gage Decl."), located at Exhibit F of Plaintiff's Complaint.

during the review period. While on the web page containing the Agreement, Jean-Baptiste acknowledged her understanding of its terms by clicking on a button marked "Review Completed".

Jean-Baptiste did not opt out of the Agreement and therefore is bound by it. In breach of that Agreement, however, she filed a lawsuit against the Company in a New Jersey state court, alleging claims stemming from her AT&T Mobility employment. When asked to submit that dispute to arbitration, she refused, therefore threatening to irreparably harm the Company by denying it the benefit of the Agreement and requiring it to engage in costly, and possibly duplicative, litigation. In cases involving similar facts, state and federal courts around the country have granted the Company's motion to compel arbitration pursuant to the Agreement. *See Uszak v. AT&T Mobility Servs. LLC*, No. 15-4195, 2016 WL 3924241 (6th Cir. July 21, 2016) (affirming district court's order compelling arbitration); *Rivera v. AT&T Mobility Puerto Rico, INC., et al.*, No: 3:17-cv-01675-FAB (D.P.R. Aug. 21, 2017); *Cornoyer v. AT&T Mobility Servs., LLC*, No. CIV 15-0474 JB/WPL, 2016 WL 6404853 (D.N.M. Oct. 5, 2016); *Powe v. AT&T d.b.a. AT&T Mobility*, No. 3:15-cv-00022-GFVT (E.D. Ky. Mar. 25, 2016); *Couch v. AT&T Servs., Inc.,* No. 13-CV-2004 (DRH)(GRB), 2014 WL 7424093 (E.D.N.Y. Dec. 31, 2014); *Wagman v. AT&T Mobility Servs., LLC, et al.*, No. 14CV05477 (Or.–Multnomah Cty., Sept. 17, 2014); *Danielski v. AT&T*, Cause No.

D-1-GN-14-000718 (Tex. Dist.–Travis Cty., May 28, 2014); *Versmesse v. AT&T Mobility, LLC*, No. 13 CV 171, 2014 WL 856447 (N.D. Ind. Mar 4, 2014); *Karzon v. AT&T, Inc.*, No. 4:13-CV-2202 (CEJ), 2014 WL 51331 (E.D. Mo. Jan. 7, 2014).[3] For the reasons set forth below, this Court should enter an order compelling arbitration and enjoining the State Court Action.

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 18, 2017, Jean-Baptiste filed a Petition against her employer AT&T Mobility and Robert Woodier (an AT&T Mobility employee), John Does 1-10 and ABC Corps. 1-10, in the Superior Court of New Jersey Law Division, Essex County, New Jersey, styled *Jean-Baptiste v. AT&T Mobility Services, LLC, et al.*, Case No: ESX-L-6029-17.[4] Jean-Baptiste's Petition alleges that she has been employed by AT&T Mobility since 2008. (Pet. ¶7.) In early 2016, Jean-Baptiste was employed by AT&T Mobility as an Assistant Store Manager, a management-level employee, responsible for maintaining the day-to-day operations of the store in the absence of the Store Manager, overseeing sales and coaching and training the Sales Representatives to ensure they were hitting their sales targets. (Fernandez ¶4.) The Petition alleges gender and race discrimination, retaliation, hostile work environment claims, and aiding and abetting disparate

[3] Orders granting motions to compel arbitration in *Rivera*, *Powe*, *Danielski*, and *Wagman* are attached to the declaration of Alison M. Lewandoski.

[4] On September 21, 2017, Jean-Baptiste provided a more detailed account of her allegations in her first amended complaint.

treatment claims under the New Jersey Law Against Discrimination ("NJ LAD"), N.J.S.A. 10:5.1 *et seq*. (Pet. ¶¶ 1, 14, 18, 22, 26, 30.)

Jean-Baptiste's claims are not subject to adjudication in the Superior Court of New Jersey Law Division, Essex County, New Jersey, or any court for that matter, because at the time that Jean-Baptiste alleges that AT&T Mobility took adverse action against her, Jean-Baptiste was subject to a "Management Arbitration Agreement" (the "Agreement") under which she had agreed to submit "any dispute to which [the] Agreement applies [to] final and binding arbitration instead of court litigation." (Knight Decl. ¶7 & Exh. 2.)

