UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

JOHN SAVARESE,

Plaintiff,

-against-

J.P. MORGAN CHASE, ET AL.,

Defendants.

----------X

ORDER
16-CV-321 (JFB) (SIL)

JOSEPH F. BIANCO, District Judge:

Before the Court is a Report and Recommendation ("R&R") from Magistrate Judge Locke recommending that defendants' motion to compel arbitration and stay this action be granted.

The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* R&R, dated November 16, 2016, at 19.) The date for filing any objections has since expired, and none of the parties has filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R.

Where there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*,

328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although all parties have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R and grants defendants' motion to compel arbitration and stay this action.

SO ORDERED.

Joseph Bianco

Joseph F. Bianco
United States District Judge

Dated: December 7, 2016
Central Islip, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
JOHN SAVARESE,

Plaintiff,

-against-

J.P. MORGAN CHASE, DONALD MALONEY, CHRISTINE LAWTON, PATRICIA HUMPHREY, and THOMAS MULLIGAN, *sued in their individual capacities pursuant to N.Y. Executive Law 296, et seq.*

Defendants.
----------x

**REPORT AND RECOMMENDATION**
16-CV-321 (JFB) (SIL)

**LOCKE, Magistrate Judge:**

Presently before the Court, on referral from the Honorable Joseph F. Bianco for Report and Recommendation, is Defendants J.P. Morgan Chase's ("JP Morgan"), Donald Maloney's ("Maloney"), Christine Lawton's ("Lawton"), Patricia Humphrey's ("Humphrey"), and Thomas Mulligan's ("Mulligan," and collectively, "Defendants") motion to compel arbitration and stay this action. *See* Docket Entry ("DE") [13]. By way of Complaint filed January 21, 2016, Plaintiff *pro se* John Savarese ("Plaintiff" or "Savarese") commenced this action alleging termination, failure to accommodate disability, and unequal terms and conditions of employment in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 *et seq.*, and the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12112 *et seq*. *See* Complaint ("Compl."), DE [1]. He subsequently amended his Complaint on May 9, 2016. *See* Amended Complaint ("Am. Compl."), DE [5]. For the reasons set forth

herein, the Court respectfully recommends that Defendants' motion be granted, arbitration be compelled, and the case stayed.

## I. Background

The following facts are taken from the Complaint, the Amended Complaint, and the Declaration of Mark S. Mancher Esq., ("Mancher Decl."), DE [13-1], and accompanying exhibits. Such facts are undisputed unless otherwise noted.

Plaintiff is an individual who resides in Suffolk County, New York. Am. Compl. ¶ 1. In 2013, he was hired as a Relationship Manager at a branch of Defendant JP Morgan in Ronkonkoma, New York. *Id.* at ¶¶ 3, 8. According to Savarese, he was "actively recruited by Chase recruiters for this newly created division and position and left a position of significant authority and status with Peoples United Bank as Market Manager . . . ." *Id.* at ¶ 8.

Prior to the commencement of his employment, Plaintiff was sent an offer letter ("Offer Letter") and arbitration agreement ("Arbitration Agreement"). *See* Mancher Decl. at Ex. 2 ("Agreements"), DE [13-2]. The Offer Letter, which set forth the terms and conditions of Savarese's at-will employment, contained a link to the JP Morgan Code of Conduct, and expressly states that by signing such Offer Letter, Savarese "read and understand[s] the JP Morgan Chase Code of Conduct . . . ." *Id.* at 2-3. The Offer Letter also states that Plaintiff's "employment is subject to [his] and JPMorgan Chase's agreement to submit employment-related disputes that cannot be resolved internally to binding arbitration, as set forth in the Binding Arbitration Agreement detailed below." *Id.* at 3. The Arbitration Agreement itself,

approximately 3 pages in length, set forth the mechanics of the arbitration, including how the process is to be initiated, pre-hearing motions, and enforcement of an award. *Id.* at 3-4. It also defines covered claims as, *inter alia*, "all legally protected employment-related claims," including those under Title VII, the ADEA, and ADA, and excludes claims involving: (1) criminal matters; (2) unemployment insurance disputes; (3) National Labor Relations Act claims; and (4) ERISA benefits. *Id.* at 3. Both the Offer Letter and Arbitration Agreement have a type-written signature line printed as follows: "Signature: John Savarese Date: 11-Apr-2013." *Id.* at 3, 6.

