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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

IN THE MATTER OF ARBITRATION BETWEEN MICHAEL BARROWS AND ERIC J. LUDOVICO, Petitioners, vs. RONALD J. INLOW, Respondent.	CASE NO.: 23STCP04344 **REPLY BRIEF OF RESPONDENT IN SUPPORT OF PETITION TO CONFIRM ARBITRATION AWARD** Assigned to: Christopher K. Lui Department: 76 Hearing Date: July 11, 2024 Time: 8:30 a.m.

Respondent Ronald J. Inlow (hereinafter, “Respondent” or “Mr. Inlow”) hereby files this Reply Brief (“Reply”) in Support of his Petition to Confirm Arbitration Award (“Petition to Confirm”). Respondent continues to rely on his earlier filings, but he adds the following in further support of his Petition to Confirm and in reply to the Response to the Petition to Confirm filed by Petitioners Michael Barrows (“Barrows”) and Eric J. Ludovico (“Ludovico”).

A. Petitioners Have Not Satisfied Their Burden to Establish That Arbitrator Marcus Exceeded His Powers by Acting as a Public Arbitrator under FINRA Rules.

Petitioners' sole argument for vacating the arbitration award is their challenge to the qualifications of the Chair of the Arbitration Panel, Stephen Howard Marcus ("Marcus"). Mr. Marcus, however, is a highly qualified arbitrator. According to his Arbitrator Disclosure Report (Ex. 5) that the Financial Industry Regulatory Authority ("FINRA") provided to the parties, he had an undergraduate degree from the Massachusetts Institute of Technology, and a law degree from Harvard Law School. He had been licensed to practice law in California since 1970. He had sat on three-member panels for seven FINRA arbitrations that had reached a final award, and he had chaired four of these seven panels. At the time his Arbitrator Disclosure Report was sent to the parties, he was serving on panels for nine pending FINRA arbitrations and was Chair of the panel for three of them. Prior to the present challenge by Petitioners, ***none*** of his prior awards had been subject to a vacatur challenge (based on his qualifications or any other aspect of his service as an arbitrator on those cases).

This Court should also keep in mind the extensiveness of FINRA's vetting of arbitrators, including determining whether the arbitrators should properly be classified as either public or non-public. Mr. Marcus' "Oath of Arbitrator," dated October 18, 2022 (Ex. 9) and concurrently provided to the parties by FINRA, contained an "Arbitrator Disclosure Checklist." The Arbitrator Disclosure Checklist is thorough and is organized by FINRA into nine subject matter categories. In it, FINRA posed 60 questions to Mr. Marcus in the following categories:

1. Personal Disclosures (5 questions)
2. Financial Disclosures (6 questions)
3. Disclosures About the Subject of This Case (10)
4. Disclosures About the Parties in This Case (4)
5. Disclosures About Legal Proceedings (11)
6. Criminal Disclosures (1)
7. Professional Organizations and License Disclosures (5)
8. **Arbitrator Classification Disclosures** (14 with respect to himself and 14 with

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respect to his family members (as stated in question no. 8 in this category))

9. Other Disclosures (4)

As explained in Respondent's earlier filings, a key issue in this case for determining whether Mr. Marcus was a public or non-public arbitrator was whether Mr. Marcus had spent 20 percent or more of his time in specified investment-related or financial-related activities under FINRA Rule 12100(aa)(3) and (7) (Ex. 16.) FINRA addressed this fundamental issue in four different questions included within the **Arbitrator Classification Disclosures** section of Mr. Marcus' Checklist ("the 20% Prong"). He answered "No" to each of these four questions in the "Arbitrator Classification Disclosures" in this section. (Ex. 9, pg. 11.)

Petitioners do not even address this issue. Moreover, even in their 15-page Reply brief (filed July 1, 2024), which is in violation of the Court's 10-page limit for replies, Petitioners make no mention of the 20% Prong that FINRA includes in the operative disclosure rule. Although Petitioners twice switched counsel in this Court and once formally amended their Memorandum of Points and Authorities in Support of the Petition to Vacate, a glaring omission—the failure to address the 20% Prong issue—continues to define Petitioners' request that the arbitration award be vacated on the basis that Mr. Marcus was improperly classified under FINRA Rule 12100(a)(3) and (aa)(7). (Ex. 16.) Specifically, FINRA's rules on the 20% Prong issue read as follows:

FINRA Rule re Proper Arbitrator Classification	**Petitioners' Response**
12100(aa)(3) – Permanent Disqualification	
"an attorney . . . who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry." (Ex. 16.)	Petitioners omit entirely. Mr. Marcus' Disclosure Report has no such information. Mr. Marcus' Oath of Arbitrator denies ("No") this.
12100(aa)(7) – Temporary Disqualification	
"an attorney . . . who has devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry unless the calendar year ended more than five calendar years ago. (Ex. 16.)	Petitioners omit entirely. Mr. Marcus' Disclosure Report has no such information. Mr. Marcus' Oath of Arbitrator denies ("No") this.

Mr. Marcus' Arbitrator Disclosure Report reflects that Mr. Marcus had a large variety of professional activities, of which his services in securities arbitrations were only a relatively small part. (Ex. 7, pg. 5.) Moreover, he squarely stated in his Arbitrator Disclosure Checklist that he did not spend 20 percent or more of his time in providing services to parties in disputes concerning investments or employment relationships within the financial industry. (Ex. 9, pg. 11.) FINRA therefore had ample cause to classify him as a public arbitrator. This Court should defer to this decision, particularly in view of the extensive vetting of arbitrators that FINRA provides. (Bulko v. Morgan Stanley DW Inc. (5th Cir. 2006) 450 F.3d 622, 625-26 ["In the absence of a specific agreement to the contrary, determining [the arbitrator's] qualifications and eligibility is a matter left to the NASD [FINRA's precursor].")

B. Petitioners Waived Their Challenge in This Court to Mr. Marcus' Status as a Public Arbitrator by Not First Presenting This Challenge to the Arbitrators, and Their Petition to Vacate was Untimely.

Respondent provides the following timeline in support of the contentions in his Response to the Petition to Vacate that (1) Petitioners waived their current challenge by not presenting it first to the arbitrators, and (2) the Petition to Vacate was untimely served.

Date	Event	Notes
	2022	
June 17	Statement of Claim filed with FINRA Dispute Resolutions Services	Ex. 1
September 13	Barrows, Ludovico, and Stewart execute FINRA Submission Agreement	Ex. 2
September 21	**Counsel for Petitioners was provided with Stephen Marcus' "Arbitrator Disclosure Report" by FINRA (along with all other prospective arbitrators)**	**Ex. 3-5 20 days to consider/research Marcus**
October 11	Deadline to submit Panel Ranking Form to FINRA, Marcus not stricken	Ex. 3
October 18	**Marcus' executed "Oath of Arbitrator" form (60 questions) sent by FINRA to the parties**	**Ex. 8-9 Opportunity 1 to inquire or move for recusal or removal (this was 30 days after receiving Mr. Marcus' initial disclosure)**

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November 21	FINRA hosted the Initial Pre-hearing Conference (IPHC) via Zoom with counsel, Mr. Marcus, and the other two arbitrators; Barrows and Ludovico accepted the composition of the Panel	Ex. 10 Opportunity 2 to inquire or move for recusal or removal (34 days later)
2023		
January 31	UPDATED Disclosure Report 1 from Mr. Marcus sent to the parties by FINRA	Ex. 11 Opportunity 3 (71 days later)
May 26	UPDATED Disclosure Report 2 from Mr. Marcus sent to the parties by FINRA	Ex. 12 Opportunity 4 (115 days later)
September 11	Arbitration hearing began at FINRA	Ex. 14
September 25	UPDATED Disclosure Report 3 from Mr. Marcus sent to the parties by FINRA	Ex. 13 Opportunity 5 (122 days later)
September 28	Arbitration hearing completed at FINRA	Opportunity 6: Petitioners had 31 more days until FINRA issued the Award (on October 30) to seek to have (a) Mr. Marcus recuse himself or (b) FINRA's Director remove him
October 30	Award served by FINRA (100 days later was: February 7, 2024)	Ex. 14
November 29	Petition to Vacate filed	
2024		
January 25	Robert Beachamp signed Substitution of Attorney forms for Petitioners and filed them with this Court on January 31.	Petitioners still had 13 days, until February 7, to effectuate service under CCP § 1288.
February 7	100 days after service of the FINRA arbitration Award (October 30, 2023)	Petition to Vacate still had not been served
February 20	Petition to Vacate was finally served	113 days after the arbitration award was issued/served.

As explained in Respondent's Response to the Petition to Vacate, Petitioners waived their challenge to Mr. Marcus' status as a public arbitrator by not timely presenting this challenge first

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to the arbitrators. On this point, the timeline above shows that Petitioners had six distinct opportunities during the arbitration process to challenge Mr. Marcus' status as a public arbitrator and did not challenge him at any of these opportunities. Accordingly, this challenge is waived pursuant to the case law that Respondent provided in his Response to the Petition to Vacate.

In addition, Code of Civil Procedure section 1288 provides that Petitioners had 100 days to serve the Petition to Vacate on Respondent. While Petitioners argue in their Reply Brief that they were having difficulties with their lawyers, Robert Beachamp signed Substitution of Attorney forms for Petitioners on January 25, 2024, and still had ample time to serve the Petition to Vacate. The timeline above shows that this 100-day period elapsed on February 7, 2024, but the Petitioners did not serve the Petition to Vacate on Respondent until February 20, 2024. Accordingly, the Petition to Vacate was untimely and is correctly also denied on that basis.

In sum, it was the action and inaction of Petitioners' prior counsel that resulted in no inquiries (or challenges) to Mr. Marcus, despite six watershed moments related to disclosure items when Petitioners could have inquired with Mr. Marcus or FINRA for more information or taken action related to his removal. Petitioners similarly delayed in timely serving the Petition to Vacate in accordance with the CCP requirement. If Petitioners have any grievances, they are not with FINRA or Mr. Marcus.

C. Respondent Objects to the Length of Petitioners' Reply Brief, As It Exceeds the Page Limit (by 50%) Contained in Applicable Rules of Court.

California Rules of Court, Rule 3.1113(d) ("Length of Memorandum") provides that no reply memorandum may exceed 10 pages. Here, Petitioners' reply is 15 pages (plus it includes exhibits comprised of a one-page news article and 16 more pages of two new case decisions). Moreover, most of pages 10 through 14 contain two new sections (III begins on page 10 and IV begins on page 13). Respondent objects to the excessive length of Petitioners' memorandum.

D. Petitioners' New Argument in Their Reply Brief Is Inapplicable Because Petitioners Have Not Established That Mr. Marcus Did Not Satisfy the 20% Prong of FINRA Rules 12100(aa)(3) and 12100(aa)(7), and the New Argument Applies to Nondisclosures Under Code of Civil Procedure Section 1286.2, Subdivision (a)(6)(A), Not Misclassifications Under Subdivision (a)(4).

One reason why the length of Petitioners' Reply is excessive by 50% in its page count is that Petitioners argue for the first time that their claim that Mr. Marcus exceeded his powers under Code of Civil Procedure section 1286.2, subdivision (a)(4), should be analogized to a claim under subdivision (a)(6)(A) that Mr. Marcus "failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware." Respondent objects to consideration of this untimely argument. "[A]arguments made in a reply brief for the first time are too late." (Eyford v. Nord (2021) 62 Cal. App. 5th 112, 126, 276 Cal. Rptr. 3d 309, 320.)

In addition, this new argument is incorrect, because Petitioners have not identified anything that Mr. Marcus failed to disclose. As explained in Respondent's initial Response to the Petition to Vacate and in this Reply Brief, Petitioners are required at a minimum to provide evidence that Mr. Marcus did not satisfy the 20% Prong of FINRA Rules 12100(aa)(7) and (aa)(13). Petitioners have conspicuously failed to provide any such evidence. By contrast, in the cases cited by Petitioners that vacated arbitration awards, the challengers to the awards had evidence that the arbitrator had not made a material disclosure.

Contrary to Petitioners' argument, given the disclosures that Mr. Marcus made, Petitioners could not sit idly by during the arbitration and then move to vacate in court when the arbitration award was adverse to them. Petitioners cite Haworth v. Superior Ct. (2010) 50 Cal. 4th 372, 394–95, 235 P.3d 152, 167, but fail to mention the result of the case, which rejected the contentions of the challenger to the arbitration award.

> The arbitrator cannot reasonably be expected to identify and disclose all events in the arbitrator's past, including those not connected to the parties, the facts, or the issues in controversy, that conceivably might cause a party to prefer another arbitrator. Such a broad interpretation of the appearance-of-partiality rule could subject arbitration awards to after-the-fact attacks by losing parties searching for potential disqualifying information only after an adverse decision has been made. (Remmey v. PaineWebber, Inc., supra, 32 F.3d 143, 148 ["If this challenge were sustained, nothing would stop future parties to arbitration from obtaining allegedly disqualifying information, going through with the proceedings, and then coming

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> forward with the information only if disappointed by the decision"].) Such a result would undermine the finality of arbitrations without contributing to the fairness of arbitration proceedings.

(Id.)

Petitioners likewise cite Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP (2013) 219 Cal. App. 4th 1299, 1313–14, 162 Cal. Rptr. 3d 597, 607–608, but do not mention its statement that if the "party had actual knowledge of information putting the party on notice of a ground for disqualification, yet the party failed to inquire further, the arbitrator's failure to provide additional information regarding the same matter does not justify vacating the award."[1] Here, Petitioners knew about the disclosures that Mr. Marcus had made and they opted not to investigate further or challenge him as an arbitrator. Accordingly, their belated challenge in this Court to his status as a public arbitrator is waived.[2]

Petitioners' new argument in their Reply Brief is also incorrect because it relates to nondisclosure claims under Code of Civil Procedure section 1286.2, subdivision (a)(6)(A), rather than exceeding powers claims under subdivision (a)(4). Subdivision (a)(6)(A) provides for vacatur of an award if an arbitrator does not disclose "a ground for disqualification of which the arbitrator was then aware." The ground for disqualification at issue in subdivision (a)(6)(A) is a ground for disqualification under California law, such as the grounds for disqualification listed in Code of Civil Procedure section 1281.9, subdivision (a). These bases for disqualification generally relate to California's public policy emphasis on matters that might cause a party "to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial." (Id.)

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1 (See also United Health Centers of San Joaquin Valley, Inc. v. Superior Ct. (2014) 229 Cal. App. 4th 63, 85, 177 Cal. Rptr. 3d 214, 230) ["[A] party aware that a disclosure is incomplete or otherwise fails to meet the statutory disclosure requirements cannot passively reserve the issue for consideration after the arbitration has concluded. Instead, the party must disqualify the arbitrator on that basis before the arbitration begins."]; Dornbirer v. Kaiser Found. Health Plan, Inc. (2008) 166 Cal. App. 4th 831, 841, 83 Cal. Rptr. 3d 116, 123 (2008) ("If Dornbirer was concerned about the number of times Adelman had served as an arbitrator for Kaiser, she had the opportunity to ask for clarification. However, she did not do so. . . . Under Dornbirer's interpretation, a party could simply hold off on raising the issue of the completeness of the arbitrator's disclosure, wait to see if he or she is pleased with the arbitration award, and, if unhappy with the award, challenge the award on the basis that the arbitrator failed to disclose information that the party could have easily requested prior to the arbitration."].)

2 As Respondent stated in his initial Response to the Petition to Vacate, this Court need not be concerned about any conflict between federal and California arbitration law, because federal and California law lead to the same result. In the event of any conflict between federal and California arbitration law, however, federal arbitration law controls and preempts California arbitration law. (Viking River Cruises, Inc. v. Moriana (2022) 596 U.S. 639, 662.)

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Here, by contrast, the issue is not whether Mr. Marcus was disqualified under California law but rather whether FINRA had misclassified him as a public arbitrator under FINRA's internal rules. Petitioners do not argue that California law precluded non-public arbitrators from serving as arbitrators. They have no basis to argue that whether Mr. Marcus was or was not a public arbitrator under FINRA rules had any bearing on his ability to be fair or on his appearance of impartiality or that he in fact acted in a biased or unfair manner. If anything, industry parties (such as Petitioners) generally prefer non-public arbitrators over public arbitrators. California's concern about arbitral disclosures and the appearance of bias under subdivision (a)(6)(A) is not at issue here.

Accordingly, Petitioners' new argument based on Code of Civil Procedure section 1286.2, subdivision (a)(6)(A), has little relevance to Petitioners' claim that Mr. Marcus exceeded his powers under subdivision (a)(4) because FINRA misclassified him as a public arbitrator under its internal rules. Courts generally defer to the arbitration organization's and arbitrators' interpretation of their own rules. "NASD [or FINRA] arbitrators, comparatively more expert about the meaning of their own rule, are comparatively better able to interpret and to apply it." Howsam v. Dean Witter Reynolds, Inc. (2002) 537 U.S. 79, 85.

California courts are reluctant to interfere with an arbitration award on the ground that the arbitrators exceeded their powers.

> Although section 1286.2 permits the court to vacate an award that exceeds the arbitrator's powers, the deference due an arbitrator's decision on the merits of the controversy requires a court to refrain from substituting its judgment for the arbitrator's in determining the contractual scope of those powers.
>
> Giving substantial deference to arbitrators' own assessments of their contractual authority is consistent with the general rule of arbitral finality . . . . [P]arties to private, nonjudicial arbitration typically expect "'their dispute will be resolved without necessity for any contact with the courts.'" The decision to arbitrate disputes is motivated in part by the desire to avoid the delay and cost of judicial trials and appeals. "Ensuring arbitral finality thus requires that judicial intervention in the arbitration process be minimized."

Advanced Micro Devices, Inc. v. Intel Corp. (1994) 9 Cal. 4th 362, 372–73, 885 P.2d 994, 1000 (citations omitted).

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This Court should therefore reject Petitioners' attempt to analogize the issue they have raised to nondisclosure issues under Code of Civil Procedure section 1286.2, subdivision (a)(6)(A).

CONCLUSION

For the reasons stated herein and in Respondent's initial Response to the Petition to Vacate, Respondent requests that this Court (1) deny Petitioners' Petition to Vacate, and (2) confirm the award with respect to Barrows and Ludovico under Code of Civil Procedure section 1285 and section 9 of the Federal Arbitration Act, 9 U.S.C. section 9.

DATED: July 2, 2024 **LAW OFFICES OF MONTGOMERY G. GRIFFIN**

By:______________________________
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Case Name: Michael Barrows, et al v. Ronald J. Inlow

Case Number 23STCP04344

PROOF OF SERVICE

I, the undersigned, declare that I am at least 18 years old and not a party to the within action or proceeding. I am employed in and am a resident of Orange County where the mailing occurs. My business address is LAW OFFICES OF MONTGOMERY G. GRIFFIN, 620 Newport Center Drive, 11th FL, Newport Beach, CA 92660.

On July 2, 2024, I caused to be served the following document(s):

Reply Brief of Respondent In Support of Petition to Confirm Arbitration Award

on the interested parties in this action through the following service method:

(See attached "Service List" for list of recipients)

______ **BY MAIL**: I further declare that I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure section 1013(a). I then sealed each envelope and, with postage thereon fully prepaid, placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

______ **BY CERTIFIED U.S. MAIL WITH RETURN RECEIPT REQUEST**: I further declare that I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure section 877.6(a)(2). I then sealed each envelope and, with postage thereon fully prepaid, placed each for deposit in the United States Postal Service, this same day, certified mail with return receipt request at my business address shown above, following ordinary business practices.

______ **BY OVERNIGHT MAIL**: I further declare that I am readily familiar with the firm's business practice of collection and processing of overnight delivery for mailing, and that the correspondence shall be deposited in the overnight delivery service, Federal Express, to be delivered by overnight delivery to the parties at the address listed in the "Service List" below.

______ **BY FACSIMILE SERVICE**: I transmitted the document(s) described above to the person(s) and facsimile number(s) identified below pursuant to Code of Civil Procedure 1013(e), 1013(F) and California Rules of the Court Rule 2.306. The facsimile machine I used complied with California Rules of Court, Rule 2003 and no error or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission of the document(s).

______ **BY PERSONAL SERVICE**: I emailed the documents identified above to a courier service, [COURIER SERVICE NAME], to be delivered by personal service to the parties at the addresses listed in the "Service List" below.

X______ **BY ELECTRONIC SERVICE**: I caused a copy of the document(s) to be sent from email address montyg@montgomerygriffin.com to the persons at the email addresses listed in the Service List. This electronic service is sent to the email addresses obtained in compliance with Code of Civil Procedure §§ 1010.6(2)(A)(ii), 1010.6(e)(1), and California Rules of the Court 2.251, wherein our notice was provided on or about [VIA COVID]. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. As such, service has been completed only by emailing the document(s) to the person(s) at the email address(es) listed in the Service List. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 2nd day of July, 2024, at Newport Beach, California.

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SERVICE LIST

Case Name: Michael Barrows, et al v. Ronald J. Inlow

Case Number 23STCP04344

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