On March 18, 2016, the Company sent an email to Jean-Baptiste at her unique Company email address, FJ4488@us.att.com, with the subject heading "Action Required: Notice Regarding Arbitration Agreement," advising her that it had created an arbitration program that would apply to any future claims brought by Jean-Baptiste against the Company if she did not opt out of the program within 60 days (by 11:59 p.m. May 18, 2016), and providing instructions on how to opt out. (*See Id.* at ¶7 & Exh. 1; Dunlap Decl. ¶¶6-8 & Exhs. 1-2; Fernandez Decl. ¶7.) The email informed her in no uncertain terms that, *if she did not opt out*, she and the Company "would use independent, third-party arbitration rather than courts or juries to resolve legal disputes." (Knight Decl. ¶7 & Exh. 1; Dunlap Decl. ¶6 & Exh. 1.) It also advised Jean-Baptiste that the decision was "entirely up to [her],"

and that there would be "no adverse consequences for anyone opting out of the Management Arbitration Agreement." (Knight Decl. ¶7 & Exh. 1; Dunlap Decl. ¶6 & Exh. 1.) It made clear that "*[i]f you do not opt out by the deadline, you are agreeing to the arbitration process as set forth in the Agreement*." (Knight Decl. ¶7 & Exh. 1; Dunlap Decl. ¶6 & Exh. 1.) The email further indicated that "[t]o help [her] make [her] decision, it [was] very important for [Jean-Baptiste] to review the Management Arbitration Agreement linked to this email," and provided a link—using the words "[c]lick here to review"—to a web page containing the text of the Agreement itself. (Knight Decl. ¶7 & Exh. 1; Dunlap Decl. ¶6 & Exh. 1.)

Follow-up reminder e-mails identical to the one Jean-Baptiste received on March 18, 2016, were sent to Jean-Baptiste's work e-mail account on April 1, 2016 and April 15, 2016. (*See* Knight Decl ¶¶8-11 & Exh. 1; Dunlap Decl. ¶¶6-8 & Exhs. 1-2.)

AT&T Mobility took steps to ensure that employees received these e-mails. As part of their responsibilities, employees like Jean-Baptiste were expected to (and did) read and respond to e-mail messages sent to their accounts. (Fernandez Decl. ¶7.) Any automated responses to the e-mails just described – e.g., if there were problems with delivery (an "undeliverable message") or if the recipient had set up an automated "out of office" reply – were sent to a central e-mail inbox

monitored by Company employees. (*See* Knight Decl. ¶¶12-15.) No such automatic replies were received from Jean-Baptiste's email account. (*Id.*)

Days after the third reminder email was sent to her, Jean-Baptiste accessed the web page containing the text of the Agreement on April 18, 2016. (*See* Dunlap Decl. ¶10 & Exh. 4.) The use of Jean-Baptiste's unique username and confidential password was necessary to access the webpage. (*See id.* at ¶10 & Exh. 4; Knight Decl. ¶9 & Exh. 3.) The same day Jean-Baptiste affirmatively acknowledged having seen the Agreement by clicking a button at the top of the web page labeled "Review Completed". (*See* Dunlap Decl. ¶11. & Exh. 5.)

The Agreement, by its specific terms, "applies to any claim that [Jean-Baptiste] may have against . . . any AT&T company," as well as claims against "its present or former . . . employees or agents in their capacity as such or otherwise." (Knight Decl. ¶7 & Exh. 2.) The Agreement explicitly covers "claims includ[ing] without limitation those arising out of or related to [Jean-Baptiste's] employment or termination of employment with the Company and any other disputes regarding the employment relationship, . . . retaliation, discrimination or harassment and claims arising under the . . . Civil Rights Act of 1964 . . . and state statutes and local laws, if any, addressing the same or similar subject matters, and all other state and local statutory and common law claims." (*Id.*)

Jean-Baptiste did not opt out of the Agreement, which, by its terms, went into effect on May 19, 2016. (*See* Johnson Decl. ¶12.) However, rather than attempting to resolve her disputes with the Company through the arbitration program, Jean-Baptiste filed the State Court Action, in contravention of the valid and enforceable Agreement. Indeed, even after being reminded of her obligations under the Agreement, Jean-Baptiste refused to submit her claims to arbitration. (*See* Gage Decl. ¶¶3-4, 6-9 & Exhs. 1, 2, 5.)

The Company then filed, concurrently with this Motion and Memorandum of Law in Support, a Complaint in this Court seeking orders compelling the parties to arbitrate Jean-Baptiste's State Court Action claims and enjoining those proceedings.