Savarese's employment commenced on May 1, 2013. Am. Compl. ¶ 8. He claims that, due to the termination of the area manager at the bank prior to his hiring, he was provided with "no direct supervision or direction for over six months . . . ." *Id.* at ¶ 8.1. Although the allegations in the pleadings are incoherent, it appears that at an undisclosed time Plaintiff pulled the credit of a customer without first obtaining a signed disclosure from the client. *See id.* at ¶¶ 8.6-8.8. Savarese labels this a "mis-communication" attributable to his disability. *Id.* at ¶ 8.8; Compl. ¶ 8. Specifically, he "suffers from hearing loss" and during the client meeting there was "loud road construction noise" and that he heard the client say "[d]o as you see fit." Am. Compl. ¶ 8.12. Upon learning of the error, Plaintiff took remedial steps to rectify the mistake, including "remov[ing] the order and credit record impact from [the client's] account." *Id.* at ¶ 8.8.

Nonetheless, an investigation by the company followed, where investigator "Mr. Mulligan" stated that "we never pull credit without a signed disclosure." *Id.* at

¶ 8.6. Savarese claims that such statement is "categorically untrue" as employees "fulfill credit and loan requests without signed disclosures on a daily basis," and that the investigator allowed "Chase to use the blanket 'code of conduct' violation, which was incorrect for this circumstance." *Id.* He believes that the investigation was motivated by his Italian national origin, as Mr. Mulligan has a "track record of firings and disciplinary actions that is much more bias and critical to those that are of non-Anglo white characteristics." *Id.* at ¶ 8.18; Compl. ¶ 8. He also claims it was inspired by his age, as he was in his fifties at the time of employment, *see* Am. Compl. ¶ 7, and that "younger employees with egregious code of conduct violations were given warning or no disciplinary actions whatsoever for severe violations" and that "younger branch and field personnel engage in the same activity of ordering credit cards without disclosures and without reprimand, discipline, monitoring or discussion of the same activity." *Id.* at ¶¶ 8.13, 8.15; Compl. ¶ 8.

In April 2014, after the investigation, Plaintiff was terminated. Compl. ¶ 8. He filed a charge with the Equal Employment Opportunity Commission ("EEOC") on September 2, 2014 and was issued a Notice of Suit Rights on October 30, 2015. Am. Compl. ¶ 10; Compl. p. 6. Two months later, he commenced this action alleging discrimination on account of his age, hearing impairment disability, and Italian national origin. *See generally* Am. Compl. Plaintiff seeks 2.5 million dollars. *Id.* at ¶ 8.19. Defendants move to compel arbitration pursuant to the Arbitration Agreement.

## II. Legal Standard

### A. *Pro Se* Pleadings

It is well-established that pleadings by *pro se* plaintiffs are held "to less stringent standards than formal pleadings drafted by lawyers." *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S. Ct. 173 (1980); *see also Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal citations omitted). The Second Circuit has held that a court reviewing a *pro se* complaint must "construe the complaint broadly, and interpret it to raise the strongest arguments that it suggests." *Weixel v. Bd. of Educ. of the City of New York*, 287 F.3d 138, 146 (2d Cir. 2002) (internal alterations omitted); *see also Rene v. Citibank N.A.*, 32 F. Supp. 2d 539, 541 (E.D.N.Y. 1999) (holding that a court must "make reasonable allowances so that . . . *pro se* plaintiffs do not forfeit their rights by virtue of their lack of legal training."). However, the court "need not argue a *pro se* litigant's case nor create a case for the *pro se* which does not exist." *Ogunmokun v. Am. Educ. Servs./PHEAA*, No. 12-CV-4403, 2014 WL 4724707, at *3 (E.D.N.Y. Sept. 23, 2014) (quoting *Molina v. New York*, 956 F. Supp. 257, 259 (E.D.N.Y. 1995)).

### B. Motion to Compel Arbitration

Pursuant to the Federal Arbitration Act ("FAA"), "[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 . . . for an order directing

that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. "It is well-settled that the FAA generally requires that courts resolve issues of arbitrability in favor of arbitration." *Brown v. Coca-Cola Enterprises, Inc.*, No. 08-CV-3231, 2009 WL 1146441, at *5 (E.D.N.Y. Apr. 28, 2009). In evaluating whether the parties should be compelled to submit to arbitration, courts focus on the four following inquiries:

> [F]irst, it must determine whether the parties agreed to arbitrate; second, it must determine the scope of that agreement; third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be nonarbitrable; and fourth, if the court concludes that some, but not all, of the claims in the case are arbitrable, it must then decide whether to stay the balance of the proceedings pending arbitration.

*JLM Indus., Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 169 (2d Cir. 2004) (citations omitted); *see also Begonja v. Vornado Realty Trust*, 159 F. Supp. 3d 402, 408 (S.D.N.Y. 2016) (stating same four factors).

Motions to compel arbitration are analyzed pursuant to the same standards applicable to motions for summary judgment. *See Teah v. Macy's Inc.*, No. 11-CV-1356, 2011 WL 6838151, at *4 (E.D.N.Y. Dec. 29, 2011) (quoting *Bensadoun v. Jobe Riat*, 316 F.3d 171, 175 (2d Cir.2003)) ("In reviewing motions to compel arbitration brought under the FAA, 'the court applies a standard similar to that applicable for a motion for summary judgment.' "); *see also Brown*, 2009 WL 1146441, at *5 ("The Court must evaluate a motion to compel arbitration, pursuant to the FAA, under a standard similar to the standard for a summary judgment motion."). Accordingly, "[i]f there is an issue of fact as to the making of the agreement for arbitration, then a

trial is necessary." *Bensadoun*, 316 F.3d at 175; *see also Moton v. Maplebear Inc.*, No. 15 CIV. 8879, 2016 WL 616343, at *4 (S.D.N.Y. Feb. 9, 2016), *appeal dismissed* (July 13, 2016).

## III. Discussion

Defendants move to compel arbitration in light of the Arbitration Agreement. Analyzing the relevant four factors, and construing the facts most favorably for Savarese, the Court recommends that Defendants' motion be granted in its entirety.

### A. Agreement to Arbitrate

A party seeking to compel arbitration "bears the burden of showing that the arbitration agreement exists and a stay is warranted." *Roller v. Centronics Corp.*, No. 87 CIV. 5715, 1989 WL 71200, at *2 (S.D.N.Y. June 22, 1989); *see also Hines v. Overstock.com, Inc.*, 2010 WL 2203030, at *1 (2d Cir. June 3, 2010) (summary order) ("The party seeking to stay the case in favor of arbitration bears an initial burden of demonstrating that an agreement to arbitrate was made."); *Valsana, S.A. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 86 CIV. 0943, 1987 WL 6908, at *1 (S.D.N.Y. Feb. 10, 1987) ("Despite the strong federal policy in favor of arbitration . . . the defendant has the initial burden of showing that an arbitration agreement exists and a stay is warranted.") (internal citation omitted). Such burden may be met "by the actual production of the arbitration agreement or by showing it was a regular practice of defendant to enter into these agreements." *Roller*, 1989 WL 71200, at *2. Further, the moving party need not show that the agreement is enforceable, but "merely that one existed." *Hines*, 2010 WL 2203030, at *24. The burden then "shifts to the party

opposing arbitration to put the making of that agreement 'in issue.' " *Id.* at *24; *see also Valsana*, 1987 WL 6908, at *1 ("After the defendant has met its initial requirement, the burden shifts back to the plaintiff to demonstrate a 'substantial issue' concerning the presence of an agreement to arbitrate.").

In evaluating whether an arbitration agreement exists, Courts generally apply the contract law of the state in which it sits. *See Frydman v. Diamond*, No. 1:14-CV-8741, 2015 WL 5294790, at *4 (S.D.N.Y. Sept. 10, 2015) ("Since arbitration agreements are considered contracts . . . whether the parties entered into a binding arbitration agreement is governed by state contract law principles.") (internal citation omitted); *Brown*, 2009 WL 1146441, at *6 ("[C]ourts should generally apply state-law principles that govern the formation of contracts.") (internal quotation marks omitted). Pursuant to New York law, "arbitration will not be compelled absent a 'clear, explicit and unequivocal agreement to arbitrate.' " *Teah*, 2011 WL 6838151, at *4 (quoting *Fiveco, Inc. v. Haber,* 11 N.Y.3d 140, 144, 863 N.Y.S.2d 391 (2008)). Such agreement "may be formed by words or by conduct that demonstrate the parties' mutual assent." *Manigault v. Macy's E., LLC*, 318 F. App'x 6, 8 (2d Cir. 2009) (summary order) (citing *Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of N.J.,* 448 F.3d 573, 582 (2d Cir. 2006) and *Maas v. Cornell Univ.,* 94 N.Y.2d 87, 93–94, 699 N.Y.S.2d 716 (1999)).

Here, Defendants have met their initial burden by providing the Offer Letter and Arbitration Agreement. *See* Agreements. Pursuant to the Offer Letter, Savarese agreed that his "employment is subject to [his] and JPMorgan Chase's agreement to

submit employment-related disputes that cannot be resolved internally to binding arbitration, as set forth in the Binding Arbitration Agreement detailed below." *Id.* at 3. Such explicit language conveys a clear and unmistakable message that the parties intended to submit certain claims to arbitration. Further, the Arbitration Agreement itself outlines, in detail, an overview of the arbitration process, including initiating arbitration, fees associated with the arbitration, discovery in relation to the arbitration, prehearing motions, and enforcement of the arbitrator's decision. *Id.* at 3-6. As such, Defendants have satisfied their initial burden of establishing the existence of an agreement to arbitrate. *See Victorio v. Sammy's Fishbox Realty Co., LLC*, No. 14 CIV. 8678, 2015 WL 2152703, at *11 (S.D.N.Y. May 6, 2015) ("By supplying the Court with copies of each Plaintiff's signed arbitration agreement . . . the Defendants satisfied their initial burden of establishing agreements to arbitrate."); *JPMorgan Chase & Co. v. Custer*, No. 15-CV-6288, 2016 WL 927339, at *5 (D.N.J. Mar. 10, 2016) (analyzing a similar arbitration agreement issued by JP Morgan and finding a clear intent to proceed via arbitration).

Although Defendants have satisfied their initial burden, Plaintiff disputes the validity of the Arbitration Agreement. Specifically, he argues that: (1) his electronic signature is invalid; (2) he does not recall signing the Arbitration Agreement; and (3) such agreement was signed under duress. The Court addresses each contention in turn.

Initially, Savarese claims that his electronic signature on the document is invalid pursuant to the Electronic Signatures and Records Act ("ESRA"). *See*

Plaintiff's Memorandum of Law in Opposition to Defendant's Motion ("Pl.'s Mem."), DE [18], at 5. Pursuant to ESRA, "an electronic signature may be used by a person in lieu of a signature affixed by hand. The use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand." N.Y.S. Tech. L § 304. An "electronic signature" is defined as "an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record." *Id.* at § 302. Here, the signature line in the Arbitration Agreement reads: "Signature: John Savarese Date: 11-Apr-2013." Agreements at 6. As Plaintiff's typewritten name is expressly labeled a "signature," it logically was intended to constitute as much. Further, Defendants have submitted circumstantial evidence to support the validity of the electronic signature, explaining that all candidates-for-hire receive an offer letter through a "unique web-link" sent to an email address provided by the candidate, and are then "required to review the offer letter, and enter his/her e-signature in two areas: one accepting the offer of employment and agreeing to comply with the Bank's Code of Conduct and another agreeing to the Bank's arbitration program." *See* Declaration of Tricia Childs ("Childs Decl."), DE [20-2], ¶¶ 5-10.

Nonetheless, Savarese challenges that "defendants have not fulfilled requirements of proof regarding e filing [*sic*] and e signatures [*sic*] with respect to the alleged employment and arbitration agreement . . . ." *See* Plaintiff's Affirmation in Opposition to Defendant's Motion, ("Pl.'s Aff."), DE [16], ¶ 3. Such requirements, according to Plaintiff, include "an email address of the plaintiff to where this

document was allegedly sent, the PIUD number of corresponding computers involved in the transmission, or exclusive token number to authentic a secured transaction." Pl.'s Mem. at 6. Savarese, however, does not explain the legal basis for such requirements, and the cases cited by him in support of this contention are inapposite.[1] Thus, in light of JP Morgan's procedure which requires an electronic signature for new employees, and that Plaintiff's name is expressly defined as a "signature," the Court finds that Savarese's typewritten name is a valid electronic signature.

Plaintiff also challenges the Arbitration Agreement by asserting that he "has no recollection of having e-signed any such agreement . . . ." *Id.* at 4. A mere lack of recollection of signing an agreement however, is insufficient on its own to defeat a finding that the contract existed. *See Vardanyan v. Close-Up Int'l, Inc.*, 2009 WL 6486625, at *2 (2d Cir. Mar. 11, 2009) (finding an agreement valid even where a signatory claimed he did not recall signing it, but provided no evidence that it was fabricated); *Gonder v. Dollar Tree Stores, Inc.*, 144 F. Supp. 3d 522, 528 (S.D.N.Y. 2015) ("A mere assertion that one does not recall signing a document does not, by itself, create an issue of fact as to whether a signature on a document is valid—especially in the absence of any evidence the document was fabricated."). As Savarese does not contend that the agreement was fabricated, but only that he does not

[1] *See Pepco Energy Servs., Inc. v. Geiringer*, No. CV 07-4809, 2010 WL 318284 (E.D.N.Y. Jan. 21, 2010) (reviewing whether a typed name in an email attachment was an electronic signature where there was no "defined signature line"); *Prudential Ins. Co. of Am. v. Dukoff*, 674 F. Supp. 2d 401 (E.D.N.Y. 2009) (analyzing whether, in the context of an insurance agreement, an electronic signature was formed where an applicant submitted personal information through a "standard internet click-through process"); *People v. Hernandez*, 31 Misc. 3d 208, 915 N.Y.S.2d 824 (N.Y. City Ct. 2011) (analyzing the admissibility of a "[x]erox copy of a signature" on a breath test foundational document in a criminal matter).

remember signing it, this challenge to the validity of the Arbitration Agreement fails as a matter of law.

Finally, Plaintiff argues that the agreement was signed under duress because of the "lack of proper guidance in the hiring process due to a complete managerial breakdown in communication [that] resulted in a stressful uninformed process . . . ." Pl.'s Mem. at 7. Assuming that this argument does not undercut Savarese's prior assertion that he does not recall signing the Arbitration Agreement, Plaintiff's duress claim also fails as a matter of law. Although "applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements," *Doctor's Associates, Inc. v. Casarotto,* 517 U.S. 681, 687, 116 S. Ct. 1652, 1656 (1996), Savarese's allegations do not amount to duress. To establish duress, a plaintiff must show: "(1) a threat, (2) which was unlawfully made, and (3) caused involuntary acceptance of contract terms, (4) because the circumstances permitted no other alternative." *Hart v. Canadian Imperial Bank of Commerce*, 43 F. Supp. 2d 395, 399–400 (S.D.N.Y. 1999) (quoting *Kamerman v. Steinberg,* 891 F.2d 424, 431 (2d Cir.1989)). Here, Plaintiff fails to allege any sort of threat, unlawful or otherwise, in either his Complaint, Amended Complaint, or opposition papers. As such, his claim of duress to invalidate the Arbitration Agreement also is untenable.

Accordingly, for the reasons set forth above, Defendants have satisfied their initial burden of proving the existence of the Arbitration Agreement, and Savarese's attempts to dispute the validity of such agreement fail as a matter of law.

Accordingly, the Court recommends a finding that there is a valid agreement to arbitrate between the parties.

**B. Scope of the Arbitration Agreement**

The Court next turns to whether Plaintiff's claims fall within the scope of the Arbitration Agreement. "In determining whether a particular claim falls within the scope of the parties' arbitration agreement, [courts] focus on the factual allegations in the complaint rather than the legal causes of action asserted." *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 846 (2d Cir. 1987). Further, Courts in this Circuit have held that "doubts as to whether a claim falls within the scope of [an arbitration] agreement should be resolved in favor of arbitrability." *Hartford Acc. & Indem. Co. v. Swiss Reinsurance Am. Corp.*, 246 F.3d 219, 226 (2d Cir. 2001); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25, 103 S. Ct. 927, 941 (1983) ("The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ."). Nonetheless, parties may "limit by agreement the claims they wish to submit to arbitration," *Hartford Acc. & Indem.*, 246 F.3d at 226, and if an intention to limit is clear, "the federal policy favoring arbitration must yield." *State of N.Y. v. Oneida Indian Nation of N.Y.*, 90 F.3d 58, 61 (2d Cir. 1996).

Here, the Arbitration Agreement covers a broad range of disputes, defining covered claims as:

> [a]ll legally protected employment-related claims . . . that [Savarese] now ha[s] or in the future may have against JP Morgan Chase or its officers, directors, shareholders, employees or agents which arise out of or relate to [Savarese's] employment or separation from employment

> with JP Morgan Chase and all legally protected employment-related claims that JP Morgan Chase has or in the future may have against [Savarese], including, but not limited to, claims of employment discrimination or harassment if protected by applicable federal, state or local law, . . . retaliatory and/or constructive discharge . . . and violations of any other common law, federal, state, or local statute, ordinance, regulation or public policy, including, but not limited to Title VII of the Civil Rights Act of 1964 . . . the Age Discrimination in Employment Act of 1967 . . [and] the Americans with Disabilities Act of 1990 . . . .

Agreements at 3. In his factual allegations, Plaintiff details the events leading up to his termination, as well as the role of his age, disability, and national origin throughout his employment, the investigation, and his eventual termination. *See* Am. Compl. ¶ 8. Such allegations are embodied in his causes of action for termination, failure to accommodate disability, and unequal terms and conditions of employment under Title VII, the ADEA, and the ADA. *See generally id.* As Savarese's claims are encompassed in the definition of covered claims—indeed, the relevant statutes are listed by name—the scope of the Arbitration Agreement covers the claims set forth in the Amended Complaint.

By way of opposition, Plaintiff argues that he is seeking "matters of law heard that are not appropriate for any alleged arbitration process," to wit: (1) "the willful conduct of the management team against the plaintiff;" (2) "age, disability and heritage discrimination;" and (3) Defendants' conduct as part of their human resources policy, particularly that the " 'alleged code of conduct violations' allows them in a broad sweeping manner to terminate employs [*sic*] in a discriminatory fashion." Pl.'s Mem. at 4. Such claims, however, connected to the investigation, Savarese's termination, and the alleged discrimination he suffered in connection with

both, are embodied within Plaintiff's statutory claims under Title VII, the ADEA, and the ADA, and thus fall within the scope of the arbitration agreement. *See Norcom Elecs. Corp. v. CIM USA Inc.*, 104 F. Supp. 2d 198, 203–04 (S.D.N.Y. 2000) ("If the allegations underlying the claims 'touch matters' covered by the parties' agreement, then those claims must be arbitrated, whatever the legal labels attached to them.' ") (internal quotations and alterations omitted).

Similarly, Savarese avers that JP Morgan has "made decisions against employees that is [*sic*] contrary to public policy," which, according to him, must be decided by a court of law. *See* Pl.'s Aff. ¶ 3. Specifically, he alleges that JP Morgan "uses the mechanism of 'code of conduct violations' to hide business decisions and downsize their organization." Am. Compl. ¶ 8.19. Such claim, however, also touches upon his termination, as he alleges that the investigator "allowed Chase to use the blanket 'code of conduct' violation" in connection with his firing. *See id.* at ¶ 8.6. Accordingly, as this claim falls within the scope of the Arbitration Agreement, it should be arbitrated.

Finally, Plaintiff claims that arbitration should be precluded because he filed an "Executive level complaint" at JP Morgan, which at no point was directed to arbitration by Defendants. *See* Pl.'s Aff. ¶ 3. Construing his papers liberally, Savarese is making a waiver argument. Generally, "a defense of waiver brought in opposition to a motion to compel arbitration under § 4 is a matter to be decided by the arbitrator . . . ." *S & R Co. of Kingston v. Latona Trucking, Inc.*, 159 F.3d 80, 82–83 (2d Cir. 1998). The District Court may, however, "properly decide the question

when the party seeking arbitration had already participated in litigation *on the dispute*." *Bell v. Cendant Corp.*, 293 F.3d 563, 569 (2d Cir. 2002) (citations omitted) (emphasis in original). Here, Plaintiff provides a letter he wrote to Jamie Dimon, the Chairman and Chief Executive Officer of JP Morgan, where he outlines the events leading to his termination and threatens litigation. *See* Pl.'s Aff. at Ex. 5 ("Ltr. to JP Morgan CEO"). Such letter was sent the same day that Plaintiff filed his EEOC complaint. *Id.* at 2. Although he claims that this letter was "received and discussed by phone with the Chase executive team," Savarese does not contend that there was any litigation prior to the commencement of this action in connection with this correspondence. *See* Pl.'s Aff. ¶ 3. As a result, any potential waiver on behalf of JP Morgan by reviewing Savarese's letter, if true, is not properly before the Court and should be reserved for the arbitrator.

Accordingly, for the reasons set forth above, the Court recommends a finding that Plaintiff's claims as set forth in the Amended Complaint are within the scope of the Arbitration Agreement.

**C. Whether the Claims are Arbitrable**

Having determined that the scope of the Arbitration Agreement covers Savarese's claims, the Court now turns to whether such claims are arbitrable. "[T]here is no per se presumption against arbitration of statutory claims." *Genesco, Inc.*, 815 F.2d at 848. As such, if there is a valid agreement to arbitrate, a "party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi Motors Corp.*

*v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S. Ct. 3346, 3354–55 (1985). Courts have consistently found that claims under Title VII, the ADEA, and the ADA are arbitrable. *See Alexia ("Anthony") Daskalakis v. Forever 21, Inc.*, No. 15CV1768, 2016 WL 4487747, at *3 (E.D.N.Y. Aug. 25, 2016) ("Where a valid arbitration agreement exists, the FAA requires that federal statutory claims arising from an employment relationship, including Title VII claims, be subject to mandatory arbitration."); *Wenchun Zheng, Ph.D. v. Gen. Elec. Co.*, No. 115CV01232, 2016 WL 3212092, at *3 (N.D.N.Y. June 9, 2016), *appeal dismissed* (Aug. 9, 2016) (finding ADEA and Title VII claims arbitrable); *Marciano v. DCH Auto Grp.*, 14 F. Supp. 3d 322, 339, n. 7 (S.D.N.Y. 2014) ("Although the Parties do not appear to dispute this issue, the Court notes that claims brought under Title VII [and] the ADA . . . are arbitrable."); *Topf v. Warnaco, Inc.*, 942 F. Supp. 762, 771 (D. Conn. 1996) ("Plaintiff's statutory claims under the ADEA [and] ADA . . . are arbitrable."). Consistent with this case law, the Court finds that Plaintiff's claims as set forth in the Amended Complaint are arbitrable.

**D. The Stay**

If all claims in an action are referred to arbitration, a stay is mandatory. *See Katz v. Cellco P'ship*, 794 F.3d 341, 345 (2d Cir. 2015), *cert. denied,* 136 S. Ct. 596 (2015) ("We join those Circuits that consider a stay of proceedings necessary after all claims have been referred to arbitration and a stay requested."). As the Court has no discretion on the matter, it is respectfully recommended that the case be stayed pending arbitration. *See McMahan Sec. Co. L.P. v. Forum Capital Markets L.P.*, 35

F.3d 82, 85 (2d Cir. 1994) ("[A] district court must stay proceedings if satisfied that the parties have agreed in writing to arbitrate an issue or issues underlying the district court proceeding.").

**E. The EEOC Does Not Supersede the Arbitration Agreement**

Finally, the Court addresses Savarese's claim that the "decision, opinion and directive of the EEOC . . . supersedes any alleged agreement employer and employee entered into . . . ." Pl.'s Aff. ¶ 3. Although Plaintiff received a notice from the EEOC informing him of his right to sue, *see* Compl. at 6, such right is subject to an existing arbitration agreement. *See Henry v. Turner Const. Co.*, No. 09 CIV. 9366, 2010 WL 2399423, at *3 (S.D.N.Y. June 14, 2010) ("Although the EEOC informed Henry that she has the right to file a lawsuit against Turner within ninety days of dismissal of her charge, this right is subject to the arbitration agreement."); *Hughes v. CACI, Inc.*, 384 F. Supp. 2d 89, 98 (D.D.C. 2005) ("Therefore, although the plaintiff choose to participate in the EEO [*sic*] process, he still must submit his complaint to the forum in which he agreed to resolve potential employment disputes."). Accordingly, this argument is rejected, and the Court recommends a finding that the EEOC letter does not supersede the binding Arbitration Agreement.

## IV. Conclusion

For the reasons set forth above, the Court recommends that arbitration be compelled and the case stayed.

## V. Objections

A copy of this Report and Recommendation is being served on Defendants by electronic filing on the date below. Defendants are directed to serve a copy of this Report and Recommendation on *pro se* Plaintiff and promptly file proof of service by ECF. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of receipt of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72; *Ferrer v. Woliver*, No. 05-3696, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
November 16, 2016

s/ Steven I. Locke
STEVEN I. LOCKE
United States Magistrate Judge