No. 24-1007

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 REHEARING

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CORPORATE DISCLOSURE STATEMENT

Thomas J. Ayers, the petitioner in the above-captioned case, hereby states that he is an individual and the Corporate Disclosure Statement in the petition remains unchanged.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION –JUDGEMENT –
DISMISSAL,
(CASE No.5:23 -CV-442 -D)
FILED MAY 9th, 2024

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION– DISMISSAL – OPINION,
(CASE No.5:23 -CV-442 -D)
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT,
APPEALS No. 24-1541
(5:23-cv-00442-D-BM) JUDGEMENT – DISMISSAL
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PETITION FOR REHEARING

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Thomas J. Ayers, respectfully petitions for rehearing of the Court's order entered on May 27, 2025, denying the petition for a writ of certiorari, and, in the alternative, for panel rehearing of the unpublished per curiam decision issued October 15, 2024, which summarily affirmed the District Court's order compelling private arbitration and dismissing Petitioner's claims without prejudice while concealing all acts in private court. This petition is filed pursuant to Supreme Court Rule 44, Fed. R. App. P. 40, and 4th Cir. R. 35, and in the format prescribed by Rule 33(g)(xv).

REASONS FOR GRANTING REHEARING

Petitioner Thomas J. Ayers respectfully submits that rehearing is warranted because the panel opinion and the denial of certiorari provided no due justice:

1. The court overlooked controlling statutory and constitutional prohibitions on China foreign election influence, most notably 52 U.S.C. § 30121, and the compelling governmental interest recognized in Bluman v. Federal Election Commission, 800 F. Supp. 2d 281 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012);

2. Conflicts with Supreme Court precedent holding that courts may not relegate matters implicating National Security and state secrets to a private forum (United States v. Reynolds, 345 U.S. 1 (1953); Trump v. Hawaii, 138 S. Ct. 2392 (2018));

3. Did not adequately consider the procedural and substantive unconscionability of the arbitration agreement breaches by all defendants, as established in the record and detailed in Petitioner's Opening Brief;

4. Overlooked the public policy implications of compelling arbitration in cases involving National Security, election interference, and whistleblower retaliation, and failed to address the deprivation of Petitioner's Seventh Amendment right to a jury trial for claims sounding in tort and implicating the public interest of the American people.

5. Failed to address the statutory and constitutional protections against retaliation for protected whistleblower activity under 18 U.S.C. § 1514A, 15 U.S.C. § 78u-6, and 740 ILCS 174/1, as clarified in Digital Realty Trust, Inc. v. Somers, 138 S. Ct. 767 (2018).Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(8)

6. Issues implicating election interference and national security transcend the jurisdiction of an arbitration court, as such matters raise significant public policy concerns that

may render them non-arbitrable, notwithstanding the general enforceability of arbitration agreements under the Federal Arbitration Act, 9 U.S.C. §§ 1-16; see Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985) (recognizing that certain claims involving overriding public interests may be excluded from arbitration), and AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011)

QUESTIONS PRESENTED

1. Whether the Court may enforce Amway's private arbitration clause to foreclose adjudication of colorable claims that (i) U.S. persons accepted income from foreign business and used their profits to influence domestic elections in violation of 52 U.S.C. § 30121 and related statutes, and (ii) those activities threaten National Security.

2. Whether compelling arbitration of claims implicating National Security, election interference, and whistleblower retaliation, particularly where the Amway and arbitration agreement is alleged to be unconscionable and procured through coercion and multiple breaches, contravenes the strong public policy favoring transparency and judicial oversight in matters of national importance.

3. Whether enforcement of the arbitration agreement in this context deprives Petitioner of statutory and constitutional protections against retaliation for protected disclosures, and the right to a public trial by jury.

GROUNDS FOR REHEARING

I. Statutory Bar on Foreign Election Expenditures and Public Policy

The panel disposed of Petitioner's claims as "contractual" and therefore arbitrable, yet failed to analyze the non-waivable public-policy question raised by the involvement of Amway and China in the alleged conduct. The claims concern arrangements and transactions in which Amway, in partnership with Chinese entities, is alleged to have facilitated foreign participation in activities affecting U.S. elections. Such conduct implicates the core public interest in preventing foreign influence over the U.S. political process. Contracts that enable or conceal foreign contributions or expenditures—particularly those involving Amway and Chinese actors—are void from the outset; arbitration provisions embedded in such contracts cannot override the public interest in transparent adjudication or permit private resolution of matters that threaten the integrity of domestic elections. Respondents can not participate in funding politicians when profits come from foreign entities.