III. LEGAL ARGUMENT

A. THE FEDERAL ARBITRATION ACT ("FAA") REQUIRES THE COURT TO COMPEL THE PARTIES TO ARBITRATE THE DEFENDANT'S STATE COURT CLAIMS

The Agreement, by its express terms, is governed by the Federal Arbitration Act ("FAA"), which permits a party to a written agreement for arbitration to petition a United States district court for an order compelling the parties to arbitrate pursuant to the terms of their agreement. (*See* Knight Decl. ¶7 & Exh. 2.) In relevant part, the FAA provides:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement

> for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

9 U.S.C. § 4 (West 2017).

The Supreme Court has repeatedly confirmed that the FAA codifies the "liberal federal policy favoring arbitration agreements" and "requires courts to enforce agreements to arbitrate according to their terms." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Accordingly, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Townsend v. Pinnacle Entm't, Inc.*, 457 F. App'x 205, 207 (3rd Cir. 2012) (quoting *Moses H. Cone Mem'l Hosp*., 460 U.S. at 24-25). This national policy in favor of arbitration applies equally to the employment context. *See Circuit City Stores v. Adams*, 532 U.S. 105, 123 (2001) ("We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context. Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation….") (citations omitted); *Townsend*, 547 F. App'x at 207 ("Employment

contracts, except those regarding the employment of transportation workers, are within the ambit of the FAA.").[5]

When enforcing arbitration agreements, courts in the Third Circuit "engage in a limited review to ensure that the dispute is arbitrable." *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132, 137 (3d Cir.1998). In conducting this "limited review," courts consider the following issues: (1) whether "a valid agreement to arbitrate exists between the parties" and (2) whether "the specific dispute falls within the substantive scope of that agreement." *Id.*; *accord Townsend*, 457 F. App'x at 207-08 ("In addressing a motion to compel arbitration, a court may not resolve the merits of the underlying dispute. A district court need only 'engage in a limited review to ensure that the dispute is arbitrable.'") (citation omitted).

1. The Arbitration Agreement Is Valid and Enforceable under New Jersey Law.

A valid agreement to arbitrate has existed between Jean-Baptiste and the Company since May 19, 2016. When determining whether a valid contract to arbitrate exists, courts must apply ordinary state-law principles that govern contract

[5] The FAA governs the determination of this Motion to Compel. Still, New Jersey also has a public policy favoring arbitration agreements. *See Martindale v. Sandvik, Inc.*, 173 N.J. 76, 84–85 (2002) (collecting cases). The New Jersey Legislature demonstrated its endorsement of this public policy in favor of arbitration by enacting the NJAA. *Id.* at 84. Like the FAA, the NJAA provides that agreements to arbitrate are "valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract." N.J. Stat. § 2A:23B-6(a).

formation, "cannot subject an arbitration agreement to more burdensome requirements than those governing the formation of other contracts." *See Leodori v. Cigna Corp.*, 175 N.J. 293, 302 (2003); *accord Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426-27 (2017) (Kagan, J.) (reversing Kentucky Supreme Court decision and holding state court's "clear-statement rule" requiring explicit statement in order to waive access to jury trail fails to place arbitration agreements on equal footing with other contracts; "Such a rule is too tailor-made to arbitration agreements – subjecting them, by virtue of their defining trait, to uncommon barriers – to survive the FAA's edict against singling out those contracts for disfavored treatment"); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 469-71 (2015) (Breyer, J.) (reversing California Court of Appeal for not applying ordinary contract principles to an arbitration agreement); *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012) (per curiam) (reversing West Virginia Supreme Court of Appeal decision prohibiting pre-dispute arbitration agreements for certain types of claims as preempted by the FAA). Under New Jersey law, an enforceable contract requires mutual assent and consideration. *Atalese v. U.S. Legal Servs. Grp., L.P.*, 219 N.J. 430, 442 (2014) (discussing the mutual assent requirement); *Martindale v. Sandvik, Inc.*, 173 N.J. 76, 87-88 (2002) (discussing the consideration requirement).

The first requirement, mutual assent, is evident here. Offer and acceptance establish mutual assent sufficient to create a contract. *See Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435 (1992) ("A contract arises from offer and acceptance…. Thus, if parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract."). Electronic offers that incorporate the terms of a separate hyperlinked document are valid, so long as they "generally provide 'reasonable notice' that the additional terms apply." *ADP, LLC v. Lynch*, Civ. Nos. 2:16-01053 (WJM), 2:16-01111 (WJM), 2016 U.S. Dist. LEXIS 85636, at *12 (D.N.J. June 30, 2016), *aff'd*, 678 F. App'x 77 (3d Cir. 2017); *accord Singh v. Uber Techs. Inc.*, 235 F. Supp. 3d 656, 665-66 (D.N.J. 2017) ("If this condition is met, a party will be bound by the hyperlinked-agreement, even if that party did not review the terms and conditions of the hyperlinked agreement before assenting to them.").

