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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT,
APPEALS No. 24-1541
(5:23-cv-00442-D-BM) UNPUBLISHED – OPINION
FILED OCT 15th, 2024

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

THOMAS J. AYERS, Plaintiff

vs.

JOSEPH MARKIEWICZ, MARY BETH MARKIEWICZ,
DOUGLAS WEIR, LEADERSHIP TEAM
DEVELOPMENT, INC., and AMWAY CORPORATION,

Defendants.

JUDGMENT IN A CIVIL CASE
CASE NO. 5:23-CV-442-D

Decision by Court.

IT IS ORDERED, ADJUDGED, AND DECREED that the court GRANTS defendants' motions to compel arbitration [D.E. 34, 36, 39], DISMISSES WITHOUT PREJUDICE plaintiff's complaint, and ORDERS plaintiff to arbitrate his claims.

This Judgment filed and entered on May 9, 2024, and copies to: All counsel of record as listed in this matter (via CM/ECF electronic notification)

May 9th, 2024

Peter A. Moore, Jr.
Clerk of Court

By:/s/ Stephanie Mann

APPENDIX A

OPINION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:23-CV-442-D

THOMAS J. AYERS,
Plaintiff.

v.

JOSEPH MARKIEWICZ, et al.,
Defendants.

ORDER

On August 8, 2023, Thomas J. Ayers ("Ayers" or "plaintiff") filed a complaint against Joseph Markiewicz, Mary Beth Markiewicz (collectively "the Markiewiczs"), and Douglas Weir ("Weir") (collectively "the individual defendants") alleging defamation, tortious interference with contractual relations and prospective economic advantage, battery, intentional infliction of emotional distress ("IIED"), abuse of process, and malicious prosecution. See [D.E. 1] ¶¶23-52. On November 7, 2023, Ayers filed an amended complaint against the individual defendants, Leadership Team Development, Inc. ("LTD"), and Amway Corporation ("Amway") (collectively "defendants") alleging defamation, tortious interference with contractual relations and prospective economic advantage, civil conspiracy to commit battery, IIED, abuse of process, malicious prosecution, civil conspiracy, and battery. See [D.E. 9] ¶¶ 34-68.¹

On January 29, 2024, the individual defendants moved to compel arbitration or, alternatively, dismiss Ayers's complaint for failure to state a claim upon which relief can be

¹ Ayers's amended complaint also appears to assert a cause of action for punitive damages. See Am. Compl. [D.E. 9], ¶¶ 69-70. Ayers clarifies that he does not assert punitive damages as a remedy. See [D.E. 43] 15-16. Rather, Ayers seeks punitive damages as a remedy. See id.

granted [D.E. 34] and filed a memorandum in support [D.E. 35]. See 9 U.S.C. § 4; Fed. R. Civ. P. 12(b)(6). The same day, Amway filed an unopposed motion to dismiss and compel arbitration [D.E. 36] and filed a memorandum in support [D.E. 37]. See 9 U.S.C. § 4; Fed. R. Civ. P. 12(b)(1), (3). The same day, LTD moved to dismiss and compel arbitration [D.E. 39] and filed a memorandum in support [D.E. 40]. See 9 U.S.C. § 4; Fed. R. Civ. P. 12(b)(1), (3), (6).

On February 26, 2024, Ayers responded in opposition to the individual defendants' motion to compel arbitration [D.E. 43]. On February 26, 2024, Ayers notified the court that he did not oppose LTD's motion to compel arbitration [D.E. 44]. On March 18, 2024, the individual defendants replied [D.E. 46]. As explained below, the court grants defendants' motions to compel arbitration.

I.

"Amway is a multi-level marketing company that contracts with individuals to" buy and sell its products. Am. Compl. ¶15. LTD is a sales organization consisting of Amway Independent Business Owners ("IBOs"). See id. at ¶ 16. Between August 1999 and June 17, 2022, Ayers was an IBO with Amway and LTD. See id. Ayers had contracts with Amway ("the Amway Agreement") and LTD ("the LTD Agreement") (collectively "the Agreements") that included arbitration clauses. See id. at ¶ 12; see also [D.E. 34-1] 7-30 (the Amway Agreement), 32-59 (the LTD Agreement). Weir and Joseph Markiewicz are "LTD and Amway corporate officers." Am. Compl. ¶ 21. Ayers alleges Mary Beth Markiewicz is an agent of Amway and LTD. See id. at ¶¶ 33. The Markiewiczs are married. See id. at ¶ 2.

In early 2021, Ayers told Weir and Joseph Markiewicz that "Amway portray[ed] overtly patriotic views" but ignored "valid documented concerns" about the legitimacy of the 2020 United States presidential election and the events of January 6, 2021. Id. at ¶¶ 18-19. Ayers also raised concerns about Amway's political funding and possible election interference. See id. at ¶17; [D.E. 34-1] 61-62. Ayers also told Weir and Joseph Markiewicz "about Amway's support of former Vice President Mike Pence and his actions related to confirming the 2020 election result ... and the resignation of Amway Owner and Secretary of Education" Betsy DeVos on January 7, 2021. Am. Compl. ¶ 20; see [D.E. 34-1] 64-65. Ayers alleges that Weir and Joseph Markiewicz had a "duty to investigate documented concerns" about Amway's role in the 2020 election. Am. Compl. ¶ 20; see id. at ¶16 ("Ayers ... raise[d] documented concerns ... to the attention of the [d]efendants concerning the cover up of Amway activities related to interference in the 2020 election.")

From February 2021 to June 2022, Weir and Joseph Markiewicz approached Ayers's sales , team members ("Ayers's downline") and encouraged them to stop working with Ayers. See id. At ¶ 21. Weir and Joseph Markiewicz told Ayers's downline that Ayers is a mentally ill conspiracy theorist. See id. Weir and Joseph Markiewicz warned some of Ayers's downline that they "legally" should not talk to Ayers and should remove and block Ayers on social media. Id. Members of Ayers's downline told Ayers about these interactions. See id. Weir and Joseph Markiewicz also told Ayers "to remain silent 'or else,'" and they asked Ayers if he "wanted to die on this mountain." Id. at ¶ 22. Ayers alleges that at one point, Joseph Markiewicz and Weir cut off Ayers's "communication from the LTD/Amway messaging system prior to any written notice and sent a cease and desist letter to his LTD/Amway business." Id. at ¶ 23. Ayers sought to challenge the cease-and-desist letter, but Joseph

Markiewicz "used his position as an officer ... to deprive Ayers of his contractual right to a peer review." Id.

On July 28, 2022, Ayers bought a ticket to attend the "LTD/Amway HOAL 22 Baseball game," a public event. Id. At ¶¶ 24--25. On July 29, 2022, Ayers attended the game. See id. at ¶ 24. At the game, members of Ayers's downline expressed their confusion that they could no longer reach Ayers on the LTD/Amway messaging app. See id. Then, Mary Beth Markiewicz grabbed Ayers's arm "so hard that her fingernails tore the skin on [Ayers's] right arm." Id. at ¶ 25. Mary Beth Markiewicz told Ayers to leave the game. See id. Ayers declined, showed her his ticket, and said he wanted to see "the hundreds of people to which [the Markiewicz] had defamed Ayers." Id. Mary Beth Markiewicz let go, left Ayers, and called the police to tell them Ayers "was looking to harm her husband and was armed." Id.

Police officers arrived and asked Ayers if he was armed. See id. at ¶ 26. He was not. See id. The officers told Ayers that Ayers was trespassing and needed to leave the baseball game. See id. Ayers complied. See id. Once outside the stadium, the officers assaulted Ayers. See id. at ¶ 27. Approximately ten officers "punched and kicked Ayers," breaking his ribs and causing serious bruising on Ayers's body. See id. The officers arrested Ayers and took him to jail for disorderly conduct. See id. Later, a judge dismissed Ayers's disorderly conduct charge. See id. at ¶ 28.

On May 9, 2022, Joseph Markiewicz told Ayers "that he knew ... Ayers was mentally sound and not dangerous and that he was engaging in this conduct to silence Ayers and destroy [Ayers's] credibility to cover up the concerns Ayers had" about Amway's involvement in the 2020 election. Id. at ¶ 30. Nonetheless, on July 30, 2022, Joseph Markiewicz sent an audio message on the LTD/Amway messaging app

telling Ayers's "former downline and thousands of others" that Ayers is "mentally ill." *Id.* at ¶ 29. Joseph Markiewicz also said Ayers "was probably armed," had an "intent to harm" Joseph Markiewicz, and "was of the Devil." *Id.* Over the next few days, other Amway/LTD members told Ayers they were "not allowed to speak" to Ayers or Ayers's wife. *Id.* at ¶ 31. LTD/Amway officers told the other Amway/LTD members "that if they did speak to Ayers, they would suffer legal and business consequences." *Id.* "Multiple witnesses reported and confirmed that [Joseph Markiewicz] and [Weir] had mentioned to [Ayers's] downline that Ayers may become a potential mass shooter, and that Ayers had a bullet with his name on it." *Id.* On October 14, 2022, Ayers's former teammates told Ayers that Amway/LTD officials posted signs at security checkpoints at the Amway Summit Conference, which displayed Ayers's photograph, and demanded anyone who saw Ayers immediately report him to security. *See id.* at ¶ 32.

Ayers timely filed for arbitration with the American Arbitration Association ("AAA") against Amway and LTD. *See id.* at ¶ 12. Amway and LTD argued that Ayers failed to properly serve the entities, and the arbitrator dismissed Ayers's arbitration. *See id.* at ¶¶ 13-14. On August 8, 2023, Ayers brought this action. *See* [D.E. 1].

II.

The Federal Arbitration Act ("FAA") provides that a written arbitration agreement "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; *see Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010); *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 595 (4th Cir. 2023). The standard for deciding a motion to compel arbitration brought under the FAA, 9 U.S.C. § 4, is similar to the standard applicable to a motion for summary judgment. *See, e.g., Naimoli v. Pro-Football, Inc.*, ___ F. Supp. 3d ___, 2023 WL 5985256, at *4-5 (D. Md. Sept. 14, 2023).

To compel arbitration, the movant must show: "(1) a dispute exists between the parties; (2) the dispute falls within the scope of a written, valid agreement that includes an arbitration provision; (3) the parties' agreement relates to interstate or foreign commerce; and (4) the opposing party has failed or refused to arbitrate the dispute at hand." Amos, 74 F.4th at 595; see Adkins v. Lab. Ready, Inc., 303 F.3d 496, 500-01 (4th Cir. 2002); De Sa v. RPS Holdings, LLC, 577 F. Supp. 3d 395, 396-97 (E.D.N.C.2022).

Under the FAA, a court interprets an arbitration agreement according to the intentions of the parties. See, e.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985); Wash. Square Sec., Inc. v. Aune, 385 F.3d 432, 435 (4th Cir. 2004). Although a court interprets an arbitration agreement using principles of state contract law, "due regard must be given to the federal policy favoring arbitration." Volt Info. Scis., Inc. v. Bd. Of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 476 (1989); see Wachovia Bank Nat'l Ass'n v. Schmidt, 445 F.3d 762, 767 (4th Cir. 2006); Newman v. First Montauk Fin. Corp., No. 7:08-CV-116, 2010 WL2933281, at *4-5 (E.D.N.C. July 23, 2010) (unpublished). Accordingly, "the parties' intentions are generously construed as to issues of arbitrability, and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Newman, 2010 WL 2933281, at *4 (quotations and citation omitted); see Mitsubishi Motors Corp., 473 U.S. at 626; Moses H. Cone Mem'l HoSJ. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). superseded by statute on other grounds, 9 U.S.C. § 16(b)(1); Aune, 385 F.3d at 436.

By enacting the FAA, Congress created a "presumption" in favor "of arbitrability." AT&T Techs., Inc. v. Comm.c'ns Workers of Am., 475 U.S. 643, 650 (1986). A court must resolve any doubts in favor of arbitration and compel arbitration "unless it may be said with positive assurance that the arbitration clause is not susceptible of

an interpretation that covers the asserted dispute." Id.; see, e.g., Moses H. Cone Mem'l Hosp., 460 U.S. at 24-25; Patten Grading & Paving, Inc. v. Skanska USA Bldg., Inc., 380 F.3d 200,204 (4th Cir. 2004). Thus, "the heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 867 F.2d 809, 812 (4th Cir. 1989). Furthermore, where an arbitration clause is reasonably susceptible of an interpretation that covers the dispute between the parties, only an "express provision" in the arbitration agreement excluding the dispute or "the most forceful evidence of a purpose to exclude the claim from arbitration" suffices to preclude arbitration. Aune, 385 F.3d at 436 (quotations omitted).

Ayers does not oppose Amway or LTD's motions. See [D.E. 44] 1; cf. [D.E. 36] 1. Accordingly, the court grants Amway and LTD's motions to dismiss and compel arbitration. see, e.g., United States ex rel. Harbor Constr. Co. v. T.H.R. Enters., Inc., No. 4:14CV17, 2014 WL 4452755, at *1-3 (E.D. Va. Sept. 9, 2014) (unpublished).

The individual defendants move to compel arbitration of Ayers's claims against them. see [D.E. 35] 1-3, 7-14. Ayers argues that the individual defendants cannot enforce the Agreements' arbitration clauses because the individual defendants are not parties to the Agreements. see [D.E. 43] 1-2, 3-5. The individual defendants respond that nonsignatories can enforce arbitration agreements. see [D.E. 46] 2-3.

The parties agree that North Carolina law governs the Amway and LTD Agreements. See, e.g., [D.E. 43] 3-8; [D.E. 46] 2-5. Generally, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363

U.S. 574, 582 (1960). The law, however, "of the Fourth Circuit and of North Carolina is well-established that a nonsignatory to an arbitration clause may, in certain situations, compel a signatory to the clause to arbitrate the signatory's claims against the nonsignatory despite the fact that the signatory and nonsignatory lack an agreement to arbitrate." Erichsen v. RBC Cap. Mk.ts., LLC, 883 F. Supp. 2d 562, 571 (E.D.N.C. 2012) (quotation omitted); see Rogers v. Tug Hill Operating, LLC, 76 F.4th 279, 285- 88 (4th Cir. 2023); Am. Bankers Ins. Grp., Inc. v. Long, 453 F.3d 623, 627 (4th Cir. 2006); Klopfer v. Queens Gap Mountain, LLC, 816 F. Supp. 2d 281, 292 (W.D.N.C. 2011); Collie v. Wehr Dissolution Con., 345 F. Supp. 2d 555, 561-62 (M.D.N.C. 2004); Ellison v. Alexander, 207 N.C. App. 401, 411-12, 700 S.E.2d 102, 110-11 (2010); Ellen v. A.C. Schultes of Md. Inc., 172 N.C. App. 317, 320, 615 S.E.2d 729, 732 (2005); Brown v. Centex Homes, 171 N.C. App. 741, 745- 46, 615 S.E.2d 86, 88-89 (2005).²

Equitable estoppel allows a nonsignatory to compel arbitration in two circumstances: (1) the signatory relies "on the terms of the written agreement in asserting its claims against the nonsignatory"; or (2) the signatory "raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Brantley v. Republic Mortg. Ins. Co., 424 F.3d 392, 395-96 (4th Cir. 2005) (cleaned up). A nonsignatory can also compel arbitration against a signatory under "[w]ell-established common law principles" of agency. Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000); see Ellison, 207 N.C. App. at 412-13, 700 S.E.2d at 111.

Ayers, Amway, and LTD signed the Agreements. See Am. Compl. ¶ 12; [D.E. 43] 1; see also [D.E. 34-1] 43. Ayers alleges all but one of his claims against all defendants

using the same allegations and claim language. See Am. Compl. ¶¶ 34--70. Moreover, Ayers alleges "unified and

2 The Agreements both have choice-of-law provisions which specify that Michigan law governs. See [D.E. 34-1] 8, 41. None of the parties argue that this court should apply Michigan law. The court need not decide which state's law to apply because Michigan law does not substantially differ from North Carolina law on this issue. See, e.g., Southerland v. Com. Transit of Am., No. 13-14462, 2014 WL 4906891, at *4--5 (E.D. Mich. Sept. 30, 2014) (unpublished); D&R Co. v. BASF Corp., No. 09-CV-10641, 2010 WL 11545257, at *5-6 (E.D. Mich. Mar. 26, 2010) (unpublished); Steward v. Sch. Dist. of City of Flint, __ N.W.3d __, 2023 WL 3395444, at *2-3 (Mich. Ct. App. May 11, 2023); AFSCME Council 25 v. Wayne Cnty., 292 Mich. App. 68, 81-82, 811 N.W.2d 4, 12-13 (2011).

interdependent misconduct by all defendants." Piasek v. Biomass Controls PBC, No. 5:20-CV- 26, 2020 WL 2735385, at *5 (E.D.N.C. May 26, 2020) (unpublished). Thus, the individual defendants can enforce the Agreements' arbitration provisions. See, e.g., id. at *4--5.

Alternatively, Ayers alleges that Joseph Markiewicz and Weir are corporate officers of LTD and Amway. See Am. Compl. 121. Ayers also alleges Mary Beth Markiewicz is an agent of Amway and LTD. See id. at 133; see also [D.E. 34-2] , ¶¶2-3. Ayers alleges the individual defendants acted on behalf of Amway and LTD to cover up Ayers's concerns about Amway's involvement in the 2020 election, which caused Ayers to lose his Amway business. See Am. Compl. ¶¶ 16--17, 21-22, 30, 33, 39, 45, 56, 60. Thus, the individual defendants can enforce the Agreements' arbitration provisions as agents of Amway and LTD. See, e.g., Ellison, 207 N.C. App. at 412-13, 700 S.E.2d at 111.

In opposition to this conclusion, Ayers argues that the individual defendants cannot enforce the Agreements' arbitration provisions because they are not parties to the Agreements. See [D.E.43] 3-5. As discussed, the individual defendants' status as nonparties is not dispositive. See, e.g.,

Ellison, 207 N.C. App. at 412, 700 S.E.2d at 110-11 ("[T]he mere fact that [the] [d]efendant did not sign the SSAs in his individual capacity does not preclude him from enforcing the provisions of the arbitration clause contained in that document."). Accordingly, the court reject Ayers's argument. The individual defendants can enforce the Agreements' arbitration provisions.

The parties dispute whether Ayers's claims "fall[] within the scope of the Agreements' arbitration provisions, i.e., the arbitrability of Ayers's claims. Amos, 74 F.4th at 595. The individual defendants argue that all Ayers's claims are arbitrable because they "arise out of or relate to" the Agreements. See [D.E. 35] 10-14. Ayers responds that most of his claims against the individual defendants are not arbitrable because his claims do not arise out of the terms of the Agreements. See [D.E. 43] 5-8.3 The individual defendants reply that Ayers's reading of the Agreements is too narrow considering Ayers's lack of opposition to Amway and LTD's motions to compel arbitration. See [D.E. 46] 1-2, 3-5. Amway argues in its unopposed motion to compel arbitration that under the terms of the Agreements, an arbitrator must determine the arbitrability' of Ayers's claims. See [D.E. 37] 9-12.

"Courts should not assume that the parties agreed to arbitrate arbitrability" First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944 (1995). Parties, however, can agree to arbitrate arbitrability if they "clearly and unmistakably provide that the arbitrator shall determine what disputes the parties agreed to arbitrate." Peabody Holding Co. v. United Mine Workers of Am., Int'l Union, 665 F.3d 96, 102 (4th Cir. 2012) (quotations omitted); see AT&T Techs., Inc., 475 U.S. at 649; Carson v. Giant Food, Inc., 175 F.3d 325, 329 (4th Cir. 1999). Broad arbitration clauses alone do not suffice. See Peabody Holding Co., 665 F.3d at 102; Hetrick Cos. v. IINK Com., F. Supp. 3d ___, 2024 WL 47408, at *9 (E.D. Va. Jan. 3, 2024). "Those who

wish to let an arbitrator decide which issues are arbitrable need only state that 'all disputes concerning the arbitrability of particular disputes under this contract are hereby committed to arbitration,' or words to that clear effect." Carson, 175 F.3d at 330-31. Additionally, incorporation of the AAA or Judicial Arbitration and Mediation Services ("JAMS") rules "constitutes evidence that the parties delegated arbitrability questions to the arbitrator." Devine v. Bethesda Softworks, LLC, 636 F. Supp. 3d 564, 572-73 (D. Md. 2022); see Simply Wireless, Inc. v. T-Mobile US, Inc., 877

³ Ayers concedes that "the Court should simply dismiss" his tortious interference claims "and compel them to be decided through arbitration." [D.E. 43] 10.