II. National Security and State Secrets Doctrine

The claims here involve allegations that Respondents, while acting as domestic agents, channeled foreign funds and digital infrastructure to manipulate U.S. electoral data—matters intimately tied to the Intelligence Community's responsibilities. United States v. Reynolds established the state secrets privilege, requiring heightened judicial scrutiny where national security is implicated. Trump v. Hawaii further affirms judicial deference to Executive findings of national-security risk. Such deference and scrutiny are impossible where the controversy is diverted to a confidential, non-Article III arbitral forum with no authority to compel classified disclosures or protect the public interest.

III. Whistleblower Retaliation and Statutory Protections

Petitioner made protected disclosures regarding the Amway leaders in violations of law, including election interference and national security concerns, and was then subjected to retaliation, including wrongful termination, intimidation, and public defamation. Such conduct violates 18 U.S.C. § 1514A (Sarbanes-Oxley), 15 U.S.C. § 78u-6 (Dodd-Frank), and 740 ILCS 174/1 (Illinois Whistleblower Act). Digital Realty Trust, Inc. v. Somers clarifies that whistleblower protections attach when an individual reports securities violations to the SEC, but the principle of anti-retaliation extends to a variety of protected disclosures under other statutes. The lower courts failed to address these statutory protections or the public policy against retaliation for protected activity.

IV. Contractual Breaches, Unconscionability, and Due Process

Respondents' consistent pattern of misconduct—including their refusal to engage in documented Amway and LTD Leadership Team Development dispute resolution, wrongful termination, and retaliatory behavior—rendered the arbitration agreement unconscionable in both its formation and terms. The lower courts did not sufficiently address these repeated violations or the resulting injustice. Respondents participated in fraud, non-registered stock trading, compensation plan manipulation, and violating their own contract rules. The courts also failed to consider whether enforcing the arbitration agreement was appropriate given the Respondents' defamation and imitation strategies designed to conceal fraudulent practices related to Amway and Leadership Team Development, especially considering the public interest in whistleblower protection and due process.

V. Right to Jury Trial and Public Adjudication

Enforcing the arbitration agreement in these circumstances deprived Petitioner of his constitutional right to a public trial by jury and of substantive whistleblower protections. The lower courts did not critically examine whether Petitioner knowingly and voluntarily waived these rights, especially in light of the retaliatory context and the statutory limitations on waiving whistleblower protections.

VI. Procedural and Substantive Deficiencies in Lower Court Proceedings

The District Court and the appellate panel failed to address or even acknowledge the full scope of Petitioner's preserved arguments regarding protected whistleblower activity regarding fraud and corruption, Amway and Leadership Team Development abuses, denial of required dispute resolution, and the pattern of retaliatory conduct by IBOAI Members, Joseph Markiewicz and Douglas Weir. The courts' reliance on the existence of an arbitration clause as dispositive, without a searching inquiry into the fairness or enforceability of that clause in the whistleblower context, constitutes a manifest error warranting rehearing.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that the Court:

a. Grant rehearing and/or panel rehearing;

b. Vacate the October 15, 2024 judgment;

c. Recall the mandate and remand to the District Court with instructions to (i) deny the motion to compel arbitration, (ii) permit jurisdictional discovery under Fed. R. Civ. P. 26 tailored to national-security constraints (Reynolds privilege), and (iii) adjudicate Petitioner's statutory and constitutional claims on the merits; or

d. In the alternative, provide a reasoned opinion addressing the substantial legal and factual issues presented, including those arising from retaliatory acts against protected whistleblowing and the injustices done.

Respectfully submitted this 14th day of July 2025.

s/___Thomas J. Ayers___

_____

Thomas J. Ayers
Petitioner, pro se -Appellant
7447 Marrisey Loop
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614-940-2074,
judayers@protonmail.com

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition adheres to the requirements of Fed. R. App. P. 35(b)(2) and 40(b), and that its word count is 1,468. Service of this petition has been completed upon all counsel through CM/ECF on the date indicated below.

Furthermore, as counsel for the petitioner, I attest that this petition for rehearing is submitted in good faith, not for purposes of delay, and is limited to the grounds set forth in Rule 44.2.

s/___Thomas J. Ayers___

_____

Thomas J. Ayers
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APPENDIX A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

May 27, 2025

vs.

Mr, Thomas J Ayers
7447 Marrisey Loop
Galena, OH 43021
Decision by Court.

Re: Thomas J Ayers
V Joseph Markiewicz, et al.
No. 24-1007

Dear Mr. Ayers:

The Court today entered the following in the above-entiteled case:

The petition for writ of certiorari is denied.