The Company's emails on March 18, 2016, April 1, 2016 and April 15, 2016 plainly constituted an offer to Jean-Baptiste to arbitrate future claims. These emails explained the essential terms of the Agreement—mutual promises to arbitrate, the nature of the claims subject to arbitration, and the exclusive nature of the arbitration remedy—and specified a method for acceptance. (*See* Knight Decl. ¶7 & Exh. 1; Dunlap Decl. ¶6 & Exh. 1.) These emails also provided digital access to the full text Agreement via hyperlink and emphasized the importance of

reviewing its terms. (*See* Knight ¶7 & Exhs. 1-2.) Accordingly, Jean-Baptiste had reasonable notice of the existence and terms of the Agreement.

It is equally clear that Jean-Baptiste accepted AT&T Mobility's offer and manifested her intent to be bound by the terms of the Agreement by doing exactly what the Agreement specified as the method for acceptance. The emails and the Agreement made perfectly clear that Jean-Baptiste could accept the offer by choosing not to opt out of the arbitration program by May 18, 2016. (Knight Decl. ¶7, Exh. 1("*If you do not opt out by the deadline, you are agreeing to the arbitration process as set forth in the Agreement*. This means that you and AT&T are giving up the right to a court or jury trial on claims covered by the Agreement."); *id.* at ¶7, Exh. 2 (emphasis added).) Jean-Baptiste had 60 days to review the Agreement, and decide whether to accept the offer or opt out. She logged into the Company's system using her unique credentials, accessed the full text of the Agreement, and clicked the "Review Completed" button on the page acknowledging that she reviewed the Agreement. (*See* Dunlap Decl. ¶¶10–11 & Exhs. 4–5.) Jean-Baptiste did not opt-out by the May 19, 2016 deadline.

The fact that Jean-Baptiste manifested her assent through conduct is immaterial. It is well-established in New Jersey that acceptance of an offer need not be made by spoken or written word. *Leodori*, 175 N.J. at 306 (recognizing that an employee may manifest his or her assent to an offer to arbitrate claims by

signing a written instrument "or otherwise explicitly indicat[ing] his or her agreement to it"). As the New Jersey Supreme Court has explained, "where an offeree gives no indication that he or she objects to any of the offer's essential terms, and passively accepts the benefits of an offeror's performance, the offeree has impliedly manifested his or her unconditional assent to the terms of the offer." *Weichert Co. Realtors*, 128 N.J. at 436-37; *see also Troy v. Rutgers*, 168 N.J. 354, 365-66 (2001) (quoting Restatement (Second) of Contracts § 4 cmt. a (1981)) ("Implied contract terms generally are considered as binding as express contract terms," and "assent may be manifested by words or other conduct, sometimes including silence."). Indeed, New Jersey courts have specifically held that continuing employment beyond an opt-out deadline is a valid means of accepting an offer to arbitrate claims. *See, e.g., Jaworski v. Ernst & Young U.S. LLP*, 441 N.J. Super. 464, 474 (App. Div. 2015) (finding that employee manifested an intent to be bound by employer's alternative dispute resolution policy by continuing employment beyond deadline specified in "unambiguous and specifically-emphasized" terms of the agreement), *cert. denied*, 223 N.J. 406 (2015); *see also Nascimento v. Anheuser-Busch Cos.*, Civ. A. No. 2:15-02017 (CCC)(MF), 2016 U.S. Dist. LEXIS 112858, at *9 (D.N.J. Aug. 24, 2016) ("New Jersey courts have held that where an arbitration agreement states an employee accepts its terms by continued employment, the agreement will bind an employee who continues

employment beyond the agreement's effective date."); *Descafano v. BJ's Wholesale Club, Inc.*, No. 15-cv-7883 (PGS)(DEA), 2016 WL 1718677, at *2 (D.N.J. Apr. 28, 2016) ("Once a party receives notice, acceptance of the arbitration program may be signified by failing to opt out.") (citations omitted); *Jayasundera v. Macy's Logistics & Ops.*, No. 14-CV-7455 (SDW)(SCM), 2015 WL 4623508, at *4 (D.N.J. Aug. 3, 2015) (granting defendant's motion to dismiss complaint and compel arbitration because parties formed a valid agreement to arbitrate; "Failure to opt out of an arbitration program after receiving notice is sufficient conduct to signify acceptance").

