No. 13-___

IN THE

Supreme Court of the United States

ARUN WALIA,

Petitioner,

v.

KIRAN M. DEWAN, CPA, P.A. and
KIRAN MOOLCHAND DEWAN,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether and when the Federal Arbitration Act permits a court to vacate an arbitral award as the product of "manifest disregard of the law."

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Arun Walia respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is unpublished. The district court's opinions denying respondents' motion to vacate the award (*id*. 25a-50a), confirming the award (*id*. 51a-62a), and awarding fees and costs (*id*. 63a-75a) are unpublished.

JURISDICTION

The court of appeals issued its judgment on October 28, 2013. Pet. App. 1a. It denied petitioner's timely petition for rehearing en banc on November 25, 2013. *Id.* 76a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 9 of the Federal Arbitration Act (FAA), 9 U.S.C. § 9, provides:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such

> application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

Section 10(a) of the FAA, 9 U.S.C. § 10(a), provides:

> In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the

> controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

STATEMENT OF THE CASE

The Federal Arbitration Act (FAA) specifies the grounds that permit a court to vacate an arbitral award. *See* 9 U.S.C. § 10(a). In *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 578 (2008), this Court held that the FAA's "statutory grounds" for vacatur "are exclusive." The courts of appeals nonetheless have divided four-to-three over whether an arbitral award may be vacated for "manifest disregard of the law," a non-statutory ground that arises when the arbitrator "understand[s] and correctly state[s] the law, but proceed[s] to disregard the same." Pet. App. 14a (internal quotation marks and citation omitted). This Court reserved judgment on that question in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 672 n.3 (2010). This case—in which the court of appeals vacated an arbitral award exclusively on the basis of the arbitrator's supposed "manifest disregard of the law"—exemplifies the conflict and presents the Court with an ideal vehicle to resolve it.

1. Petitioner Arun Walia is a certified public accountant (CPA) and a citizen of Canada who lawfully came to the United States on an H-1B visa to

work for respondents Kiran M. Dewan, CPA, PA (the "Company") and Kiran M. Dewan, its owner. Petitioner actively worked for the Company from June 2003 until August 2009. Pet. App. 2a.

Before stopping work for the Company, petitioner executed a release agreement that waived any legal "claim" against the Company, and he promised "never to file a lawsuit or assist in or commence any action asserting any claims, losses, liabilities, demands, or obligations released hereunder." *Id*. 15a-16a. The release was unclear as to whether an "action" was limited to a suit in court and what would constitute the "commence[ment]" of such an action. The agreement provided that any dispute concerning the release would be submitted to "binding arbitration administered by the American Arbitration Association." *Id*. 31a, 4a-5a.

2. Respondents subsequently initiated arbitration against petitioner, alleging, *inter alia*, that petitioner had breached covenants not to compete, covenants not to solicit Company clients, restrictions on the use of confidential information, and the release agreement. Pet. App. 5a. Petitioner denied those claims and also asserted counterclaims, including for breach of his employment agreements, for unlawfully low wages, and for unlawful interference with his immigration status. *Id*. The gravamen of petitioner's counterclaims was that for a period of over six years, respondents systematically underpaid him in violation of both their contracts and the applicable immigration regulations, and that respondent Kiran M. Dewan, who was both petitioner's employer and his

immigration attorney, subordinated petitioner's interests to that of the accounting firm, and also unlawfully sought to prevent petitioner from obtaining renewal of his immigration status, causing petitioner substantial harm. *Id*.[1] Petitioner also argued that the release agreement was invalid because it was unconscionable. *See id.* 16a.

The parties jointly selected Dr. Andrée McKissick—an AAA neutral arbitrator since 1992 with extensive experience in labor and employment matters—to resolve the dispute.[2] Over a one-year period, the parties argued motions, filed pre-hearing briefs, attended four full days of hearings, and filed post-hearing briefs. *See* Pet. App. 5a, 7a.

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[1] On May 22, 2013, a federal grand jury indicted respondent Kiran M. Dewan in connection with unrelated conduct concerning his immigration law practice. *See generally United States v. Dewan*, No. 12-cr-400-WDQ (D. Md.); Pet. App. 2a n.1. The indictment charges that respondent offered bribes to an undercover officer whom he believed to be an immigration official in order to secure employment authorizations and green card documents for four of his clients (unconnected to petitioner). The indictment also alleges that respondent prepared false immigration documents to facilitate his clients' applications. *See* Press Release, Immigration & Customs Enforcement, Maryland Attorney and Four Clients Indicted for Conspiracy to Bribe an Immigration Official (May 22, 2013), http://www.ice.gov/news/releases/1305/130522baltimore.htm. Two of respondent's co-defendants have pleaded guilty; respondent has pleaded not guilty. Trial is scheduled for January 6, 2014.

[2] Dr. McKissick's CV is available at http://www.nmb.gov/arbitrator-resumes/mckissick-andree-y_res.pdf.

Dr. McKissick subsequently issued a detailed and reasoned thirty-nine page Interim Award in which she rejected all of respondents' claims. C.A. J.A. 33-71. She determined that some of respondents' claims were barred by the statute of limitations, *id.* 60, and that respondents' claims regarding the covenant not to compete, the solicitation of former clients, and the use of confidential materials were all "baseless," *id*. 64. The arbitrator also determined that, during the arbitration proceeding, respondents had withheld or materially altered official documents, and had submitted falsified documents in an effort to create misimpressions regarding the firm's revenues and therefore the scope of its obligations to petitioner. *Id*. 61-62, 67-68; *see also* Pet. App. 7a.

The arbitrator rejected petitioner's claim that the release was unconscionable. C.A. J.A. 65-66. She interpreted the release, however, to bar petitioner only from pursuing "all tort and contractual claims in federal or state courts as well as attorney's fees." *Id.* 66. The arbitrator thus interpreted the release not to bar petitioner from asserting counterclaims in arbitration. *See id*., Pet. App. 17a. On the merits, she upheld petitioner's claims because respondents had failed to pay required wages and had unlawfully jeopardized petitioner's immigration status. C.A. J.A. 66-69. The award found in petitioner's favor on his claims for wage shortfalls from 2003 until the date of the arbitration, his claim for medical and disability expenses, his claim for legal representation, his claim for relocation expenses, and his claim for arbitration expenses; it also found that punitive damages were

appropriate in light of the baselessness of respondents' claims. *Id*. 70.

In a final award, *Id*. 186-191, the arbitrator reiterated her findings, and also noted that, in light of discrepancies between documents respondent had submitted to the Department of Homeland Security (which were obtained via a request under the Freedom of Information Act) and (falsified) documents that were submitted to the arbitrator, respondent "was a party to fraud." *Id*. 189. The arbitrator thus awarded petitioner compensatory and punitive damages totaling $457,108.20, plus interest and costs. *See id*. 190-91; Pet. App. 7a. The award resolved the parties' entire dispute.

3. Respondents filed a complaint in the U.S. District Court for the District of Maryland seeking vacatur of the award. The district court granted petitioner's motion to dismiss the complaint in a twenty page opinion, *see* Pet. App. 25a-50a, explaining that "Plaintiffs' claims before this Court are almost identical to the ones presented before the arbitration tribunal," and concluding that "[e]ssentially, in bringing this action Plaintiffs have asked this Court to second-guess the well-reasoned award issued by the arbitrator, Dr. McKissick," *id.* 47a. The court observed that respondent Kiran M. Dewan had drafted the arbitration agreements in question, had initiated arbitration against petitioner, and that "[n]ow, having received an unfavorable result in his forum of choice, Dewan petitions this Court to vacate the award." *Id*. The court stated that "[h]aving thoroughly reviewed the record in this case, this Court finds substantial

support for the decisions made by the arbitrator, that the arbitrator did not go beyond the scope of the submissions, and that the arbitrator's determinations were not arbitrary. Additionally, Plaintiffs [did] not meet their heavy burden of proof with respect to any of the applicable grounds to vacate an arbitration award." *Id*. 48a. Later, the court denied respondents' motion to reconsider, and granted petitioner's petition to confirm the award. *Id*. 52a. In a separate order, the court awarded petitioner attorney's fees and costs. *See id*. 63a-75a.

Respondents appealed to the Fourth Circuit, contending, *inter alia*, that the release barred petitioner's counterclaims, so that the arbitrator's contrary conclusion evidenced a "manifest disregard of the law."[3] In a divided opinion, the court of appeals vacated the judgment of the district court. Pet. App. 1a.

The panel majority recognized that the FAA by its terms authorizes the federal courts to vacate an arbitral award only on four grounds:

> (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the

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[3] Although respondents' complaint nominally invoked Maryland's arbitration statute, at oral argument before the Fourth Circuit both parties recognized that the FAA applies. In turn, the court of appeals decided the case on that basis. *See* Pet. App. 10a-12a.

> arbitrators were guilty of misconduct . . . ; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id. 13a (quoting 9 U.S.C. § 10(a)). The Fourth Circuit majority did not determine that this case implicated any of those statutory bases for vacatur. *See id.*

Instead, the majority cited Fourth Circuit precedent recognizing additional "'permissible common law grounds for vacating such an award,'" including that the award "'evidences a manifest disregard of the law.'" *Id*. (quoting *MCI Constructors, LLC v. City Of Greensboro*, 610 F.3d 849, 857 (4th Cir. 2010)). The majority acknowledged that "considerable uncertainty exists" as to whether this "extra-statutory" ground retains "continuing viability" in the wake of this Court's 2008 decision in *Hall Street*. *Id*. 14a n.5. But it held that question was resolved in the Fourth Circuit by a published 2012 opinion reaffirming that the "manifest regard" standard remains good law. *Id*. (citing *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012)).

Applying that extra-statutory standard to the award in this case, the majority agreed with respondents that "the Arbitrator could not find the Release valid and enforceable but nevertheless make an award to [petitioner] on claims arising out of his employment with the Company." Pet. App. 12a. The majority first summarized and rejected the arbitrator's interpretation of the release:

> [T]he Arbitrator appears to have concluded that the Release sufficed to extinguish Walia's common law and state and federal statutory claims *if they were brought in state or federal court*, but did not extinguish some or all of such claims *if they were brought in an arbitral forum*. We find untenable the Arbitrator's attempt to parse the language of the Release so finely.

Id. 17a (emphasis in original).

The court then advanced its own interpretation of the release, and stated its holding:

> Objectively viewed, the language of the Release could not be more expansive, clear, or unambiguous. The plain language of the Release fatally undermines the suggestion that Walia retained the right to bring any of his counterclaims in arbitration. The Release waived all claims stemming from his employment relationship with the Company, regardless of forum. Accordingly, we hold that the Arbitrator manifestly disregarded the law by holding the Release valid and enforceable but nevertheless arbitrating Walia's counterclaims arising out of his employment with the Company.

Id. 19a.

Judge Wynn dissented. Pet. App. 20a-24a. In his view, the "arbitrator's interpretation, which more than arguably applies the contract, does not manifestly disregard the law." *Id.* 21a. The dissent also noted that the language of the release—which refers to

"lawsuits" and "actions," but not to arbitration—is plainly susceptible to a reading that limits it to judicial claims. *Id*. 23a-24a. The dissent concluded that "[b]ecause the arbitrator unquestionably construed the release agreement at issue, we are not at liberty to substitute our preferred interpretation for the arbitrator's." *Id*. 24a.

The Fourth Circuit denied petitioner's timely petition for rehearing en banc, Pet. App. 76a, which requested that the court reconsider its precedent in light of an entrenched circuit split, as well as this Court's decisions in *Hall Street* and *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064 (2013).

This petition followed.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari for two reasons.

First, the Fourth Circuit's holding that "manifest disregard of the law" is an independent, extra-statutory ground for vacatur of an arbitral award conflicts with this Court's precedents. The court of appeals held that because the arbitrator found that the release was enforceable, she manifestly disregarded the law by failing to construe the release to bar the counterclaims asserted in the arbitration.

The Fourth Circuit's decision flies in the face of this Court's holding that the FAA's limited grounds for vacatur are "exclusive," *Hall Street Assocs. LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008), as well as its holding that when an arbitrator construes an agreement that the parties entrust her to interpret, the "arbitrator's construction holds, however good,

bad, or ugly." *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064, 2070-71 (2013). Nonetheless, the Court has left open whether "manifest disregard" remains a valid ground for vacatur. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010). Certiorari is warranted to resolve that question.

Second, this case is an ideal vehicle to resolve the acknowledged circuit conflict over whether "manifest disregard" justifies vacatur of an arbitral award. The courts of appeals are divided, four-to-three, over whether "manifest disregard" survived *Hall Street*. This divergence is untenable, as it subjects arbitral awards to different standards of review based entirely on the happenstance of where they are rendered. The conflict is also entrenched: the courts of appeals have acknowledged their irreconcilable positions, but each has concluded that it has the best reading of this Court's precedents. Thus, certiorari is the only way to establish uniformity on this critical question of federal law.

I. The Fourth Circuit's Decision Conflicts With This Court's Precedents.

The Fourth Circuit's holding is contrary to this Court's precedents interpreting and applying the FAA. Under this Court's decisions, a court may not vacate an award because it decides that the arbitrator's interpretation of the parties' agreement was incorrect—or even "manifestly" incorrect. That is true both because "manifest disregard of the law" is not a ground for vacatur under the FAA, and because, irrespective of how it is labeled, the judicial approach adopted by the Fourth Circuit is fundamentally at

odds with the deferential approach mandated by this Court.

1. The "manifest disregard" standard has its origins in dictum from the now-overruled case of *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953), *overruled by Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989), in which this Court discussed the limited scope of judicial review of arbitral awards under the FAA. The Court contrasted misinterpretation of the law with "manifest disregard of the law," making it clear that the former was not a ground to vacate an award, but suggesting that the latter might be. *Id*. Relying on *Wilko*, many courts of appeals, including the Fourth Circuit, determined that an award may be vacated for manifest disregard of the law. *See, e.g.*, *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 480-81, n.6 (4th Cir. 2012).

In *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008), the Court held "that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification" of an arbitral award. The Court reasoned that expanding the available grounds to vacate an award beyond those enumerated in Section 10, 9 U.S.C. § 10, would "rub too much against the grain of" Section 9 of the FAA, "which unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions applies." 552 U.S. at 587; *see also id.* at 586 ("[T]he text [of the FAA] compels a reading of the §§ 10 and 11 categories as exclusive.").

The Court further explained that Sections 9, 10, and 11 of the FAA:

> substantiat[e] a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. Any other reading opens the door to the full-bore legal and evidentiary appeals that can rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process, and bring arbitration theory to grief in post-arbitration process.

Id. at 588 (internal quotation marks and citations omitted). On that basis, the Court ruled that the parties to an arbitration agreement may not empower a federal court to vacate or modify an award on non-statutory grounds—including a disagreement with the arbitrator's decision on the merits. *Id.* at 579.

In reaching its decision, the Court rejected the argument that historical references to "manifest disregard of the law" authorize federal courts to vacate awards on non-statutory grounds. Thus, while the petitioner in *Hall Street* argued that the *Wilko* dictum supposedly acknowledged "manifest disregard" as a separate ground for vacatur, this Court determined that this was "too much for *Wilko* to bear," citing, *inter alia*, "the vagueness of *Wilko's* phrasing." 552 U.S. at 585. The Court reasoned that:

> Maybe the term "manifest disregard" was meant to name a new ground for review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them. Or, as some courts have thought, "manifest disregard" may have been shorthand for § 10(a)(3) or § 10(a)(4), the

> paragraphs authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers."

Id. at 585 (citations omitted). The Court did not settle the issue, but instead noted that "[w]e, when speaking as a Court, have merely taken the *Wilko* language as we found it, without embellishment, and now that its meaning is implicated, we see no reason to accord it the significance that Hall Street urges," *i.e.*, as a basis for expanding the scope of judicial review beyond the narrow grounds prescribed in the FAA. *Id*. (citation omitted).

Hall Street's holding that the FAA's grounds for vacatur are "exclusive" forecloses any argument that "manifest disregard" remains available as an independent, extra-statutory ground to vacate an arbitral award governed by the FAA. Were it not so, then the word "exclusive" would have to mean the opposite of what it does. *See* The American Heritage Dictionary of the English Language (5th ed. 2013), http://www.ahdictionary.com/word/search.html?q=exclusive (defining "exclusive" as "[n]ot allowing something else," "[n]ot divided or shared with others," "[n]ot accompanied by others," and "[c]omplete").

Moreover, Section 9 of the FAA provides that a court "must grant" an order confirming an arbitral award "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." 9 U.S.C. § 9. In *Hall Street*, the Court explained that because this provision "carries no hint of flexibility," and because it limits the grounds for

vacatur to those "prescribed" by the statute, it must be read to foreclose alternative grounds. 552 U.S. at 587.

Indeed, this case follows *a fortiori* from the reasoning in *Hall Street*. There, the parties had expressly agreed to apply broader standards of judicial review (which this Court rejected). Here, the parties did no such thing, but the court nevertheless applied a judge-made rule to invalidate the award. The primary "purpose" of arbitration is to resolve disputes in accord with "the intent of the parties." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010). And a key objective of the FAA is to ensure that courts do not allow "judicial hostility to arbitration" to undermine the enforceability of awards. *E.g.*, *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2308-09 (2013). It follows that if the parties—whose contractual freedom the FAA seeks to protect—may not expand the scope of judicial review, then surely courts—whose review function the FAA seeks to restrict—may not do so either.

This Court's holding in *Stolt-Nielsen* does not suggest a different result. In that case, the Court held that in the face of an agreement's conceded silence on the question of class arbitration, an arbitral tribunal was required to determine and apply the applicable law—not simply "impose its own policy preference" in favor of class arbitration. 559 U.S. at 676. The Court held that by refusing to do so, the arbitrators "exceeded their powers" and, as a result, the Court vacated the award pursuant to Section 10(a)(4) of the FAA. *Id*. at 671-72. The Court's finding that the arbitrators had exceeded their mandate was

particularly informed by the fact that the arbitrators had authorized class arbitration, which the FAA does not permit unless the parties agree to it. *Id*. at 684. At the same time, the Court specifically reserved judgment as to whether, in the wake of *Hall Street*, manifest disregard survived either "as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." *Id*. at 672 n.3. But, because *Stolt-Nielsen* fell squarely within the four corners of Section 10 of the FAA, nothing the Court said modified or qualified either the holding or the reasoning of *Hall Street*.

2. The Fourth Circuit's decision to apply an extra-statutory ground for vacatur alone warrants certiorari and reversal, but that is not the only deficiency in the decision below. Even if the Fourth Circuit's decision could be recast as applying "manifest disregard" as a "judicial gloss" on Section 10 of the FAA, it would nevertheless contravene this Court's holding in *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064 (2013).

In that case, the petitioner (Oxford) argued that an award should be vacated under Section 10(a)(4) of the FAA because the arbitrator had exceeded his powers by interpreting an ambiguous arbitration agreement as authorizing class proceedings. *See id*. at 2067-68. This Court unanimously rejected that argument.[4] It explained that a party seeking relief

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[4] Every Justice joined the majority opinion; Justice Alito, joined by Justice Thomas, concurred to raise issues particular to class arbitration. *See* 133 S. Ct. at 2071-72 (Alito, J., concurring).

under Section 10(a)(4) "bears a heavy burden." *Id*. at 2068. "'It is not enough . . . to show that the [arbitrator] committed an error—or even a serious error.' Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits." *Id*. (quoting *Stolt-Nielsen*, 559 U.S. at 671, and *E. Associated Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000)). Thus, "convincing a court of an arbitrator's error—even his grave error—is not enough . . . The arbitrator's construction holds, however good, bad, or ugly." *Id*. at 2070-71.

The Court distinguished *Stolt-Nielsen*, another class arbitration case, because there the arbitrators "had abandoned their interpretive role." *Id*. at 2070. In *Oxford Health*, by contrast, the arbitrator did *attempt* to construe the contract. The Court explained that:

> To overturn [the arbitrator's] decision, we would have to rely on a finding that he misapprehended the parties' intent. But § 10(a)(4) bars that course: It permits courts to vacate an arbitral decision only when the arbitrator strayed from his delegated task of

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No Justice questioned the rule applicable here: that courts have no ability to reject the arbitrator's interpretation—however erroneous—of an agreement that the parties entrusted her to interpret.

> interpreting a contract, not when he performed that task poorly.

Id. Indeed, the Court suggested its sympathy with the petitioner's criticisms of the arbitrator's interpretation. *See id.* ("Nothing we say in this opinion should be taken to reflect any agreement with the arbitrator's contract interpretation, or any quarrel with Oxford's contrary reading."). But it nevertheless held that courts were required to confirm the award.

There is no way to reconcile the Fourth Circuit's decision with this Court's interpretation of Section 10(a)(4) set forth in *Oxford Health*. The court of appeals determined that the arbitrator "manifestly disregarded the law" because she found the release between the parties enforceable, but nevertheless determined that it did not foreclose petitioner's counterclaims in the arbitral forum. *See* Pet. App. 19a. But the court did not find, as this Court did in *Stolt-Nielsen*, that the arbitrator had intentionally abandoned her interpretive role. Instead, it acknowledged the opposite, stating that although it did "not know how the Arbitrator reached her interpretation of the Release," her "attempt to parse the language of the Release" to permit counterclaims in arbitration was "untenable" in light of "the language of the Release," "[o]bjectively viewed." Pet. App. 17a-19a. Thus, the court reasoned that "in purporting to construe the release . . . to apply only to tort and contractual claims [petitioner] might file in federal or state court, the Arbitrator rewr[ote] the release, which . . . imposes no qualifications whatsoever concerning the forum." *Id*. 17a (quotation marks

omitted). In other words, the court of appeals decided that the arbitrator's interpretation of the release was sufficiently erroneous so as to be tantamount to rewriting it.

As this Court made clear in *Oxford Health*, if the arbitrator sought to interpret the agreement—as she plainly did—then she acted within the scope of her powers, and Section 10(a)(4) does not permit vacatur. Especially when, as here, the language of the agreement is ambiguous, the FAA does not allow a court to reject the arbitrator's interpretation. No amount of "judicial gloss" on the statute can justify a different result.

To be sure, there may be instances in which an arbitrator manifestly disregards the law and *also* exceeds her powers in violation of Section 10(a)(4). But after *Hall Street* and *Oxford Health*, there can be no doubt that only the latter conduct can result in vacatur, and what the arbitrator did in this case—*interpret* the release agreement to permit petitioner's counterclaims—cannot form the basis for a finding that the arbitrator exceeded her powers.

Moreover, the fact that Section 10(a)(4) and "manifest disregard" may sometimes overlap is not a reason to maintain the confusing "manifest disregard" doctrine. Instead, it is a reason to grant certiorari and make it clear to parties and courts alike that the validity of arbitral awards is governed exclusively by the standards Congress established in Section 10 of the FAA. The alternative is to perpetuate the misimpression that a court may second-guess an arbitrator's interpretation of the parties' agreement if

the court frames its disagreement in sufficiently vigorous terms.

In sum, the Fourth Circuit erred twice: by adhering to circuit precedent holding that the FAA's grounds for vacatur are not exclusive even after *Hall Street*, and by holding that the extra-statutory "manifest disregard" standard permitted it to vacate an arbitral award based on its disagreement with the arbitrator's interpretation of the release. Certiorari is warranted to bring the Fourth Circuit's law in line with this Court's precedents.

II. The Courts Of Appeals Are Irreconcilably Divided Over Whether "Manifest Disregard Of The Law" Constitutes A Valid Ground To Vacate An Arbitral Award.

Certiorari is also warranted to address an acknowledged, entrenched circuit conflict. The courts of appeals are fractured over whether and when "manifest disregard of the law" permits a court to vacate an arbitral award.

1. The conflict has its genesis in this Court's precedents. As explained above, the courts of appeals generally held after *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953), *overruled by Rodriguez de Quijas v. Shearson/Am. Express., Inc.*, 490 U.S. 477 (1989), that an award could be vacated if the arbitrators manifestly disregarded the law. But after this Court's decisions in *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008), and *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 672 n.3 (2010), the courts of appeals are divided four-to-three over

whether "manifest disregard" remains a valid ground for vacatur.

The Fifth, Seventh, Eighth, and Eleventh circuits have held that "manifest disregard" is no longer a valid basis to vacate an arbitral award. *See Citigroup Global Mkts., Inc. v. Bacon*, 562 F.3d 349, 355 (5th Cir. 2009); *Affymax, Inc. v. Ortho-McNeil-Janssen Pharm., Inc.*, 660 F.3d 281, 284-85 (7th Cir. 2011); *Air Line Pilots Ass'n Int'l v. Trans States Airlines, LLC*, 638 F.3d 572, 578 (8th Cir. 2011); *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1314 (11th Cir. 2010). The First Circuit has agreed in dictum. *See Ramos-Santiago v. United Parcel Serv.*, 524 F.3d 120, 124 n.3 (1st Cir. 2008).

These courts adopt similar reasoning, concluding that in light of this Court's "clear language that, under the FAA, the statutory provisions are the exclusive grounds for vacatur, manifest disregard of the law as an independent, nonstatutory ground for setting aside an award must be abandoned and rejected." *Citigroup*, 562 F.3d at 358; *Frazier*, 604 F.3d at 1324 ("We hold that our judicially-created bases for vacatur are no longer valid in light of *Hall Street*. In so holding, we agree with the Fifth Circuit that the categorical language of *Hall Street* compels such a conclusion."); *Med. Shoppers Int'l, Inc. v. Turner Invs., Inc.*, 614 F.3d 485, 489 (8th Cir. 2010) ("Appellants' claims, including the claim that the arbitrator disregarded the law, are not included among those specifically enumerated in § 10 and are therefore not cognizable.") (citing *Hall Street*).

Among these four circuits, the Seventh Circuit takes a slightly different position. Even before *Hall Street*, that court had held that "manifest disregard" was not an available ground to vacate an arbitral award. In *George Watts & Son, Inc. v. Tiffany & Co.*, 248 F.3d 577, 579 (7th Cir. 2001), the court reasoned that "[a] search for either simple or clear legal error cannot be proper" because "the relation between judges and arbitrators established by" this Court's precedents "would break down." This is so because "[i]f 'manifest disregard' means only a legal error . . . then arbitration cannot be final," as "[e]very arbitration could be followed by a suit, seeking review of legal errors, serving the same function as an appeal." *Id*. "If 'manifest disregard' means not just any legal error but rather a 'clear' error . . . the post-arbitration litigation would be even more complex than a search for simple error—for how blatant a legal mistake must be to count as 'clear' or 'manifest' error lacks any straightforward answer." *Id*. The court thus rejected the traditional understanding of "manifest disregard" and redefined the term to encompass the narrow circumstance in which the arbitrator "direct[s] the parties to violate the law." *Id*. at 580. The Seventh Circuit has reaffirmed its approach after *Hall Street*, relying on that decision to put to rest any uncertainty about the narrow scope of its rule. *See Affymax*, 660 F.3d at 285 (explaining that no decision "impl[ying] that 'manifest violation of the law' has some different or broader content . . . survives *Hall Street*"); *Johnson Controls, Inc. v. Edman Controls, Inc.*, 712 F.3d 1021, 1026 (7th Cir. 2013) ("[M]anifest disregard of the law is not a ground on which a court

may reject an arbitrator's award unless it orders parties to do something that they could not otherwise do legally (*e.g.*, form a cartel to fix prices).") (internal quotation marks omitted).

In these four circuits, it is clear that the result in this case would have been different, as any judicial disagreement with the arbitrator's reading of the release would not constitute grounds to vacate the award.

2. Three other circuits—the Second, Fourth, and Ninth—have expressly reaffirmed their recognition of the "manifest disregard" standard. Of those, the Fourth Circuit has taken the strongest view.

In *Wachovia Securities, LLC v. Brand*, 671 F.3d 472, 480 (4th Cir. 2012), the Fourth Circuit held "that manifest disregard did survive *Hall Street* as an independent ground for vacatur." The *Wachovia* court reviewed its circuit precedent, acknowledged the division in the circuits, and then analyzed this Court's decisions in *Hall Street* and *Stolt-Nielsen*. *See id.* at 481-83. It reasoned that "[t]he Supreme Court's reasoning in *Stolt-Nielsen* closely tracked the majority of circuits' approach to manifest disregard before *Hall Street*: it noted that there was law clearly on point, that the panel did not apply the applicable law, and that the panel acknowledged that it was departing from the applicable law." *Id*. at 482-83. The Fourth Circuit then read this Court's footnote in *Stolt-Nielsen*—which reserved judgment as to whether "manifest disregard" survived *Hall Street*—"to mean that manifest disregard continues to exist either 'as an independent ground for review or as a judicial gloss on

the enumerated grounds for vacatur set forth at 9 U.S.C. § 10.'" *Id*. at 483 (quoting *Stolt-Nielsen*, 559 U.S. at 672 n.3). The court thus adhered to its previous test for "manifest disregard," which applies when an arbitrator "refuse[s] to heed" a legal principle that "is clearly defined and not subject to reasonable debate." *Id*. It expressly "decline[d] to adopt the position of the Fifth and Eleventh Circuits that manifest disregard no longer exists." *Id*.

In this case, the panel applied the common-law "manifest disregard" standard to hold that the arbitrator's interpretation of the release, juxtaposed with her finding that the release was enforceable, constituted a manifest disregard of the law. *See* Pet. App. 17a-19a. Petitioner requested that the Fourth Circuit revisit the existence and scope of the "manifest disregard" standard en banc, raising the circuit split, *Hall Street*, and *Oxford Health*. But the court of appeals refused, establishing that its position is entrenched—and that the circuit conflict will persist—absent further guidance from this Court. *See id.* 76a.[5]

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[5] In an unpublished opinion, the Sixth Circuit has similarly reaffirmed the "manifest disregard" standard, and adopted a similarly broad interpretation of it. *See Coffee Beanery, Ltd. v. WW, L.L.C.*, 300 F. App'x 415, 418-19 (6th Cir. 2008) (unpublished disposition). That court cited "the Supreme Court's hesitation to reject the 'manifest disregard' doctrine" as the basis for its holding, suggesting that it is waiting for this Court to speak more clearly on the issue. *Id*. at 419.

The Tenth Circuit has acknowledged the circuit split and expressly stated that "in the absence of firm guidance from the

The Second and Ninth Circuits have also held that "manifest disregard" survived *Hall Street*, but have employed different reasoning. Those courts continue to recognize a substantive argument that an arbitral award was entered in "manifest disregard" of the law. But they hold that such an award is properly vacated under Sections 10(a)(3) and 10(a)(4) of the FAA, which apply when arbitrators either engage in misconduct or exceed their powers. *See Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 94-95 (2d Cir.), *rev'd on other grounds* 559 U.S. 662 (2010). Applying this standard, the Ninth Circuit held that an arbitrator's award that attempted to distinguish a controlling case on untenable grounds was invalid because it manifestly disregarded the law. *See Comedy Club*, 553 F.3d at 1292-93.

This circuit conflict is entrenched, and its implications are substantial. The courts of appeals have repeatedly acknowledged the disagreement, but have nevertheless adhered to their positions, meaning that unless and until this Court intervenes, courts will continue to apply inconsistent standards to the review of arbitral awards. This divergence undermines the FAA's goal of establishing a uniform, "national policy favoring arbitration with just the limited review

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Supreme Court," it too will "decline to decide whether the manifest disregard standard should be entirely jettisoned." *Abbott v. Law Office of Patrick J. Mulligan*, 440 F. App'x 612, 620 (10th Cir. 2011) (unpublished disposition).

needed to maintain arbitration's essential virtue of resolving disputes straightaway." *Hall Street*, 552 U.S. at 588. This Court should grant certiorari to put the conflict to rest.

III. This Case Is An Ideal Vehicle To Resolve An Important Question Of Federal Law

This Court should also grant certiorari because this case presents an ideal vehicle to resolve a question of national importance. The scope of judicial review of arbitral awards has historically been contentious, and although this Court has repeatedly held that the standard of review is narrow and deferential, the Court regularly confronts lower court decisions that take an expansive approach in order to vacate an award. The issue arises frequently because arbitration is rapidly becoming a preferred dispute resolution mechanism for all sorts of matters, including employment agreements, business-to-business agreements, government contracts, and consumer protection actions. Thus, businesses, individuals, attorneys, and the lower courts all have a strong interest in knowing whether this Court's holding in *Hall Street Associates LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008), forecloses the application of extra-statutory grounds for vacatur, and an especially strong interest in knowing whether—and if so how—"manifest disregard" continues to exist as a basis to vacate an award.

Until this Court resolves the question, parties in the three circuits that have retained "manifest disregard" after *Hall Street*—as well as parties in the circuits that have not decided the question—should

expect that ground to be asserted whenever possible. Indeed, a search for cases raising this issue after *Hall Street* yields literally hundreds of results.[6] Thus,

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[6] A Westlaw search of district court cases discussing "manifest disregard" and "*Hall Street*" revealed 208 results. The number of published district court opinions addressing this issue after *Hall Street* demonstrates how frequently it arises. *See, e.g.*, *YahooA Inc. v. Microsoft Corp.*, --- F. Supp. 2d ----, 2013 WL 5708604, at *4 (S.D.N.Y. 2013); *FBR Capital Mkts & Co. v. Hans*, --- F. Supp. 2d ----, 2013 WL 5665015, at *2-3 (D.D.C. 2013); *ARMA, S.R.O. v. BAE Sys. Overseas, Inc.*, --- F. Supp. 2d ----, 2013 WL 4446798, at *19 (D.D.C. 2013); *Union de Tronquistas de Puerto Rico, Local 901 v. United Parcel Serv., Inc.*, --- F. Supp. 2d ----, 2013 WL 4130396, at *4 (D.P.R. 2013); *Miss Universe, L.P., LLLP v. Monnin*, --- F. Supp. 2d ----, 2013 WL 3328241, at *5 (S.D.N.Y. 2013); *Cessna Aircraft Co. v. Avcorp Indus., Inc.*, 943 F. Supp. 2d 1191, 1195 (D. Kan. 2013); *Global Gold Mining LLC v. Caldera Res., Inc.*, 941 F. Supp. 2d 374, 385-86 (S.D.N.Y. 2013); *Waveland Capital Partners, LLC v. Tommerup*, 928 F. Supp. 2d 1227, 1231 n.4 (D. Mont. 2013); *Bangor Gas Co. LLC v. H.Q. Energy Servs. (U.S.), Inc.*, 846 F. Supp. 2d 298, 302 (D. Me. 2012); *Thomas Diaz, Inc. v. Colombiana, S.A.*, 831 F. Supp. 2d 528, 532 n.2 (D.P.R. 2011); *Priority One Servs., Inc. v. W&T Travel Servs., LLC*, 825 F. Supp. 2d 43, 50 (D.D.C. 2011); *Affinity Fin. Corp. v. AARP Fin., Inc.*, 794 F. Supp. 2d 117, 120 n.1 (D.D.C. 2011); *Fluke v. CashCall, Inc.*, 792 F. Supp. 2d 782, 785-86 (E.D. Pa. 2011); *In re Arbitration Between Gen. Sec. Nat'l Ins. Co. & AequiCap Program Admin.*, 785 F. Supp. 2d 411, 417 n.5 (S.D.N.Y. 2011); *Popkave v. John Hancock Distribs. LLC*, 768 F. Supp. 2d 785, 790-91 (E.D. Pa. 2011); *Contech Constr. Prods., Inc. v. Heierli*, 764 F. Supp. 2d 96, 110 n.15 (D.D.C. 2011); *Int'l Trading & Indus. Inv. Co. v. Dyncorp Aerospace Tech.*, 763 F. Supp. 2d 12, 26-27 (D.D.C. 2011); *Regale, Inc. v. Dollhouse Prods. N.C., Inc.*, 761 F. Supp. 2d 310, 315 n.2 (E.D.N.C. 2011); *Tio v. Wash. Hosp. Ctr.*, 753 F. Supp. 2d 9, 16 (D.D.C. 2010); *Goldman Sachs Execution & Clearing, L.P. v.*

parties considering arbitration sited in those circuits face the prospect that the time and resources they invest in arbitration will be wasted if a court disagrees with the merits of the arbitrator's decision. At a minimum, they will have to litigate the issue, adding effort and expense to post-arbitration proceedings, and rendering "informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process." *Hall Street*, 552 U.S. at 588 (internal quotation marks and citation omitted). Put differently, the continuing uncertainty over the availability of "manifest disregard" and other extra-statutory grounds for vacatur undermines core objectives of the arbitration regime: finality and predictability.

In fact, the implications are global. Many international entities may be deterred from siting arbitration in the United States out of concern that the award may be more vulnerable to being set aside. As commentators have explained, "manifest disregard has

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Official Unsecured Creditors' Comm. of Bayou Grp., LLC, 758 F. Supp. 2d 222, 225 (S.D.N.Y. 2010); *Amway Global v. Woodward*, 744 F. Supp. 2d 657, 669 n.5 (E.D. Mich. 2010); *Rai v. Barclays Capital Inc.*, 739 F. Supp. 2d 364, 373 (S.D.N.Y. 2010); *United States ex rel. Coastal Roofing Co., Inc. v. P. Browne & Assocs., Inc.*, 771 F. Supp. 2d 576, 584 (D.S.C. 2010); *Silicon Power Corp. v. Gen. Elec. Zenith Controls, Inc.*, 661 F. Supp. 2d 524, 537 (E.D. Pa. 2009); *Abbott v. Mulligan*, 647 F. Supp. 2d 1286, 1290-91 (D. Utah 2009); *Vitarroz Corp. v. G. Willi Food Int'l Ltd.*, 637 F. Supp. 2d 238, 244-45 (D.N.J. 2009); *Global Reinsurance Corp. of Am. v. Argonaut Ins. Co.*, 634 F. Supp. 2d 342, 348-49 (S.D.N.Y. 2009).

become a repository for all sorts of outlandish theories of arbitral misconduct, devised with but one aim in mind: the application of standards of appellate review to the arbitration process, and ultimately, to vacatur of a particular arbitral award." Marta Varela, *Arbitration and the Doctrine of Manifest Disregard*, 49 Disp. Res. J. 64, 65 (1994); *see also* Stephen L. Hayford, *Reining in the Manifest Disregard of the Law Standard: The Key to Restoring Order to the Law of Vacatur*, 1998 J. Disp. Res. 117, 118 (1998) (arguing that "manifest disregard" presents "a significant impediment to the maturation and institutionalization of commercial arbitration as an effective alternative to traditional litigation" because it "rob[s] the process of its most essential feature—finality," because it "increase[s] the expense, time to resolution and consternation associated with commercial arbitration," and because it provides an "overwhelming disincentive to reasoned awards that reveal the manner in which the arbitrator decides disputed questions."). Critically, this uncertainty matters even if relatively few awards are vacated for manifest disregard, because when the stakes are high—as they typically are in international arbitrations—*any* additional uncertainty creates a powerful incentive to seek a more favorable forum.

Equally important, to the extent that this Court concludes that "manifest disregard" remains valid, it is clear that the courts of appeals apply it in different ways. While the Second and Ninth circuits take a more limited view, the Fourth Circuit has adopted an expansive approach. Even if the only issue at stake was how broadly the "manifest disregard" standard

should reach, the question presented would still warrant this Court's review.

This case is an ideal vehicle to resolve the question presented. First, the "manifest disregard" issue is plainly dispositive, and is the only issue that the Fourth Circuit addressed. Here, the Fourth Circuit clearly stated its rule—that "manifest disregard" is an "extra-statutory" ground for relief that justified vacatur because the arbitrator's interpretation of the release was "untenable." Pet. App. 14a n.5, 17a-19a. That is the broadest view of "manifest disregard" adopted by any of the circuits, and therefore a useful focal point for this Court.

Second, this issue is ripe for this Court's review. By denying petitioner's request for rehearing en banc, the Fourth Circuit has established that its position is fixed. Other courts of appeals have likewise acknowledged that they are divided over the question presented, and that they have no intention of reconciling their positions. Many have made it clear that they require guidance from this Court. *See* note 5, *supra*. Thus, there is no reason for this Court to wait for another case in which "manifest disregard" again rears its head.

Finally, the arbitration and business law community is watching this case. The Fourth Circuit's decision has generated substantial reporting and commentary. *See, e.g.*, Michael P. Maslanka, *Fourth Circuit Finds Manifest Disregard for the Law*, Texas Lawyer, Nov. 20, 2013, http://texaslawyer.typepad.com/work_matters/2013/11/fourth-circuit-finds-manifest-disregard-for-the-law-

.html; Liz Kramer, *"Manifest Disregard of the Law" Is Alive and Well and Vacating Arbitrations in the Fourth Circuit*, Arbitration Nation, Nov. 7, 2013, http://arbitrationnation.com/manifest-disregard-of-the-law-is-alive-and-well-and-vacating-arbitrations-in-fourth-circuit/; Mintz Levin & Jason M. Knott, *"Man Bites Dog" in the Fourth Circuit: Court Reverses Arbitrator's Award and Enforces Release*, Suits by Suits, Nov. 6, 2013, http://www.suitsbysuits.com/20131106_fourth_circuit_vacates_arbitration; David Barmak, *Fourth Circuit Court of Appeals Takes Rare Step of Vacating Arbitrator's Award, Saving Employer $400,000*, Employment Matters, Nov. 1, 2013, http://www.employmentmattersblog.com/2013/11/fourth-circuit-court-of-appeals-takes-rare-step-of-vacating-arbitrators-award-saving-employer-400000.

The viability of "manifest disregard" remains one of the most heavily contested, important, and unresolved issues in arbitration law today. This Court should grant certiorari to address it.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 13, 2013

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-2175

KIRAN M. DEWAN, CPA, P.A., a Maryland close corporation; KIRAN MOOLCHAND DEWAN, a citizen of Maryland,

Plaintiffs-Appellants,

v.

ARUN WALIA, a non-resident alien, citizen of Canada,

Defendant-Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (1:11-cv-02195-RDB)

Argued: September 18, 2013 Decided: October 28, 2013

Before DAVIS, WYNN, and DIAZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion. Judge Wynn wrote a dissenting opinion.

ARGUED: Paul Steven Schleifman, SCHLEIFMAN AND KOMIS PLLC, Arlington, Virginia, for Appellants. Mark G. Chalpin, MARK G. CHALPIN, ESQUIRE, Gaithersburg, Maryland, for Appellee. ON BRIEF: Ramesh Khurana, THE KHURANA LAW FIRM, LLC, Rockville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kiran Dewan and his close corporation, Kiran M. Dewan, CPA, P.A. ("the Company") (collectively, "Appellants"), appeal from the district court's confirmation of an arbitral award in favor of the Company's former employee, Appellee Arun Walia. Walia came to the United States from Canada in 2003 on an employment visa to work for the Company as an accountant.[1] By 2009, the parties agreed to a parting of the ways, in connection with which Walia executed a broadly worded Release Agreement ("the Release") in consideration for the Company's payment of $7,000.

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[1] Appellant Kiran M. Dewan is an attorney as well as a CPA, and he represented Walia in connection with the application and processing of the latter's non-immigrant work visa. In Spring 2013 Dewan was named with others in an indictment filed in the District of Maryland charging conspiracy to bribe an immigration official in order to obtain lawful permanent residence, employment authorization documents, and green cards.

The parting proved less than amicable. In January 2010, Appellants filed a demand for arbitration against Walia, alleging that Walia breached the noncompetition/nonsolicitation provisions in his employment agreement. Despite the Release, Walia asserted numerous counterclaims in the arbitral forum, primarily alleging that the Company had underpaid him during his employment and that Appellants had run afoul of federal immigration law attendant to the visa program. The Arbitrator found in favor of Walia on Appellants' original claims. She also concluded, however, that the Release was valid and enforceable, but nevertheless made a substantial monetary award in Walia's favor, holding Appellants jointly and severally liable.

In due course, the parties filed opposing petitions to vacate and to confirm/enforce the award in federal district court. The district court confirmed the award and granted Walia's motion for attorney's fees and costs.

For the reasons that follow, we hold that the award in favor of Walia is the product of a manifest disregard of the law by the Arbitrator. Accordingly, we vacate the judgment and remand to the district court with instructions to vacate the award.

I.

A.

Walia, a Canadian national, came to the United States in 2003 on an employment visa to work for the Company as an accountant. He entered into a three-year employment agreement. In 2006, Walia and the

Company entered into a second three-year employment agreement ("the 2006 Employment Agreement") extending through March 23, 2009. The 2006 Employment Agreement included nonsolicitation and noncompetition provisions, as well as a broad arbitration provision. Dewan signed it in his capacity as president of the Company.

In February and March 2009, Walia underwent treatment for thyroid cancer. On approximately March 14, 2009 (as the termination date for the 2006 Employment Agreement approached), the Company's office manager, Veena Sindwani (who was also Dewan's wife), went to the intensive care unit to see Walia. The parties dispute the events occurring in the hospital. Walia contended (and the Arbitrator later found) that Sindwani presented him with a new employment agreement, which he signed. Appellants contended that no such agreement existed.

In any event, Walia continued to work for the Company through at least August 21, 2009. The parties vigorously dispute the circumstances surrounding the termination of Walia's employment. This much is undisputed: Though no termination letter was ever sent to Walia, on November 3, 2009, Walia executed the Release, which "release[d] and discharge[d]" Appellants from claims related to Walia's employment in exchange for $7,000. J.A. 250-52.[2] The Release provided for "binding arbitration" should a dispute arise concerning the Release or its

[2] The text of the Release is set forth infra pages 15-16.

performance. J.A. 251. As with the 2006 Employment Agreement, Dewan signed it in his capacity as president of the Company.

B.

Less than three months after Walia executed the Release, on January 29, 2010, Dewan initiated arbitration proceedings against Walia with the American Arbitration Association. Dewan asserted that Walia "breached an employment agreement by competing with and soliciting the clients of the employer," and "breached a settlement and release agreement by making various claims against the Employer (Claimant)." J.A. 21.[3]

Walia asserted several counterclaims. He alleged, among other things, that (1) based on his years of accounting experience he was underpaid (in apparent violation of the relevant immigrant work visa regulations) during his time at the Company; (2) the Company breached the profit-sharing terms of the 2006 Employment Agreement; and (3) Dewan, Walia's immigration attorney of record, fraudulently sought to withdraw Walia's employment authorization.

The Arbitrator conducted four days of hearings in 2011 and issued a so-called interim award ("the

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[3] Walia had filed an administrative complaint with the United States Department of Labor asserting that he was not paid the appropriate "required wage" as mandated by the non-immigrant employment visa program. *See* 8 U.S.C. §§ 1182(a)(5)(A), 1182(n); 20 C.F.R. §§ 655.731, 655.731(a)(1) and (a)(2).

Interim Award") in Walia's favor. The Arbitrator found, among other things, that

(1) no cognizable claims survived the employment agreements from 2003 and 2006 based on the applicable statute of limitations;

(2) "there [was] a viable Employment Agreement drafted by [Dewan] and signed by [Walia] on March 14, 2009 [during the hospital visit]," which Dewan had simply refused to produce;

(3) "NO termination letter was ever sent" by Dewan, and therefore the employment relationship continued through the date of the arbitration proceedings;

(4) Dewan's claims that Walia solicited the Company's clients and used the Company's confidential materials in an unauthorized manner were "baseless";

(5) Walia "voluntarily" signed the Release and thereafter negotiated checks totaling the $7,000 paid by Dewan for the Release, and Walia was therefore "legally bound" by the Release to the extent that it barred "all tort and contractual claims in federal or state courts as well as attorney's fees";

(6) the continuing "employment relationship" allowed for an award of compensatory damages stretching back to 2003 despite the bar of the statute of limitations;

(7) punitive damages were justified because Dewan "purposefully harmed" Walia's immigration interest by failing to tell Walia prior to

withdrawing the Company's sponsorship of him as required by federal law, and because Walia "had to defend himself" against Appellants' "baseless claims";

(8) tax returns that Dewan provided in discovery were significantly different than those Dewan submitted to the U.S. Department of Labor ("the DOL");

(9) the statutory remedies for failure to pay prevailing wages under the Immigration and Nationality Act ("INA") were not exclusive, and the Arbitrator could order damages based on a violation of the INA; and

(10) the Arbitrator had given the award "interim" status to "await . . . guidance in this case from DOL's investigation" of Appellants.

J.A. 60-69.

On November 18, 2011, the Arbitrator issued a final award ("the Final Award"). The Arbitrator first recounted a series of developments since the Interim Award. These included a finding that Dewan "was a party to fraud" based on the differences between documents obtained by Walia through FOIA requests and documents provided in discovery. J.A. 189. The Arbitrator then awarded Walia $387,108.20 in compensatory damages and $70,000 in punitive damages, and found that Dewan and the Company were jointly and severally liable for the combined $457,108.20.

On December 16, 2012, Appellants filed an amended complaint in their previously filed federal

court action challenging the Final Award.[4] Eventually thereafter, Walia filed a petition to confirm and enforce the Final Award.

The district court first denied Appellants' petition to vacate the Final Award. *Kiran M. Dewan, CPA, P.A. v. Walia*, 2012 WL 3156839 (D. Md. Aug. 3, 2012). The court noted its severely circumscribed role in reviewing an arbitration award, and the limited

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[4] Curiously, Appellants did not simply file a petition to vacate the award, but instead filed a civil complaint asserting ten "claims" in separately numbered "counts" pursuant to the Maryland Uniform Arbitration Act ("the MUAA"), Md. Code Ann., Cts. & Jud. Proc. § 3-201 et seq.: (1) the Arbitrator lacked authority to order Dewan personally liable because no arbitration agreement existed between Dewan and Walia; (2) the Arbitrator exceeded her powers and reached an irrational result by ordering damages despite finding the Release enforceable; (3) the Arbitrator's award was the product of "undue means" because of its alleged irrationality; (4) the Arbitrator showed partiality to Walia and demonstrated misconduct prejudicing Appellants' rights; (5) the Arbitrator refused to hear evidence material to the controversy; (6) the Arbitrator was not permitted to award attorney's fees in the form of punitive damages; (7) the Arbitrator unlawfully asserted "continuing jurisdiction" over the controversy; (8) there was no 2009 employment agreement, and therefore no agreement to arbitrate claims arising from Walia's employment after the three-year period of the 2006 Employment Agreement; (9) the Arbitrator was prohibited from awarding punitive damages because the 2006 Employment Agreement's arbitration provision did not expressly provide for arbitration of punitive damages; and (10) by filing a DOL action against the Company for unpaid wages, wage shortfalls, and other allegedly unlawful employment conditions, Walia waived any right to arbitrate those claims. J.A. 126-54.

grounds for vacating such an award. The court stated that Appellants' federal-court claims "are almost identical to the ones presented before the arbitration tribunal," and that in bringing the claims Appellants "[e]ssentially . . . have asked [the court] to second-guess the well-reasoned award . . . ." *Id*. at *9. The court concluded that there was "substantial support for the decisions made by the arbitrator, that the arbitrator did not go beyond the scope of the submissions, and that the arbitrator's determinations were not arbitrary." *Id*. at *10. The court further concluded that Appellants did not "meet their heavy burden of proof with respect to any of the applicable grounds to vacate an arbitration award under the MUAA." *Id*.

Appellants filed a motion for reconsideration. The district court issued a memorandum order denying that motion and granting Walia's petition to confirm and enforce the award. *Kiran M. Dewan, CPA, P.A. v. Walia*, 2012 WL 4356783 (D. Md. Sept. 21, 2012). On October 16, 2012, the court granted Walia's motion for attorney's fees and costs. *Kiran M. Dewan, CPA, P.A. v. Walia*, 2012 WL 4963827 (D. Md. Oct. 16, 2012).

Appellants timely noticed this appeal.

II.

A.

On appeal from the district court's evaluation of an arbitral award, "[w]e review the district court's findings of fact for clear error and its conclusions of law, including its decision to vacate [or confirm] an arbitration award, de novo." *Raymond James Fin.*

Servs., Inc. v. Bishop, 596 F.3d 183, 190 (4th Cir. 2010).

B.

As an initial matter, we must determine what body of law controls the resolution of this appeal. The parties' arguments are all based on the MUAA, Maryland's analogue to the Federal Arbitration Act ("the FAA"), 9 U.S.C. § 1 et seq. The district court acquiesced in the parties' invocation of the MUAA. At oral argument before us, however, the parties were unable to explain why the FAA should not control.

The FAA "supplies not simply a procedural framework applicable in federal courts; it also calls for the application, in state as well as federal courts, of federal substantive law regarding arbitration." *Preston v. Ferrer*, 552 U.S. 346, 349 (2008). Under § 2 of the FAA, "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

The Supreme Court has

> interpreted the term "involving commerce" in the FAA as the functional equivalent of the more familiar term "affecting commerce"—words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power. Because the statute provides for "the enforcement of arbitration agreements

> within the full reach of the Commerce Clause," . . . it is perfectly clear that the FAA encompasses a wider range of transactions than those actually "in commerce"—that is, "within the flow of interstate commerce."

Citizens Bank v. Alafabco, Inc., 539 U.S. 52, 56 (2003) (internal citations omitted). Commerce includes foreign commerce. *See Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500-01 (4th Cir. 2002) (noting that a litigant can compel arbitration under the FAA if able to demonstrate, among other things, "the relationship of the transaction . . . to interstate or foreign commerce . . . ."). The relevant transactions here are the non-immigrant employment application process leading to, and the ultimate execution by the parties of, the 2003 and 2006 employment contracts, and, as well, the execution in 2009 of the Release by Walia, a Canadian national. Subject matter jurisdiction plainly exists because Walia is a Canadian national, but "diversity of citizenship—or lack thereof—is not by itself enough to determine the nature of a transaction . . . ." *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012). Here, though, the transactions involving the employment of a Canadian national by an American company pursuant to federal immigration law clearly involved foreign commerce.

The Release states that it "shall be construed and enforced in accordance with the laws of the State of Maryland," J.A. 251, and the 2006 Employment Agreement states that it "shall be governed by and construed according to the laws of the State of Maryland applicable to agreements to be wholly

performed therein," J.A. 248. But "a contract's general choice-of-law provision does not displace federal arbitration law if the contract involves interstate [or foreign] commerce." *Rota-McLarty*, 700 F.3d at 698 n.7; *see also Porter Hayden Co. v. Century Indem. Co.*, 136 F.3d 380, 383 (4th Cir. 1998) (finding that a similar choice-of-law provision could "reasonably be read merely as specifying that Maryland substantive law be applied to resolve disputes arising out of the contractual relationship," and "absent a clearer expression of the parties' intent to invoke state arbitration law, we will presume that the parties intended federal arbitration law to govern the construction of the Agreement's arbitration clause"). The term "evidencing a transaction" in § 2 of the FAA "requires only that the transaction in fact involved interstate commerce, not that the parties contemplated it as such at the time of the agreement." *Rota-McLarty*, 700 F.3d at 697.

In short, because the employment contracts and the Release evidence and arise out of transactions involving foreign commerce, we hold that the FAA controls.

III.

Appellants argue, among other things, that the arbitration award must be vacated because it is the product of the Arbitrator's manifest disregard of the law. Specifically, they contend that the Arbitrator could not find the Release valid and enforceable but nevertheless make an award to Walia on claims arising out of his employment with the Company. We are constrained to agree.

"Judicial review of an arbitration award in federal court is 'substantially circumscribed.'" *Three S Del., Inc. v. DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007) (citation omitted). In fact, "'the scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all—the quick resolution of disputes and the avoidance of the expense and delay associated with litigation.'" *MCI Constructors, LLC v. City Of Greensboro*, 610 F.3d 849, 857 (4th Cir. 2010) (quoting *Three S Del.*, 492 F.3d at 527). "In order for a reviewing court to vacate an arbitration award, the moving party must sustain the heavy burden of showing one of the grounds specified in the [FAA] or one of certain limited common law grounds." *Id*.

The grounds specified in the FAA are: "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct . . . ; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a).

"The permissible common law grounds for vacating such an award 'include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law.'" *MCI Constructors*, 610 F.3d at 857

(citation omitted).[5] "Under our precedent, a manifest disregard of the law is established only where the 'arbitrator[ ] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.'" *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 235 (4th Cir. 2006) (citation omitted). Merely misinterpreting contract language does not constitute a manifest disregard of the law. *Id*. An arbitrator may not, however, disregard or modify unambiguous contract provisions. *Id*. "Moreover, an award fails to draw its essence from the agreement if an arbitrator has 'based his award on his own personal notions of right and wrong.' . . . In such circumstances, a federal court has 'no choice but to refuse enforcement of the award.'" *Id*. (citations omitted).

Here, Walia agreed to "release and discharge" Appellants from claims related to Walia's employment in exchange for $7,000. J.A. 250-52. The expansive breadth and scope of the Release are plainly reflected in its plain language, which we set forth in full:

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[5] In the wake of the Supreme Court's decision in *Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576 (2008), this court has recognized that considerable uncertainty exists "as to the continuing viability of extra-statutory grounds for vacating arbitration awards." *Raymond James*, 596 F.3d at 193 n.13. Nevertheless, we have recognized that "manifest disregard continues to exist" as a basis for vacating an arbitration award, either as "an independent ground for review or as a judicial gloss" on the enumerated grounds for vacatur set forth in the FAA. *Wachovia Secs., LLC v. Brand*, 671 F.3d 472, 483 (4th Cir. 2012).

3. Release. EMPLOYEE, on behalf of himself and his representatives, spouse, agents, heirs and assigns releases and discharges COMPANY and COMPANY'S former, current or future officers, employees, representatives, agents, fiduciaries, attorneys, directors, shareholders, insurers, predecessors, parents, affiliates, benefit plans, successors, heirs, and assigns from any and all claims, liabilities, causes of action, damages, losses, demands or obligations of every kind and nature, whether now known or unknown, suspected or unsuspected, which EMPLOYEE ever had, now has, or hereafter can, shall or may have for, upon or by reason of any act, transaction, practice, conduct, matter, cause or thing or any kind whatsoever, relating to or based upon, in whole or in part, any act, transaction, practice or conduct prior to the date hereof, including but not limited to matters dealing with EMPLOYEE'S employment or termination of employment with the COMPANY, or which relate in any way to injuries or damages suffered by EMPLOYEE (knowingly or unknowingly). This release and discharge includes, but is not limited to, claims arising under federal, state and local statutory or common law, including, but not limited to, the Age Discrimination in Employment Act ("ADEA"), Title VII of the Civil Rights Act of 1964, claims for wrongful discharge under any public policy or any policy of the COMPANY, claims for breach of fiduciary duty, and the laws

> of contract and tort; and any claim for attorney's fees. EMPLOYEE promises never to file a lawsuit or assist in or commence any action asserting any claims, losses, liabilities, demands, or obligations released hereunder.
>
> 4. Known or Unknown Claims. The parties understand and expressly agree that this AGREEMENT extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to any conduct of the COMPANY and its successors, subsidiaries, and affiliates, and all their employees, owners, shareholders, agents, officers, directors, predecessors, assigns, agents, representatives, and attorneys, whether known by EMPLOYEE or whether or not EMPLOYEE believes he may have any claims and that any and all rights granted to EMPLOYEE under the Annotated Code of Maryland or any analogous state law or federal law or regulations, are hereby expressly WAIVED.

J.A. 250-51. As noted above, the Release provided for "binding arbitration" should a dispute arise concerning the Release or its performance. J.A. 251.

In the Interim Award, the Arbitrator rejected Walia's argument that the Release was unconscionable. She then found that Walia

> knew he was signing a release and chose to sign it. However, he did not know the legal consequences nor the significance of his signature. However, he voluntarily signed it but

> without consulting an attorney and is now legally bound. Accordingly, all [Walia's] rights for all tort and contractual claims in federal or state courts as well as attorney's fees are now waived.

J.A. 66. The Arbitrator also found that Walia had negotiated the checks "for the composite amount of the Release . . . ." J.A. 66; *see also* J.A. 69 ("All claims involving Solicitation, Covenant not to Compete and unauthorized release of Confidential Data from the Claimant's CPA firm are dismissed except for the valid execution of the Release (2009) based on Maryland law. Accordingly, [Walia] is precluded from bringing all tort and contractual claims in state and federal courts as well as being precluded from receiving attorney's fees."); J.A. 190 (same, in Final Award).

In sum, the Arbitrator appears to have concluded that the Release sufficed to extinguish Walia's common law and state and federal statutory claims *if they were brought in state or federal court*, but did not extinguish some or all of such claims *if they were brought in an arbitral forum*. We find untenable the Arbitrator's attempt to parse the language of the Release so finely.

We agree with Appellants that in purporting to construe "the release and waiver provision to apply only to tort and contractual claims Walia might file in federal or state court," the Arbitrator "rewr[ote] the release, which expressly 'includes, but is not limited to, claims arising under federal, state and local statutory or common law,' and imposes no qualifications whatsoever concerning the forum in which those

released claims could have been brought." Appellants' Br. at 37. We have no doubt that Maryland law accords with Appellants' contentions. *See Herget v. Herget*, 573 A.2d 798, 801 (Md. 1990) (stating that a broad settlement agreement purporting to release all claims, whether known or unknown, is enforceable); *Bernstein v. Kapneck*, 430 A.2d 602, 606 (Md. 1981).[6]

The Arbitrator's finding that the Release was valid and enforceable forecloses all of Walia's arguments on appeal that the Release was

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[6] *Marcus v. Rapid Advance, LLC*, 2013 WL 2458347, at *6 (E.D. Pa. June 7, 2013), succinctly summarized Maryland courts' approach to the interpretation of broad releases:

> Under Maryland law, releases are contracts that are read and interpreted under ordinary contract principles--including, inter alia, the parol evidence rule. *Bernstein v. Kapneck*, 290 Md. 452, 458–59, 430 A.2d 602 (1981). In *Bernstein*, the Maryland Court of Appeals set out three principles that underlie this conclusion: (1) in the absence of legal barriers, "parties are privileged to make their own agreement and thus designate the extent of the peace being purchased;" (2) in a time of "burgeoning litigation," private settlement of disputes is to be encouraged, and "a release evidencing accord and satisfaction is a jural act of exhalted significance which without binding durability would render the compromise of disputes superfluous, and accordingly unlikely," and (3) according to conventional rules of construction, when a release is stated in clear and unambiguous language, the words should be given their ordinary meaning. *Id*. at 459–60, 430 A.2d 602. Accordingly, the Court of Appeals instructs that courts interpret releases based on their clear, objective language.

unconscionable.[7] We do not know how the Arbitrator reached her interpretation of the Release. However, it is clear to us that neither linguistic gymnastics, nor a selective reading of Maryland contract law, could support her conclusion that the Release was enforceable but that Walia's claims were arbitrable anyway.

Objectively viewed, the language of the Release could not be more expansive, clear, or unambiguous. The plain language of the Release fatally undermines the suggestion that Walia retained the right to bring any of his counterclaims in arbitration. The Release waived all claims stemming from his employment relationship with the Company, regardless of forum. Accordingly, we hold that the Arbitrator manifestly disregarded the law by holding the Release valid and enforceable but nevertheless arbitrating Walia's counterclaims arising out of his employment with the Company.[8]

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[7] These arguments include that (1) the payment of $7,000 violated Maryland law "by paying Walia much less than he was owed at the alleged termination of his employment in August 2009"; (2) "Dewan failed to advise Walia to seek independent counsel before signing" the Release; and (3) Dewan engaged in "fraudulent and malicious actions both in coercing Walia to sign the Release Agreement and then in presenting evidence in arbitration in seeking to enforce the Release Agreement without paying Walia wages owed him." Appellee's Br. at 34-35.

[8] Our disposition of this appeal renders it unnecessary for us to determine whether our holding in *Venkatraman v. REI Systems, Inc.*, 417 F.3d 418, 422-24 (4th Cir. 2005), that a U.S. citizen has no private cause of action against his former employer under the

IV.

For the reasons set forth, we vacate the judgment and remand with instructions that the district court vacate the award.

VACATED AND REMANDED

WYNN, Circuit Judge, dissenting:

Our review of an arbitrator's award is so "severely circumscribed" that it is "among the narrowest known at law." *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 193 (4th Cir. 1998) (footnote

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INA, applies to a foreign national who is the beneficiary of the visa program. Relatedly, we need not consider whether, even if no such claim lies in a judicial forum, such a claim might lie in an arbitral forum. We simply hold that under the Arbitrator's finding that the Release is valid and enforceable, she acted in manifest disregard of controlling Maryland law in carving out an exception for some claims that, as she viewed the matter, were retained by Walia.

In any event, Walia concedes that he in fact fully pursued his "required wage" claim before the DOL and that the agency found "no violation" by the Company. *See* Appellee's Br. at 27. Accordingly, as Walia further concedes, "The compensatory damages awarded by the Arbitrator are based on the agreements between the parties . . . ." *Id*. at 33. In light of this concession, the conclusion is inescapable that even though the Arbitrator purported to adjudicate and award damages pursuant to an ostensible statutory claim under the INA, it is clear that she in fact awarded damages "based on the agreements between the parties." But as the Arbitrator earlier found, the contractual claims had been extinguished by the Release and could not support an award of damages.

omitted). Not surprisingly, then, even an "erroneous interpretation of the agreement in question" cannot serve as a basis for vacating an arbitration award. *Id*. at 194. Instead, "[a]s long as the arbitrator is even arguably construing or applying the contract[,] a court may not vacate the arbitrator's judgment." *Upshur Coals Corp. v. United Mine Workers of Am., Dist. 31*, 933 F.2d 225, 229 (4th Cir. 1991) (quotation marks omitted).

In this case, the arbitrator interpreted a release agreement stating that Arun Walia promised "never to file a lawsuit or assist in or commence any action" related to his employment as applying to claims in courts but not to disputes in arbitrations. J.A. 250-51, 66. Because the arbitrator's interpretation, which more than arguably applies the contract, does not manifestly disregard the law, I cannot support overthrowing the arbitrator's award on that basis. Accordingly, I must respectfully dissent.

I.

As the majority notes, Kiran Dewan employed Walia in 2003, but they parted ways in 2009. At the time they parted, Dewan, an attorney, drafted a release agreement that Walia ultimately signed. Under the agreement, Walia "release[d]" and "discharge[d]" claims against Dewan, promising "never to file a lawsuit or assist in or commence any action" relating to his employment. J.A. 250-51. In exchange, Dewan paid Walia $7,000.

The arbitrator concluded that the release agreement was "valid and enforceable" and "[a]ccordingly, all [Walia's] rights for all . . . claims in

federal or state courts as well as attorney's fees are now waived." J.A. 66. In other words, the arbitrator concluded that the agreement released Dewan only as to claims asserted in court, not disputes brought to an arbitral forum.

II.

"As we have made clear repeatedly: Judicial review of an arbitration award in federal court is substantially circumscribed." *Raymond James Fin. Servs., Inc. v. Bishop*, 596 F.3d 183, 190 (4th Cir. 2010) (quotation marks and omitted). Indeed, "the scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all-the quick resolution of disputes and the avoidance of the expense and delay associated with litigation." *Id*. (quotation marks omitted).

We have consistently emphasized that, in reviewing an arbitration award, "a district or appellate court is limited to determine whether the arbitrators did the job they were told to do-not whether they did it well, or correctly, or reasonably, but simply whether they did it." *Id*. (quotation marks omitted). Thus, in reviewing an arbitrator's contract interpretation, a court "must uphold it so long as it draws its essence from the agreement." *Upshur Coals Corp.*, 933 F.2d at 229 (quotation marks omitted). Stated differently, "[a]s long as the arbitrator is even arguably construing or applying the contract[,]" the reviewing court's conviction that the arbitrator committed "serious error does not suffice to overturn his decision." *Long John*

Silver's Rests., Inc. v. Cole, 514 F.3d 345, 349 (4th Cir. 2008) (quotation marks omitted).

III.

In this case, the arbitrator reasonably interpreted the agreement to release suits in court but not disputes in arbitration. The release agreement specifically barred "lawsuits" and "actions." J.A. 250-51. Neither term is defined in the release agreement. However, both terms are generally understood to mean proceedings in a judicial forum, not arbitration. *See UBS Fin. Servs., Inc. v. Carilion Clinic*, 706 F.3d 319, 329-30 (4th Cir. 2013) (noting that the phrase "actions and proceedings" is generally construed as a judicial proceeding and does not encompass arbitration); *see also* Black's Law Dictionary 32, 1572 (9th ed. 2009) (defining "action" as "[a] civil or criminal judicial proceeding" and "lawsuit" as "[a]ny proceeding by a party or parties against another in a court of law"). Nowhere did the release agreement state that it barred arbitration. I cannot agree with the majority that interpreting the agreement as releasing suits in court but not arbitration requires "linguistic gymnastics," ante at 19, or an "untenable" attempt to "finely" "parse" the release. *Ante* at 17.

In contrast to the arbitrator, the majority interprets the agreement as releasing all claims regardless of forum. This interpretation, too, is reasonable and arguably "may be the more logical one." *Atalla v. Abdul-Baki*, 976 F.2d 189, 194 (4th Cir. 1992) (concluding that a settlement agreement read as a whole did not unambiguously release the plaintiff's claims, despite inclusion of "an all-encompassing

release clause," *id*. at 193). But it is not the only one. *Cf. id.* at 193-94. The arbitrator thus did not "disregard or modify unambiguous contract provisions," *ante* at 14, and vacatur on that basis is thus unjustified.

Further, I cannot agree with the majority's statement that the release agreement "could not be more expansive, clear, or unambiguous." *Ante* at 19. Indeed, the release agreement could have "release[d]" and "discharge[d]" all claims and disputes not just in the form of "lawsuit[s]" or "actions" but "in any and all forms and in any and all fora." J.A. 250-51. Or it could have made clear that Walia "promised never to file a lawsuit, or assist in or commence any action or arbitration or any other form of dispute for adjudication in any forum whatsoever." But it did not.

Because the arbitrator unquestionably construed the release agreement at issue, we are not at liberty to substitute our preferred interpretation for the arbitrator's. *Upshur Coals Corp.*, 933 F.2d at 229 ("As long as the arbitrator is even arguably construing or applying the contract[,] a court may not vacate the arbitrator's judgment." (quotation marks omitted)). "[V]acatur of an arbitration award is, and must be, a rare occurrence . . . ." *Raymond James Fin. Servs., Inc.*, 596 F.3d at 184. The contract interpretation dispute here simply does not present that rare circumstance justifying our overthrowing an arbitration award. Consequently, I respectfully dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KIRAN M. DEWAN,
CPA, P.A. *et al.*,

Plaintiffs,

v. Civil Action No. RDB-11-02195

ARUN WALIA

Defendant.

MEMORANDUM OPINION

Plaintiffs Kiran M. Dewan, CPA, PA, an accounting company, and Kiran M. Dewan in his individual capacity (collectively "Plaintiffs") bring this action against Arun Walia ("Defendant") seeking to vacate the Final Arbitration Award[1] ("Final Award")

[1] Plaintiffs' original Complaint filed on August 9, 2011 challenged the Interim Arbitration Award ("Interim Award") issued on July 11, 2011. After the issuance of the Final Award, Plaintiffs' filed an Amended Complaint on December 16, 2011. Although Plaintiffs failed to obtain opposing counsel's consent or to seek

issued on November 18, 2011 in favor of the Defendant by the American Arbitration Association ("AAA"). Specifically, Plaintiffs seek to vacate the award based on Sections 3-224, 3-221 and 3-208[2] of the Maryland Uniform Arbitration Act, Courts and Judicial Procedures § 3-201, et seq. ("the MUAA"). Pending before this Court are Plaintiffs' Motion for Partial Summary Judgment on Count I of the Complaint (ECF No. 6) and Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 17). Also pending before this Court are Defendant's Motions to Dismiss the original Complaint and the Amended Complaint (ECF Nos. 8 & 16) pursuant to Rule 12(b)(1) and in the alternative Rule 12(b)(6) of the Federal Rules of Civil Procedure. The parties' submissions have been reviewed and no hearing is necessary. See Local Rule 105.6 (D. Md. 2011). According to the procedures relating to post-arbitration proceedings, Plaintiffs' Amended Complaint seeking vacation of the Final Award is most commonly viewed as a Petition to Vacate the Award. For the reasons that follow, Plaintiffs' Motion for Leave to File Amended

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leave to amend from this Court prior to filing the Amended Complaint, as discussed below, Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 17) is GRANTED. As such, this Court will consider the claims made by Plaintiffs in the Amended Complaint.

[2] Plaintiffs essentially challenge the arbitrator's decision to retain jurisdiction over matters related to the dispute until March 2012. As discussed *infra*, the time period having lapsed, Plaintiffs' claim under Section 3-208 is MOOT.

Complaint (ECF No. 17) is GRANTED and Defendant's Motion to Dismiss the original Complaint (ECF No. 8) is MOOT. Defendant's Motion to Dismiss the Amended Complaint (ECF No. 16) is GRANTED and Plaintiffs' Petition to Vacate the Award is DENIED. As a result, the Amended Complaint is DISMISSED WITH PREJUDICE and Plaintiffs' Motion for Partial Summary Judgment on Count I of the Complaint (ECF No. 6) is DENIED.

BACKGROUND

Judicial "[r]eview of an arbitrator's award is severely circumscribed." *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 193 (4th Cir. 1998). "[A]n arbitrator's fact finding and contract interpretation [are] accorded great deference [along with her] interpretation of the law." *Upshur Coals Corp. v. United Mine Workers of America*, 933 F.2d 225, 229 (4th Cir. 1991).

Plaintiff Kiran M. Dewan ("Dewan") is a certified public accountant and attorney licensed to practice both professions in Maryland. Dewan Decl. in Supp. of Mot. for Partial Summ. J. ¶ 2, ECF No. 6-1. He is also the sole owner of Kiran M. Dewan, CPA, P.A. ("KMDCPA") an accounting firm organized under the laws of Maryland with its principal place of business located in Maryland. *Id.* ¶ 2; *see also* Pls.' Am. Compl. ¶ 6, ECF No. 15.[3] KMDCPA and Dewan will

[3] Plaintiffs Dewan and KMDCPA filed the original Complaint (ECF No. 1) on August 9, 2011. Subsequently, Plaintiffs filed the Amended Complaint (ECF No. 15) on December 16, 2011.

collectively be referred to as "Plaintiffs" in this Memorandum Opinion and the accompanying Order.

Defendant Arun Walia ("Walia") is a Canadian national who came to the United States under an H-1B[4] status to work as an auditor and accountant for KMDCPA beginning on June 3, 2003. Pls.' Am. Compl. ¶¶ 8, 11; *see also* Interim Award at 3, ECF No. 1-1. According to Plaintiffs, Walia worked for KMDCPA until August 21, 2009 when he elected to terminate his employment. Pls.' Am. Compl. ¶ 13. Plaintiffs further allege that Walia soon thereafter divulged confidential information to competitors to obtain new employment, began to work for a competitor accounting firm,[5] and

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Defendant Walia then moved to dismiss the Amended Complaint as Plaintiffs had neither sought Defendant's consent or leave from this Court to file it. Plaintiffs responded by filing a Motion for Leave to File Amended Complaint (ECF No. 17), which for the reasons discussed below is GRANTED. As such, this Court refers to the Amended Complaint to determine the relevant facts of this case. *See Young v. City of Mt. Ranier*, 238 F.3d 567, 572 (4th Cir. 2001) ("As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.") (citation omitted).

[4] The H-1B is a nonimmigrant visa allowing United States employers to hire foreign nationals in specialty occupations. *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(15)(H). The term "specialty occupation" includes accounting. *Id.* at § 1184(i)(3).

[5] Plaintiffs allege that Defendant is presently in the country under the Trade NAFTA (North American Free Trade Agreement) status, which he allegedly obtained through his current employer and "is currently defending removal proceedings before the United States Immigration Courts system

solicited KMDCPA clients in violation of his employment agreement. *Id.* ¶ 20; Interim Award at 16. As a result, Plaintiffs commenced arbitration proceedings against Walia on January 29, 2010 who also made counterclaims of his own. Pls.' Am. Compl. ¶ 21; Interim Award at 2-3.[6] Dr. Andrèe Y. McKissick

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under the auspices of the United States Department of Justice." Pls.' Am. Compl. ¶ 8. The Trade NAFTA status is a special nonimmigrant status which applies to foreign nationals of Canada and Mexico. *See* INA, 8 U.S.C. § 1184(e)(2). This status allows Canadian nationals to practice the professions identified in the Canada-United States Free Trade Agreement (including accounting) legally in the United States. *See* Canada-United States Free Trade Agreement, 27 I.L.M 281, 363 (1988).

[6] According to the Interim Award:

> The thrust of the Claimant's complaint lies in the following areas: (1) Whether or not the Respondent breached the Covenant Not to Compete with the Claimaint? (2) Whether or not the Respondent solicited clients of the Claimant? (3) Whether or not the Respondent divulged confidential information regarding the Claimant to the Claimant's competitors? (4) Whether or not the Respondent voluntarily quit his employment with the Claimant? . . . [The issues raised by Respondent's counterclaims] are as follows: (1) Whether or not the Claimant purposefully withheld an Employee Agreement of 2009? Was it submitted to the United States Citizenship and Immigration Services with the required Immigration Petitions for the Respondent? (2) Whether or not a Job Termination Letter has been issued by the Claimant to the Respondent to this date? Whether or not the Claimant continues to be liable to the Respondent for full wages to date in compliance with the termination of H-1B employees Regulations? (3) Whether or not various tort and contractual claims, delineated in the parties' contentions, are viable against the Claimant based upon the Claimant's dual

("Dr. McKissick" or "the Arbitrator") was selected by the parties to arbitrate *In re Kiran Dewan-Kiran M. Dewan, CPA, PA, Claimant and Arun Walia, Respondent* AAA Case No. 16-116-00125-10 (American Arbitration Association: Commercial Arbitration Tribunal). Pls.' Am. Compl. ¶ 28.

Plaintiffs relied on two documents to bring their dispute before the arbitration tribunal. First, Plaintiffs alleged that Walia violated the no-solicitation and non-compete provision contained in the May 2006 Employment Agreement entered into by the parties on May 10, 2006. Pls.' Am. Compl. ¶ 12; *see also* Employment Agreement ¶ 13, ECF No. 1-3. The Employment Agreement also contained an arbitration clause which states that:

> Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court with jurisdiction. Submission to arbitration does not affect Company's right to Injunctive Relief.

> roles as an immigration attorney as well as the Respondent's employer? (4) Whether or not the Release Agreement was fairly drafted and implemented? Whether or not the Respondent had an opportunity to seek independent legal advice prior to signing it? (5) Whether or not the Respondent's renewal of the H-1B Petition in 2009 should have been subject to the minimum wage $74,069, level 4 wages?

Interim Award at 2-3.

Employment Agreement ¶ 16. Second, following claims made by Walia against Plaintiffs in response to their withdrawal of his H-1B status sponsorship on September 8, 2009, the parties entered into the 2009 Employee Settlement and Release Agreement ("2009 Release Agreement") on November 3, 2009. Pls.'s Am. Compl. ¶¶ 14-16; *see also* Employee Settlement and Release Agreement, ECF No. 1-2 [hereinafter Release Agreement]. In this agreement, Walia accepted $7,000 dollars in exchange for releasing and discharging the

> COMPANY . . . from any and all [federal, state and common law] claims . . . whether now known or unknown, . . . which EMPLOYEE ever had, now has, or hereafter can, shall or may have . . . relating to . . . but not limited to matters dealing with EMPLOYEE's employment or termination of employment with the COMPANY. . . .

Release Agreement ¶ 3. The Release Agreement also contained an arbitration clause by and through which the parties agreed to resolve any dispute arising "concerning this AGREEMENT or its performance [to] binding arbitration administered by the American Arbitration Association . . ." *Id.* ¶ 8. It is important to note that Dewan claims that he is neither a party to the 2006 Employment Agreement nor to the 2009 Release Agreement in which he "is identified as an intended third-party beneficiary of Walia's release." Pls.' Am. Compl. ¶ 16. However, Dewan signed both agreements on behalf of KMDCPA. Employment Agreement at 5; Release Agreement at 3.

Also of significance in this case is Walia's health condition concurrent with these events. Walia was diagnosed with thyroid cancer and underwent surgery as well as chemotherapy between February 27 and March 31, 2009. Interim Award at 5. During that time, Walia claims that Dewan's wife and KMDCPA's Office Manager, came to see him in the hospital to have him sign a new Employment Agreement ("2009 Employment Agreement") along with other documents. *Id.* at 20, 29. Although Plaintiffs contend that this agreement never existed, the Arbitrator determined, based on strong evidence in the record, that not only had it existed, but also that Plaintiffs had made serious misrepresentations to the arbitration tribunal, the United States Citizenship and Immigration Services ("USCIS") and the Department of Labor.[7] Final Award ¶ 14, ECF No. 13-1; *see also* Interim Award at 29-30.

On July 11, 2011, after hearings lasting four days,[8] the Arbitrator issued an Interim Award largely

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[7] In addition to concluding that the Plaintiffs "purposefully withheld the Employment Agreement of 2009" due to monetary discrepancies in the Interim Award, the arbitrator stated that "it would appear that the Claimant was a party to fraud due to the disparity in the amounts verified in documents presented to the United States Citizenship and Immigration Services and this arbitration tribunal in comparison to his tax returns." Final Award ¶ 14; *see also* Interim Award at 28-30 (the arbitrator's determinations concerning the 2009 Employment Agreement).

[8] The hearings were held on February 18 and 25, 2011 as well as on March 16 and 29, 2011. Pls.' Am. Compl. ¶ 38.

in favor of Defendant. *See generally* Interim Award, ECF No. 1-1; Pls.' Am. Compl. ¶ 38. In it the Arbitrator concluded that Walia is precluded from bringing "all tort and contractual claims in state and federal courts as well as . . . from receiving attorney's fees" in light of the 2009 Release Agreement. *Id.* at 37. The Arbitrator further held that the employment relationship between the parties was not terminated, that the 2009 Employment Agreement was purposely withheld by Plaintiffs and that the "2003 and 2006 Employment Agreements have lapsed based on the [three-year] Statute of Limitations." *Id.* at 37-38. As a result, the Arbitrator awarded Walia compensatory and punitive Damages. *Id.* At that time, the Arbitrator issued the Interim Award and indicated that she would await the Department of Labor's guidance on issues of "wages, hours, working conditions and false and/or material misrepresentations" in light of its concurrent investigation into the matter. *Id.* at 37. Although the Arbitrator did not receive this input, she issued a Final Award on November 18, 2009 reiterating the same conclusions and laying out the exact amounts owed by Plaintiffs to Walia. Final Award at 6-7.

Having lost the arbitration proceedings, Plaintiffs filed the original seven-count Complaint in this case seeking vacatur of the Interim Award on August 9, 2011. Pls.' Compl., ECF No. 1. Subsequent to the issuance of the Final Award, Plaintiffs filed an Amended Complaint alleging three additional counts. Pls.' Am. Compl., ECF No. 15. Plaintiffs raise the Maryland Uniform Arbitration Act ("MUAA") grounds applicable to the vacatur of an arbitration award. MD.

CODE., CTS. & JUD PROC., § 3-224(b). Specifically, Plaintiffs allege that there was no arbitration agreement between Dewan and Walia and that any relief awarded on the basis of the 2009 Employment Agreement must be vacated as that agreement does not exist. Counts I & VIII, Pls.' Am. Compl. ¶¶ 60-72, 136-144. Plaintiffs further allege that the Arbitrator exceeded her power, demonstrated partiality, refused to hear evidence material to the controversy as well as awarded attorney's fees and punitive damages to Defendant without any contractual basis allowing for them. Counts II, IV, V, VI and XI, Pls.' Am. Compl. ¶¶ 73-87, 103-128, 145-154. Plaintiffs also allege that the award was procured by undue means. Count III, Pls.' Am. Compl. ¶¶ 88-101. Additionally, Plaintiffs claim that the Award should be vacated because Walia waived his right to arbitrate claims "for unpaid wages, wage shortfalls and other employment conditions" when he commenced administrative proceedings against Plaintiffs before the Department of Labor pursuant to 8 U.S.C § 1182(n). Count X, Pls.' Am. Compl. ¶¶ 155-165. Finally, Plaintiffs seek to stay further arbitration proceedings in light of the Arbitrator having retained jurisdiction over these matters until March 2012. Count VII, Pls.' Am. Compl. ¶¶ 129-135.

Pending before this Court are Plaintiffs' Motion for Partial Summary Judgment on Count I of the Complaint (ECF No. 6) and Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 17). Also pending before this Court are Defendant's Motions to Dismiss the original Complaint and the Amended Complaint (ECF Nos. 8 & 16) pursuant to Rule

12(b)(1) and in the Alternative Rule 12(b)(6) of the Federal Rules of Civil Procedure.

STANDARDS OF REVIEW

I. Motion for Leave to Amend Pursuant to Rule 15(a)

Federal Rule of Civil Procedure 15(a), provides that leave to amend "shall be freely given when justice so requires," and the general rule is that Rule 15(a) be liberally construed. *See Forman v. Davis*, 371 U.S. 178, 182 (1962). Accordingly, leave should be denied only when amending the complaint would prejudice the opposing party, reward bad faith on the part of the moving party, or would amount to futility. *Steinburg v. Chesterfield Cnty. Planning Comm'n*, 527 F.3d 377, 390 (4th Cir. 2008).

II. Motion to Dismiss Pursuant to Rule 12(b)(1)

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction challenges a court's authority to hear the matter brought by a complaint. *See Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005). This challenge under Rule 12(b)(1) may proceed either as a facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting "that the jurisdictional allegations of the complaint [are] not true." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (citation omitted). With respect to a facial challenge, a court will grant a motion to dismiss for lack of subject matter jurisdiction "where a claim

fails to allege facts upon which the court may base jurisdiction." *Davis*, 367 F. Supp. 2d at 799. Where the challenge is factual, "the district court is entitled to decide disputed issues of fact with respect to subject matter jurisdiction." *Kerns*, 585 F3d at 192. "[T]he court may look beyond the pleadings and 'the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.'" *Khoury v. Meserve*, 268 F. Supp. 2d 600, 606 (D. Md. 2003) (citation omitted). The court "may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004); *see also Sharafeldin v. Maryland Dept. of Public Safety & Correctional Services*, 94 F. Supp. 2d 680, 684-85 (D. Md. 2000). A plaintiff carries the burden of establishing subject matter jurisdiction. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999).

III. Judicial Review of an Arbitration Award[9]

Judicial "[r]eview of an arbitrator's award is severely circumscribed." *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 193 (4th Cir. 1998). "In fact a district court's authority to review an arbitration decision 'is among the narrowest known at

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[9] Although Defendant moves to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, this Court construes his motion under the judicial review standard applicable to arbitration awards.

law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all.'" *AO Techsnabexport v. Globe Nuclear Services and Supply, Ltd.*, 656 F. Supp. 2d 550, 554 (D. Md. 2009) (quoting *Three S. Delaware, Inc. v. DataQuick Information Systems, Inc.*, 492 F.3d 520, 527 (4th Cir. 2007). "A court must determine only whether the arbitrator did his job—not whether he did it well, correctly, or reasonably, but simply whether he did it." *PPG Indus. Inc.v. Int'l Chem. Workers Union Council*, 587 F.3d 648, 652 (4th Cir. 2009) (internal quotation marks omitted).

As such, "an arbitrator's fact finding and contract interpretation [are] accorded great deference [along with his] interpretation of the law." *Upshur Coals Corp. v. United Mine Workers of America*, 933 F.2d 225, 229 (4th Cir. 1991). "A legal interpretation of an arbitrator may only be overturned where it is in manifest disregard of the law." *Id.* (citation omitted). Even where a court disagrees, it "must uphold [an arbitrator's contract interpretation] so long as it 'draws its essence from the agreement.' " *Id.* (citing *United Steelworkers v. Enterprise Wheel and Car Corp.,* 363 U.S. 593, 597 (1960); *Holcomb v. Colony Bay Coal Co.,* 852 F.2d 792, 795 (4th Cir. 1988)). This Court has recently held that an arbitrator's decision is only subject to vacatur where the moving party demonstrates "that the arbitrator was aware of the law, understood it, found it applicable to the case at hand, and still chose to ignore it in making his decision." *Amerix Corp. v. Jones*, 2012 WL 141150, at *7 (D. Md. Jan. 17, 2012) (Motz, J.) (citing *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 149 (4th Cir. 1994).

"As a general proposition, a federal court may vacate an arbitration award only upon a showing of one of the grounds specified in the Federal Arbitration Act ("FAA"), *see* 9 U.S.C. § 10(a),[10] or upon a showing of certain limited common law grounds." *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 234 (4th Cir. 2006). "The permissible common law grounds for vacating such an award . . . include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law." *Id.*

The Maryland Uniform Arbitration Act ("MUAA"), Maryland Code, Courts and Judicial Proceedings Article, §§ 3-201 *et seq.*, is the "state analogue" of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.* *Walther v. Sovereign Bank*, 872 A.2d 735, 742 (Md. 2005). Under both the FAA and the MUAA, the party moving to vacate the arbitration award bears the

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[10] A United States court may only vacate an arbitration award pursuant to the FAA:

> (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

burden of proof. *See, e.g.*, *Jih v. Long & Foster Real Estate, Inc.,* 800 F. Supp. 312, 317 (D. Md. 1992)*; Baltimore Teachers Union, Am. Fed. of Teachers, Local 340 v. Mayor of Baltimore*, 671 A.2d 80 (Md. App. 1996) (citation omitted), *cert. denied,* 677 A.2d 565 (Md. 1996). The grounds to vacate an arbitration award under both statutes are largely similar except that the lack of an arbitration agreement is only an available ground for vacatur under the MUAA. Specifically, the Court may only vacate an award under the MUAA where:

> (1) An award was procured by corruption, fraud, or other undue means; (2) [t]here was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party; (3) [t]he arbitrators exceeded their powers; (4) [t]he arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing . . . as to prejudice substantially the rights of any party; or (5) [t]here was no arbitration agreement . . . the issue was not adversely determined in proceedings . . . and the party did not participate in the arbitration hearing without raising the objection.

MD. CODE., CTS. & JUD PROC., § 3-224(b). In Maryland, "[c]ourts generally refuse to review arbitration awards on the merits, reasoning that the parties are required 'to submit to the judgment of the tribunal of their own

selection and abide by the award.' " *Int'l Ass'n of Firefighters, Local 1619 v. Prince George's County*, 538 A.2d 329, 332 (Md. 1988) (quoting *Roberts Bros. v. Consumers' Can Co.*, 62 A. 585, 587 (Md. 1905).

ANALYSIS

I. Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 17)

Defendant Walia argues that this Court should not consider Plaintiffs' Amended Complaint because Plaintiffs' neither obtained Defendant's consent nor sought leave from this Court before filing the amended pleading. While it is true that Plaintiffs' did not first seek Defendant's consent or leave from this Court, they subsequently sought to cure this issue by filing a Motion for Leave to File Amended Complaint. Federal Rule of Civil Procedure 15(a), provides that leave to amend "shall be freely given when justice so requires," and the general rule is that Rule 15(a) be liberally construed. *See Forman v. Davis,* 371 U.S. 178, 182 (1962). Specifically, the Supreme Court observed that "[i]n the absence of any apparent or declared reason- such as undue delay, bad faith or dilatory motive . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be 'freely given.' " *Id.* at 182. Accordingly, leave should be denied only when amending the pleading would unduly prejudice the opposing party, reward bad faith on the part of the moving party, or would amount to futility. *Steinburg v. Chesterfield Cnty. Planning Comm'n*, 527 F.3d 377, 390 (4th Cir. 2008). The United States Court of Appeals for the Fourth Circuit has

held that no undue prejudice exists where a "defendant was from the outset made fully aware of the events giving rise to the action." *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980), *cert dismissed* 448 U.S. 911 (1980).

In this case, Defendant does not contend that he is unduly prejudiced by the Amended Complaint nor does he argue that the amendment is futile. While Defendant contends that the original Complaint was filed in bad faith, he fails to argue that the Amended Complaint was itself filed in bad faith. Moreover, the record does not indicate the existence of undue prejudice, bad faith or futility. Accordingly, Plaintiffs' Motion for Leave to File Amended Complaint is GRANTED.

II. Defendant's Motion to Dismiss the Amended Complaint (ECF No. 16)

A. Diversity of Citizenship

Plaintiffs' assert that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) in that complete diversity of citizenship exists and the amount in controversy exceeds $75,000. However, Defendant contends that complete diversity does not exist because he is domiciled and resides in the state of Maryland.

Federal diversity jurisdiction requires complete diversity of citizenship between the plaintiffs and defendants. 28 U.S.C. § 1332(a). "For purposes of this section, . . . an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled." *Id.* However,

this Court has recently held that "foreign nationals not admitted by the United States Citizenship and Immigration Services ("USCIS") as permanent residents are not "citizens" of their state of domicile, no matter how long there they live." *Awah v. Best Buy Stores*, DKC-10-2748, 2010 WL 4963014, at * 2 (D. Md. Nov. 3, 2010) (citing *Foy v. Schantz, Schatzman & Aronson*, 108 F.3d 1347, 1349 (11th Cir. 1997). Moreover, it is well established that "state citizenship for purposes of diversity jurisdiction depends not on residence, but on national citizenship and domicile." *Axel Johnson, Inc. v. Carroll Carolina Oil Co.*, 145 F.3d 660, 663 (4th Cir. 1998) (citing *see, e.g., Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989) ("In order to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States *and* be domiciled within the State.") (emphasis in original). Mere allegations of residence are insufficient standing alone. *Axel Johnson, Inc.*, 145 F.3d at 663 (citation omitted). Being domiciled "requires physical presence, coupled with an intent to make the State a home." *Johnson v. Advance Am., Cash Advance Ctrs. of S.C., Inc.*, 549 F.3d 932, 937 n. 2 (4th Cir. 2008) (citation omitted).

In this case, Defendant Walia is a foreign national from Canada. Although he indicates that he is both domiciled and resides in the State of Maryland, Walia is neither a citizen nor a permanent resident of the United States. Accordingly, complete diversity of citizenship exists between the parties and this Court has subject matter jurisdiction.

B. Judicial Review of the Arbitration Award

Defendant Walia argues that Plaintiffs Dewan and Kiran M. Dewan, CPA, P.A. ("KMDCPA")'s Amended Complaint seeking to vacate the arbitration award should be dismissed. In fact, Plaintiffs move this Court to vacate the Final Award under Sections 3-224(b) and 3-221(b) of the Maryland Uniform Arbitration Act ("MUAA"), Maryland Code, Courts and Judicial Proceedings Article, §§ 3-201, *et seq.*[11] Specifically, Plaintiffs contend that the award was the product of undue means, that Dr. McKissick exceeded her powers, refused to hear evidence material to the controversy, committed misconduct and evidenced partiality prejudicing their rights. Plaintiffs further challenge Dr. McKissick's finding that a 2009 Employment Agreement was signed and her determination that despite the enforceability of the 2009 Release Agreement, Defendant was entitled to recovery under the "lost" 2009 Employment Agreement. Additionally, Plaintiffs challenge the award of attorney's fees to Defendant and the participation of Plaintiff Dewan as a party to the arbitration.

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[11] Count VII of the Amended Complaint requests a stay of further arbitration pursuant to Section 3-208 of the MUAA. Specifically, Plaintiffs challenge Dr. McKissick's decision to retain jurisdiction over the arbitrable issues in this case for one year starting on March 29, 2011. As the year has now lapsed, this issue is MOOT and Count VII is DISMISSED WITH PREJUDICE.

In Maryland, the MUAA "governs the enforceability of arbitration agreements." *Lang v. Levi*, 16 A.3d 980, 985 (Md. App. 2011) (citing *Mandl v. Bailey*, 858 A.2d 508, 520 (Md. App. 2004). As a preliminary matter, the MUAA imposes a 30-day statute of limitations on the filing of petitions to vacate arbitration awards. MD. CODE., CTS. & JUD PROC., § 3-224(a). "[T]his time limit is mandatory and cannot be circumvented." *Hott v. Mazzacco*, 916 F. Supp. 510, 514 n. 4 (D. Md. 1996). However, this requirement is not jurisdictional. *Id.* In this case, Plaintiffs filed the Complaint within 30 days of the issuance of the Interim Award and filed the Amended Complaint within 30 days of the issuance of the Final Award. For all intents and purposes, Plaintiffs complied with Section 3-224(a)'s timely filing requirement.

Judicial review of arbitration awards is "severely restrict[ed]" in support of the "policy favoring arbitration as an alternative dispute resolution method." *Mandl*, 858 A.2d at 520 (citation omitted); *see also AO Techsnabexport v. Globe Nuclear Services and Supply, Ltd.*, 656 F. Supp. 2d 550, 553 (D. Md. 2009) (citing *Three S Delaware, Inc. v. DataQuick Information Systems, Inc.*, 492 F.3d 520, 527 (4th Cir. 2007)); *see also Apex plumbing Supply, Inc. v. U.S. Supply Co.*, 142 F.3d 188, 193 (4th Cir. 1998) ("Review of an arbitrator's award is severely circumscribed."). "[T]he standard of review of arbitral awards 'is among the narrowest known to the law.' " *Letke Sec. Contractors, Inc. v. United States Sur. Co.*, 991 A.2d 1306, 1312 (Md. App. 2010) (citing *Litvak Packing Co. v. United Food & Commercial Workers, Local Union No. 7*, 886 F.2d 275, 276 (10th Cir.1989)). The Court of

Special Appeals of Maryland has also held that it would "not vacate an arbitration award simply because the court would not have made the same award as the arbitrator, or for mere legal error." *Letke Sec. Contractors*, 991 A.2d at 1312-13. Additionally, it noted in a parenthetical that "[o]nce a binding [arbitration] award has been rendered, issues settled by the award are no longer subject to future arbitration or litigation." *Redemptorists v. Coulthard Services, Inc.*, 801 A.2d 1104, 1125 (Md. App. 2002) (citing Martin Domke, D*omke on Commercial Arbitration* § 31:02, at 452 (2d ed. 1984).

Judicial review of an arbitration award under the MUAA is "specific, extremely limited . . . such that any post-arbitration proceeding will not constitute a renewed adjudication of the merits of the controversy." *Shailendra Kumar, P.A. v. Dhanda*, 43 A.3d 1029, 1038 n. 7 (Md. 2012). "Courts generally refuse to review arbitration awards on the merits, reasoning that the parties are required 'to submit to the judgment of the tribunal of their own selection and abide by the award.' " *Int'l Ass'n of Firefighters, Local 1619 v. Prince George's County*, 538 A.2d 329, 332 (Md. App. 1988) (quoting *Roberts v. Consumers Can. Co.*, 62 A. 585 (Md. 1905). A court's ability to vacate the award under the MUAA is "narrowly confined" to the following grounds:

> (1) An award was procured by corruption, fraud, or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any

> arbitrator, or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing . . . as to prejudice substantially the rights of any party; or
>
> (5) There was no arbitration agreement . . . the issue was not adversely determined in proceedings . . . and the party did not participate in the arbitration hearing without raising the objection.

MD. CODE., CTS. & JUD PROC., § 3-224(b); *Mandl*, 858 A.2d at 521. The MUAA also provides that "[t]he court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief." *Id.* § 3-224(c). Specifically, "under the MUAA, factual findings by an arbitrator are virtually immune from challenge and decisions on issues of law are reviewed using a deferential standard on the far side of the spectrum away from a usual, expansive *de novo* standard." *Mandl*, 858 A.2d at 525 (citation omitted) (emphasis in original). "Only a *completely irrational decision* by an arbitrator on a question of law, so extraordinary that it is tantamount to the arbitrator's exceeding his powers, will warrant the court's intervention." *Id.* (emphasis added). Furthermore, the party moving to vacate an arbitration award bears the 'heavy burden' of showing that the award is invalid. *See Baltimore Teachers Union, Am. Fed. of Teachers, Local 340 v. Mayor of*

Baltimore, 671 A.2d 80, 87 (Md. App. 1996), *cert denied*, 677 A.2d 565 (Md. 1996). The movant "bears the burden of showing, by the record, that the error occurred. Mere allegations and arguments contesting the validity of an award, unsubstantiated by the record, are insufficient to meet that burden." *Kovacs v. Kovacs*, 663 A.2d 425, 432 (Md. App. 1993).

Plaintiffs' claims before this Court are almost identical to the ones presented before the arbitration tribunal. Essentially, in bringing this action Plaintiffs have asked this Court to second-guess the well-reasoned award issued by the arbitrator, Dr. McKissick. Moreover, the record reflects that Plaintiff Dewan, as the sole owner of KMDCPA and an attorney, drafted the agreements signed between the parties and represented Defendant Walia in his immigration matters. As far as the agreements are concerned, the record reflects that Dewan included binding arbitration provisions in both the 2006 Employment Agreement and the 2009 Release Agreement. Pursuant to these agreements, Dewan commenced arbitration proceedings on behalf of himself and KMDCPA against Defendant Walia and agreed to the institution of Dr. McKissick as arbitrator over the arbitration dispute. Now, having received an unfavorable result in his forum of choice, Dewan petitions this Court to vacate the award.

This Court has previously held that an arbitrator's award should not be disturbed "(a) so long as the interpretation was not arbitrary; (b) even where the award permits an inference that the arbitrator may have exceeded its authority; or (c) merely because the

court believes that sound legal principles were not applied." *Communications Equipment Workers, Inc. v. Western Elec. Co.*, 320 F. Supp. 1277, 1279 (D. Md. 1970), *aff'd*, 1971 WL 2967 (4th Cir. May 27, 1971) (citations omitted). However, a court may interfere with an award "where the arbitrator (a) clearly went beyond the scope of the submission; (b) where the authority to make the award cannot be found or legitimately assumed from terms of the arbitration agreement; or (c) if the arbitrator made a determination not required for a resolution of the dispute." *Id.* at 1280 (citations omitted). Having thoroughly reviewed the record in this case, this Court finds substantial support for the decisions made by the arbitrator, that the arbitrator did not go beyond the scope of the submissions, and that the arbitrator's determinations were not arbitrary. Additionally, Plaintiffs do not do not meet their heavy burden of proof with respect to any of the applicable grounds to vacate an arbitration award under the MUAA. Therefore, Plaintiffs' Petition to Vacate the Award is DENIED and Plaintiffs' Amended Complaint is DISMISSED WITH PREJUDICE. Accordingly, Defendant's Motion to Dismiss the Amended Complaint is GRANTED.[12]

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[12] Furthermore, Defendant requests to be awarded reasonable costs, expenses and attorney's fees in relation to these proceedings should this Court Dismiss Plaintiffs' Amended Complaint. In light of this Court's dismissal of Plaintiffs' Amended Complaint with prejudice, Defendant is permitted to submit supplemental briefing, of no more than five (5) pages,

C. Disclosure of Personal Identifier

In the Motion to Dismiss the Amended Complaint, Defendant also requests that the Dewan's Second Declaration (ECF No. 11-1) be stricken from the record along with the Form CBP I-94 (ECF No. 11-2) submitted as an exhibit to said Affidavit as it disclosed Defendant's full birth date in violation of Rule 5.2(a)(2) of the Federal Rules of Civil Procedure. Defendant argues that this disclosure exposes him to financial and credit related consequences as his personal identifier was available on the web for over 101 days. *See* Def.'s Resp. to Pls.' Supp. Filing of Redacted R. Ex. 11-2, ECF No. 20. Defendant additionally requests that this Court grant him attorney's fees to allow him to defend and protect his personal identifier.

In response to Defendant's Motion, Plaintiffs requested that the document be blocked from public review and submitted a redacted version of the Form CBP I-94 to serve as a substitute for docket entry ECF No. 11-2. *See* Line Supp. Filing of Redacted Ex. 11-2, ECF No. 19. Alternatively, Plaintiffs argue that the disclosure was an oversight and that Defendant waived his right under Rule 5.2(a) by filing his Maryland driver's license as an exhibit to his Motion to Dismiss without redacting the renewal date, which in Maryland occurs on one's birthday.

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indicating the grounds under which he is entitled to these monetary costs. Plaintiffs' will then be permitted to file a response.

The record demonstrates no intent on behalf of the Plaintiffs and no harm or damage to Defendant in relation with this inadvertent disclosure. Moreover, Defendant himself disclosed his birthdate in his submissions to this Court. Finally, Plaintiffs' have already cured the defect relating to the Form CBP I-94 submitted as an Exhibit to Dewan's Second Declaration. Consequently, Dewan's Second Declaration need not be stricken.

CONCLUSION

For the reasons stated above, Plaintiffs' Motion for Leave to File Amended Complaint (ECF No. 17) is GRANTED and Defendant's Motion to Dismiss the original Complaint (ECF No. 8) is MOOT. Defendant's Motion to Dismiss the Amended Complaint (ECF No. 16) is GRANTED and Plaintiffs' Petition to Vacate the Award is DENIED. As a result, the Amended Complaint is DISMISSED WITH PREJUDICE and Plaintiffs' Motion for Partial Summary Judgment on Count I of the Complaint (ECF No. 6) is DENIED.

A separate Order follows.

Dated: August 3, 2013 /s/

Richard D. Bennett
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KIRAN M. DEWAN,
CPA, P.A. *et al.*,

Plaintiffs,

v. Civil Action No. RDB-11-02195

ARUN WALIA

Defendant.

MEMORANDUM ORDER

Plaintiffs Kiran M. Dewan, CPA, P.A. and Kiran M. Dewan in his individual capacity (collectively "Plaintiffs") brought an action against Arun Walia ("Defendant") seeking to vacate an arbitration award in favor of the Defendant. This Court denied Plaintiffs' Petition to Vacate the Award and granted Defendant's Motion to Dismiss the Plaintiffs' Amended Complaint. Now pending before this Court are two additional motions: Plaintiffs' Motion for Reconsideration (ECF No. 37) and Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35). The parties' submissions have been reviewed

and no hearing is necessary. See Local Rule 105.6 (D. Md. 2011). For the reasons stated below, Plaintiffs' Motion for Reconsideration will be DENIED, and Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs will be GRANTED.

BACKGROUND

The facts of this case are fully set forth in this Court's Memorandum Opinion issued on August 3, 2012 (ECF No. 28). A brief summary of the facts will adequately frame the pending motions.

Plaintiff Kiran M. Dewan ("Mr. Dewan") is a certified public accountant and attorney licensed to practice both professions in Maryland. Dewan Decl. in Supp. of Mot. for Partial Summ. J. ¶ 2, ECF No. 6-1. Mr. Dewan is the sole owner of Kiran M. Dewan, CPA, P.A. ("KMDCPA"), an accounting company organized under Maryland law and with its principal place of business in Maryland. Id. Defendant Walia ("Defendant" or "Mr. Walia") is a Canadian national who worked as an auditor and accountant for KMDCPA under an H1-B status.[1] Mr. Walia was employed by KMDCPA from 2003 until August 21, 2009, when he elected to terminate his employment. Pls.' Am. Compl. ¶¶ 11, 13.

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[1] Pls. Am. Compl. ¶¶ 8, 11, ECF No. 15. The H1-B visa program allows employers in the United States to hire foreign nationals in specialty occupations. *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(15)(H).

On January 29, 2010, Plaintiffs initiated arbitration proceedings against Mr. Walia, alleging that he breached various provisions of the parties' May 2006 Employment Agreement. Id. ¶ 21. In response, Mr. Walia raised several counterclaims. Interim Award, ECF No. 1-1, at 37-38. Dr. Andrèe Y. McKissick ("Arbitrator") of the American Arbitration Association arbitrated the proceeding and issued an Interim Award largely in the Defendant's favor on July 11, 2011. Interim Award 37-38; Pls.' Am. Compl ¶ 40. On November 18, 2011, the Arbitrator issued a Final Award, reiterating the findings and conclusions contained in the Interim Award. Final Award, ECF No. 13- 1. The Arbitrator's Final Order dismissed all but one of the Plaintiffs' claims,[2] granted the Defendant's counterclaims,[3] and awarded the Defendant compensatory and punitive damages. *Id*.

Having lost at the arbitration proceeding which they initiated, Plaintiffs filed this action on August 9, 2011, requesting vacatur of the Interim Award. On December 16, 2011, Plaintiffs filed an Amended Complaint (ECF No. 15) that addressed the

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[2] The Arbitrator found that the Employment Agreement of 2009, in which Mr. Walia waived certain claims against his employer, was valid and enforceable. Interim Award 28.

[3] The Arbitrator found that Mr. Walia was owed wage shortfalls and medical and disability expenses. Interim Award 38. She also awarded Mr. Walia punitive damages for having to defend against the Plaintiffs' "baseless claims." *Id*. Moreover, the Arbitrator found that Mr. Walia was still employed by KMDCPA because he never received a Letter of Termination. *Id*. at 37.

Arbitrator's Final Award. They asserted several grounds for vacating the award, namely, that there was no arbitration agreement; that Mr. Walia waived his right to arbitrate claims for wage shortfalls; as well as that the Arbitrator exceeded her power, demonstrated partiality, refused to hear evidence material to the controversy, and awarded attorney's fees and punitive damages where there was no contractual basis for doing so. This Court denied Plaintiffs' Motion to Vacate the Award and granted Defendant's Motion to Dismiss the Amended Complaint in a Memorandum Opinion issued on August 3, 2012 (ECF No. 28).

Pending before this Court are Plaintiffs' Motion for Reconsideration (ECF No. 37) and Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35). Plaintiffs' Motion for Reconsideration relies centrally on their claim that this Court should have performed de novo review of the question whether arbitration proceeding was authorized. Pls.' Mot. to Recons. 6-7. They insist that no arbitration agreement exists, and that this Court would have agreed if it had performed more searching judicial review. *Id*. Plaintiffs specifically argue that de novo review is required to determine three jurisdictional issues: (1) whether there was an arbitration agreement authorizing arbitration of Defendant's counterclaims arising under the Immigration and Nationality Act, 8 U.S.C. § 1182(n), (2) whether there was an arbitration agreement authorizing proceedings against Mr. Dewan in his individual capacity, and (3) whether the 2009

Employment Agreement exists. Pls.' Mot. to Recons. 7-13. Additionally, Plaintiffs reassert an argument from their previous Motion to Vacate that the Arbitrator exceeded her powers in awarding damages to the Defendant.

STANDARD OF REVIEW

Rule 59(e) of the Federal Rules of Civil Procedure provides that "[a] motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment." Fed. R. Civ. P. 59(e). The United States Court of Appeals for the Fourth Circuit has repeatedly recognized that a judgment may be amended in only three circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citing *EEOC v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112 (4th Cir. 1997); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993)). Rule 59(e) does not permit a party to "raise arguments which could have been raised prior to the issuance of the judgment," nor does it enable a party to "argue a case under a novel legal theory that the party had the ability to address in the first instance." *Pacific Ins. Co.*, 148 F.3d at 403.

Moreover, "[t]he district court has considerable discretion in deciding whether to modify or amend a judgment." *Id*. Such motions do not authorize a "game of hopscotch," in which parties switch from one legal theory to another "like a bee in search of honey." *Cochran v. Quest Software, Inc.*, 328 F.3d 1, 11 (1st

Cir. 2003). In other words, a Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to entry of judgment." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (quoting 11 Wright, *et al.*, *Federal Practice and Procedure* § 2810.1, at 127-28 (2d ed. 1995)). Where a party seeks reconsideration on the basis of clear error, the earlier decision cannot be "just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week old, unrefrigerated dead fish." *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009) (quoting *Bellsouth Telesensor v. Info. Sys. & Networks Corp.*, Nos. 92-2355, 92-2437, 1995 WL 520978 at *5 n.6 (4th Cir. Sept. 5, 1995)). "In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id*. (internal citations and quotation marks omitted).

ANALYSIS

I. Plaintiffs' Motion for Reconsideration (ECF No. 37)

At bottom, Plaintiffs' arguments in their Motion for Consideration boil down to two: (1) this Court should have applied de novo review to the jurisdictional issues raised in their Motion to Vacate, and (2) the Arbitrator exceeded her powers by awarding the Defendant damages. The arguments will be addressed in that order.

A. The Arbitrator's Jurisdiction to Arbitrate Plaintiffs' and Defendant's Claims

Plaintiffs contend that this Court made a clear error of law by failing to perform de novo review in resolving the jurisdictional questions in this case. Specifically, they claim that this Court should have performed de novo review in evaluating whether an arbitration agreement existed that authorized the various findings and conclusions in the Final Award.

Plaintiffs cite *Messersmith v. Barclay Townhouse Associates*, 547 A.2d 1048 (Md. 1988), for the proposition that de novo review is required for jurisdictional questions. In *Messersmith*, the Maryland Court of Appeals explained that while a district court usually applies a deferential standard of review to an arbitration award, de novo review is required to determine whether an arbitration agreement exists in the first place. *Id*. at 1051-54 ("[A]n award issued by an arbitration panel acting without jurisdiction should be accorded no deference at all on appeal, when the basis for appeal is that there was no agreement to arbitrate."). *Messersmith* provides the Plaintiffs no relief, however, because this Court thoroughly reviewed the record and found that Mr. Dewan entered binding arbitration agreements in both 2006 and 2009 Employment Agreements. Mem. Op. at 18 ("As far as the agreements are concerned, the record reflects that Dewan included binding arbitration provisions in both the 2006 Employment Agreement and the 2009 Release Agreement."). Thus this Court performed de novo review as required by *Messersmith*.

Plaintiffs further challenge the Arbitrator's jurisdiction over the Defendant's counterclaims for back wages and wage shortfalls, which arise out of the

Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1182(n). Because the INA includes a comprehensive remedial scheme, Plaintiffs argue that the Defendant's INA counterclaims were not amenable to arbitration. To support their assertion, Plaintiffs cite *Venkatraman v. REI Systems, Inc.*, 417 F.3d 418 (4th Cir. 2005), in which the Court of Appeals for the Fourth Circuit found that Congress afforded no private right of action in federal court for alleged violations of the INA. Plaintiffs also point to *Montgomery County v. FOP Montgomery County Lodge 35*, 810 A.2d 519 (Md. Ct. Spec. App. 2002), in which the Maryland Court of Special Appeals precluded arbitration of a dispute for which the governing state statute provided the exclusive remedy.

Again, Plaintiffs' arguments fail because this Court found, after performing de novo review, that the Arbitrator had jurisdiction to hear the Defendant's counterclaims. Mem. Op. at 19 ("Having thoroughly reviewed the record in this case, this Court finds substantial support for the decisions made by the arbitrator . . . ."). Although the Court of Appeals in *Venkatraman* found that the INA affords no private right of action, the Court did not preclude arbitration of claims under the INA. Plaintiffs' argument seems to "rests on suspicion of arbitration as a method of weakening the protections afforded in the substantive law." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 29 (1991) (internal citations and quotation marks omitted). This sort of argument, the Supreme Court has explained, is "far out of step with our current strong enforcement of the federal statutes favoring [the arbitral] method of resolving disputes."

Id. (internal citation and quotation marks omitted). Plaintiffs show no clear error of law on this point.

Plaintiffs' reliance on Montgomery County is also inapt. The state statute at issue in *Montgomery County* expressly stated that disputes "may not be the subject of binding arbitration." 810 A.2d at 525. The court logically found, based on the plain meaning of the statute, that parties could not submit their statutory claims to arbitration. *Id*. at 526. In this case, Plaintiffs have not shown that the INA precludes the use of arbitration proceedings. Indeed, in employment disputes the Supreme Court has rejected "the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001). Finding no clear error of law, this Court reaffirms its conclusion that the Arbitrator had jurisdiction to resolve the Defendant's counterclaims.

Finally, Plaintiffs make two related arguments regarding the Arbitrator's lack of jurisdiction. They contest that under *Messersmith* this Court should have performed de novo review in deciding whether an arbitration agreement applied to Mr. Dewan in his individual capacity and whether the Employment Agreement of 2009 existed. In accordance with *Messersmith's* directive of de novo review, this Court thoroughly reviewed the record and found that the Arbitrator had jurisdiction over the claims in arbitration. Mem. Op. 18-19. At this stage, the Plaintiffs' attempt to revive their argument that they never committed themselves to an arbitration

agreement falls on deaf ears. As the Court of Appeals for the Fourth Circuit has held, a Rule 59(e) motion "may not be used to relitigate old matters." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

B. The Arbitrator Did Not Exceed Her Powers

Plaintiffs also argue that this Court should reconsider its decision that the Arbitrator did not exceed her powers in awarding the Defendant compensatory and punitive damages. Plaintiffs acknowledge that the standard of review for this challenge is extremely deferential. Pls.' Mot. to Recons. 5. Nevertheless, they continue to contend that the award of damages was arbitrary.

Judicial review of an arbitrator's award is "severely circumscribed." *Apex Plumbing Supply, Inc. v. U.S. Supply Co.*, 142 F.3d 188, 193 (4th Cir. 1998). "In fact a district court's authority to review an arbitration decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all." *AO Techsnabexport v. Globe Nuclear Servs. & Supply, Ltd.*, 656 F. Supp. 2d 550, 554 (D. Md. 2009) (internal citation and quotation marks omitted). Applying deferential review to the Arbitrator's award, it is clear that her decision was not arbitrary. Plaintiffs fail to show a "clear error of law" warranting reconsideration of this Court's previous decision. *Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). Accordingly, Plaintiffs' Motion for Reconsideration is denied.

II. Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35)

The second issue to be addressed is Defendant Walia's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35). Defendant concedes that he neglected to request confirmation and enforcement of the arbitration award in his earlier prayer for relief. Def.'s Mot. for Leave to File Pet'n 2. Defendant asks this Court to grant this motion, citing Federal Rule of Civil Procedure 54. Rule 54(c) directs that all final judgments aside from default judgments "should grant relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c).

Because the parties' agreement provided for arbitration under Maryland law, this Court has jurisdiction to enforce the agreement and enter judgment on the arbitration award. MD. CODE. ANN., CTS. & JUD. PROC. § 3-202. Maryland law requires that this Court confirm the award unless the other party files a motion to vacate it. *Id*. § 3-227(b). In this case, Plaintiffs' Motion to Vacate the Arbitration Award has been denied. Under Rule 54(c), this Court is instructed to grant the relief that Defendant is entitled to under Maryland law. For this reason, Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35) is granted.

Accordingly, it is this 21st day of September 2012, ORDERED that:

1. Plaintiffs' Motion for Reconsideration (ECF No. 37) is DENIED;
2. Defendant's Motion for Leave to File Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35) is GRANTED;
3. Defendant's Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35) is GRANTED;
4. The Final Arbitration Award, attached as Exhibit 3 to Defendant's Motion for Leave to File Petition to Confirm and Enforce Arbitrator's Award and Entry of Judgment Against Plaintiffs (ECF No. 35), shall be enforced; and
5. The Clerk of the Court transmit copies of this Memorandum Order to counsel of record.

/s/

Richard D. Bennett
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KIRAN M. DEWAN,
CPA, P.A. *et al.*,

Plaintiffs,

v. Civil Action No. RDB-11-02195

ARUN WALIA

Defendant.

MEMORANDUM ORDER

Plaintiffs Kiran M. Dewan, CPA, PA ("KMDCPA"), an accounting company, and Kiran M. Dewan ("Dewan"), in his individual capacity (collectively "Plaintiffs"), brought this action against Arun Walia ("Walia" or "Defendant") seeking to vacate the Final Arbitration Award ("Final Award") issued on November 18, 2011 in favor of the Defendant by the American Arbitration Association ("AAA"). On August 3, 2012, this Court entered an Order granting Defendant Walia's Motion to Dismiss Plaintiffs' Amended Complaint with prejudice and denying Plaintiffs' Motion to Vacate the Award (ECF No. 29). Defendant Walia was also asked to submit a

supplemental briefing of no more than five (5) pages indicating the grounds under which he is entitled to attorneys' fees and expenses. Pending before this Court is Defendant Walia's Motion for "Grant of Attorneys' Fees and Costs" (ECF No. 33). This Court has reviewed the record and finds that no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2011). For the reasons stated below, Defendant's Motion for "Grant of Attorneys' Fees and Costs" (ECF No. 33) is GRANTED. Accordingly, Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the amount of $14,423.75, as an award of reasonable attorneys' fees and costs for defending the action.

BACKGROUND

The facts of this case are fully set forth in this Court's Memorandum Opinion issued on August 3, 2012 (ECF No. 28). A brief summary of the facts will adequately frame the pending motion.

Plaintiff Kiran M. Dewan ("Mr. Dewan") is a certified public accountant and attorney licensed to practice both professions in Maryland. Dewan Decl. in Supp. of Mot. for Partial Summ. J. ¶ 2, ECF No. 6-1. Mr. Dewan is the sole owner of Kiran M. Dewan, CPA, P.A. ("KMDCPA"), an accounting company organized under Maryland law and with its principal place of business in Maryland. *Id.* Defendant Walia ("Defendant" or "Mr. Walia") is a Canadian national who worked as an auditor and accountant for

KMDCPA under an H1-B status.[1] Pls. Am. Compl. ¶¶ 8, 11, ECF No. 15. Mr. Walia was employed by KMDCPA from 2003 until August 21, 2009, when he allegedly elected to terminate his employment. Pls.' Am. Compl. ¶¶ 11, 13.[2]

On January 29, 2010, Plaintiffs initiated arbitration proceedings against Mr. Walia. *Id.* ¶ 21. Plaintiffs relied on two documents to bring their dispute before the arbitration tribunal: (1) the May 2006 Employment Agreement entered into by the parties on May 10, 2006, and (2) the 2009 Employee Settlement and Release Agreement ("Release Agreement") entered into on November 3, 2009 as a result of claims brought by Mr. Walia against Plaintiffs for their withdrawal of his H-1B status sponsorship. *Id.* ¶¶ 12, 14-16. Defendant Walia in turn raised several counterclaims. Interim Award, ECF No. 1-1, at 37-38.

Dr. Andrèe Y. McKissick ("Arbitrator") of the American Arbitration Association arbitrated the proceedings and issued an Interim Award largely in the Defendant's favor on July 11, 2011. Interim Award at 37-38; Pls.' Am. Compl ¶ 40. After receiving files

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[1] The H1-B visa program allows employers in the United States to hire foreign nationals in specialty occupations. *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(15)(H).

[2] In the Final Award, the Arbitrator concluded that Walia was "still currently employed as an Accountant to present at the prevailing wage rate, as there was no Letter of Termination received by" him. Final Award at 6, ECF No. 13-1.

from the Department of Homeland Security (DHS) and the Internal Revenue Service (IRS) pursuant to Defendant's Freedom of Information Act (FOIA) request, the Arbitrator issued a Final Award on November 18, 2011. Final Award, ECF No. 13-1. The Final Award largely reiterated the findings and conclusions contained in the Interim Award and further concluded that Plaintiffs had engaged in fraud by submitting disparate income information under penalty of perjury to the Department of Homeland Security, the IRS and the arbitration tribunal. *Id.* at 5, ¶¶ 13-15. In sum, the Final Award dismissed all but one of the Plaintiffs' claims, granted the Defendant's counterclaims, and awarded the Defendant compensatory and punitive damages.[3] *Id.* at 6.

Particularly significant at this juncture in the case is the Arbitrator's finding that the Release Agreement of 2009, in which Mr. Walia waived certain claims against his employer, was valid and enforceable. *Id.* The Arbitrator found that Walia willingly signed the Release Agreement and under Maryland Law was

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[3] In terms of compensatory damages, the Arbitrator awarded Mr. Walia wage and wage shortfalls, medical and disability expenses, cash paid for legal representation, reimbursement for the absence of work during the relocation of the office, expenses relating to the arbitration of his counterclaims and percentages of the Plaintiffs net profits from 2006-2009 and gross profits of revenue from tax. Final Award at 6. Additionally, Walia was awarded punitive damages in the amount of $70,000 "for the cost of having to defend himself against the baseless claims" brought against him by Plaintiffs. *Id.*

therefore bound by its terms. Interim Award at 34; Final Award at 6. The release clause reads in pertinent parts:

> EMPLOYEE, . . . releases and discharges COMPANY and COMPANY's former, current or future officers, . . . from any and all claims, . . . which EMPLOYEE ever had, now has, or hereafter can, shall or may have for, upon or by reason of any act, transaction, practice, conduct, matter, cause or thing of any kind whatsoever, relating to or based upon, in whole or in part, any act transaction, practice or conduct prior to the date hereof, including but not limited to matters dealing with Employee's employment or termination of employment with the COMPANY, or which relate in any way to injuries or damages suffered by EMPLOYEE (knowingly or unknowingly). This release and discharge includes, but is not limited to, claims arising under federal, state and local statutory or common law, . . . and the laws of contract and tort; and any claim for attorney's fees. EMPLOYEE promises never to file a lawsuit or assist in or commence any action asserting any claims, losses, liabilities, demands, or obligations released thereunder.

Release Agreement ¶ 3, ECF No. 33-5. Accordingly, the Arbitrator determined that the Release Agreement precludes Walia from bringing all tort and contractual claims in state and federal courts as well as . . . from receiving attorney fees." Final Award at 6. However, the Release Agreement also includes a provision by

which the parties agreed that the prevailing party in an action to enforce any provision of said agreement was entitled to recover "in addition to any other relief, reasonable attorneys' fees and costs and expenses of litigation or arbitration." Release Agreement ¶ 10.

Having lost the arbitration proceedings which they initiated, Plaintiffs brought this action before this Court requesting vacatur of both the Interim and Final Awards. This Court denied Plaintiffs' Motion to Vacate the Award and granted Defendant's Motion to Dismiss the Amended Complaint in its Memorandum Opinion and accompanying Order issued on August 3, 2012 (ECF Nos. 28 & 29). Unsatisfied with this Court's decision, Plaintiffs' then filed a Motion for Reconsideration (ECF No. 37) on August 22, 2012. A month later, by Memorandum Order (ECF No. 45), this Court both denied Plaintiffs' Motion for Reconsideration and granted Defendant Walia's Petition to Confirm and Enforce the Arbitrator's Award and Entry of Judgment against Plaintiffs (ECF No. 35).

STANDARD OF REVIEW

Maryland follows the common law "American Rule," which states that, generally, a prevailing party is not awarded attorneys' fees "unless (1) the parties to a contract have an agreement to that effect, (2) there is a statute that allows the imposition of such fees, the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (3) a plaintiff is forced to defend against a malicious prosecution." *Nova Research, Inc. v. Penske Truck Leasing Co.*, 952 A.2d 275, 281 (Md. 2008) (internal quotation marks and

citation omitted). Accordingly, "[c]ontract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers v. Kayhoe*, 892 A.2d 520, 532 (Md. 2006). However, "Maryland law limits the amount of contractual attorneys['] fees to actual fees incurred, regardless of whether the contract provides for a greater amount." *SunTrust Bank v. Goldman*, 29 A.3d 724, 728 (Md. App. 2011). "Even in the absence of a contract term limiting recovery to reasonable fees, trial courts are required to read such a term into the contract and examine the prevailing party's fee request for reasonableness." *Myers*, 892 A.2d at 532. "The burden is on the party seeking recovery to provide the evidence necessary for the fact finder to evaluate the reasonableness of the fees." *Atlantic Contracting & Material Co., Inc. v. Ulico Cas. Co.*, 844 A.2d 460, 478 (Md. 2004) (citation omitted).

In determining appropriate fee awards, this Court typically conducts a "lodestar" analysis whereby the Court multiplies the reasonable number of hours expended by a reasonable hourly rate. *See, e.g., Bd. of Educ. of Frederick Cnty. v. I.S.*, 358 F. Supp. 2d 462, 465 (D. Md. 2005). Next, the Court applies a number of factors to determine the reasonableness of that initial number. *See, e.g., id.; First Bankers Corp. v. The Water Witch Fire Co., Inc.*, RDB–09–975, 2010 WL 3239361, at *1 (D. Md. Aug.16, 2010). However, the "lodestar" approach is "an inappropriate mechanism for calculating fee awards . . . [in] disputes between private parties over breaches of contract." *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton*, 7 A.3d

1, 7 (Md. 2010). Instead the Court "should use the factors set forth in Rule 1.5 [of the Maryland Rules of Professional Conduct ("MRPC")[4]] as the foundation for analysis of what constitutes a reasonable fee when the court awards fees based on a contract entered by the parties authorizing an award of fees." *Id.* at 8. Those factors are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

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[4] MRPC 1.5(a) is a standard of professional ethics, generally applicable to all attorney-client relationships, which mandates that an attorney "shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

MRPC 1.5(a). However, this Court need not evaluate each factor separately, and need not "make explicit findings with respect to Rule 1.5 at all, or even mention Rule 1.5 as long as it utilizes the rule as its guiding principle in determining reasonableness." *Nautical Girl LLC v. Polaris Investments Ltd.*, ELH-10-3564, 2011 WL 6411082, at *2 (D. Md. Dec. 19, 2011)(quoting *Suntrust Bank*, 29 A.3d at 730 and *Monmouth*, 7 A.3d 1, at 10 n. 3).

ANALYSIS

Plaintiffs Kiran M. Dewan, CPA, PA ("KMDCPA and Kiran M. Dewan ("Dewan") contend that Defendant Arun Walia ("Walia") is not entitled to attorneys' fees under the 2009 Employee Settlement and Release Agreement ("Release Agreement"). Specifically, Plaintiffs contend that the agreement was entered into by KMDCPA and Walia, and that Dewan is under no obligation to pay attorneys' fees. Additionally, Plaintiffs contend that the agreement "is limited to 'any action [brought] to enforce any provision' of the *Agreement*." Pl's Resp. in Opp. at 4, ECF No. 36. As this action was brought to vacate the interim and final awards, it is not covered by the attorneys' fee provision of the Release Agreement. Moreover, according to Plaintiffs' reading of the award, the Arbitrator has precluded Walia from receiving attorneys' fees in all circumstances. Finally, Plaintiffs argue that even if Walia were entitled to such fees, Walia has failed to demonstrate the "reasonableness" of the fees. Plaintiffs' position is meritless.

First, the Arbitrator along with this Court have already determined that Plaintiff Dewan as the sole

owner of KMDCPA, the attorney who drafted the agreements signed between the parties and represented Defendant Walia in his immigration matters, and the instigator of both the arbitration proceedings and the case before this Court, is liable under both agreements.

Second, the Arbitrator has determined that the Release Agreement is enforceable and this Court has already held that it found "substantial support for the decisions made by the Arbitrator, that the Arbitrator did not go beyond the scope of the submissions, and that the Arbitrator's determinations were not arbitrary." Mem. Op. at 19, ECF No. 28. Because "an arbitrator's fact finding and contract interpretation [are] accorded great deference [along with his] interpretation of the law," *Upshur Coals Corp. v. United Mine Workers of America*, 933 F.2d 225, 229 (4th Cir. 1991), this Court also holds that the Release Agreement is enforceable.

Third, this agreement entitles the prevailing party in "any action brought . . . to enforce" the agreement to reasonable attorneys' fees. Release Agreement ¶ 10, ECF No. 33-5. While the Arbitrator determined that Walia was not entitled to attorneys' fees with respect to the claims he willingly relinquished under the Release Agreement, the parties have agreed that to the extent that an action is brought to enforce the Release Agreement's terms, attorneys' fees are recoverable. Dewan's argument that this action was not brought to enforce a provision of the Release Agreement, but instead to vacate the arbitration award, is without merit. In fact, Plaintiffs arguments

in support of the vacatur of the award rested heavily on the Release Agreement. As a result, the attorneys' fees provision of the Release Agreement is applicable here and Walia, as the prevailing party, is entitled to them.

According to Walia, his representation in the matter before this Court was on a contingent fee basis at the hourly rate of $275.[5] Walia Aff. ¶ 5, ECF No. 33-4; *see also* Engagement Letter, ECF No. 38-2. Walia's attorneys have presented affidavits and detailed invoices to this Court concerning their representation of Defendant. Khurana Aff., ECF No. 33-2, Chaplin Aff., ECF No. 33-3. As a result, Walia requests $14,423.75 in attorneys' fees relating to this action. Mot. for Attorneys' Fees at 2, ECF No. 33. To determine whether this request is reasonable, this Court must consider it in light of the eight factors[6]

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[5] Rule 1.5(c) of the Maryland Rules of Professional Conduct authorizes contingent fee agreements in all matters except those delineated in Rule 1.5(d), which are not at issue in this case.

[6] "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent." MRPC 1.5(a)

outlined in Rule 1.5(a) of the Maryland Rules of Professional Conduct. However, this Court need not evaluate each factor separately, and need not "make explicit findings with respect to Rule 1.5 at all, or even mention Rule 1.5 as long as it utilizes the rule as its guiding principle in determining reasonableness." *Nautical Girl LLC v. Polaris Investments Ltd.*, ELH-10-3564, 2011 WL 6411082, at *2 (D. Md. Dec. 19, 2011)(quoting *Suntrust Bank*, 29 A.3d at 730 and *Monmouth*, 7 A.3d 1, at 10 n. 3). Whether separately or as a whole, all the factors weigh in favor of awarding attorneys' fees. Notably, Walia's attorneys have represented him on complex issues involving two distinct forums. The considerable time spent on this matter precluded them from employment on other matters. The hourly rate charged was reasonable for legal services provided in a federal court of the Washington, D.C. metropolitan area. Moreover, his attorneys provided him with an effective representation in defending Plaintiffs' claims.[7] Although Plaintiffs' challenge the fees charged by Mr. Chaplin because he did not participate in the motions decided on August 3, 2012, his invoice and expertise indicate that he has provided required representation for Defendant Walia and support for Mr. Khurana and as such is also entitled to his fees. Accordingly, Defendant's Motion for "Grant of Attorneys' Fees and

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[7] Plaintiffs' appeal of this Court's decision to enforce the Final Award is presently pending before Court of Appeals for the Fourth Circuit. *See Kiran M. Dewan, CPA, P.A., et al. v. Arun Walia*, No. 12-2175.

Costs" (ECF No. 33) is GRANTED. Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the amount of $14,423.75, as an award of reasonable attorneys' fees and costs for defending this action.

ORDER

For the reasons stated above, it is this 16th day of October, 2012, ORDERED that:

1. Defendant's Motion for "Grant of Attorneys' Fees and Costs" (ECF No. 33) is GRANTED;

2. Plaintiffs Kiran M. Dewan, CPA, PA and Kiran M. Dewan are jointly and severally liable for the amount of $14,423.75, as an award of reasonable attorneys' fees and costs for defending the action;

3. The Clerk of the Court transmit copies of this Memorandum Order to Counsel.

/s/

Richard D. Bennett
United States District Judge

APPENDIX E

FILED: November 25, 2013

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 12-2175

(1:11-cv-02195-RDB)

KIRAN M. DEWAN, CPA, P.A., a Maryland close corporation; KIRAN MOOLCHAND DEWAN, a citizen of Maryland,

Plaintiffs-Appellants,

v.

ARUN WALIA, a non-resident alien, citizen of Canada,

Defendant-Appellee.

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk