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U.S. COURT OF APPEALS  
FOURTH CIRCUIT

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

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

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**THOMAS J. AYERS**  
Plaintiff-Appellant

VS

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

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**ON APPEAL FROM  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

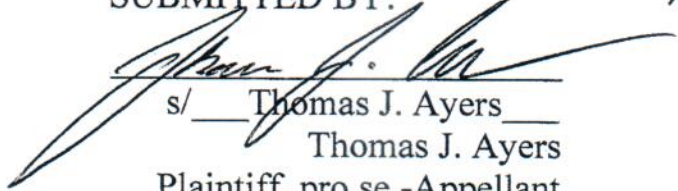
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**OPENING BRIEF OF PLAINTIFF**

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SUBMITTED BY:

*8-17-24*



s/ Thomas J. Ayers

Thomas J. Ayers

Plaintiff, pro se -Appellant

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**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

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**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

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## 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. Defendants 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 attempt 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 17<sup>th</sup>, 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 9<sup>th</sup>, 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 11<sup>th</sup> 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 16<sup>th</sup>, 2022. I received back: REVIEW DENIED on Friday June 17<sup>th</sup>, 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 Markiewiczzs 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

### 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.

FILED: August 9, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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

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THOMAS J. AYERS

Plaintiff - Appellant

v.

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

Defendants - Appellees

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ORDER

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Upon consideration of the motion for extension of the informal briefing schedule, the court extends the time for serving and filing the informal opening brief to 08/19/2024. Any further request for an extension of time in which to file the informal opening brief shall be disfavored.

For the Court--By Direction

/s/ Nwamaka Anowi, Clerk