Jaworski v. Ernst & Young U.S. LLP, 441 N.J. Super. 464 (App. Div. 2015) is particularly instructive. There, the employer communicated a revised arbitration agreement to personnel via email. *Id.* at 471. The employer's records reflected plaintiff Holewinski's receipt of the email. *Id.* The revised plan stated that employees could indicate acceptance of the agreement by remaining employed beyond the date the agreement became effective. *Id.* Plaintiff Holewinski never signed any acknowledgement form indicating his acceptance of the revised plan, but remained employed for five years beyond the effective date. *Id.* at 471. The court held that Holewinski's conduct was sufficient to manifest his assent, and compelled arbitration of Holewinski's claims pursuant to the revised arbitration agreement. *Id.* at 474-75, 483. The court noted:

> Here, unlike *Leodori*, where the employer's "own documents contemplated [the employee]'s signature as a concrete manifestation of his assent," EY's ADR policy provided: "An Employee indicates his or her agreement to the Program and is bound by its terms and conditions by beginning or continuing employment with [EY] after July 18, 2007 (the 'Effective Date')." Not only did Holewinski continue with EY after the Effective Date, thus manifesting his intent to be bound pursuant to the unambiguous and specifically-emphasized terms of the Program, he did so for an additional five years until his termination in 2012. Therefore, consistent with *Leodori*, we conclude Holewinski, Jaworski and Haggis are bound by the Program in its iteration as of the date of their termination.

Id. at 474-75 (internal citations omitted). Following *Jaworski*'s interpretation of *Leodori*, Jean-Baptiste's choice not to opt-out of the arbitration program before the specified deadline manifests her intent to be bound by the Agreement and waived her right to litigate her NJ LAD claims against AT&T Mobility in New Jersey state court, or any other court for that matter.

Finally, it is well-established that an offer of continued employment in New Jersey is sufficient consideration to support the formation of a contract. *Martindale*, 173 N.J. at 88 ("[I]n New Jersey, continued employment has been found to constitute sufficient consideration to support certain employment-related agreements."). Equally significant, the Agreement provides for mutual promises to arbitrate claims. (Knight Decl. ¶7 & Exh. 2 ("Under this Agreement, you and the AT&T company that employs you . . . agree that any dispute to which this

Agreement applies will be decided by final and binding arbitration instead of court litigation").) Such mutual promises are additional, adequate consideration supporting the agreement to arbitrate. *See Jayasundera*, 2015 WL 4623508, at *4 ("sufficient consideration for the arbitration agreement also exists, as the agreement mutually obliges Macy's and Plaintiff to arbitrate all employment disputes and Plaintiff has continued his employment with Macy's."). Therefore, when Jean-Baptiste failed to opt-out, she obtained the benefit of the Company's obligation to arbitrate claims that it may have against them.

2. The Scope of the Agreement Unambiguously Covers Jean-Baptiste's State Court Action Claims.

An arbitration agreement need not "list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights." *Leodori*, 175 N.J. at 301 (quoting *Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A.*, 168 N.J. 124, 135 (2001)). To the contrary, courts in New Jersey apply a "presumption of arbitrability" whereby "an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Waskevich v. Herold Law, P.A.*, 431 N.J. Super. 293, 298 (App. Div. 2013) (quoting *EPIX Holdings Corp. v. Marsh & McLennan Cos., Inc.*, 410 N.J. Super. 453, 471 (App. Div. 2009)). Where the language of the arbitration provision "unambiguously sets forth the drafter's intention to arbitrate all employment-related claims," such as by

generally referring to all laws "regarding employment discrimination, conditions of employment, or termination of employment," "[t]hat language *easily* satisfies the requirement that such clauses provide an unmistakable expression of an employee's willingness to waive his or her statutory remedies." *Leodori*, 175 N.J. at 302-03 (emphasis added).

That is precisely the case here. The Agreement states that Jean-Baptiste waived the right to litigate "any claim that [Jean-Baptiste] may have against . . . any AT&T company," and further explicitly covers "claims includ[ing] without limitation those arising out of or related to [Jean-Baptiste's] employment or termination of employment with the Company and any other disputes regarding the employment relationship, . . . retaliation, discrimination or harassment and claims arising under the . . . Civil Rights Act of 1964 . . . and state statutes and local laws, if any, addressing the same or similar subject matters, and all other state and local statutory and common law claims. (Knight Decl. ¶ 7 & Exh. 2.) Immediately following the description of its scope, the Agreement clearly states that it "requires all such disputes to be resolved only by an arbitrator through final and binding arbitration and not by way of a court or jury trial." (*Id.*) Accordingly, there can be no dispute that the Agreement reflects an unambiguous intention to arbitrate the NJ LAD claims that Jean-Baptiste asserts in the State Court Action.

B. THE COURT MUST ENJOIN JEAN-BAPTISTE'S STATE COURT ACTION TO AID THE COURT'S JURISDICTION AND EFFECTUATE THE COURT'S ORDER COMPELLING ARBITRATION PURSUANT TO THE AGREEMENT

The All Writs Act grants federal courts the authority to issue injunctions enjoining state courts. 28 U.S.C. § 1651(a) (1994) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). However, the Anti-Injunction Act ("AIA") limits this broad power, restricting federal courts from enjoining state court proceedings except under the following circumstances: 1) if expressly authorized by statute, 2) where necessary in aid of its jurisdiction, or 3) to protect or effectuate its judgments. 28 U.S.C. § 2283 (1994).

"Courts in the Third Circuit have found that an injunction of a pending state court action pending arbitration falls under the 'necessary in aid of its jurisdiction' exception, because the injunction is necessary to aid the court's exercise of its jurisdiction over the petition to compel arbitration." *JPMorgan Chase & Co. v. Custer*, 2016 U.S. Dist. LEXIS 31595, at *23 (D.N.J. March 10, 2016) ("Permitting Respondent to proceed in state court could potentially 'eviscerate the arbitration process and make it a hollow formality, with needless expense to all concerned.'"(citations omitted)); *see also Ace Am. Ins. Co. v. Guerriero*, Civil

Action No. 2:17-cv-00820, 2017 U.S. Dist. LEXIS 135891, at *29 (D.N.J. Aug. 24, 2017) (same).

Furthermore, recognizing the AIA's 'protect or effectuate its judgments' exception "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court," courts in the Third Circuit have also enjoined duplicative state court proceeding pending the outcome of the arbitration proceedings. *Id.* at *29-30 (enjoining state court proceedings after compelling its claims to arbitration in order to prevent relitigation of the claims); *see also Home Buyers Warranty Corp. v. Jones*, No. 15-mc-324-RGA-MPT, 2016 U.S. Dist. LEXIS 80363, at *8 (D. Del. June 21, 2016) (affirming the Magistrate Judges order to enjoin state court proceedings; "This Court has authority to issue an injunction to stay the state court proceedings where an injunction is necessary 'to protect or effectuate [the Court's] judgments.'") (quoting 28 U.S.C. § 2283)).

Accordingly, because the FAA requires the Court to compel the parties to arbitrate Jean-Baptiste's state court claims pursuant to the Agreement as explained above, the Court should also issue an order enjoining the State Court Action. Here, permitting the State Court Action to proceed may render arbitration futile, and cause both parties to incur unnecessary expenses stemming from the duplicative, and likely costly, litigation. Furthermore, having established Jean-Baptiste's state

court claims are subject to Agreement, and therefore compelled to arbitration, allowing the State Court Action to proceed will result in relitigation of this Court's order to compel arbitration. Thus, an order granting a preliminary injunction of the State Court Action is necessary in order to aid this Court's jurisdiction and effectuate its judgment.

IV. CONCLUSION

Jean-Baptiste agreed, effective May 19, 2016, to a reciprocal agreement with the Company under which each promised to arbitrate any disputes arising with the other. She accepted the terms in the manner and method prescribed by the Agreement, and her conduct unmistakably reflected her assent. She has enjoyed the benefit of the Agreement, and should not be permitted to avoid its obligations simply because she would rather litigate. Accordingly, this Court should order Defendant to arbitrate her State Court Action claims and enjoin those state court proceedings.

[SIGNATURE PAGE TO FOLLOW]

DATED: November 21, 2017

By: /s/ Keith J. Rosenblatt

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2017, a copy of the foregoing Memorandum of Law in Support of the Plaintiff's Motion to Compel Arbitration and Motion for Preliminary Injunction and supporting declaration were filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Keith J. Rosenblatt
Keith J. Rosenblatt

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