

No. _____

IN THE
Supreme Court of the United States

THOMAS J. AYERS
Appellant - Petitioner

vs

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

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On June 16, 2022, Petitioner requested dispute resolution under LTD / Amway Agreement Sections 20 and 11.4, seeking mediation to address ongoing fraudulent activities, retaliatory conduct, and violations of the Amway Rules of Conduct by Defendants which includes the importance of National Security issues involving multiple types of election interference and business breaches in the rules of conduct. Despite following proper procedures, the request was summarily denied without explanation. Subsequent events escalated to wrongful termination, while defamation, threats, and physical harm, culminating in a public arrest under false pretenses, later dismissed as unlawful. Additionally, the enforcement of arbitration agreements, alleged breaches of fiduciary duty, and procedural unfairness raise constitutional concerns about due process and the right to a public trial regarding the issues raised.

With the material facts documented and supported by evidence, Petitioner presents these issues for review:

- I. Did the Defendants' denial of Petitioner's request for dispute resolution and mediation, contrary to contractual provisions, constitute a breach of contract and procedural fairness under LTD and Amway rules?**
- II. Did Defendants abuse their positional authority to suppress National Security complaints, while concealing fraudulent activities, and engage in retaliatory conduct, violating principles of good faith and fair dealing inherent in contractual relationships?**
- III. Was Petitioner's resignation under duress, caused by the Defendants' retaliatory actions and refusal to follow procedural rules, invalid, and does it warrant judicial review of the wrongful termination?**

IV. Did Defendants' actions, including defamation, public accusations, and interference with Petitioner's business, constitute tortious interference and reputational harm under applicable state and federal laws?

V. Did the unlawful use of law enforcement by Defendants, resulting in excessive force, wrongful arrest, and detention, violate Petitioner's constitutional rights under the First, Fourth and Fourteenth Amendments?

VI. Did the lower courts err in failing to address systemic patterns of abuse, procedural misconduct, and constitutional violations, thereby undermining the enforcement of contractual rights and due process protections?

VII. Does the enforcement of an arbitration agreement, allegedly procured and executed under circumstances involving breaches of fiduciary duty, defamation, and duress, violate principles of procedural and substantive unconscionability as recognized in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421 (2017)?

VIII. Does compelling arbitration of claims arising from independent tortious conduct, outside the scope of the arbitration agreement, infringe on the Seventh Amendment right to a jury trial, as outlined in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989)?

A. Is the arbitration agreement unenforceable due to procedural and substantive unconscionability, given the Defendants' multiple breaches of contract and tortious actions?

B. Did the District Court err in enforcing the arbitration agreement despite the existence of defamation and intentional tortious claims that fall outside the scope of the contract?

C. Does the enforcement of the arbitration agreement violate Petitioner's constitutional right to a jury trial under the Seventh Amendment?

D. Are Defendants' actions, which include defamation and coercion, sufficient to necessitate a public trial to protect Petitioner's constitutional rights and the public interest?

E. Under the federal misprision of felony statute, 18 U.S.C. § 4, can an individual or business board who has knowledge of the commission of a felony and conceals it without reporting it to the authorities be charged with misprision of felony?

STATEMENT OF THE CASE

The Petitioner, **Thomas J. Ayers**, formerly an Independent Business Owner (IBO) affiliated with **Amway** and a participant in **Leadership Team Development, Inc. (LTD)**, initiated this action after reporting major systemic misconduct by the Respondents, including illegal business practices and manipulation of compensation structures in violation of Amway's and LTD's internal policies also reported to the FTC. Amway has been implicated in donation records linked to the Black Lives Matter movement, which was associated with unrest in and destruction to various U.S towns Nationwide. Additionally, Amway board members have reportedly made significant donations into 17 officials or more involved in the impeachment of former President Donald Trump, raising questions about political motivations against our country along with perceived (RICO) racketeering coordination's. Following the January 6th, 2021, events at the capital, DeVos's resignation drew National attention, while soon after the Amway board allegedly engaged in campaign finance violations by using company funds from the U.S. and

China business to fund former VP Pence's Presidential campaign against President Donald J. Trump, while LTD and the IBOAI had full knowledge thereof.

This sequence of events raised business, National Security and election integrity concerns, suggesting undue influence in political processes. In response to, Amway IBOAI board, along with LTD LOA, implemented a policy prohibiting Amway Independent Business Owners (IBOs) from engaging in political discussions at events and throughout social media while concealing and hiding these details like this from the sales field. This policy barred IBOs from mentioning the Trump campaign or other political topics on business stages, raising concerns about First Amendment right violations, accompanied with threats of compensation backlash.

Ayers asserts that after he reported documented information to his upline at the IBOAI and with his Amway Corp contacts, he was then subjected to retaliation and a series of actions, scolded meetings, including coercive pressure to be silent on issues or else, intimidation and threats used, defamatory statements and ultimately a wrongful termination from his 22 years of business for his reporting misconduct and then taking a whistleblower stance. These retaliatory measures were allegedly designed to silence and discredit Ayers and protect the Respondents from scrutiny regarding their business practices that produce income.

In response to these retaliatory actions, Ayers filed a lawsuit against the individual Respondents, including **Joseph Markiewicz**, **Marybeth Markiewicz**, and **Douglas Weir**, as well as corporate Respondents **Leadership Team Development, Inc. (LTD)** and **Amway Corporation**, asserting claims for:

1. **Defamation**,

2. **Tortious interference with contractual relations, and**
3. **Intentional infliction of emotional, physical, and financial distress.**
4. **Misprision, ignoring knowledge of the commission of a felony and concealing them without reporting them to the authorities while serving on boards that have fiduciary duties.**

The Petitioner contends that the Respondents' conduct caused significant reputational harm and financial loss, as well as personal hardship, warranting adjudication in a public forum to ensure accountability and justice.

Despite Ayers' well-founded documented objections, the District Court granted the Respondents' motion to compel arbitration pursuant to an arbitration clause embedded in Ayers' agreements with Amway and LTD. Ayers contends that the arbitration agreement is unenforceable on several grounds, including **procedural unconscionability**, **substantive unconscionability**, and **lack of mutual assent**, as it was imposed through coercion and without any opportunity for meaningful negotiation. Specifically, Ayers argues that the arbitration clause was part of an adhesion contract, presented on a take-it-or-leave-it basis by parties wielding vastly superior bargaining power over one's income.

Ayers' position is that the arbitration clause was not entered into freely or fairly, thereby rendering it invalid under established legal doctrines. See **AT&T Mobility LLC v. Concepcion**, 563 U.S. 333, 339 (2011) (noting that arbitration agreements must not be enforced in a manner that deprives parties of their substantive rights). Moreover, Ayers emphasizes that enforcing the arbitration clause deprives him of his **Seventh Amendment right to a jury trial**, a constitutional safeguard that protects litigants from

arbitrary adjudication of disputes and promotes public confidence in the judicial process. See **Simler v. Conner**, 372 U.S. 221, 222 (1963) (“The federal policy favoring jury trials is of historic and continuing strength.”).

During the proceedings below, Ayers presented evidence and legal arguments to support his position that the arbitration agreement was procured under circumstances involving undue influence, coercion, and bad faith. He also demonstrated that compelling arbitration in this context undermines public policy by allowing the Respondents to evade accountability for their alleged fraudulent business practices. Nevertheless, the District Court compelled arbitration, citing the strong federal policy favoring arbitration under the **Federal Arbitration Act (FAA)**, 9 U.S.C. § 1 *et seq.*, and reasoning that Ayers failed to demonstrate sufficient grounds for invalidating the agreement. Additionally, Amway & LTD did not hold Defendants accountable to their signed agreements.

Ayers respectfully contends that the lower court erred in its application of the FAA by disregarding critical contract law principles that render unenforceable any agreement that is the product of coercion, fraud, or unconscionability. He argues that the court’s failure to properly scrutinize the procedural and substantive fairness of the arbitration agreement, as required by **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.**, 559 U.S. 662 (2010), constitutes reversible error. Furthermore, Ayers maintains that the enforcement of the arbitration clause in this case sets a dangerous precedent by effectively insulating powerful corporate actors from public accountability and judicial oversight, contrary to public interest.

The Petitioner emphasizes that the issues presented in this case are of exceptional National importance, as they

implicate fundamental constitutional rights, including the right to a jury trial, and raise serious concerns about the fairness of arbitration agreements imposed in adhesion contracts. 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.”).

Under 18 U.S.C., involves the concealment of knowledge regarding treasonous activities without reporting them to the appropriate authorities. This statute is crucial for ensuring that individuals do not remain silent about acts that could threaten national security. The legal framework for treason is defined in Article III, Section 3 of the U.S. Constitution, which describes treason as levying war against the United States or aiding its enemies. Relevant case law, such as *United States v. Rahman*, 189 F.3d 88 (2d Cir. 1999), is a case where national security is at stake and highlights the importance of reporting treasonous activities to prevent harm to the nation. The statute serves as a deterrent against the concealment of treason and reinforces the duty of citizens or business associates to report in good faith any knowledge of such acts, thereby upholding the rule of law and maintaining National Security. Many of these topics are

Given the substantial public interest in exposing fraudulent business practices and ensuring that litigants are afforded their constitutional right to a jury trial, Ayers seeks review of the District Court’s decision by this Court. He respectfully urges this Court to grant a **writ of certiorari**, reverse the order compelling arbitration, and allow his claims to proceed in a public trial where his legal and constitutional rights can be fully vindicated, as well as protecting others nationally.

PARTIES TO THE PROCEEDING BELOW

The following individuals and entities were parties to the appeal in the United States Court of Appeals for the Fourth Circuit and are now respondents in this petition for a writ of certiorari before the Supreme Court of the United States:

1. **Thomas J. Ayers** – *Petitioner and Petitioner below.*

Ayers is a former Independent Business Owner (IBO) affiliated with both Amway and Leadership Team Development, Inc. (LTD). He initiated legal proceedings against the Respondents after reporting what he contends were fraudulent and illegal business practices involving manipulation of compensation structures and coercive tactics to silence him. Ayers alleges that after reporting these violations, he became the target of threats, defamation, and wrongful termination orchestrated by the Respondents who both were IBOAI members with LTD with Amway. In the lower courts, Ayers argued that enforcement of the arbitration agreement was unjust and unconstitutional, as it was both procedurally and substantively unconscionable because of breaches of contract. Furthermore, Ayers contended that enforcement violated his Seventh Amendment right to a jury trial in a public forum, given the serious nature of his claims and the significant public interest involved.

2. **Joseph Markiewicz** – *Respondent and Defendant below.*

Markiewicz, a senior figure within Amway & LTD and the IBOAI as Chairman, is alleged to have played a leading role in defaming and retaliating against Ayers in response to his whistleblowing activities. Petitioner

asserts that Markiewicz engaged in coercive conduct designed to silence him and prevent exposure of the alleged fraudulent business practices which Markiewicz also gave sworn testimony appearing before the FTC. Markiewicz joined in the motion to compel arbitration, relying on the arbitration clauses in Ayers' agreements to hide wrong doings to aid Amway.

3. **Marybeth Markiewicz** – *Respondent and Defendant below.*

Marybeth Markiewicz, also a senior figure within Amway & LTD, is accused of participating in the retaliatory and defamatory actions aimed at Ayers. The Petitioner alleges that she was actively involved in the ongoing scheme to discredit and intimidate him. She joined the other Respondents in the motion to compel arbitration.

4. **Douglas Weir** – *Respondent and Defendant below.*

Weir (former IBOAI Head of Legal and Ethics), another senior leader within LTD, is implicated in the fraudulent business practices and retaliatory conduct alleged by Ayers. The Petitioner contends that Weir directly contributed to the manipulation of compensation plans and the retaliatory campaign to silence Ayers. Weir also did not he did not want people to know he was participating in stocks and securities trading with insider information with his downlines money while he was not a registered Financial Adviser with FINRA or the SEC, further violating Amway & LTD rules. Weir also joined in the motion to compel arbitration while clearly promoting to all business parties that Ayers was a Conspiracy Theorist and threatened others with legal consequences if the

engage with Ayers. Weir also is arguing that Ayers was bound by the arbitration agreement under the Federal Arbitration Act (FAA).

5. Leadership Team Development, Inc. (LTD) – Respondent and Defendant below.

LTD, a key entity in the Amway business model, provides training, mentorship, and support for IBOs while operating an illegal deceptive tools practice/business that had no income disclosure for new Amway IBO's. Ayers asserts that LTD engaged in systematic fraud by misrepresenting business opportunities and compensation structures while retaliating against those who exposed wrongdoing. LTD (Larry Winters and John Dumproff) , alongside the individual Respondents, sought to enforce the arbitration agreement, arguing that Ayers was required to resolve his claims through private arbitration as stipulated in the governing agreements even though they breach the contract and DENIED the LTD rule of a written request board review, designed to be a kangaroo court terminations to again hide details from other IBO's and on looking citizens.

6. Amway Corporation – Respondent and Defendant below.

Amway, a global direct-selling company, partnered with LTD in operating its IBO network. Ayers alleges that Amway played a central role in facilitating the fraudulent business practices and retaliatory actions against him while participating in activities of multiple types of Election Interference which is a National Security matter. Amway, like LTD, moved to compel arbitration pursuant to the FAA, contending that the arbitration clauses governing Ayers'

participation as an IBO were binding and enforceable. While they never responded to any of my rule violations with their own policies and not reprimanding the respondents for their breach of Amway or LTD rules.

In the District Court, the Respondents successfully moved to compel arbitration, citing the arbitration clauses in Ayers' agreements and relying on the strong federal policy favoring arbitration under the FAA. Ayers opposed this motion, arguing that the arbitration agreement was both procedurally and substantively unconscionable under applicable contract law because of multiple breaches documented. He further argued that compelling arbitration would deprive him of his constitutional right to a jury trial under the Seventh Amendment, given the serious nature of his claims, including defamation, tortious interference, and intentional infliction of emotional and financial distress.

Despite Ayers' contentions, the District Court granted the Respondents' motion, enforcing the arbitration agreement and dismissing the case from judicial review thus hiding National issues from the public. Ayers appealed to the Fourth Circuit, reiterating his arguments regarding the unconscionability of the arbitration agreement and the constitutional implications of its enforcement. The Fourth Circuit affirmed the District Court's decision, holding that the arbitration agreement was enforceable under the FAA, and finding that Ayers had not presented sufficient evidence to overcome the presumption in favor of arbitration. While the court UNPUBLISHED the decision and did not write an opinion while the 3 Justices did not review or vote on the details of the case or the breaches of the arbitration contract.

This petition for a writ of certiorari seeks review of the Fourth Circuit's decision, raising significant questions

regarding the enforceability of arbitration agreements procured under unconscionable circumstances, the interplay between the FAA and state contract law, and the constitutional right to a jury trial in civil cases under the Seventh Amendment. The Petitioner respectfully urges the Supreme Court to grant certiorari, given the National importance of this public interest in ensuring that arbitration agreements are not used as a shield for fraudulent conduct and to safeguard the constitutional right to a public trial in cases involving significant allegations of wrongdoing, and to protect individual from corporate overlordship and injustices.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....	i
STATEMENT OF THE CASE.....	iii
PARTIES TO THE PROCEEDING BELOW.....	viii
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
1. 1. U.S. Constitution, Amendment VII.....	3
2. 2. Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16	4
3. 3. 28 U.S.C. § 1254(1).....	5
4. 4. 28 U.S.C. § 1257.....	3, 5
5. 5. U.S. Constitution, Article III, Section 3.....	5
6. Citations to Relevant Precedents.....	6
1. Kindred Nursing Centers Ltd. P’ship v. Clark, 137 S. Ct. 1421 (2017).....	6
2. Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989).....	6
3. AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).....	7
4. Am. Express Co. v. Italian Colors Rest., 570 U.S. 228 (2013).....	7
5. Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp., 559 U.S. 662 (2010)	7

6. United States v. Rahman, 189 F.3d 88 (2d Cir. 1999),.....16

REASONS FOR GRANTING THE PETITION.....18

1. The Petition Involves a Vital Constitutional Question Regarding the Right to a Jury Trial.....9
2. Clarification of the Legal Standards for Unconscionability and Breach of Fiduciary Duty in the Enforcement of Arbitration Agreements.....10
3. Conflict with Established Precedent on Judicial Review of Arbitration Agreements.....11
4. The Need for Clarity on the Intersection of Federal Arbitration Policy and Constitutional Rights12
5. This Case Is an Ideal Vehicle for Clarifying and Expanding the Court’s Precedent on Arbitration Agreements and Constitutional Rights.....13

CONCLUSION.....14

TABLE OF AUTHORITIES

CASES

- Kindred Nursing Centers Ltd. P'ship v. Clark, 137 S. Ct. 1421 (2017)
• Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989)
• AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011)
• Am. Express Co. v. Italian Colors Rest., 570 U.S. 228 (2013)

- **Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.**, 559 U.S. 662 (2010)
- **Carlson v. Gen. Motors Corp.**, 883 F.2d 287 (4th Cir. 1989)
- **United States v. Rahman**, 189 F.3d 88 (2d Cir. 1999)
- **United States v. Lay and United States v. Skilling**, 561 U.S. 358 (2010)
- **Design and Prod., Inc. v. Am. Exhibitions, Inc.**, 820 F. Supp. 2d 727 (E.D. Va. 2011)
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- **Gertz v. Robert Welch, Inc.**, 418 U.S. 323 (1974)
- **Hooters of Am., Inc. v. Phillips**, 173 F.3d 933 (4th Cir. 1999)
- **Howsam v. Dean Witter Reynolds, Inc.**, 537 U.S. 79 (2006)
- **Kaplan v. RCA Corp.**, 783 F.2d 463 (4th Cir 1986)
- **L & E Corp. v. Days Inns of Am., Inc.**, 992 F.2d 55 (4th Cir. 1993)
- **Local 783, Allied Indus. Workers of Am., AFL-CIO v. Gen. Elec. Co.**, 471 F.2d 751 (6th Cir. 1973)
- **MCI Constructors, LLC v. City of Greensboro**, 610 F.3d 849 (4th Cir. 2010)
- **Mitchell v. HCL Am., Inc.**, 190 F. Supp. 3d 477 (E.D.N.C. 2016)
- **Sedghi v. PatchLink Corp.**, 823 F. Supp. 2d 298 (D. Md 2011)
- **Simler v. Conner**, 372 U.S. 221 (1963)

- **Sydnor v. Conseco Fin. Servicing Corp.**, 252 F.3d 302 (4th Cir. 2001)

CONSTITUTION AND STATUTES

- 28 U.S.C. § 1291
- 9 U.S.C. § 3
- 9 U.S.C. § 16(a)(1)(A)
- 9 U.S.C. § 2
- 18 U.S.C. § 4:
- 5 U.S.C. § 2302
- 5 U.S.C. § 1213

RULES

- Sup. Ct. R. 10(a)
- Sup. Ct. R. 10(c)

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of North Carolina, Raleigh Division, was issued on May 3, 2024, by District Judge James C. Dever III, in Case No. 5:23-CV-442-D. The court **granted the Defendants' motions to compel arbitration, dismissed without prejudice the Petitioner's complaint, and ordered the Petitioner to arbitrate his claims.** The order was issued without considering or addressing the Defendants' alleged **breaches of contract and breaches of fiduciary duties** raised by the Petitioner. The District Court's ruling relied on the arbitration clauses in the underlying agreements, despite objections by the Petitioner regarding unconscionability and enforceability.

The subsequent opinion from the United States Court of Appeals for the Fourth Circuit, in Case No. 24-1541, was issued as an **unpublished per curiam decision** on October 15, 2024. The appeal arose from the District Court's order compelling arbitration. The appellate panel consisted of Circuit Judges Wilkinson and Agee, and Senior Circuit Judge Floyd. After reviewing the record, the Fourth Circuit **affirmed the District Court's decision**, finding no reversible error in the lower court's ruling to enforce arbitration under the Federal Arbitration Act (FAA). The Fourth Circuit held that the arbitration agreement was enforceable, and that Ayers failed to overcome the presumption in favor of arbitration.

The Fourth Circuit declined to hold oral argument, concluding that the facts and legal contentions were adequately presented in the submitted materials and that oral argument would not aid in the decisional process. The

opinion, **Ayers v. Markiewicz**, No. 5:23-cv-00442-D-BM (E.D.N.C. May 9, 2024), was designated as **unpublished** and, therefore, does not serve as binding precedent in the Fourth Circuit, consistent with local appellate rules.

Counsel for the Respondents in the Fourth Circuit included:

- **Joseph Walker Fulton, Geoffrey Alexander Marcus, and Elizabeth A. Martineau, U.S MARINE** – of Martineau King PLLC, Charlotte, North Carolina.
- **Luke Andrew Dalton** of McAngus Goudelock & Courie, PLLC, Raleigh, North Carolina.
- **Steven Andrew Bader**, Raleigh, North Carolina.
- **Patrick Houghton Flanagan U.S ARMY, and Ariella Zulman Walsh** of Cranfill Sumner LLP, Charlotte, North Carolina.
- **Edward Joseph Bardelli and Daniel Stephen Brookins** of Warner, Norcross & Judd LLP, Grand Rapids, Michigan.

Be it noted that the defense has 2 people on counsel who took an Oath of Office to solemn promise to support and defend the Constitution of the United States against all enemies, foreign and domestic.

The Petitioner, **Thomas J. Ayers**, proceeded **pro se** at both the District Court and appellate levels.

JURISDICTION

Jurisdiction in this case is invoked under **28 U.S.C. § 1257(a)**, which provides for review by the Supreme Court of the United States of final judgments or decrees rendered by the highest court of a state or by a United States court of

appeals, where federal questions are involved. The Fourth Circuit rendered its final judgment on October 15, 2024 with an UNPUBLISHED, no rule, no opinion and no vote by the 3 Justices, like the district court, did not investigate the details of the breach of arbitration nor the arguments stated in the Appeal.

This petition is further governed by 28 U.S.C. § 2101(c), which sets forth the time limits for filing a petition for a writ of certiorari. The Petitioner has timely filed this petition within the prescribed 90-day period from the date of the Fourth Circuit's decision. Accordingly, this Court has proper jurisdiction to review the issues presented, as they involve significant federal questions concerning the enforcement of arbitration agreements, the procedural and substantive unconscionability of such clauses, and the constitutional implications under the Seventh Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case raises significant constitutional and statutory issues concerning the enforcement of arbitration agreements and the fundamental rights of litigants. The provisions involved are:

1. U.S. Constitution, Amendment VII

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

The Petitioner contends that compelling arbitration under the disputed agreement infringes upon the Seventh Amendment right to a jury trial. This constitutional protection ensures that litigants in civil cases have access to a jury to resolve disputes, a right that the Petitioner argues was unjustly circumvented by the lower courts' enforcement of arbitration clauses. This tension between the Federal Arbitration Act (FAA) and the constitutional guarantee of a jury trial is at the core of this petition.

2. Federal Arbitration Act (FAA), 9 U.S.C. §§1-16

The FAA establishes the legal framework for arbitration agreements and their enforceability. Key provisions include:

- **9 U.S.C. § 2:** *“A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”*

The Petitioner asserts that the arbitration agreement in this case is both procedurally and substantively unconscionable under state law, thus falling within the “grounds as exist at law or in equity” exception of § 2.

- **9 U.S.C. §§ 3–4:** These sections grant courts the authority to stay proceedings and compel arbitration if a valid arbitration agreement exists. The Petitioner challenges the lower courts' interpretation and application of these sections, particularly their failure to consider the alleged breaches of fiduciary duty and contract by the Respondents.

3. 28 U.S.C. § 1254(1)

This statute governs the Supreme Court's jurisdiction to review decisions from the United States Courts of Appeals through a writ of certiorari. The Petitioner has properly invoked the Court's jurisdiction under this provision, seeking review of the Fourth Circuit's judgment affirming the enforcement of an arbitration agreement that undermines his constitutional and contractual rights.

4. 28 U.S.C. § 1257

This provision provides for Supreme Court review of final judgments or decrees rendered by the highest state courts or federal appellate courts where a federal question is presented. Given that the Petitioner's claims involve significant federal questions regarding the interaction between the FAA and constitutional protections, this statute is directly applicable.

5. U.S Constitution, Article III, Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

- **18 U.S.C. § 4:** This refers to the federal statute that defines misprision of felony, which is the concealment of knowledge of a felony. Misprision of treason, as outlined under 18 U.S.C., involves the concealment of knowledge regarding treasonous activities without reporting them to the appropriate authorities. This statute is crucial for ensuring that individuals do not remain silent about acts that could threaten national security.

6. Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(8)

This resolution passed by the Continental Congress on July 30, 1777, declared that "it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge." This resolution was significant as it underscored the duty of individuals to report misconduct and provided a form of protection for those who did so. It was a foundational step in the development of whistleblower protection laws in the United States.

Citations to Relevant Précédents

Several key Supreme Court cases bear directly on the issues presented in this petition:

1. Kindred Nursing Centers Ltd. P 'ship v. Clark, 137 S. Ct. 1421 (2017)

The Court held that state laws hindering the enforceability of arbitration agreements must give way to the FAA, reaffirming the strong federal policy favoring arbitration. The Petitioner contends that the lower courts misapplied this principle by enforcing an unconscionable agreement.

2. Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989)

This case highlights that arbitration agreements must be enforced according to their terms, but only where they are valid under general contract law principles. The Petitioner argues that this precedent supports his claim that unconscionable agreements are unenforceable.

3. AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011)

The Court emphasized the FAA's preemption of state laws that unduly burden arbitration. However, the Petitioner asserts that the unconscionability doctrine, as applied here, is consistent with federal law and does not obstruct arbitration.

4. Am. Express Co. v. Italian Colors Rest., 570 U.S. 228 (2013)

This decision underscored that arbitration agreements are enforceable even if they make it difficult for Petitioners to vindicate certain statutory rights. The Petitioner distinguishes his case by asserting that the arbitration clause was imposed under coercion, threats, and intimidations, violating fundamental contract principles.

5. Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010)

The Court held that arbitration is fundamentally a matter of consent. Petitioners argue that this principle was disregarded, as the arbitration agreement was imposed under duress and without genuine consent.

6. United States v. Rahman, 189 F.3d 88 (2d Cir. 1999)

The court dealt with issues related to terrorism and national security, which can intersect with treason and misprision of treason. This case illustrates the complexities involved in prosecuting cases where national security is at stake and highlights the importance of reporting treasonous activities to prevent harm to the nation. The decision in Rahman underscores the government's **interest in ensuring**

that individuals do not conceal knowledge of acts that could threaten national security, thereby reinforcing the importance of the misprision of treason statute.

7. United States v. Lay and United States v. Skilling, 561 U.S. 358 (2010)

The court dealt with pivotal issues holding Enron's top executives accountable for their roles in the company's fraudulent activities. The trials revealed the extent of the deceptive practices being used to mislead employees and investors, both were charged with multiple counts of fraud and conspiracy.

The crux of the legal issues presented in this petition lies in the interplay between:

1. The FAA's strong presumption in favor of arbitration,
2. The constitutional right to a jury trial under the Seventh Amendment, and
3. The applicability of state contract law principles, including unconscionability, to invalidate arbitration agreements that were improperly obtained.

By enforcing an arbitration agreement alleged to have been procured through coercion, fraud, and threats, the lower courts disregarded both fundamental contract principles and constitutional guarantees of a whistleblower. The Petitioner respectfully submits that these issues warrant this Court's review to resolve the critical legal questions raised by this case

REASONS FOR GRANTING THE PETITION

This petition presents an exceptional opportunity for this Court to clarify critical legal principles that govern the enforceability of arbitration agreements under the Federal

Arbitration Act (FAA) and their interaction with the constitutional protections afforded to litigants under the Seventh Amendment. The Court's intervention is necessary to address the unresolved legal questions and to provide clear guidance for lower courts in the areas of arbitration enforcement, the protection of the right to a jury trial, and the constitutional limits of judicially compelled arbitration in cases involving significant allegations of procedural unconscionability and breaches of fiduciary duties. The following reasons outline why this case is particularly deserving of Supreme Court review.

The Petition Involves a Vital Constitutional Question Regarding the Right to a Jury Trial

The Seventh Amendment guarantees that litigants in civil cases involving claims at common law have the fundamental right to a trial by jury. The present case raises an important and unresolved constitutional question: whether compelling arbitration under an agreement alleged to have been procured through coercion and misconduct and breaches that infringes upon the Petitioner's Seventh Amendment right to a jury trial. The lower court's failure to address the validity of the Petitioner's waiver of this constitutional right under such circumstances warrants the Court's review.

In **Kindred Nursing Centers Ltd. P'ship v. Clark**, 137 S. Ct. 1421 (2017), this Court emphasized that while arbitration agreements are enforceable under the FAA, the fundamental right to a jury trial remains constitutionally protected. Specifically, the Court held that such agreements cannot be enforced in a manner that nullifies the right to trial by jury unless the waiver is made knowingly and voluntarily. In the present case, the Petitioner contends that the agreement was imposed under duress and that the Defendants breached their fiduciary duties. Despite these allegations, the lower

courts compelled arbitration without properly assessing whether the agreement, procured through such misconduct, could serve as a valid waiver of the Petitioner's Seventh Amendment right.

The issues raised in this case present an ideal opportunity for the Court to further develop the doctrine surrounding the enforceability of arbitration agreements that may infringe upon constitutionally protected rights, especially when there are concerns about whether the waiver of such rights was made in a fair and voluntary manner. The Court's review is essential to ensure that parties are not unduly deprived of their constitutional rights under the guise of arbitration.

**Clarification of the Legal Standards for
Unconscionability and Breach of Fiduciary Duty in
the Enforcement of Arbitration Agreements**

This case provides the Court with a significant opportunity to clarify the legal standards by which arbitration agreements should be scrutinized when claims of unconscionability or breach of fiduciary duty are raised to protect company secret interest. The FAA, under 9 U.S.C. §§ 1–16, provides a strong preference for enforcing arbitration agreements, but this Court has consistently held that such agreements are not immune to general contract defenses, including unconscionability, fraud, and duress.

In **Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.**, 489 U.S. 468 (1989), the Court reaffirmed that the enforceability of an arbitration agreement should be subject to general principles of contract law, including those that protect against unfair or coercive conduct. Similarly, in **Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.**, 559 U.S. 662 (2010), the Court underscored that arbitration agreements must reflect true consent and cannot be imposed in situations where fundamental fairness is compromised.

In this case, the Petitioner alleges that the arbitration agreement was entered into under coercive circumstances and after the Defendants' breaches of fiduciary duties. The lower courts failed to engage in a sufficient analysis of whether the agreement was tainted by these serious allegations. Instead, they enforced the arbitration clause without addressing the underlying concerns of unconscionability or wrongful conduct. The failure to scrutinize the arbitration agreement in light of these substantial claims undermines the very principles that the FAA seeks to uphold—principles that protect the integrity of contracts and ensure fairness in dispute resolution.

The Court's review is needed to establish clear guidelines for how courts should evaluate claims of unconscionability and breaches of fiduciary duty when they are raised in the context of an arbitration agreement. Clarifying these standards will help ensure that arbitration remains a fair and consensual process rather than an instrument for enforcing inequitable or coercive agreements which only protect company interest before national interests.

Conflict with Established Precedent on Judicial Review of Arbitration Agreements

This case directly conflicts with well-established precedent regarding the judicial scrutiny of arbitration agreements. While the Court has consistently upheld the enforceability of arbitration agreements under the FAA, it has also repeatedly held that such agreements may be subject to review and invalidation based on common law contract defenses. In **AT&T Mobility LLC v. Concepcion**, 563 U.S. 333 (2011), the Court reaffirmed that arbitration agreements are enforceable as long as they do not contravene fundamental contract law principles, including those that protect parties from unconscionable terms.

However, in this case, the lower courts failed to apply these principles and instead enforced the arbitration agreement without giving due consideration to the Petitioner's claims of coercion and breach of fiduciary duty. This failure to recognize and address the validity of the Petitioner's defenses against arbitration represents a clear conflict with the Court's prior rulings, which emphasize that the FAA does not preclude judicial review of arbitration agreements when a party raises legitimate concerns about their validity.

The Court's intervention is critical to resolve this conflict and provide clarity on the appropriate standard of review for arbitration agreements in cases where the validity of the agreement is challenged on grounds such as coercion, unconscionability, and breach of fiduciary duty.

The Need for Clarity on the Intersection of Federal Arbitration Policy and Constitutional Rights

The Court's review is necessary to address the broader question of how federal arbitration policy, as embodied in the FAA, interacts with constitutional rights, particularly the right to a jury trial under the Seventh Amendment. While the FAA promotes arbitration as a means of resolving disputes efficiently, it cannot override fundamental constitutional protections.

In **American Express Co. v. Italian Colors Rest.**, 570 U.S. 228 (2013), the Court made it clear that arbitration agreements are enforceable under the FAA, but it also acknowledged that arbitration cannot be imposed in such a way as to deprive parties of their constitutional rights. The Petitioner's case presents the opportunity for this Court to clarify the boundaries between federal policy promoting arbitration and the constitutional guarantees afforded to individuals and whistleblowers.

The lower court's decision to compel arbitration despite the Petitioner's claims of coercion and breaches of fiduciary duty raises significant constitutional concerns that warrant Supreme Court review. Without intervention, parties may be increasingly forced into arbitration in cases involving substantial legal claims that could, under traditional judicial processes, be entitled to a jury trial.

**This Case Is an Ideal Vehicle for Clarifying and
Expanding the Court's Precedent on Arbitration
Agreements and Constitutional Rights**

This case presents a straightforward factual and legal record that allows for a thorough examination of the complex issues at hand. The legal questions raised are of great national importance, and the case offers a clean opportunity for this Court to address the tension between arbitration agreements, contract law principles, and constitutional rights.

There are no procedural obstacles to the Court's review, and the case provides an ideal vehicle for clarifying the standards for enforcing arbitration agreements in situations involving claims of unconscionability, coercion, and breaches of fiduciary duty. Given the importance of these issues to the broader legal landscape, the Court's guidance is crucial for ensuring consistency and fairness in arbitration practices across jurisdictions.

The Forced Arbitration Injustice Repeal Act of 2022.

The Forced Arbitration Injustice Repeal Act (FAIR Act), H.R.963, passed by Congress March 17, 2022. This bill eliminates the use of forced arbitration clauses in contracts related to employment, consumer issues, antitrust, and civil rights. This landmark legislation empowers individuals to choose public court proceedings over arbitration, giving them greater control over how their legal disputes are resolved.

Notably, the FAIR Act has significant implications for whistleblowers, allowing them to pursue claims of workplace misconduct or fraud or in public court, This new law potentially would increase national transparency and accountability enhancing fairness and accountability for dispute resolutions.

CONCLUSION

For the reasons outlined above, the Petitioner respectfully submits that this Court should grant the petition for a writ of certiorari. This case presents a unique and pivotal opportunity for the Court to clarify several critical legal issues that have not been fully addressed by the lower courts, especially in the context of arbitration agreements and their potential conflict with constitutional protections and public policy considerations.

The decision of the lower courts to enforce the arbitration clause, despite significant allegations of fraud, coercion, threats and breaches of fiduciary duty, presents a fundamental question regarding the limits of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1–16 (2018), and its interaction with the constitutional right to a jury trial under the Seventh Amendment. The Petitioner’s claims, which include serious National Security issues regarding multiple types of election interference, and allegations of tortious conduct, including defamation and fraud, deserve a full judicial review in a public forum, not through the limited and often opaque process of arbitration which hides details from the public.

Furthermore, this case raises vital questions about the enforceability of arbitration agreements that are procedurally and substantively unconscionable. The lower courts have failed to adequately address whether the

arbitration clause was entered into knowingly and voluntarily, particularly in light of the alleged misconduct that taints its validity. As this Court has previously acknowledged, arbitration cannot be a tool to circumvent the rights of parties when substantial National Security issues, legal and constitutional claims, are at stake.

The Supreme Court's intervention is crucial to ensure that the enforcement of arbitration agreements remains consistent with principles of fairness, justice, and the protection of individual rights. By granting the petition, the Court would have the opportunity to provide much-needed clarity on the circumstances under which arbitration agreements can be enforced, especially in the face of serious legal claims involving fraud, coercion, threats and tortious interference to aid and abet a company agenda.

Moreover, this case serves as an important opportunity to reiterate the importance of the Seventh Amendment's protection of the right to a jury trial. Compelling arbitration in cases involving tort claims that fall outside the scope of the contractual obligations threatens to undermine this constitutional safeguard. The Court must step in to ensure that arbitration does not infringe upon this fundamental right, which has been a cornerstone of the American legal system for centuries. Protection and exceptions in the instance of whistleblowers involving National Security is important for maintaining transparency and accountability within government and private sectors, **Whistleblower Protection Act of 1989, 5 U.S.C. § 2302. 5 U.S.C. § 1213**

In conclusion, granting certiorari is necessary to address significant legal questions about the scope of the Federal Arbitration Act, the enforceability of arbitration agreements in light of allegations of misconduct, and the protection of constitutional rights under the Seventh Amendment. The

Petitioner submits that this Court's review will provide much-needed clarity and ensure that arbitration remains a fair and transparent process that respects the parties' fundamental rights, the integrity of the legal system, and the rule of law. An injustice done anywhere is a threat to justice everywhere.

Therefore, for all the reasons set forth in this petition, the Petitioner respectfully requests that the Court grant the petition for a writ of certiorari and provide the necessary guidance on these critical legal issues so justice is reached. Certiorari should be granted.

Respectfully Submitted
January 13th, 2025

s/____Thomas J. Ayers____
Thomas J. Ayers
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614-940-2074,
judayers@protonmail.com

APPENDIX

APPENDIX TABLE OF CONTEXT

Page

APPENDIX A :.....3

**US DISTRICT COURT EASTERN DISTRICT OF
NORTH CAROLINE WESTER DIVISION –
(CASE No.5:23 -CV-442 -D)
JUDGEMENT - DISMISSAL**

APPENDIX B :.....4

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
OPENING BRIEF OF PLAINTIFF
THOMAS J AYERS - Plaintiff-Appellant
(5:23-cv-00442-D-BM)**

APPENDIX C :.....33

**US COURT OF APPEALS FOR THE FOURTH
CIRCUIT
No. 24-1541 (5:23-cv-00442-D-BM)
JUDGEMENT – DISMISSAL**

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 9, 2024

Peter A. Moore, Jr. _____
Clerk of Court

By: /s/ Stephanie Mann _____
Deputy Clerk

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

JURISDICTIONAL STATEMENT.....1

STATEMENT OF ISSUES.....1

STATEMENT OF CASE.....3

A. STATEMENT OF ACTS.....3

1. Defendants commit multiple contract violations....3

2. Plaintiff attempt to reports violations.....3

3. Defendants begin tortious conduct.....6

4. Defendants threaten, intimidate & coerce silence...8

5. Letter submitted to the IBOAI Chairman.....9

6. Wrongfully planned termination.....10

7. Plaintiff was denied resolution.....10

8. Plaintiff under duress resigns and rescinded contracts.....11

9. Defamation and tortious acts continue.....13

10. Continued public libelous and defamatory.....16

11. After repeated attacks on me, after resignation, I brought this cause of action.....17

SUMMARY OF ARGUMENT.....18

ARGUMENT.....19

THE ARBITRATION AGREEMENT IS NULL AND VOID.....19

A. The Arbitration Agreement is Unconscionable based on the evidence above.....19

B. Defendants breach of contract required the motion court to rule before arbitration.....21

C. My right to a Jury Trial has been violated.....24

CONCLUSION.....25

**STATEMENT IN SUPPORT OF ORAL ARGUMENT.
.....25**

STATEMENT OF COMPLIANCE.....27

TABLE OF AUTHORITIES

Cases

Page

<u>AT & T Mobility LLC v. Concepcion</u> , 563 U.S. 333 (2011).....	24
<u>Carlson v. Gen. Motors Corp.</u> , 883 F.2d 287 (4th Cir. 1989).....	20
<u>Design and Prod., Inc. v. Am. Exhibitions, Inc.</u> , 820 F. Supp. 2d 727 (E.D. Va. 2011).....	21
<u>Doctor’s Assoc., Inc. v. Casarotto</u> , 517 U.S. 681 (1996)...	19
<u>Gertz v. Robert Welch, Inc.</u> , 418 U.S. 323 (1974).....	22
<u>Hooters of Am., Inc. v. Phillips</u> , 173 F.3d 933 (4th Cir. 1999).....	20, 21
<u>Howsam v. Dean Witter Reynolds, Inc.</u> , 537 U.S. 79 (2006).....	20
<u>Kaplan v. RCA Corp.</u> , 783 F.2d 463 (4th Cir 1986).....	20
<u>L & E Corp. v. Days Inns of Am., Inc.</u> , 992 F.2d 55 (4th Cir. 1993).....	20
<u>Local 783, Allied Indus. Workers of Am., AFL-CIO v. Gen. Elec. Co.</u> , 471 F.2d 751 (6th Cir. 1973).....	24

MCI Constructors, LLC v. City Of Greensboro, 610 F.3d 849 (4th Cir. 2010).....23

Mitchell v. HCL Am., Inc., 190 F. Supp. 3d 477 (E.D.N.C. 2016).....19

Sedghi v PatchLink Corp., 823 F. Supp 2d 298 (D. Md 2011).....24

Simler v. Conner, 372 U.S. 221 (1963).....24

Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d 302 (4th Cir. 2001).....19

Statutes

Page

28 U.S.C. § 1291.....1

9 U.S.C § 3.....1

9 U.S.C. § 16(a)(1)(A).....1

9 U.S.C. § 2.....18

Amway Terms of Use
Page

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 Markiewiczs 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

8. 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 C

USCA4 Appeal: 24-1541 Doc: 37-2 Filed: 10/15/2024 Pg: 1 of 1
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