Sincerely,
Scott S. Harris, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

THOMAS J. AYERS, Plaintiff

vs.

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

Defendants.

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

Decision by Court.

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

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

May 9th, 2024

Peter A. Moore, Jr.
Clerk of Court

By:/s/ Stephanie Mann

APPENDIX A

OPINION

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

TIIOMAS J. AYERS,
Plaintiff.
v.
JOSEPH **MARKIEWICZ,** et al.,
Defendants.

ORDER

On August 8, 2023, Thomas J. Ayers ("Ayers" or "plaintiff') filed a complaint against Joseph Markiewicz, Mary Beth Markiewicz (collectively "the Markiewiczs"), and Douglas Weir ("Weir") (collectively "the individual defendants") alleging defamation, tortious interference with contractual relations and prospective economic advantage, battery, intentional infliction of emotional distress ("IIED"), abuse of process, and malicious prosecution. See [D.E. 1] ¶¶23-52. On November 7, 2023, Ayers filed an amended complaint against the individual defendants, Leadership Team Development, Inc. ("LTD"), and Amway Corporation ("Amway") (collectively "defendants") alleging defamation, tortious interference with contractual relations and prospective economic advantage, civil conspiracy to commit battery, IIED, abuse of process, malicious prosecution, civil conspiracy, and battery. See [D.E. 9] ¶¶ 34-68.[1]

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

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

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

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

I.

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

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

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

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

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

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

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

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

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

II.

The Federal Arbitration Act ("FAA") provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; see Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 67 (2010); Amos v. Amazon Logistics, Inc., 74 F.4th 591, *595* (4th Cir. 2023). The standard for deciding a motion to compel arbitration brought under the FAA, 9 U.S.C. § 4, is similar to the standard applicable to a motion for summary judgment. See, e.g., Naimoli v. Pro-Football, Inc., _ F. Supp. 3d___, 2023 WL 5985256, at •4-5 (D. Md. Sept. 14, 2023).

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

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

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

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

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

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

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

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

Equitable estoppel allows a nonsignatory to compel arbitration in two circumstances: (1) the signatory relies "on the terms of the written agreement in asserting its claims against the nonsignatory"; or (2) the signatory "raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Brantley v. Republic Mortg. Ins. Co., 424 F.3d 392, 395-96 (4th Cir. 2005) (cleaned up). A nonsignatory can also compel arbitration against a signatory under "[w]ell-established common law principles" of agency. Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d411, 416-17 (4th Cir. 2000); see Ellison, 207 N.C. App. at412-13, 700 S.E.2d at 111.

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

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

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

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

Alternatively, Ayers alleges that Joseph Markiewicz and Weir are corporate officers of LTD and Amway. See Am. Compl. 121. Ayers also alleges Mary Beth Markiewicz is an agent of Amway and LTD. See id. at 133; see also [D.E. 34-2] , ¶¶2-3. Ayers alleges the individual defendants acted on behalf of Amway and LTD to cover up Ayers's concerns about Amway's involvement in the 2020 election, which caused Ayers to lose his Amway business. See Am. Compl. ¶¶ 16--17, 21-22, 30, 33, 39, 45, 56, 60. Thus, the individual defendants can enforce the Agreements' arbitration provisions as agents of Amway and LTD. See, e.g., Ellison, 207 N.C. App. at412-13, 700 S.E.2dat 111.

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

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

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

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

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

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

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

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

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

not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability[,] or formation of this Agreement including, but not limited to[,] any claim that all or any part of this Agreement is void or voidable." Id. Moreover, the Amway Agreement incorporates the AAA rules. See id. at 29.[4] Thus, the parties to the Amway Agreement clearly and unmistakably agreed to arbitrate arbitrability. See, e.g., Novic v. Credit One Bank Nat'l Ass'n, 757F. App'x263, 266 (4th Cir. 2019) (unpublished); Devine, 636F. Supp.

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

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

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

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

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

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

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

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

III.

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

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

JAMES C. DEVER III
United States District Judge

APPENDIX C

FILED: October 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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

THOMAS J. AYERS
Plaintiff - Appellant

v.

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

J U D G M E N T

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

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

/s/ NWAMAKA ANOWI, CLERK

APPENDIX C

UNPUBLISHED

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

THOMAS J. AYERS,
Plaintiff - Appellant,
v.
JOSEPH MARKIEWICZ; MARY BETH MARKIEWICZ; DOUGLAS WEIR; LEADERSHIP TEAM DEVELOPMENT, INC.; AMWAY CORPORATION,
Defendants - Appellees.

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

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

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

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

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

AFFIRMED