F.3d 522, 527-28 (4th Cir. 2017), abrogated on other grounds by Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63 (2019).

The LTD Agreement states that an "arbitrator shall have exclusive authority to resolve any dispute relating to the enforceability of this Agreement and any of its provisions including, but not limited to, jurisdictional and arbitrability disputes." [D.E. 34-1] 39. The LTD Agreement also states that an "arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter." Id. at 40. Thus, the parties to the LTD Agreement clearly and unmistakably agreed to arbitrate arbitrability. See, e.g., Galloway v. Priority Imports Richmond, LLC, No. 20 - 1020, 2023 WL 1858387, at *1 (4th Cir. Feb. 9, 2023) (per curiam) (unpublished); Shaomin Sui v. FedEx Ground Package Sys., Inc., Civ. No. 19-3318, 2020 WL 3639984, at *5 (D. Md. July 6, 2020).

The Amway Agreement states that "[a]rbitrability [i]ssues [are] to [b]e [d]ecided [b]y [an] [a]rbitrator." [D.E. 34-1] 30. The Amway Agreement also states that an arbitrator, "and

not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability[,] or formation of this Agreement including, but not limited to[,] any claim that all or any part of this Agreement is void or voidable." Id. Moreover, the Amway Agreement incorporates the AAA rules. See id. at 29.⁴ Thus, the parties to the Amway Agreement clearly and unmistakably agreed to arbitrate arbitrability. See, e.g., Novic v. Credit One Bank Nat'l Ass'n, 757F. App'x263, 266 (4th Cir. 2019) (unpublished); Devine, 636F. Supp.

⁴The court assumes without deciding that a sophisticated party may not compel an unsophisticated party's arbitrability issues to an arbitrator based on incorporation of the AAA or JAMS rules alone. See, e.g., Stone v. Wells Fargo Bank N.A., 361 F. Supp. 3d 539, 552-55 (D.Md 2019). This court, however, need not decide whether Ayers is an unsophisticated party because the plain text of the Agreements suffices to delegate arbitrability questions to an arbitrator. The parties' incorporation of the AAA rules bolsters that conclusion.

3d at 570-73; Smith v. Gen. Info. Sols., LLC, Civ. No. 3:18-2354, 2018 WL 6528155, at *4-5 (D.S.C. Dec. 11, 2018) (unpublished). Accordingly, the court grants the individual defendants' motion to compel arbitration. See Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213,218 (1985) ("By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.").

This conclusion comports with Ayers's contradictory stances concerning the defendants' motions to compel arbitration. As discussed, Ayers brings all his claims against all defendants except his battery claim. See Am. Compl. ¶¶ 34-70. Ayers does not oppose Amway and LTD's motions to compel Ayers's claims to arbitration, but Ayers

opposes the individual defendants' motion to compel the same claims to arbitration. See [D.E. 36] 1; [D.E. 43]; [D.E. 44]. The only difference between the motions is the specific defendants who filed them. Thus, Ayers implicitly concedes that the court should compel his claims to arbitration if the defendants can enforce the Agreements' arbitration provisions. As discussed, the individual defendants can enforce the Agreements' arbitration provisions. Accordingly, the court compels Ayers's claims to arbitration.

Once a court has determined that the parties agreed to arbitrate arbitrability, the court must order arbitration even "if the argument for arbitration is wholly groundless." Henry Schein, Inc., 586 U.S. at 66; see, e.g., Galloway, 2023 WL 1858387, at *1-2. The court's only role at this stage is to decide if the parties formed a valid agreement to arbitrate. See, e.g., Rogers, 76 F.4th at 286; Rowland v. Sandy Morris Fin. & Est. Planning Servs., LLC, 993 F.3d253, 257-58 (4th Cir. 2021).

Ayers does not challenge the validity of the Agreements or of the arbitration provisions. Cf. [D.E. 36] I; [D.E. 44] 1. Instead, Ayers argues that the individual defendants' interpretation of the Agreements' arbitration provisions would render those provisions unconscionable. See [D.E. 43] 7-8. In effect, Ayers argues that the individual defendants are wrong to argue that his claims are arbitrable. This is a repackaged arbitrability argument that Ayers may present to the arbitrator. Accordingly, the court orders arbitration.

Finally, "[t]here is tension within the Fourth Circuit regarding whether dismissal or a stay is appropriate when granting a motion to compel arbitration." Stone, 361 F. Supp. 3d at 557 (quotation omitted); see Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 376 (4th Cir. 2012). The Fourth Circuit, however, has held that "dismissal is a proper remedy when all of the issues presented in a lawsuit

are arbitrable." Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc., 252 F.3d 707, 709-10 (4th Cir. 2001); see Stone, 361 F. Supp. 3d at 557-58. Accordingly, the court dismisses Ayers's complaint without prejudice pending arbitration of his claims.

III.

In sum, the court GRANTS defendants' motions to compel arbitration [D.E. 34, 36, 39], DISMISSES WITHOUT PREJUDICE plaintiff's complaint, and ORDERS plaintiff to arbitrate his claims. The clerk shall close the case.

SO ORDERED. This 9th day of May, 2024.

JAMES C. DEVER III
United States District Judge

19a

APPENDIX B :

CIV NO. 5:23-CV-442-D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS J. AYERS
Plaintiff-Appellant

vs

JOSEPH MARKIEWICZ, MARYBETH
MARKIEWICZ, DOUGLAS WEIR,
LEADERSHIP TEAM DEVELOPMENT,
INC., and AMWAY CORPORATION,
Defendants-Respondents

ON APPEAL FROM
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

OPENING BRIEF OF PLAINTIFF

SUBMITTED BY:

s/____ Thomas J. Ayers ____
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Amway Terms of Use

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1.1. Your User License You are granted a limited, nonexclusive, nontransferable license to access the Site and its content in accordance with these Terms. Posting or transmitting any unlawful, infringing, threatening, libelous, defamatory, obscene, indecent, inflammatory, pornographic, or profane material, or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law, is strictly prohibited.....17

3. YOUR CONDUCT 3.1. Your Authorization to Use the Site. Your authorization to use the Site and contribute to it depends on your compliance with community standards and the conduct guidelines set forth below. If you fail to conduct yourself appropriately, we may revoke your privileges to use all or a portion of the Site and/or take other appropriate measures to enforce these community standards and conduct guidelines.....9

3.2. Conduct Guidelines/Community Standards. The following is a non-inclusive list of behaviors that are not permitted on the Site. You agree not to:

3.2.1. upload, post, transmit, or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy (up to, but not excluding any address, email, phone number, or any other contact information without the written consent of the owner of such information), hateful, or racially, ethnically, or otherwise objectionable;.....17

3.2.10. intentionally or unintentionally violate any applicable local, state, national, or international law, including, but not limited to,

regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including without limitation, the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and any regulations having the force of law;.....6

Amway Rules of Conduct

3.9. IBO Contract Termination: An IBO may terminate his or her IBO Contract at any time prior to expiration by written communication to the Amway Business Conduct and Rules Department.....11

4.1. Duty of Good Faith Under the terms of the IBO Contract, Amway and all IBOs agree to perform their obligations in accordance with the duty of good faith and fair dealing. An IBO will be held accountable for the actions of a partner, family member or third party acting or purporting to act on behalf of the IBO or IB, so far as the Rules of Conduct are concerned. An IBO shall not aid and abet another IBO to violate the Rules of Conduct. IBOs shall not conduct any activity that could jeopardize the reputation of Amway or IBOs.....4

4.14. Compliance with Applicable Laws, Regulations, and Codes: IBOs shall comply with all laws, regulations, and codes that apply to the operation of their IB wherever said business may be conducted. IBOs shall not directly or indirectly encourage, or aid and abet any person to violate any laws, regulations, codes, or term of the IBO Contract. No IBO may operate any illegal or unlawful business enterprise, or engage or participate in any deceptive, illegal or unlawful trade practices.....9

4.19. Activity Outside The Region or Activity Outside The Market Where The IBO Is Registered: IBOs who engage, directly or indirectly, in any activity related to the Amway business in a jurisdiction outside of the Region must do so in a manner that complies with the letter and spirit of the applicable laws, regulations,

rules, policies and procedures of the Amway affiliate in that jurisdiction, regardless of whether they are registered IBOs in that jurisdiction. Failure to do so shall be a breach of the IBO Contract.....4

4.22 IBO Plan Manipulation: IBOs shall not manipulate the Plan, point value (PV) or business volume (BV), in any way which results in the payment of bonuses or other awards and recognition that have not been earned in accordance with the terms of the IBO Contract.....3

5.5.1. Rules Compliance: The sponsor must be an IBO in full compliance with the Rules of Conduct.....5

6.3. Other Business Activities: Except as provided in Rule 6.2, IBOs may engage in other business ventures, including other selling activities, involving products, services, or business opportunities. However, IBOs may not take advantage of their knowledge in our association with other IBOs whom they did not personally register, including their knowledge resulting from or relating to Line of Sponsorship Information, in order to promote and expand such other business ventures.....6

6.3.1. Every IBO agrees not to solicit, directly or indirectly, other IBOs whom he or she did not personally sponsor in order to sell, offer to sell, or promote other products, services, business opportunities, investments, securities, or loans not offered through or by Amway. Every IBO agrees not to sell, offer to sell, or promote any other business opportunities, products, or services in connection with the Plan. Nothing in this Rule 6.3 restricts the sale or distribution of Business Support Materials in accordance with Rule 7. ”6

9. Complying with the IBO Contract (Remedies for Breach)
Complying with the IBO Contract is essential for preserving a strong and viable business for IBOs and Amway. IBOs and Amway each

have rights and responsibilities in case of a breach of the IBO Contract.....10

9.1 Amway's Rights and Responsibilities: When Amway detects a potential breach of the IBO Contract, it will first investigate as appropriate. Before taking enforcement action, Amway shall attempt to contact the IBO in an effort to resolve the issue. If the communication does not resolve the issue, Amway may take any enforcement action authorized by the IBO Contract including, but not limited to, one or any combination of the following:"10

11.3. Confidentiality: The Parties, when involved in the dispute resolution process in any manner, will not disclose to any other person not directly involved in the dispute resolution process: (a) the substance of, or basis for, the Dispute; (b) the content of any testimony or other information obtained through the dispute resolution process; or (c) the resolution (whether voluntary or not) of any matter that is subject to the dispute resolution process. However, nothing in these Rules shall preclude any one of the Parties from, in good faith, investigating a claim or defense, including interviewing witnesses and otherwise engaging in discovery.....15,17

11.4. Non-Binding Mediation: The Mediation process comprises two stages: Facilitative Mediation and a Hearing Panel, both of which are non-binding. The Mediation process is reciprocal and applies to all Parties. The Parties to a Dispute shall engage in the Mediation process set forth in this Rule 11.4 prior to proceeding to Binding Arbitration pursuant to Rule 11.5; however, in Disputes where an IBO is a Party, the IBO may, at the IBO's sole discretion, opt out of the Mediation process at any time, before or during either the Facilitative Mediation or Hearing Panel stages, and may instead proceed directly to Binding Arbitration pursuant to Rule 11.5. The Party first seeking resolution of a Dispute shall commence Facilitative Mediation, subject to an IBO's ability to opt out of the Mediation process as described above, by providing a Request for

Mediation form to the other affected Parties and, in any Dispute, the Amway Business Conduct and Rules Department. In cases where the IBOAI will be involved in the Mediation process, a copy of the Request for Mediation will also be given to the IBOAI and the IBOAI Hearing Panel
 Chairperson.....11, 15

LTD Agreement

1. QUALIFIED IBO & FUND ACCOUNTS ELIGIBILITY ALL CURRENTLY QUALIFIED PLATINUM & ABOVE LTD MEMBERS IN GOOD STANDING MAY PARTICIPATE IN THE LTD BSM COMPENSATION PROGRAM. [For purposes of this Exhibit, the terms Platinum, Platinum Line of Affiliation, or Platinum Line of Sponsorship refer to any Platinum or above group]. Platinum Qualification is based on the most recent Amway fiscal year ended August 31st and is determined by LTD two (2) times per Amway fiscal year, as of August 31st and February 28th. If a Platinum IBO/Member fails to re-qualify at any given BSM compensation level as of the end of the most recent Amway fiscal year ended August 31st, IBO/Member will no longer be eligible for the commission available at that BSM compensation level, for the coming year. The IBO/Member will have an opportunity to re-qualify as of the end of February of the following year. IBO/Member acknowledges that LTD reserves the right to verify IBO/Member's current Amway pin level during each of the assessment periods explained above. It is the responsibility of the qualified LTD BSM participants to initiate contact with LTD when the IBO/Member achieves an increase in qualification status, i.e., increases from Platinum to Emerald (3 leg fund); failure to inform LTD and provide official documentation of the achievement according to the above eligibility deadlines may result in temporary/month-to-month forfeiture of additional qualifying compensation. Furthermore, any LOA transfer into the LTD Compensation program must adhere to these calendar requirements to ensure equitability and consistency. If circumstances warrant, LTD reserves the right to refer special cases

to the Diamond Council Management Group for review and recommendation.....16

2. Read Before Signing Please read this Agreement carefully before signing it. You may ask any question you have of an authorized representative of LTD before signing and you are encouraged to have your own attorney independently review this Agreement before signing. Your signature represents that you understand and agree to be bound by every term of this Agreement. LTD IBO/MEMBER's signature represents *that he/she understands and agrees to be bound by every term of this Agreement*, those applicable portions of the Amway Quality Assurance Standards and the Amway/IBO Rules of Conduct, the terms of the Amway IBO Registration Agreement as well as the professional guidelines and standards that are established, expected, taught and promulgated by LTD. By signing this Agreement LTD IBO/MEMBER agrees that he/she will cooperate with LTD in monitoring compliance with enforcing the Amway Quality Assurance Standards, Amway/IBO Rules of Conduct, and the Amway IBO Registration Agreement as it relates to the sale, promotion or distribution of BSM.".....15

8. LTD IBO/MEMBER Recognized by Amway LTD
IBO/MEMBER represents that he/she is an Independent Business Owner recognized by Amway and is and will at all times, remain in good standing within Amway. LTD IBO/MEMBER represents and agrees that he/she is bound by all contractual provisions required by Amway and that he/she will abide by all such contracts during the term of this Agreement including, without limitation, the Amway/IBO Rules of Conduct, the QAS, and the Amway LTD IBO/MEMBER Registration Agreement.....15

19. Default and Termination LTD IBO/MEMBER's right to participate in LTD's BSM Compensation Plan will automatically and immediately terminate subject to the right to cure as provided for in this Section, in the event of any of the following: a) if LTD IBO/MEMBER fails to maintain the qualification required in paragraph eleven (11) of this Agreement, except as provided in Section 4 of Exhibit A attached hereto; b) if LTD IBO/MEMBER

fails to retain his/her affiliation with LTD or fails to remain a Member in good standing with LTD. Member in Good Standing means an IBO/MEMBER who has made a good-faith effort to participate in and support the LTD Business Support system. This includes subscribing to and paying for a Premium or VIP package; attending all Events of their upline LOS/LOA and/or LTD; promoting LTD Business Support Materials and system to their downline IBOs; c) if LTD IBO/MEMBER fails to retain his/her affiliation with Amway Corp. or fails to remain an LTD IBO/MEMBER in good standing with Amway; (d) if LTD IBO/MEMBER commits a material breach of any term of this Agreement and fails to cure the breach within the time specified in this Section concerning specific BSM or attendance at events; or (e) if LTD IBO/MEMBER commits any act or engages in any conduct which, in the sole determination of LTD, creates civil liability for LTD or compromises or adversely affects the reputation of LTD. If any of the above events occur, LTD shall provide written notice to the IBO/MEMBER. IBO/MEMBER will have 5 days upon receipt of notice to cure the default or breach. In the event that IBO/MEMBER does not cure the default/breach, LTD may elect to proceed with any of the following or combination of the following: a) Terminate this contract immediately; b) Suspend Compensation pursuant to this Contract; and/or c) Disqualify IBO/MEMBER as an LTD Member in good standing. In the event LTD takes any one or more of the above actions, IBO/MEMBER will not be fully reinstated until the parties execute a new, separate written contract reinstating IBO/MEMBER. If LTD, in its sole discretion, decides to not pursue any remedy above, LTD shall not be deemed to have waived the right to elect such remedy against IBO/MEMBER for a subsequent breach or against any other IBO/MEMBER. In all other respects, this Agreement will continue until either party terminates this Agreement for any reason. In order to terminate this Agreement, the terminating party must give the other party forty-five (45) days written notice. After the termination of this Agreement, LTD IBO/MEMBER may not sell or distribute LTD's BSM to any person or entity.".....10, 11, 15, 21

Agreement 20. Dispute Resolution A. As an optional first step, LTD provides a non-binding Voluntary Mediation Program (the "Program") administered in partnership with the LTD Diamond Council Management Group and Diamond Council. Participation in the Program does not toll the two-year period of limitations to demand arbitration as provided in Rule 11.5.5 of the Amway/IBO Rules of Conduct. To participate in the Program, all parties to a dispute must agree in writing and make a written request to LTD. LTD will promptly notify LTD Diamond Council Management Group of the written request to participate in the Program. LTD will then provide the requesting Members with the name of a Member of the LTD Diamond Council Management Group who is a neutral and disinterested party and is willing to act as the parties' mediator. The parties will review the recommended mediator and notify LTD whether all parties agree to the appointment of the mediator. The voluntary mediation shall proceed according to the procedure outlined in the Program documents, a copy of which is available upon request. The mediator will attempt to have closure of the dispute within 60 days. **B.** All disputes, claims, or controversies arising out of or related to this Agreement, including, but not limited to, any state or federal statutory or common law claims, or the breach, termination, enforcement, interpretation or validity thereof, or BSM including, but not limited to, any claims or disputes against LTD, an IBO/MEMBER, any purchaser of BSM, or any signatories to this Agreement, regardless if they arise before or after the termination of this Agreement, shall be resolved in accordance with the Mediation and Arbitration process set forth in Rule 11 of the Amway/IBO Rules of Conduct (a copy of which is attached hereto). Rule 11 of the Amway/IBO Rules of Conduct is incorporated herein by reference.....4, 10, 11, 15

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 1291, which grants the Court of Appeals jurisdiction over final decisions of the District Court.

Additionally, this Court has jurisdiction under 9 U.S.C. § 16(a)(1)(A) to review an appeal from an Order denying a motion to stay proceeding pending arbitration pursuant to 9 U.S.C § 3.

The review of such orders is conducted *de novo*, except for findings of fact, which are reviewed for clear error.

STATEMENT OF ISSUES

1. Contract Law vs Tortious Conduct: 4th Circuit court needs to see this was tortious conduct and intentional conduct performed by the defendants to induce harm which was not the purpose of arbitration or contract. Due to the wide gulf in bargaining position between plaintiff and defendants, along with the unfair terms of the agreement, did the arbitration agreement become unenforceable due to procedural and substantive unconscionability? Party to a contract cannot demand arbitration for independent tortious conduct with malicious intent to harm that is over and above outside the scope of the contract. A party

cannot breach a contract while wrongfully forcing termination and then compel the opposing party to still arbitrate. In addition, and after defendants breach the contract, the opposing party rescinded the contract and arbitration agreement in writing on June 21st, 2022, to which defendant still continued to defame, slander, and commit torts against Ayers. Where defendants violated and voided the agreement through breach of contract and tortious actions, did the District Court err in enforcing the Arbitration Agreement?

2. Does the existence of defamation and intentional tortious claims outside of the scope of contract appropriate a Seventh Amendment right to a jury trial?

3. The district court has jurisdiction over the intentional tort claims, which are unrelated to the contract and because plaintiff also rescinded the arbitration clause after the defendants breached the contract.

STATEMENT OF CASE

A STATEMENT OF FACTS

1. Défendants commit multiple contract violations

I Thomas J. (Jud) Ayers was an Independent Business Owner (“IBO”) along with the Defendants in Amway, a multi-level marketing company that contracts with individuals to “buy and sell its products.” Leadership Team Development, Inc. (“LTD”) is an Amway approved accredited sales organization for Amway Independent Business Owners (“IBOs”) with terms, rules and QAS (Quality Assurance Standards) it must adhere too. I had been a member of the organization from 1999-2022. By 2020, however, I began noticing various violations of Amway and LTD rules. The term IBOAI refers to Independent Business Owners Association International, Inc.® (IBOAI®), a group with elected board members to advocate for all business owners and collaborate with Amway Corp in all areas of business, such as products, compensation, rules of conduct and more.

2. Plaintiff attempts to reports violations

June 4, 2020, I send concerns to Doug Weir and Joe Markiewicz regarding compensation plan manipulation/fraud taking

place in my business organization. I discovered illegal business practices being done in my organization to qualify for Amway bonuses, LTD Events, and Amway Awards Trips. *[See Amway Rules of Conduct 4.22 IBO Plan Manipulation / Rule 9. Complying with the IBO Contract (Remedies for Breach) / Amway Rules of Conduct 4.1 Duty of Good Faith / Amway Rights and Responsibilities 9.1]*

On June 5, 2020, I called Joe Markiewicz to let him know that Amway violated Amway Rule of Conduct 4.19, commanding that individual business owners (IBOs) engage in activities outside their jurisdiction in a manner that does not comply with the Amway affiliate in that jurisdiction. Specifically, Amway had used its finances to donate to the Black Lives Matter (BLM) movement which used funds to promote social injustice within America. Defendants Markiewicz and Weir ignored my message.

Approximately a week later, on July 12, 2020, In attempt to utilize *LTD Agreement 20, Dispute Resolution B*, I spoke to Markiewicz again about Amway issues involving perceived criminal activities within the plaintiff's downline business team. Realizing that Joe Markiewicz and Doug Weir were ignoring these documented issues, I reached out to LTD's Customer Service, Andrea Young, and

Amway LGS adviser Jim Bos to report these rule violations. After confirming violation details with Ms. Young, I presented the documented evidence to defendant Doug Weir (IBOAI Chair of Legal and Ethics). Again, however, my complaints were ignored regarding reporting fraud taking place throughout the LTD organization.

Later in the month, a downline IBO informed me that defendants Joe and Doug had bypassed me when speaking with my team members in violation of the proper communication flow structure. In doing so, defendants Joe and Doug began talking poorly about plaintiff, including that I had become “negative,” violating *Amway Rules of Conduct 5.5.1, which prohibits those of abusing positional power from using such authority to silence or threaten Amway IBO's.*

Even after I submitted compensation PV Plan Manipulations—where people would over-buy bulk products and then work out deals to transfer volume and award financial compensation back to IBOs who participated—my reports were ignored. An IBOAI board member must report this fraud according to rules, both men held offices with the IBOAI. In addition, Markiewicz sent me an email asking me to settle down on these issues while telling me that I have

bad breath advising me to ignore these known issues. Joe was also aware that Doug was not complying with Verified Customer Sales (VCS) and teaching his organization to create fraudulent VCS reporting, further violating the Amway contracts.

On November 17, 2020, I sent defendant Joe Markiewicz Amway's inappropriate donation records and public social media messages regarding the funding of the BLM movement from "our work" with potential election interference. Knowing about election fraud or interference and not reporting it is called a misprision. My messages were again ignored but I have all documentation via emails and the LTD messaging app (a corporate communications platform).

The following year, more violations occurred. On July 28, 2021, team members asked me why IBO's were participating in stocks and securities trading with defendant Doug Weir (former IBOAI Head of Legal and Ethics), who was not a registered Financial Adviser with FINRA or the SEC. This violation was also in contradiction to *Amway Terms 3.2.10, prohibiting intentional or unintentional violations of laws as well as SEC regulations; Rules of Conduct 6.3, preventing IBOs from soliciting other IBOs whom he or she did not personally sponsor to solicit, to sell, offer to sell, or promote different products,*

services, business opportunities, investments, securities, or loans not provided through or by Amway or LTD. I have witnesses to testify of their personal experiences with this.

3. Defendants begin tortious conduct

Rather than discuss these violations, defendants Markiewicz and Weir continued to refer to me as a “conspiracy theorist” and “negative” to my downline and crossline IBO’s in the field. These attacks on my character and threats continued. Defendant Weir next calls me on November 17th, 2021, to try to shut me up because people at our local meeting were discussing these topics of concern. Defendant Weir informs me I am not allowed to come to Fall LTD/Amway Leadership Event if I keep asking questions about his day trading activities and fraud going on in my organization. He told me that if I did not listen to him, he would cut me out of LTD and I should mind my own business. When I told him I would take him before the IBOAI rules process to report these topics he then says on a recorded line, “DO YOU WANT TO DIE ON THIS MOUNTAIN”. Then proceeds to tell me if I do take him before IBOAI via the rules that all other IBOAI Board members will vote and all will side with him, which is abuse of positional powers. Since I was being ignored

about the violations, I realized I needed to document these interactions. At this point, I started recording calls for my protection.

On November 20, 2021, at the Weir Fall Leadership Event, defendant Doug Weir shared with multiple IBO partners that I am a “conspiracy theorist” simply because I was pointing out his Amway Rule Violations on multiple levels. He also tells my downline IBO’s leaders to stop working with me and to start working with him if they want to grow.

Again, in February 2022, I documented and reported Amway’s board members’ involvement in treasonous activities, including but not limited to election interference. I received no replies. Then again, on April 9, 2022, I sent an LTD Messaging App asking for my IBOAI representative to report this because it would harm our business efforts over time. My messages finally resulted in a conference call requested by the defendants.

4. Defendants threaten, intimidate and coerce silence

On May 9th, 2022 now threatening my wife and I, using intimidation to coerce us into silence, the following call took place which we recorded and is partly transcribed here:

THE CALL: (Markiewicz)....."Let's get started I don't want to keep this long, Kara is actually on here too Doug. Jud I want to address a turn of events or sequence of events with the crusade that I'm not comfortable with and I got Doug on here because Doug and I have been talking about this and first of all I want to remind you both of you, you're a very important part of our organization, you're accomplished IBO leaders and you have done something that the average IBO refuses to do, your commitment level is high your belief levels high. You've got a good organization, you've got good people in the downline, and Jud I told you at, when we spoke briefly at (Weir) winter conference here about a month or so ago that I am not tone deaf to a lot of the things that you're concerned about."

*.....let me finish what I gotta say the thing that bothers me most and that we are gonna shut this down tonight **OR ELSE**, now I'm gonna start taking a different stance with you Jud and that is that the messages about the Amway corporation, about the Devos and Van Andel's and most about their dealings with China...*

... but getting back to what we're gonna put a stop to and that is this passing of negative downline and crossline to the point where people

in your downline end up, now questioning whether this business is worth investing time in and that crossed the line and that will stop!

And if it doesn't stop, you two don't stop it, like agree to do it right now then seriously Doug might not feel comfortable doing it, but

I'M GONNA DO IT!

... I just cannot have that,so do you understand the importance and the gravity of what I'm saying? [See Amway Rules of Conduct 4.14].

The next two years include several similar odd calls occurred, all recorded. Conversations have now moved to open threats of stealing my business and attempts to get me to follow their conditions to remain quiet "or else". May 11th 2022, call with Joe saying: "Shut up! Shut up, shut up, or else, Jud! Hey Marybeth (his wife in the background), Jud Ayers is done! Jud, do you point blank hear me? Done!" After Joe hangs up on me, I text him back basically pleading for him not to remove me. He texts that he is removing me from LTD/Amway, with his reasoning, "you give me no choice." [See *Amway Terms 3: Your Conduct 3.1*]

5. Letter submitted to the IBOAI Chairman

June 7, 2022, I submitted a letter in person addressed to Joe Markiewicz of the IBOAI /Amway / LTD requesting a meeting to

address or fix these fraudulent activities and report them for records. This was done at the IBOAI meeting being conducted at the Amway Grand Hotel, which should have been reported to the IBOAI and Amway / LTD for all board members to see. [See *Amway Rules of Conduct 9.1*] I wore a body camera for my protection and have footage to verify how this happened. In good faith, I was trying to follow their mediation procedures and did not want to resign. According to contract procedures, I wrote this letter to serve as an official complaint to be entered into the IBOAI record. Joe confirmed receipt of the letter that evening at 5:01 PM via text, "*Our relationship is done.*"

6. Wrongfully planned termination

Defendant Joe Markiewicz then began telling members that I broke into their meeting, lying about the day's details. A few hours later, my corporate LTD messaging app became locked out, without official notice or warning. The locking of my app prevented me from communicating with my business IBO team and constitutes a breach of LTD Rules and denying my paid subscription as I had not received any formal notice. Two days later, on June 9, 2022, I received a Cease-and-Desist Order notice from LTD/Amway, defendants now

are calling my downline directly, while continuing to discredit and defame us, telling others not to speak with Kara and I while some made rumors about our marriage, reported from witnesses, available to testify.

7. Plaintiff was denied resolution

After the Cease-and-Desist Order, I consulted with LTD Diamonds Danny Snipes and Gary Newell, it was suggested that I request an LTD/Amway Board review to seek resolutions. I attempted to institute *LTD Agreement 20 Dispute and Mediation Resolution* with an LTD/Amway Board review for dispute resolution under *LTD Agreement 11.4 Non-Binding Mediation*, the request was submitted on Thursday June 16th, 2022. I received back: REVIEW DENIED on Friday June 17th, 2022. According to their rules, I followed proper procedure but was still denied for no good reason. This denial constituted an additional breach of my agreement with LTD and Amway. Markiewicz and Weir are also seated as board management with www.LTDHQ.com and did not want other LTD Diamond board members to learn about details of these documented, fraudulent activities so they forced their positional powers to break the rules. This

was a clear abuse of position power by which they forced a wrongful termination of my business hoping their threats would keep me quiet.

8. Plaintiff under duress resigns and rescinded contracts

So, under duress after attempting to follow their procedures without reciprocation and seeing no other option, I applied *Amway Rules of Conduct 3.9 IBO Contract Termination*, sending in my official LTD/Amway Resignation on June 21, 2022 to seek justice under the law.

About a month later after having rescinded my agreements, on July 29, 2022, I attended a public baseball game to see my friends and business team so I could communicate what had occurred since I was wrongfully cut off from my LTD/Amway communications. I paid for a ticket to enter the public stadium, printed on the ticket were the terms which clearly stated I was allowed to be in attendance. While in the stadium, defendant Marybeth Markiewicz forcibly grabbed my arm, dug her nails into my arm, and scolded me, saying I could not be there. Marybeth Markiewicz calls the police and they come in and ask for my identification. I showed them my ID and paid entry ticket and that I was lawfully able to be there. Despite this, defendant Marybeth Markiewicz falsely accused me of being armed with intent to harm her

husband. The police came back and claimed I was now trespassing and must leave.

After leaving and while in the parking lot, the Markiewicz Manager told them to arrest me. The police read me my rights, I asked why they were detaining me. At that moment, about ten officers jumped on me and tackled me to the ground. I was not trespassing or resisting arrest; they were just told to arrest me by Markiewicz staff, specifically Joe's business manager, Marty Waugh. The officers punched me and beat me while badly bruising my legs and knee and kicking me in the ribs, which broke a lower rib causing physical harm. I was placed into a police cruiser with handcuffs way too tight, losing feeling in my right hand. I requested them to loosen the cuffs, but they would not. I was handcuffed and arrested with no laws broken. I was then detained and held against my will and constitutional rights for the rest of the night. I was placed in a cell after being strip searched. In the end, I was given a ticket for disorderly conduct. Later noted, as evidenced by the Judge dismissing the charges, the arrest was unlawful and illegal as a citizen on the land.

9. Defamation and tortious acts continue

In the late evening, a partner came and posted bail. The next day, defendant Markiewicz sends out a message to the LTD Leadership Forum via the LTD Messaging App (corporate communication platform), potentially to about 10,000 people or more, publicly labeling me as “mentally ill,” intimating again that I was there to harm him and inferring that I am of the devil. I have a digital copy of this message sent to me by multiple downline and crossline IBO’s who directly received his message. Here is the audio transcribed:

(Markiewicz) Great day yesterday, sending this out to my leadership forum just a really special day it's great spending time with you on Wednesday night and with the husbands and wives are getting notified on this one. Now I want you to hear from me, look you know there's just some things in life that we have to address that are not fun and I'm just sending this out to the LTD Leadership Forum many of you have been I've been hit up and harassed by a guy named Jud Ayers, he's no longer an IBO, he is no longer part of LTD he has resigned both from Amway and LTD"and he has a purpose and that purpose is to harass me and to harass people in Amway, he has an agenda I'm not going to go through it unfortunately he has followed

us down to the ball game last night, he showed up in the in the stands, he had a megaphone, I am sure that he intended to disrupt, you know the games, you know at times where he could try to embarrass me and he was arrested last night and he you know made bail or maybe it was just disturbing the peace but he was trespassing, I wish it was more, he has an agenda, and he now wants to, I'm not, I'm not entirely sure the extent, but he is here to engage with every one of my downline. To talk just some crazy stuff, about Amway about the UN, about the New World Order, about Joe Markiewicz the chairman of the board, he's in on it that I am protecting the Cabal, and on and on and on. He is now made his way to the hotel and Kingston security is aware of him, Amway security is aware of him, Amway security is very concerned because as an executive, their executive flying in today, I don't know if he intends to do harm to me he's been trying to get to me and he's currently walking the beach, with a great big flag, ahh, called an Appeal to Heaven Flag, and he is not someone I want you to engage with, do not engage with him. Security is aware of it, the Sheriff is aware of it, and we have private, we will have private security here on site and I'm sorry I have to tell you this, I was hoping to, I was hoping to keep it private. I was hoping this guy would just go away, but

obviously he's not, he has an agenda, and you know he's, he's mentally ill... when he drives all the way down from Columbus OH, to South Carolina to invade my meeting, disrupt my meeting. I know this, you know some of you are, you know your blood is boiling right now, and some of you have already been contacted and confronted by this, by this guy, do not engage with him, uh I don't know what his intentions are. We're working with the Kingston security I want him out of here and but now he is on the beach, he's walking the beach right now and engaging with your downline, and you know, what's he saying, it's very against Amway, it's very against Joe Markiewicz, and he intends to either just embarrass me or to divide my organization or to even hurt me. I'm not quite sure. I do have security around me this weekend and Ah my top leaders some of them have already been involved, and informed. I'm sorry we're going to have a great Heart of a Leader, it is gonna be life changing, the Devil hates what we're doing, and we've got protection around us. Absolutely, I believe that and we're gonna kick Satan's butt, we're gonna run him out of here, and ah we're taking back ground, absolutely the Devil hates what we do, just remember that do not engage with this guy, his name is Jud Ayers, I'm including a picture from when he tried to get in on a board

meeting that I was conducting as a chairman of the IBOAI board with executives with Amway present, and he tried to get into the board offices, and tried to get into the board offices but he tried to get into the boardroom, the IBOAI room and he was stopped so this guy is very unpredictable. Alright I'm gonna send you the picture do not engage with him, that's it. Alright we'll see you tonight, my head is clear.

This is a Breach of Contract, confidentiality and Breach of *Amway Rule 11 and LTD Agreements 19 and 20*, denying rules and my right to request dispute resolution. I have witnesses willing to testify their accounts that throughout the weekend, from the Amway QAS approved/LTD stage, Joe continued his egregious behavior, repeatedly referred to me as “inmate #” to the entire LTD crowd of about 2000 IBO’s, which also violates his signed LTD Speaker Agreement.

Approximately a week later, on Monday, August 8, 2022, defendants Markiewicz and Weir called specific former team members downline, asking them to pick a side if they wanted to keep their Amway/LTD incomes and years of work. In the discussion they mention, I (Jud Ayers) have “a bullet with my name on it” and that I am a “potential mass shooter.” Other conversations were had with

witnesses who told us they were intimidated and threatened with “legal” consequences if they were to speak to us. *[See LTD Agreement 7: Rules of Conduct.]*

Saturday, August 20, 2022, I complete Myrtle Beach, SC Police FOIA to retrieve police body camera, police car, and jail footage of wrongful arrest.

Thursday, August 25, 2022 I had to travel to South Carolina to represent myself in court for the ticket of Disorderly Conduct. After evidence was presented to the Judge, my bail was refunded, charges dismissed, knowing it was an unlawful and illegal arrest; I got an apology.

10. Continued public libelous and defamatory

On Friday, October 14, 2022, Summit Conference, 115 days after I rescinded and resigned from LTD and Amway to seek legal remedy, LTD/AMWAY posted signs at every entry at their large, coliseum Summit event, **with our images** and names, stating if you see Jud Ayers or Kara Ayers, do not permit entry and report to security if seen. This was defaming libel and a threat to us and our family. *[This violates confidentiality rules as well as Amway Rules of Conduct 1.1 / 3.2.1*

11. After repeated attacks on me, after resignation, I brought this cause of action

On August 8, 2023, Thomas J. Ayers (“plaintiff”) initiated this action against the defendants, Joseph Markiewicz, Marybeth Markiewicz, and Douglas Weir, asserting claims for defamation, tortious interference with contractual relations, intentional infliction of emotional distress, abuse of process and malice prosecution, and extortion of my business. Plaintiff amended his complaint on November 7, 2023, to include defendants Leadership Team Development, Inc. (LTD) and Amway Corporation.

As expanded upon in his amended complaint, Mr. Ayers asserts that the Markiewicz and Weir engaged in a campaign of defamation regarding his mental acuity, intimidation, battery, as well as breach of fiduciary duty and interference with business interests.

In response to plaintiff’s amended pleading, approximately two months later, on January 29, 2024, the individual defendants moved to compel arbitration or dismiss the complaint for failure to state a claim. Mr. Ayers vehemently opposed these motions on February 26, 2024, and argued that the claims involved—defamation, libel, slander, threats, and personal torts—were not subject to the business arbitration agreement.

Despite plaintiff's arguments, on May 9, 2024, the District Court granted defendants' motion to compel arbitration and enforcement of the arbitration clauses in plaintiff's agreements with Amway and LTD, not defendants. The motion court's decision to compel arbitration prevents plaintiff from making the rest of his tortious claims through a public jury trial while defendants hide and cover up details in a private court.

The District Court's decision compelling arbitration is the basis for this appeal is so the Plaintiff voice can be heard in public.

SUMMARY OF ARGUMENT

The Arbitration Agreement is unenforceable. As a result, in line with 9 U.S.C. § 2, an arbitration agreement may or can be revoked on legal or equitable grounds. In this case, due to procedural and substantive unconscionability as well as the consistent breaches made by the Defendants, the Arbitration Agreement is unenforceable. The defendants' impermissible actions invalidate the arbitration agreement.

ARGUMENT**1. THE ARBITRATION AGREEMENT IS NULL AND VOID.****A. The Arbitration Agreement is Unconscionable based on the evidence above.**

It has been clearly established by the Plaintiff that the Arbitration Agreement is invalid due to consistent breaches made by the Defendants, rendering the arbitration void. Under the Federal Arbitration Act (FAA), an arbitration agreement is unenforceable “upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C § 2. These grounds include the generally applicable contract defenses “such as fraud, duress, or unconscionability.” See Doctor’s Assoc., Inc. v. Casarotto, 517 U.S. 681, 687 (1996). Further, an arbitration agreement may be invalidated through equitable principles. See Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d 302, 305 (4th Cir. 2001) (principles of equity may counsel for invalidation of an arbitration agreement if the grounds for revocation relate specifically to the arbitration clause.); Mitchell v. HCL Am., Inc., 190 F. Supp. 3d 477, 487 (E.D.N.C. 2016) (noting a court inquiry is not confined to defects in contract formation, but also

includes “such grounds as exist at law or in equity for the revocation of any contract.)

The Arbitration Agreement is both procedurally and substantially unconscionable, or at the very least, on equitable grounds, unenforceable. Unconscionability is a narrow doctrine invalidating an agreement whereby the inequality “shocks the conscience.” L & E Corp. v. Days Inns of Am., Inc., 992 F.2d 55, 59 (4th Cir. 1993).

In inquiring into unconscionability requires that a court first address “whether a contract was ‘tainted by an absence of meaningful choice.’” Carlson v. Gen. Motors Corp., 883 F.2d 287, 295 (4th Cir. 1989). Specifically, the factors in determining “unconscionability” are various and include “the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties’ bargaining power; the parties’ relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.” Kaplan v. RCA Corp., 783 F.2d 463, 467 (4th Cir 1986).

The authorities cited provide clear guidance on how courts of competent jurisdiction should handle an arbitration clause in an

agreement. See Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2006) (“When faced with a motion to compel arbitration, the court analyzes only two ‘gateway matter[s].’”). First, the court must determine whether “a valid agreement to arbitrate exists between the parties.” Hooters of Am., Inc. v. Phillips, 173 F.3d 933, 938 (4th Cir. 1999). Second, when the court concludes that there is such an agreement, the court asks whether “the specific dispute falls within the substantive scope of that agreement.” Id. Here, the trial court, however, failed to consider these essential requirements and the arguments revealing the inequity faced by plaintiff.

B. Defendants breach of contract required the motion court to rule before arbitration.

The arbitration agreement between the parties had been fundamentally and materially breached through the wrongful termination and defamatory actions made by the Defendants. See Hooters of Am., Inc., 173 F.3d at 941 (noting the material breach of a duty warranting rescission is an issue of substantive arbitrability and thus is reviewable before arbitration).

Here, the Defendants failed to follow their stated rules and procedures, which resulted in the illegal and unfair termination of the Plaintiff's

business while extorting his business intentionally. Indeed, under Federal law, a material breach of contract by one party may relieve the other party from its obligations under the contract. See Design and Prod., Inc. v. Am. Exhibitions, Inc., 820 F. Supp. 2d 727, 738 (E.D. Va. 2011) (“Once a party to a contract materially breaches the contract, the other party is relieved of all continuing obligations under the contract, and the first breaching party may not sue to enforce subsequent breaches by the other party.”).

It is also important to note that the defendants breached the terms set in the agreement by defaming the plaintiff before and after the contract termination. The plaintiff consistently upheld his contractual obligations, while the opposing parties blatantly broke their contracts deliberately sought to silence his First Amendment rights, specifically through its defamatory conduct.

The Defendant caused more harm by exploiting every means to slander the Plaintiff through corporate communications, including labeling him as dangerous, “mentally ill”, while advising people to report him to the police or security if seen. These actions were designed to hide the Defendants’ own misconduct and further harmed the plaintiff’s reputation. See generally Gertz v. Robert Welch, Inc.,

418 U.S. 323, 323 (1974) (“[T]here is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in ‘uninhibited, robust, and wide-open’ debate on public issues.”). This ongoing defamation and threats constitute additional breaches and tortious conduct that render the arbitration agreement void. The Defendants tried every possible means to intimidate the plaintiff and tarnish the goodwill of his business, thereby breaching the terms set out in the agreement signed by both parties.

Further, the defendants had breached their fiduciary duty by engaging in conduct which is in direct conflict with the interest of the Plaintiff. Plaintiff asserts that the Defendant owed a fiduciary duty to Plaintiff. Plaintiff maintains that "Defendants breached their fiduciary duty by their acts of fraud, misappropriation, and conversion," that "[t]he breach of fiduciary duty was done maliciously, intentionally, and wantonly, and amounts to willful misconduct," and that, "[a]s a direct and proximate result of defendants' breach of fiduciary duty, which both Markiewicz and Weir took an IBOAI Oath of Office with Amway are LTD board members and responsible to uphold the rules for the field. The plaintiff has suffered damages, including the loss of

substantial sums of money and social reputations damages. Therefore, the Defendants fraudulent actions clearly invalidate the Arbitration Agreement. See generally MCI Constructors, LLC v. City Of Greensboro, 610 F.3d 849, 858 (4th Cir. 2010) (finding that fraud will invalidate an arbitration award).

The plaintiff has continued to allege that the defendants has collectively shown acts such as defamation, tortious interference with contractual relations and prospective economic advantage, civil conspiracy to export and remove Ayers from the business, lied, abuse of process, malicious prosecution, civil conspiracy, and battery. This is proven in a recording stated earlier in the brief.

Where Markiewicz states, “we are gonna shut this down tonight OR ELSE.

...And if it doesn't stop, you two don't stop it, like agree to do it right now then seriously Doug might not feel comfortable doing it, but I'M GONNA DO IT!”, As the Amway IBOAI Chairman, Joe Markiewicz would know it does not look good when he deliberately ignores and breaks rules violations.

C. My right to a Jury Trial has been violated.

Finally, the public interest and plaintiff's right to a jury trial as provided under the Seventh Amendment necessitate a public trial rather than private arbitration. See Sedghi v PatchLink Corp., 823 F. Supp 2d 298, 307 (D. Md 2011) ("I conclude that plaintiff is entitled to a jury trial with respect to his promissory estoppel claim.").

In AT & T Mobility LLC v. Concepcion, 563 U.S. 333, 333 (2011), the Supreme Court held and recognized that an arbitration agreement cannot override substantive rights as protected by federal law. Given the public interest in exposing fraudulent activities and the significant constitutional implications, it is important for this case to be held in court. The fundamental right to a jury trial is not just a procedural formality but a matter of substantive protection against arbitrary and unfair decisions. See Simler v. Conner, 372 U.S. 221, 222 (1963) ("The federal policy favoring jury trials is of historic and continuing strength.").

Also, arbitrary enforcement of arbitration clauses can underrate this protection, especially when such clauses are imposed in an adhesion contract without unfair bargaining power. See Local 783, Allied Indus. Workers of Am., AFL-CIO v. Gen. Elec. Co., 471 F.2d

751, 756 (6th Cir 1973) (“[I]t is our opinion that the circumstances must indeed be exceptional before a party is required to forego his constitutional right to a trial by jury”).

CONCLUSION

From the foregoing, the plaintiff respectfully requests that this court reverse the district court’s decision enforcing the arbitration agreement. The agreement is invalid due to procedural and substantive unconscionability, breaches of fiduciary duty and ongoing defamatory actions by the defendants to hide spoliations of evidence. Also, the enforcement of the arbitration agreement violates the plaintiff’s constitutional right to a jury trial based on tortious conduct and under the Seventh Amendment. Provided the significant public interest and constitutional implication, this case deserves a public trial.

STATEMENT IN SUPPORT OF ORAL ARGUMENT

I respectfully request oral argument to provide a more comprehensive and nuanced presentation of the issues at hand and to address the substantial legal and factual matters involved in this appeal. The case presents critical questions regarding the

enforceability of an arbitration agreement that the plaintiff argues is invalid due to procedural and substantive unconscionability, breaches of fiduciary duty, and ongoing defamatory actions by the appellees. Additionally, the enforcement of the arbitration agreement is asserted to violate the plaintiff's constitutional right to a jury trial under the Seventh Amendment.

On August 8, 2023, the plaintiff, Thomas J. Ayers, filed a lawsuit against the appellees, including individual defendants Joseph Markiewicz, Marybeth Markiewicz, and Douglas Weir, as well as additional defendants Leadership Team Development, Inc. (LTD) and Amway Corporation. The claims involve serious allegations of defamation, tortious interference, and intentional infliction of emotional, physical, and financial distress. The trial court's decision to compel arbitration and enforce the arbitration clauses, despite the plaintiff's opposition and assertions of invalidity, has prevented a public adjudication of these claims.

I believe that oral argument is essential to fully address the complex interplay of legal and factual issues, including the procedural and substantive unconscionability of the arbitration agreement, breaches of fiduciary duty, and the denial of the right to a jury trial.

This will also ensure that the court has a complete understanding of the implications of its decision and the potential impact on public interest and constitutional rights.

Oral argument will facilitate a thorough examination of the plaintiff's claims and the trial court's decisions, providing clarity on the enforceability of the arbitration agreement and the broader implications for the plaintiff's legal rights. The plaintiff has witnesses for each claim he is stating who are willing to testify. The plaintiff also has documentation and recorded calls backing up his claims and respectfully urges the court to grant oral argument to address these critical issues effectively in a public court.

STATEMENT OF COMPLIANCE

I certify that this brief complies with the Federal Rules of Appellate Procedure and the Local Rules of the United States Court of Appeals for the Fourth Circuit. The brief has been prepared using a 14-point, proportionally spaced font, and is double-spaced. It adheres to the page limit requirements. A copy of this brief has been served on all parties as required.

APPENDIX B

CIV NO. 5:23-CV-442-D

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS J. AYERS
Plaintiff-Appellant

vs

JOSEPH MARKIEWICZ, MARYBETH
MARKIEWICZ, DOUGLAS WEIR,
LEADERSHIP TEAM DEVELOPMENT,
INC., and AMWAY CORPORATION,
Defendants-Respondents

ON APPEAL FROM
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
REPLY BRIEF OF PLAINTIFF

SUBMITTED BY:

s/____ Thomas J. Ayers____
Thomas J. Ayers
Plaintiff, pro se -Appellant
7447 Marrissey Loop Galena, OH 43021
614-940-2074,
judayers@protonmail.com

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ARGUMENT

I. RESPONDENTS' BRIEFS FAIL TO ADDRESS THE POINT IN APPELLANT'S OPENING BRIEF

Respondents hide behind the arbitration agreement, hoping to avoid the underlying nature of appellant's claims. We are a husband and wife with 22 years of partnership with the named Defendants. We are one Plaintiff-Appellant going against five defendants represented by approximately 11 attorneys. We read all their response briefs, and none addressed the actions and experiences we detailed in our appeal.

One specific instance of this failure is when respondents argue that appellant is "contractually promised to comply with the LTD/Amway Rules of Conduct." That would mean Joseph Markiewicz, Marybeth Markiewicz, and Douglas Weir also "contractually promised to comply with the Amway Rules of Conduct." In addition, all three defendants took an Amway IBOAI Oath of Office to uphold the rules as leaders within Amway/LTD. Our appeal is to show the ways that those listed above were out of compliance by ignoring the rules and breaking the rules of both Amway and LTD, respectively. Each of our attempts to report and resolve these incidents was ignored or denied by all parties in every report, complaint or filing.

Respondents also assert that appellant is "presenting new arguments" in appellant's appeal, but this position ignores the original documents that began this action. Our original documents state:

“defamation,” “tort,” “slander,” “corruption which is considered fraud,” “business-related concerns” with rule violations, and how Defendants were out of compliance (D.E. 1, ¶9-10). We did not present new arguments but listed more details that support our claims. When respondents moved to dismiss appellant’s complaint, we opposed it with explicit claims involving contract and rule violations, fraud, tortious acts, threats, intimidation, coercion, removing our second amendment rights, invoking duress, defamation, libel, slander, and malice, with wrongfully planned termination, which is not subject to the arbitration agreement and needed further detailed explanation for the court as raised documented concerns. Furthermore, our appeal brief expounded upon the claims in the complaint with further documentation and detail specific to explaining the clearly documented claims.

Respondent Amway and LTD representatives mentioned in their responses that Joseph, Marybeth, and Doug “contractually promised to comply with the Amway Rules of Conduct.” The information we have presented illustrates the lack of good faith and fair dealings that prevents the contract from being enforced. See Nw., Inc. v. Ginsberg, 572 U.S. 273, 285 (2014) (explaining that most States recognize some form of the good faith and fair dealing doctrine when dealing with contracts).

Additionally, respondents Joseph, Marybeth, and Doug are not in “good standing,” per their Amway/LTD Rules and Contracts, and should be held accountable not through arbitration but through the

legal process. How can they still conduct business or receive payment with these documented actions? What is the Process and Procedure for Amway/LTD for filing and reporting complaints? Were the Defendants negligent in their reporting responsibilities when these incidents were reported? There is clear unconscionability. Will they be held accountable for their contracts, obligations, and failures?

The fact that we have presented these claims and the Defendants are still in business with no consequences illustrates why their arbitration process is not a solution for equal justice under the law.

Respondents also failed to address that the appellant attempted to follow through the mandated dispute process, including the informal and formal procedures, but it was unavailing. As stated in their Response Briefs, there are three phases to the dispute process, including both informal and formal methods. You will see through our Appeal the dates and details of the attempts we made in writing and other forms all documented by date, time and transgression. Informal attempts were documented in our Appeal by including emails, texts, and transcribed and recorded phone calls with Defendants, which we mentioned in earlier case filings (D.E. 1, ¶11-13). We also had emails and phone calls to Amway and LTD (our Appeal and earlier filings list employees we spoke with). Our formal attempt was a typed letter addressed to the IBOAI Board, **hand delivered by the Plaintiff** at (Amway) headquarters, and handed to the Chairman of the Amway IBOAI Board. For the Defendants to say these attempts were not made is meritless and disingenuous with the

text message reply at 5:01 PM from Markiewicz stating our relationship is done. Was this letter entered or reported to IBOAI records?

Noticeably, appellants made every attempt in our power to dispute and seek resolution as stated in their agreements, including following Rule # 20 for dispute resolution, requesting a review in writing, only to have our review denied. Denying our requests is a breach of contract and voids arbitration. Due to their abuse of positional powers, we are asking the courts to hear us and address our unresolved and effectively stated grievances through our Appeal and Constitutional Rights. Appellant does not feel arbitration will allow justice to be served, and the grievances alleged are outside of arbitration and inside of this court's jurisdiction.

Appellant's original brief provided detailed documentation (phone calls transcribed, texts and emails verbatim, eyewitness accounts from witnesses willing to testify) of the underlying events. Out of respect for this Court, we narrowed down 22 years of experience to the most effective details supporting our claims while simultaneously explaining why this case is worthy of this Court's review. Appellant's evidence reveals that appellant attempted every avenue of dispute resolution in compliance with respondent's rules. Yet, respondents have used those same rules to hide their tortious actions and breaches of contract.

Conversely, respondents consistently violated the rules even after our partnership and contracts ended. Respondents continually

threatened, defamed the appellant, and breached the rules mandating dispute resolution. These instances include calling me a “mass shooter.” Respondent Markiewicz took it upon himself to force the rules breaks, which created duress because he acted as the sole decision maker as the Amway IBOAI chairman and leader of the LTD Leadership Management Group, trying to block the knowledge and truth of what was happening—a clear abuse of positional power. These continuous acts had nothing to do with respondents’ business and cannot be governed by an employment contract that had no effect after we resigned. Thus, these reasons explain the need for a jury trial as the greater good would be served by the public understanding what occurred.

We are here today because our informal and formal efforts were not received, reported, or acknowledged, violating the agreements and rules of the contracts. Respondents flaunted the rules, selectively enforcing appellant’s strict compliance while allowing respondents Joseph, Marybeth, and Doug to continue their misconducts. These issues cannot allow the contract to stand. See generally MCI Constructors, Inc. v. Greensboro, City of, 125 F. App’x 471, 476–77 (4th Cir. 2005) (“When one party to a contract is designated in the contract to decide finally the issues about whether the contract was breached, the contract, without more, becomes illusory, because the performance of the contract is determined by the party alleging that the contract was breached”).

In good faith, we ask for your assistance in seeking justice and remedy in which this court has jurisdiction.

II. HEARING THIS APPEAL WOULD SERVE THE GOAL OF SEEKING JUSTICE.

Considering the purpose of an appeal and seeking justice, we do not feel we will receive proper or enforceable justice through their arbitration court process, and we feel the basis of our case is outside of arbitration jurisdiction. Indeed, the purpose of an appeal is to ensure that justice is served by correcting errors of law and fact, ensuring consistency with established precedents, and upholding the principles of being fair with the right to due process. See *Cobra Nat. Res., LLC v. Fed. Mine Safety & Health Rev. Comm'n*, 742 F.3d 82, 88 n.11 (4th Cir. 2014) (“At the end of the day, justice is served by reaching the correct result.”).

We understand this was the personal actions of Markiewicz and Weir that brought us here, and these tortious acts and breaches of contract are in the jurisdiction of this court since they should not try to hide behind the corporate arbitration. After investigating their arbitration agreement, appellant has realized there is no determined solution for our situation. Proof of this is in the knowledge of everything that has gone on and how the Defendants broke their contractual agreements yet still have their positions and pay. This is another reason we are appealing to the courts, as there would be no resolution through their arbitration process. Furthermore, if appellant or someone else without their position or power were to take these

same actions, would that person be able to continue without repercussions?

We would add that Markiewicz, LTD, and Amway are under investigation by the Federal Trade Commission for many topics for which Markiewicz has given sworn statements. This case affects more than just the Plaintiff; this case affects many others. Their desire to arbitrate is an attempt to hide and continue the egregious behaviors and actions that we detailed. As "leaders" in Amway and LTD, no one holds them accountable for their actions as if they are above the laws or rules that are clearly stated. We are standing up, not just for our experiences but for all those silenced by fear and intimidation and slandered in the same ways to tarnish their credibility. We stand for those with similar experiences who are unable and unwilling to stand up to these abuses of positional power.

CONCLUSION

We respectfully request that this Court reverse the decision of the motion court and grant us the rights afforded to us by the Constitution. As the Plaintiff, we are filing Claim against Defendants Markiewicz and Weir for their breach of contract and tortious conduct. Specifically, their defamatory and harmful actions and omissions which have caused significant damages to my business, family, and personal life. Due to Defendants' wrongful malice actions, we have suffered; Loss of profits \$50,000 per year, expected course of Plaintiffs business about 30 years, totaling \$1,500,000. Reputational

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and emotional anguish of \$2,000,000, Exemplary/punitive damages \$2,000,000. As a direct result of Defendants' intentional harm, we are seeking Remedy of \$5.5 million in damages to compensate for the irreparable damage caused to our 22 years of life's energy work in business.

SUBMITTED BY:

s/____Thomas J. Ayers____

Thomas J. Ayers
Plaintiff, pro se -Appellant

7447

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APPENDIX C

FILED: October 15, 2024

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-1541
(5:23-cv-00442-D-BM)

THOMAS J. AYERS
Plaintiff - Appellant

v.

**JOSEPH MARKIEWICZ; MARY BETH MARKIEWICZ;
DOUGLAS WEIR; LEADERSHIP TEAM
DEVELOPMENT, INC.; AMWAY CORPORATION**
Defendants – Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

APPENDIX C

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 24-1541**

THOMAS J. AYERS,
Plaintiff - Appellant,

v.

JOSEPH MARKIEWICZ; MARY BETH MARKIEWICZ;
DOUGLAS WEIR; LEADERSHIP TEAM
DEVELOPMENT, INC.; AMWAY CORPORATION,
Defendants - Appellees.

Appeal from the United States District Court for the
Eastern District of North Carolina, at Raleigh. James C.
Dever III, District Judge. (5:23-cv-00442-D-BM)

Submitted: October 10, 2024 Decided: October 15, 2024
Before WILKINSON and AGEE, Circuit Judges, and
FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Thomas J. Ayers, Appellant Pro Se. Joseph Walker Fulton,
Geoffrey Alexander Marcus, Elizabeth A. Martineau,
MARTINEAU KING PLLC, Charlotte, North Carolina;
Luke Andrew Dalton, MCANGUS GOUDELOCK &
COURIE, PLLC, Raleigh, North Carolina; Steven Andrew
Bader, Raleigh, North Carolina, Patrick Houghton
Flanagan, Ariella Zulman Walsh, CRANFILL SUMNER,
LLP, Charlotte, North Carolina; Edward Joseph Bardelli,
Daniel Stephen Brookins, WARNER, NORCROSS & JUDD,
LLP, Grand Rapids, Michigan, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas J. Ayers appeals the district court's order granting Defendants' motions to compel arbitration, dismissing his civil action, and ordering that he arbitrate his claims. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Ayers v. Markiewicz*, No. 5:23-cv-00442-D-BM (E.D.N.C. May 9, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED