

CAUSE NO DC-25-04677

DICKEY’S BARBECUE	§	IN THE DISTRICT COURT OF
RESTAURANTS, INC., ROLAND	§	
DICKEY, JR., JEFFREY GRUBER,	§	
and DEBORAH LONGWORTH,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	162nd JUDICIAL DISTRICT COURT
AMERICAN ARBITRATION	§	
ASSOCIATION, INC.,	§	
GARY LEYDIG, and	§	
G SIX CONSULTING LLC,	§	
	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

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PLAINTIFFS’ AMENDED PETITION, VERIFIED APPLICATION FOR  
TEMPORARY RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY  
INJUNCTION AND PERMANENT INJUNCTION

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TO THE HONORABLE COURT:

Plaintiffs Dickey’s Barbecue Restaurants, Inc. (“DBRI”), Roland Dickey Jr. (“Dickey”), Jeffrey Gruber (“Gruber”), and Deborah Longworth (“Longworth”) (Dickey, Gruber, and Longworth are referred to herein as the “Individual Plaintiffs” or “Non-Parties”) (DBRI and the Individual Plaintiffs are referred to herein collectively as the “Plaintiffs”) bring this lawsuit against the American Arbitration Association, Inc. (“AAA”), Gary Leydig (“Leydig”), and G Six Consulting LLC (“G Six”) (collectively, “Defendants”) and, in support, respectfully show the Court as follows:

## I. INTRODUCTION

DBRI and G Six are engaged in an Arbitration Proceeding administered by the AAA, and presided over by Gary Leydig, the arbitrator. The Arbitration Proceeding is scheduled for a final hearing in Dallas, Texas starting on April 28, 2025. Dickey, Gruber, and Longworth are not parties to the arbitration or parties to the arbitration agreement.

In flagrant and stated disregard for the FAA, AAA Rules, federal and Texas law, and all notions of equity and due process, Leydig has issued death-penalty sanctions against DBRI because the Individual Plaintiffs refused to waive their rights and submit to the jurisdiction of the AAA.

DBRI has offered, on multiple occasions, to provide a deposition of a corporate representative of DBRI. But the arbitrator and G Six refused the offer and instead insisted that the Individual Plaintiffs submit to pre-hearing depositions and even ordered them to fly to Florida for depositions. Mr. Leydig said that if DBRI would not force the Individual Plaintiffs to submit to the AAA's jurisdiction, then DBRI would be punished. And he acted on that threat last night.

Mr. Leydig issued overbroad and punitive sanctions which include but are not limited to excluding DBRI from presenting any witness testimony, excluding DBRI from presenting any documentary evidence, excluding DBRI from cross-examining any of G Six's witnesses, excluding DBRI from presenting any expert witness, and excluding DBRI from presenting any defense against G Six's claims. This order also explicitly

dismisses all of DBRI's counterclaims against G Six. The sanctions preclude DBRI from making **any arguments against or based on the facts G Six may present**. The arbitrator has no power to order any such sanctions since that power was not provided to him in the arbitration agreement. Moreover, his order is effectively a default judgment on all claims and counterclaims which is a violation of law and AAA rules.

There is no dispute between the parties regarding document discovery or any other issue. The only dispute is whether the Individual Plaintiffs are subject to the arbitrator's deposition subpoenas and orders issued in the arbitration; and whether the arbitrator and the AAA can severely punish DBRI for non-parties' decisions not to waive their due process rights.

Mr. Leydig has explicitly stated that he refused to consider case law presented by DBRI, has ruled that he *"do[es] not consider himself bound by the procedural rules—including those controlling discovery procedure—of the federal courts, Texas or any other judicial jurisdiction."* He also refuses to consider the AAA's discovery rules and the arbitration agreement between DBRI and G Six in conducting the arbitration. And he has made advance rulings on many legal and factual issues before considering DBRI's position.

The Arbitration Proceeding must be immediately enjoined due to the AAA and Mr. Leydig's flagrant abuse of power and process. Further, the statements and actions by Mr. Leydig and G Six's counsel toward DBRI and its counsel are the type of incivility

which has long been forbidden in federal and state courts in Texas. The AAA has and is allowing this outrageous conduct to proceed unchecked.

DBRI has made multiple attempts to resolve these issues with Mr. Leydig and with the AAA but the only result has been retaliatory actions taken by Mr. Leydig against DBRI and its counsel – the most recent being the death penalty sanctions order issued late yesterday (March 26, 2025) – conduct which has been condoned by the AAA.

To put it succinctly, the arbitrator is out of control and the AAA is condoning his behavior. As such, Plaintiffs have no recourse but to seek the intervention of this Court.

The Plaintiffs ask the Court to grant a TRO and temporary and permanent injunction enjoining the prehearing deposition subpoenas served upon the Individual Defendants, enjoining the arbitrator from enforcing the sanctions order, and enjoining the AAA from moving forward on the final hearing at this time. DBRI also seeks to have the Court oversee the arbitration proceedings going forward.

## **II. DISCOVERY CONTROL PLAN**

Discovery in this case shall be conducted under Level 3 of the Texas Rule of Civil Procedure 190.

### **III. CLAIM FOR RELIEF**

Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs currently seek monetary relief of \$250,000.00 or less and non-monetary relief. Plaintiffs reserve the right to amend and/or supplement its pleading.

### **IV. PARTIES**

1. Dickey's Barbecue Restaurants, Inc. ("DBRI") is a corporation organized under the laws of Texas, with its principal place of business in Dallas, Texas.

2. Roland Dickey Jr. ("Dickey") is an individual residing in Dallas, Texas.

3. Jeffrey Gruber ("Gruber") is an individual residing in Dallas, Texas.

4. Deborah Longworth ("Longworth") is an individual residing in Dallas, Texas.

5. Defendant American Arbitration Association, Inc. ("AAA") is a corporation with its headquarters in New York, and which does business in Texas. The AAA may be served through its registered agent, Corporation Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

6. Defendant Gary Leydig is an individual residing in Illinois. He may be served at 100 East Cossitt Avenue, Suite 300, La Grange, Illinois, 60525.

7. Defendant G Six Consulting, LLC ("G Six") is an Illinois limited liability company with its principal place of business in Chicago, Illinois. G Six is owned by Demetrius Gibson ("Mr. Gibson") and Maria Gibson ("Mrs. Gibson" and collective with

Mr. Gibson, the “Gibsons”), who are individuals residing in Illinois. G Six may be served through its registered agent, United States Corporation Agents, Inc. 500 N. Michigan Avenue, Suite 536, Chicago Illinois, 60611-3755.

## **V. JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction under Texas Government Code § 24.007 and Article V, Section 8, of the Texas Constitution.

9. The Court has personal jurisdiction over the AAA under Texas Civil Practice and Remedies Code § 17.042. *Moki Mac*, 221 S.W.3d at 575 (“[A] nonresident does business in Texas if it: (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state; [or] (2) commits a tort in whole or in part in this state.”).

10. The Court has personal jurisdiction over Leydig under Texas Civil Practice and Remedies Code § 17.042. *Id.*

11. This Court has personal jurisdiction over G Six because it purported to issue the deposition subpoenas in the State of Texas in the Arbitration Proceeding and because G Six entered into the Franchise Agreement supporting the Arbitration Proceeding in the State of Texas. *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007) (“[A] nonresident does business in Texas if it (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state[.]”) (quoting TEX. CIV. PRAC. & REM. CODE § 17.042(1)).

12. The Court further has personal jurisdiction over G Six because G Six seeks to enforce a subpoena under Section 7 of the FAA. *See Moki Mac*, 221 S.W.3d at 575 (“[T]he requirements of the Texas long-arm statute are satisfied if an assertion of jurisdiction accords with federal due-process limitations.”); *Certified Lab’ys v. Momar, Inc.*, No. 3:22-MC-60-K-BN, 2022 WL 4370456, at \*6 (N.D. Tex. Aug. 16, 2022), *report and recommendation adopted*, No. 3:22-MC-0060-K, 2022 WL 4371507 (N.D. Tex. Sept. 21, 2022) (“[I]n a proceeding to enforce an arbitral subpoena pursuant to Section 7 of the FAA, the relevant contacts for determining personal jurisdiction are contacts with anywhere in the United States[.]”) (quoting *Broumand v. Joseph*, 522 F. Supp. 3d 8, 20 (S.D.N.Y. 2021)); *accord Busch v. Buchman, Buchman & O’Brien, L. Firm*, 11 F.3d 1255, 1258 (5th Cir. 1994) (“And, when a federal court is attempting to exercise personal jurisdiction over a defendant in a suit based upon a federal statute providing for nationwide service of process, the relevant inquiry is whether the defendant has had minimum contacts with the United States.”)

13. Venue is proper in this Court pursuant to Texas Civil Practice and Remedies Code §§ 15.012 and 65.023(b). Venue is further proper in this Court under Texas Civil Practice and Remedies Code § 15.001 because a substantial part of the events giving rise to the claim, including G Six’s issuance and delivery of the subpoenas and the hearing itself is to occur in Dallas County.

## **VI. STATEMENT OF FACTS**

### **The Arbitration Proceeding**

14. Pursuant to an arbitration agreement between them, DBRI and G Six are engaged in an arbitration proceeding administered by the AAA, captioned as *G Six Consulting LLC v. Dickey's Barbecue Restaurants, Inc.*, AAA Case No. 01-23-0004-5053 (the "Arbitration Proceeding"). The Arbitration Proceeding is currently scheduled for a final hearing in Dallas, Texas on April 28, 2025. The Individual Plaintiffs (Dickey, Gruber, and Longworth) are employees of DBRI. They are not parties to the arbitration agreement and have not submitted to the jurisdiction of the AAA.

15. The Arbitration Proceeding underlying this dispute relates to claims by a single franchisee—G Six—against Dickey's, related to a single franchised restaurant. G Six operated its restaurant for three months after opening, and then unilaterally closed the restaurant. Dickey's did not terminate the agreement, which is still in place. Rather, the closing was done voluntarily by G Six and in violation of its obligations under the franchise agreement with Dickey's. G Six has blamed Dickey's for its inability to turn a profit in the three months it was open. And G Six and its counsel have improperly weaponized the Arbitration Proceeding and the AAA and Mr. Leydig are complicit.

16. G Six initiated the Arbitration Proceeding by filing a demand with the American Arbitration Association ("AAA") October 13, 2023 against DBRI and a number

of individual employees and former employees of DBRI including but not limited to the Individual Defendants. At issue here are the depositions of three of these individuals:

- **Roland Dickey, Jr.:** the Chief Executive Officer (“CEO”) of Dickey’s Capital Group, which is the holding company of DBRI;
- **Jeffrey Gruber:** the Senior Vice President of Franchise Relations of DBRI; and
- **Deborah Longworth:** the Senior Director of Store Development of DBRI.

17. The FAA and the arbitration agreement governs the Arbitration Proceeding pursuant to the arbitration provision in the Franchise Agreement between DBRI and G Six, which states, among other things, that “[a]ll matters relating to the arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.” Ex. A, Franchise Agreement (Excerpt).

18. G Six knew at the time the dispute was filed that the Individual Respondents were not parties to the Arbitration Agreement, and therefore not subject to the AAA’s jurisdiction.

### **Scheduling Order**

19. From the outset of the Arbitration Proceeding, DBRI has advised that the FAA does not permit non-party depositions, and opposed the same.

20. On May 9, 2024, in advance of the initial scheduling conference, the parties submitted a proposed scheduling order to the arbitrator, noting disputed issues. Ex. B, May 9, 2024 Email.

21. The following day, the parties attended an initial scheduling conference with Arbitrator Leydig, during which counsel for DBRI argued that the number of depositions should not exceed the number of parties<sup>1</sup> because non-party depositions are not permitted under the FAA. The Arbitrator instructed that the scheduling order would include G Six's requested ten (10) depositions, over DBRI's objection.

### **Initial Issuance of the Subpoenas**

22. On August 27, 2024—at the outset of discovery in the Arbitration Proceeding—counsel for DBRI requested briefing on the issue of jurisdiction over the Individual Respondents, given the distinction drawn in this Circuit (and others) between party and non-party depositions:

Arbitrator Leydig –

As you may recall from the preliminary hearing in this matter, there are a number of individuals named as respondents in this dispute (Roland Dickey, Jr., Jeff Gruber, Lee Quinn, Deborah Longworth, and Stephen Mullet, as well as Virtual Brands, Inc.). Dickey's position is that the AAA does not have jurisdiction over these respondents, as none of them are parties to the arbitration agreement between Dickey's and Mr. Gibson (later assumed by G Six Consulting, LLC), which provides for the AAA's jurisdiction over this dispute.

As we are moving into discovery in this matter, Dickey's would like to resolve this issue, as it will have significant impact on depositions and the scope of discovery. I propose the following briefing schedule:

- **Sept. 6, 2024:** Dickey's brief
- **Sept. 13, 2024:** Claimants' response
- **Sept. 20, 2024:** Dickey's reply

We will of course defer to you, if you see a more efficient way to accomplish this.

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<sup>1</sup> At that time, there were seven named respondents, including the Individual Respondents.

Ex. C, August 27, 2024 Email.

23. The following day, Arbitrator Leydig denied DBRI's request to resolve the pending jurisdictional issue, stating: "The parties—including the non-appearing parties—need to present the issue of my jurisdiction and the validity of the arbitration agreement in accordance with the rules." Ex. D, August 28, 2024 Email.

24. Of course, the Individual Respondents could not submit the merits of that issue to the Arbitrator without waiving rights as they were not represented by counsel nor subject to the AAA's jurisdiction.<sup>2</sup>

25. Shortly thereafter, G Six requested subpoenas for the depositions of Dickey and Gruber, individually. Arbitrator Leydig issued the subpoenas on September 23, 2024.

### **Dismissal of the Non-Parties and Re-Issuance of the Subpoenas**

26. Upon issuance of the subpoenas, counsel for DBRI communicated to the arbitrator and counsel for G Six that the Fifth Circuit (and other circuits) do not provide authority for the AAA to secure pre-hearing depositions of non-parties. DBRI offered (as it has done on numerous occasions since) to provide a corporate representative deposition, which G Six has repeatedly declined and Arbitrator Leydig has ignored.

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<sup>2</sup> *E.g. Piggly Wiggly Operators' Warehouse, Inc. v. Piggly Wiggly Operators' Warehouse Indep. Truck Drivers Union, Loc. No. 1*, 611 F.2d 580, 584 (5th Cir. 1980) ("[T]he grievance submitted to the arbiter defines his authority without regard to whether the parties had a prior legal obligation to submit the dispute."); *Baer v. Terminix Int'l Co. P'ship*, 975 F. Supp. 1272, 1279 (D. Kan. 1997) ("[A] party that agrees to submit the question of arbitrability to the arbitrator waives any right to object later to that arbitrator's authority.").

Arbitrator Leydig,

We have received notices for the depositions of Roland Dickey and Jeff Gruber, which were noticed to take place on November 5 and 6, 2024 at 4145 Cole Avenue, Ste. 600, Dallas, TX 75205. While counsel from our firm will attend any properly noticed depositions on behalf of Dickey's, our firm has not been retained to represent Jeff Gruber or Roland Dickey individually.

Note that we do not believe the AAA has authority to secure pre-hearing depositions of any third party. We have thoroughly researched the case law in the 5<sup>th</sup> Circuit on this point and can find no authority for this proposition. Our firm has been involved in deposition discovery in multiple arbitrations and have been on both sides of this issue and it is our understanding that the AAA does not have authority to require third parties to participate in any pre-hearing discovery. If there is a statute or case that suggests otherwise, we would like to review it. In those circuits where pre-hearing discovery of third parties is permitted, it is generally held that there must be some special reason why a third party would need to be compelled to participate. Here, there is no reason provided and we can think of no reason to support the request. Dickey's has agreed to provide a corporate representative for deposition. To date, we have not received any proposed topics from the claimant. If claimant provides proposed topics, we will be glad to determine the appropriate corporate representative(s) to testify on topics and will work with claimant's counsel to schedule the deposition(s).

Ex. E, September 24, 2024 Email.

27. The Arbitrator responded by *sua sponte* quashing the subpoenas, finding (correctly) that Section 7 of the FAA "in fact makes no reference to depositions or, more generally, discovery of any sort," and ordering G Six to provide authority supporting the issuance of the subpoenas. Ex. F, September 26, 2024 Email.

28. In the same correspondence, the Arbitrator also *specifically instructed DBRI that he was "not interested" in objections raised by DBRI*, but instead would only consider arguments or objections raised by the Individual Respondents themselves. *Id.*

A couple other comments going forward. If the respondents have objections or arguments to make on *their* own behalf, make them. I am not interested, however, in hearing objections or arguments made on behalf of the parties who have elected to not appear in this arbitration. If the arbitrator takes action that affects these non-appearing parties, **they** need to take whatever action they deem necessary to protect their interests. Counsel for the respondents who have thus far appeared have repeatedly emphasized to the arbitrator that they are not appearing on behalf of these absent parties. That being so, I am not interested in the “back door” arguments that are purportedly being made on the absent parties’ behalf. Also, I do not read the parties’ arbitration agreement or the controlling Preliminary Hearing and Scheduling Order as requiring the application of the law emanating from the Fifth Circuit on issues like those presented by the subpoenas. As with all matters, I am open to persuasion to the contrary but that is my current understanding.

Ex. F, September 26, 2024 Email.

29. On October 8, 2024, G Six provided briefing purporting to support the re-issuance of the subpoenas, arguing that subpoenas were appropriate because (1) Dickey and Gruber were parties to the arbitration; (2) the subpoenas were authorized under the Texas General Arbitration Act; and (3) that the FAA does not apply to the Arbitration Proceeding (notwithstanding that both the Franchise Agreement conferring jurisdiction in arbitration *and* the order controlling the disposition of Arbitration Proceeding states that the FAA *shall* apply).

30. On October 15, 2024, Arbitrator Leydig issued an order stating that the subpoenas would be re-issued. Ex. G, October 15, 2024 Order. The subpoenas were re-issued the same day, purporting to compel Dickey and Gruber’s depositions on November 5 and 6, 2024. Exs. H-1, Dickey Subpoena and H-2, Gruber Subpoena.

31. In the same order, Arbitrator Leydig also opined that “it is time to resolve this issue of the status of Messrs. Dickey’s and Guber’s status,” and ordered the parties

to submit briefing on the jurisdictional dispute over the Individual Respondents. Ex. G, October 15, 2024 Order.

32. Neither Dickey nor Gruber have submitted to the AAA's jurisdiction over them in this dispute (or any dispute); therefore, neither appeared for the scheduled depositions or have appeared in the arbitration.

33. On November 12, 2024, Arbitrator Leydig finally and rightfully dismissed all of the individuals from the Arbitration Proceeding, finding that "[t]hey are not contractual parties thereto and have not consented to arbitration." Ex. I, November 12, 2024 Order.

34. On November 26, 2024, G Six filed a motion to compel the depositions of Dickey and Gruber with the Arbitrator, as well as a request to impose sanctions on DBRI for Dickey and Gruber's non-appearance. Ex. J, November 26, 2024 Motion to Compel and to Impose Sanctions.

35. In its Motion, G Six argued *for the first time* that DBRI was required to produce the Individual Plaintiffs for deposition as its employees (rather than as individual parties to the Arbitration Proceeding). *Id.* DBRI responded, objecting to G Six's retroactive revision of its deposition notices, and further argued that Dickey's deposition

was *additionally* barred not only because he is not a party to the Arbitration Proceedings but also due to the apex doctrine.<sup>3</sup>

### **Unenforceable Orders to Compel Non-Party Depositions**

36. On December 20, 2024, Arbitrator Leydig issued an order granting G Six's motion to compel these depositions, and stated that monetary sanctions would be addressed against DBRI at the time of the final hearing. Ex. K, December 20, 2024 Order. In this Order, Arbitrator Leydig explicitly stated, "*I do not consider myself bound by the procedural rules – including those controlling discovery procedure – of the federal courts, Texas or any other judicial jurisdiction.*" *Id.* at 1. This rejection of federal law exceeds the AAA's jurisdiction in this case, which is explicitly limited by parties' agreement that "*all matters relating to the arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.).*"<sup>4</sup> Ex. A, Franchise Agreement § 27.5 (Excerpt).

37. Around the same time, G Six also requested the deposition of Longworth.

38. What followed, throughout January and February 2025, was a series of correspondence and conferences among counsel for G Six, counsel for DBRI, and

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<sup>3</sup> See *In re Alcatel USA, Inc.*, 11 S.W.3d 173, 175 (Tex. 2000) (discussing guidelines to be applied "[w]hen a party seeks to depose a corporate president or other high level corporate official").

<sup>4</sup> *Am. Eagle Airlines, Inc. v. Air Line Pilots Ass'n, Int'l*, 343 F.3d 401, 406 (5th Cir. 2003) ("[W]here an arbitrator exceeds his contractual authority, vacation or modification of the award is an appropriate remedy.") (quoting *Delta Queen Steamboat Co. v. District 2 Marine Engineers Beneficial Ass'n*, AFL-CIO, 889 F.2d 599, 602 (5th Cir.1989)); *E.I. DuPont de Nemours & Co. v. Loc. 900 of Int'l Chem. Workers Union*, AFL-CIO, 968 F.2d 456, 458 (5th Cir. 1992) (requiring that an arbitrator's order "draws its essence from the [arbitration agreement], and is not based on the arbitrator's own brand of industrial justice") (internal quotations omitted).

Arbitrator Leydig regarding the depositions of the non-party individuals, during which time Arbitrator Leydig issued a second order compelling the depositions of the non-party individuals (Ex. L, January 10, 2025 Order), and a third order compelling the same (Ex. M, January 23, 2025 Order).

39. In the interim, DBRI filed a Rule 17 Notice with the AAA.<sup>5</sup> Such objections were *required* to be raised at that time, or risk waiving them.<sup>6</sup> In response, the case manager in this matter confirmed that “the arbitration proceeding is paused pending the AAA’s decision on Respondent’s objection.” *Id.* Notably, however, after an *ex parte* discussion with G Six’s counsel—for which counsel for DBRI was neither notified nor included—the case manager stated, “So all pending deadlines in the Arbitrator’s Order

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<sup>5</sup> One of the reasons for DBRI’s challenge to Arbitrator Leydig’s appointment was his failure to disclose facts and circumstances giving rise to bias. For example, Mr. Leydig’s AAA resume, which was provided to the parties, states that a “substantial portion of (his) practice focuses on issues affecting the relationship between franchisees/dealers and their franchisors/manufacturers/suppliers.” However, this was a material change to his law firm bio, where he stated that he is “a nationally recognized leader in the representation and protection of . . . franchisees in their disputes with their suppliers and franchisors. . . .” Another example of Mr. Leydig’s bias were his published articles referring to franchisors as “unscrupulous” and encouraging franchisees to engage in litigation against their franchisors. He has also written about his deeply held belief that franchisors enter into transactions “to make money off the franchisee,” and spoken generally derisively about franchisors (“Further, in those states having franchise relationship laws, the top-down authority that nonprofit franchisors previously wielded over their independent affiliates may be more readily, and effectively, called into question now that the emperor’s clothes have been revealed for what they are.”).

After the Rule 17 challenge, Mr. Leydig referred to Ms. Nix as Ms. Dix. Ms. Nix pointed this out, which is an obviously offensive misspelling, but Mr. Leydig never acknowledged or apologized for it. Instead, his uncivil behavior towards Ms. Nix continued to escalate.

<sup>6</sup> Generally, a party seeking to vacate an arbitration award on the grounds of evident partiality must object during the arbitration or else waive such objection. *Bernstein Seawell Kove v. Bosarge*, 813 F.2d 726, 732 (5th Cir. 1987). *See also Tex. Health Mgmt., LLC v. Healthspring Life & Health Ins. Co.*, No. 05-18-01036-CV, 2020 WL 3071729, at \*4 (Tex. App.—Dallas June 10, 2020, no pet.) (mem. op.) (“A party who knows or who has reason to know of an arbitrator’s alleged bias but remains silent pending the outcome of the arbitration waives the right to complain.”).

remain in place. However, any issues and/or discovery disputes will be tabled pending the AAA's determination regarding Mr. Leydig's appointment." *Id.*

40. She also specifically instructed the parties on January 31, 2024, "The arbitrator shall not be copied on any comments related to the disclosure." *Id.*

### **G Six's Motion for Sanctions**

41. On February 20, 2024, G Six filed its Motion for Sanctions, requesting that the arbitrator strike DBRI's pleadings and draw adverse inferences against DBRI for refusing to "force" the non-party witnesses to sit for a deposition. (Ex. N, February 20, 2025 Motion for Sanctions). Ignoring the AAA's explicit direction not to reference the Rule 17 Notice, G Six specifically included DBRI's objection to the arbitrator as an argument supporting its Motion for Sanctions.

42. In response, Arbitrator Leydig issued a *fourth* order, now compelling the depositions of the non-party individuals to take place *in Miami, Florida*, and threatening to impose "*some or all of the full array of sanctions available under the AAA Rules*" (presumably including the "death penalty" sanctions requested by G Six) if the non-party individuals failed or refused to appear for pre-hearing depositions in Florida. Ex. O, February 24, 2025 Order).

43. Notably, Arbitrator Leydig issued this fourth order *before DBRI even had an opportunity to file its response to G Six's Motion for Sanctions*. See AAA Comm. Rules R-60(b) ("The arbitrator *must provide a party that is subject to a sanction request*

*with the opportunity to respond prior to making any determination* regarding the sanctions application.”) (emphasis added).

44. DBRI submitted its response to Claimant’s Motion for Sanctions on March 13, 2025.

45. On March 27, 2025, before the hearing on such briefing, Arbitrator Leydig issued an order granting outrageous (and wholly improper) death penalty sanctions against Dickey’s, as follows:

- a. Claimant’s motion for sanctions is granted.
- b. Respondent’s Answer and Affirmative Defenses are stricken. Respondent’s Counterclaim is dismissed.
- c. Respondent is excluded from all further fact-finding aspects of this arbitration, including but not limited to, (i) it will not be allowed to present any witness testimony or documentary evidence at the hearing on Claimant’s claims, (ii) it will not be allowed to cross-examine any of Claimant’s witnesses, and (iii) its expert witness report and testimony will not be allowed.
- d. If requested by Claimant, the arbitrator will draw reasonable adverse inferences.
- e. Claimant shall be awarded its attorneys’ fees and costs associated with (i) its original motion to compel the depositions of Dickey, Jr. and Gruber, (ii) its subsequent activity to obtain compliance with Orders No. 1, No. 2, No. 3, and No. 4, and (iii) the prosecution of its motion for sanctions.
- f. Respondent shall, on terms that shall be developed by the arbitrator, be allowed only to participate in the presentation of strictly legal arguments that address the nature of the claims brought by Claimant.

Ex. P, March 26, 2025 Order.

46. The Order all but acknowledges that these sanctions are case-determinative, instructing the parties that the it may “impact such things as (i) whether witness testimony needs to proceed with live testimony or if it can now be handled with witness statements or some combination, (ii) whether certain pre-hearing activities should now be eliminated or modified, and (iii) likely many other items that have not yet come clearly into view.” *Id.*

## VII. ARGUMENT AND AUTHORITIES

### A. The Non-Parties seek protection to quash pre-hearing depositions.

47. The Non-Parties to the Arbitration Proceeding (Dickey, Gruber, and Longworth) respectfully seek protection from this Court to quash the subpoenas directing their pre-hearing depositions, as none of them have submitted to the AAA’s jurisdiction and such depositions are categorically barred by the FAA.

#### 1. Non-party depositions are specifically prohibited under the FAA, and the Franchise Agreement.

48. “An arbitrator’s authority over parties that are not contractually bound by the arbitration agreement is strictly limited by the Federal Arbitration Act (FAA).” *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 406 (3rd Cir. 2004) (emphasis added). Here, the bounds of the FAA are explicitly incorporated into the parties

agreement, under Section 27.5 of the Franchise Agreement.<sup>7</sup> Ex. A, Franchise Agreement (Excerpt) (“[A]ll matters relating to the arbitration will be governed by the Federal Arbitration Act.”).

49. The FAA permits arbitrators to summon:

any person *to attend before them* or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case [...] 9 U.S.C. § 7 (emphasis added).

50. Under the plain language of the statute, an arbitrator does not have the authority to order the depositions of non-parties to the arbitration proceedings. *See Certified Lab’ys*, 2022 WL 4370456, at \*6 (“Section 7 does not authorize district courts to compel witnesses to appear in locations outside the physical presence of the arbitrator[.]”).

51. Courts in the wide majority of Circuits (including the Fifth Circuit) impose this limitation on discovery in arbitration proceedings:

- **Second Circuit:** “*Arbitrators have no such power to compel discovery from third parties*—even those (like Peachtree) that signed the underlying arbitration agreements.” *Life Receivables Tr. v. Syndicate 102 at Lloyd’s of London*, 549 F.3d 210, 217 (2d Cir. 2008) (emphasis added).
- **Third Circuit:** “*Nowhere does the FAA grant an arbitrator the authority to order non-parties to appear at depositions*, or the authority to demand that non-parties provide the litigating parties with documents

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<sup>7</sup> *E.I. DuPont de Nemours*, 968 F.2d at 458 (requiring that an arbitrator’s order “draws its essence from the [arbitration agreement], and is not based on the arbitrator’s own brand of industrial justice”) (internal quotations omitted).

during pre-hearing discovery.” *Hay Grp., Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 410 (3d Cir. 2004) (emphasis added) (agreeing with the Fourth Circuit approach, and further holding that Section 7 does not allow any “special need” exception).

- **Fourth Circuit:** “*Nowhere does the FAA grant an arbitrator the authority to order non-parties to appear at depositions*, or the authority to demand that non-parties provide the litigating parties with documents during prehearing discovery.” *COMSAT Corp. v. Nat’l Science Foundation*, 190 F.3d 269, 274–76 (4th Cir.1999) (emphasis added).
- **Fifth Circuit:** “*Section 7 does not authorize district courts to compel witnesses to appear in locations outside the physical presence of the arbitrator[.]*” *Certified Lab’ys*, 2022 WL 4370456, at \*6 (emphasis added). See also *Chicago Bridge & Iron Co. N.V. v. TRC Acquisition, LLC*, No. CIV.A. 14-1191, 2014 WL 3796395, at \*3 (E.D. La. July 29, 2014) (holding that an action to enforce deposition subpoena was “not authorized under Section 7,” and agreeing with the Second, Third, and Fourth circuits on the discovery limitations imposed by Section 7); *Empire Fin. Grp., Inc. v. Penson Fin. Servs., Inc.*, No. 3:09-cv-2155-D, 2010 WL 742579, at \*3 (N.D. Tex. Mar. 3, 2010) (“The court adopts the reasoning of the Third and Second Circuits and holds that § 7 of the FAA does not authorize arbitrators to compel production of documents from a non-party, unless they are doing so in connection with the non-party’s attendance at an arbitration hearing.”).
- **Sixth Circuit:** “*As an initial matter, the undersigned observes that Section 7 does not allow arbitrators to subpoena third-parties for discovery purposes.*” *Am. Income Life Ins. Co. v. FFL Onyx, L.L.C.*, 720 F. Supp. 3d 518, 520 (E.D. Mich. 2024) (emphasis added) (quoting *Dodson Int’l Parts, Inc. v. Williams Int’l Co.*, No. 19-MC-50489, 2019 WL 5680811 (E.D. Mich. June 26, 2019)).
- **Seventh Circuit:** “By its own terms, the FAA’s subpoena authority is defined as the power to compel non-parties to appear before them; that is, to compel testimony by non-parties at the arbitration hearing. *A deposition simply does not fall within those terms.*” *Matria Healthcare, LLC v. Duthie*, 584 F. Supp. 2d 1078, 1080 (N.D. Ill. 2008).

- **Ninth Circuit:** *“Nothing in the language of § 7 grant[s] an arbitrator the authority to order non-parties to appear at depositions, or the authority to demand that non-parties provide the litigating parties with documents during prehearing discovery. The Court also finds persuasive the Second and Third Circuits’ reasoning that an arbitrator’s authority over non-parties, particularly non-parties to the arbitration proceeding who are also non-parties to the arbitration agreement, is limited because the arbitrator’s power ultimately stems from a contractual agreement to arbitrate. Non-parties, by definition, have not agreed to abide by the arbitrator’s decisions. *McTammany v. Found. Cap. Partners L.P.*, No. 8:15-mc-0006-DOC (VBKx), 2015 WL 12781404, at \*2 (C.D. Cal. May 1, 2015). See also *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017) (“The text of section 7 grants an arbitrator no freestanding power to order third parties to produce documents other than in the context of a hearing.”).*
- **Eleventh Circuit:** *“[W]e conclude that 9 U.S.C. § 7 does not permit pre-hearing depositions and discovery from non-parties.” *Managed Care Advisory Grp., LLC v. CIGNA Healthcare, Inc.*, 939 F.3d 1145, 1160 (11th Cir. 2019) (emphasis added).*

52. This limited discovery process is “a hallmark of arbitration” and “a necessary precursor to its efficient operation.” *COMSAT Corp.*, 190 F.3d at 276 (“Parties to a private arbitration agreement forego certain procedural rights attendant to formal litigation in return for a more efficient and cost-effective resolution of their disputes.”).

53. The case law is consistent with the AAA commercial rules, which contemplate only the exchange of *documents* in pre-hearing discovery and do not contemplate *any* depositions as a matter of right. R-22.

54. Further, consistent with the case law, Rule 35 requires that *“[a]ll evidence shall be taken in the presence of all of the arbitrators and all of the parties.”* R-35

(emphasis added). In fact, under the AAA rules, depositions are only contemplated *at all* in “exceptional cases” or in “large, complex cases,” which this case is not.

**2. The Arbitrator lacks authority to order the purported sanctions.**

**a. The arbitrator’s order that depositions proceed in Miami, Florida violates Rule 45’s Geographic Restrictions.**

55. Even if the Arbitrator could compel depositions of the Non-Parties (he cannot, as discussed above), the order purporting to compel the depositions to take place in Florida violates the geographic limitations imposed by Federal Rule of Civil Procedure 45(c), the FAA, and the geographic location of the arbitration. The subpoenas are entirely unenforceable.

56. Section 7 states that arbitral subpoenas “shall be directed to the said person and *shall be served in the same manner as subpoenas to appear and testify before the court.*” 9 U.S.C. § 7 (emphasis added). Thus, “Rule 45(c)’s geographic limits apply to arbitral subpoenas, as incorporated by Section 7.” *Certified Lab’ys*, 2022 WL 4370456, at \*7 (quoting *Broumand*, 522 F. Supp. 3d at 14 n.1, 22) (“[E]ven if Rule 45(c)’s geographical limitations did not invalidate these arbitral subpoenas, Section 7’s presence requirement would.”); *Dynegy Midstream Servs. v. Trammochem*, 451 F.3d 89, 94–95 (2d Cir. 2006) (“Service of subpoenas to appear before the federal courts and enforcement of those subpoenas are in turn governed by Federal Rule of Civil Procedure 45.”).

57. Rule 45 provides that a subpoena may command a person to attend a trial hearing or deposition *only* “within 100 miles of where the person resides, is employed, or regularly transacts business in person.” FED. R. CIV. P. 45(c). Each of the Non-Parties resides in Dallas, Texas, which is also the location of the Arbitration Proceeding.

58. No authority supports the Arbitrator’s attempt to compel depositions to occur in Florida—over 1300 miles from “where [the Non-Parties] reside[.]” *Id.* To the contrary, the great weight of authority across the nation specifically prohibits it. *See also In re Managed Care Litig.*, 2020 WL 3643042, at \*8 (“Pursuant to Rule 45, an arbitral summons can only command a non-party to attend a final hearing within 100 miles of where the non-party resides, is employed or regularly transacts business.”); *Maine Community Health Options v. Walgreen Co.*, No. 18-mc-0009, 2018 WL 6696042, at \*2–3 (W.D. Wisc. Dec. 20, 2018) (applying Rule 45 territorial limits to an arbitral subpoena and stating that it can only require attendance within 100 miles of where the witness resides....); *Ping-Kuo Lin v. Horan Capital Mgmt. LLC*, No. 14-CIV-5202, 2014 WL 3974585 at \*1 (S.D.N.Y. August 13, 2014) (holding that an arbitrator may not summons a witness outside of the 100 mile limit allowed by the Federal Rules); *see also Legion Ins. Co. v. John Hancock Mutual Life Ins. Co.*, 33 Fed. App’x 26 (3d Cir. 2002) (“In light of the territorial limits imposed by Rule 45 upon the service of subpoenas, we conclude that the District Court did not commit error in denying John Hancock’s motion to enforce the arbitration

subpoena against SCIS, which, as a non-party located in Florida, lies beyond the scope of the court's subpoena enforcement powers.").

3. **Section 7 provides the mechanism for enforcement of the subpoenas.**

59. Finally, G Six's attempts to obtain non-party depositions through repeated orders from the Arbitrator are improper and unenforceable, and a clear attempt to bypass the FAA, the AAA and the parties' agreement.

60. "The FAA imposes *no requirement that a subpoenaed party file a petition to quash or otherwise challenge the subpoena.*" COMSAT, 190 F.3d at 276.

**b. The arbitrator's order imposing death-penalty sanctions is punitive, retaliatory, and violates any sense of equity.**

61. Now, Arbitrator Leydig's death-penalty order exceeds the scope of explicitly prevents DBRI from even challenging the merits of G Six's claims against Dickey's.

62. The Order not only strikes DBRI's pleadings, but it prevents DBRI from presenting *any* witnesses on direct examination to refute the factual bases of G Six's meritless claims and *precludes DBRI from even cross-examining G Six's witnesses.*

63. Specifically, the Order imposes the following sanctions:

- Respondent's Answer and Affirmative Defenses are stricken. Respondent's Counterclaim is dismissed.
- Respondent is excluded from all further fact-finding aspects of this arbitration, including but not limited to, (i) it will not be allowed to present any witness testimony or documentary evidence at the hearing

on Claimant's claims, (ii) it will not be allowed to cross-examine any of Claimant's witnesses, and (iii) its expert witness report and testimony will not be allowed.

- If requested by Claimant, the arbitrator will draw reasonable adverse inferences.
- Claimant shall be awarded its attorneys' fees and costs associated with (i) its original motion to compel the depositions of Dickey, Jr. and Gruber, (ii) its subsequent activity to obtain compliance with Orders No. 1, No. 2, No. 3, and No. 4, and (iii) the prosecution of its motion for sanctions.
- Respondent shall, on terms that shall be developed by the arbitrator, be allowed only to participate in the presentation of strictly legal arguments that address the nature of the claims brought by Claimant.

**Ex. P.**

64. This one-side order entirely upends the adversarial nature of the judicial system in this country (which includes arbitration). *See Beaudine v. U.S.*, 368 F.2d 417, 424 (5th Cir. 1966) ("Mulvey was not exposed to the truth-revealing pressures of the sort of cross examination which is really *the heart of our adversary system*").

65. Cross examination in this country "*is a matter of right.*" *Montgomery v. U.S.*, 203 F.2d 887, 890 (5th Cir. 1953) ("Indeed, cross-examination, as has been often observed, is the surest test yet devised of the truthfulness of a witness' testimony[.]"). The Supreme Court has explicitly stated that exclusion of cross examination "passes the proper limits of discretion and is prejudicial error." *D.C. v. Clawans*, 300 U.S. 617, 632 (1937).

66. Arbitrator Leydig's Order bypasses notions of fairness and due process, stripping DBRI of its right to defend itself in retaliation for DBRI's efforts to protect its

rights. See *E.E.O.C. v. General Dynamics Corp.*, 999 F.2d 113, 119 (5th Cir. 1993) (instructing that “death penalty” sanctions “should be used as a lethal weapon only under extreme circumstances”).

**B. DBRI seeks a stay of the Arbitration Proceeding pending resolution of the dispute regarding depositions.**

67. DBRI also seeks this Court’s intervention—specifically, DBRI requests that this Court stay the Arbitration Proceeding pending resolution of the dispute regarding Non-Party depositions. DBRI has been threatened with *death penalty sanctions* based on position taken by the Non-Parties, who have not submitted to the jurisdiction of the AAA.

**1. DBRI is not responsible for producing non-parties for deposition.**

68. G Six rests its position on the assumption that DBRI is responsible for producing the non-parties for deposition because they are employees. But that is counter to established authority. DBRI—the *only* respondent party to this dispute—has repeatedly offered to produce a corporate representative for deposition, which G Six has repeatedly declined.<sup>8</sup> *Karakis v. Foreva Jens Inc.*, No. 08-61470-CIV-COHN, 2009 WL 113456, at \*1 (S.D. Fla. Jan. 19, 2009) (“Only a party to the litigation may be compelled to give deposition testimony pursuant to a notice of deposition. If the party is a corporation,

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<sup>8</sup> Notably, DBRI has also requested a corporate representative deposition of G Six, and sent topics for the same. G Six has repeatedly refused to provide dates for such deposition.

it may be noticed pursuant to Federal Rule of Procedure 30(b)(6), in which case the corporation must designate an individual to testify as the corporate representative.”).

69. Now, DBRI has been sanctioned with *death penalty sanctions* for the position taken by the *Non-Parties*, who have not submitted to the AAA’s jurisdiction. Cf. *Cire v. Cummings*, 134 S.W.3d 835, 839 (Tex. 2004) (“First, a *direct relationship* must exist between the offensive conduct and the sanction imposed. . . . Second, the sanctions *must not be excessive.*”) (emphasis added).

70. Such sanctions against DBRI are explicitly prohibited by relevant law:

Except where the employee has been designated by the corporation under Rule 30(b)(6), *an employee is treated in the same way as any other witness*. His or her presence must be obtained by subpoena rather than by notice, *sanctions cannot be imposed against the corporation if he or she fails to appear*, and the deposition is not considered to be that of the corporation and is usable only under the same circumstances as that of any other nonparty witness.”

*Allen v. Experian Info. Sols. Inc.*, No. SA-24-CV-00157-XR, 2024 WL 2988960, at \*1 (W.D. Tex. June 13, 2024) (emphasis added) (quoting *Harrison v. Wells Fargo Bank, N.A.*, No. 3:13-CV-4682-D, 2016 WL 1392332, at \*8 (N.D. Tex. Apr. 8, 2016)).

71. These sanctions effectively amount to a default judgment, which is prohibited under the AAA Commercial Rules. See AAA Comm. Rules R-60 (“The arbitrator may not enter a default award as a sanction.”).

2. **DBRI has no adequate remedy by appeal in the face of death penalty sanctions.**

72. DBRI will suffer irreparable harm for which it has no adequate appellate remedy if the arbitration proceeding is not stayed, because G Six has pursued—and Arbitrator Leydig has granted—death penalty sanctions against DBRI that are effectively case determinative. *In re Le*, 335 S.W.3d 808, 814 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (holding there is no adequate appellate remedy from a sanctions order if the sanctions are case determinative); *In re Ford Motor Co.*, 988 S.W.2d 714, 723 (Tex. 1998) (“We therefore hold that appeal is not an adequate remedy when a court imposes a monetary penalty on a party’s prospective exercise of its legal rights.”).

73. There is no legal basis for these sanctions; nor is there any recourse for DBRI within the Arbitration Proceeding. Instead, the sanctions appear to be purely retaliatory, based in part on DBRI’s objection to Arbitrator Leydig’s continued service as arbitrator. They are wholly punitive and wipe out DBRI’s opportunity to raise any defense to G Six’s allegations against it.

### **VIII. CONDITIONS PRECEDENT**

74. Plaintiffs have performed or otherwise satisfied all conditions precedent to filing this lawsuit and to bringing the Causes of Action contained herein.

### **IX. CAUSES OF ACTION**

#### **Count 1: Breach of Contract (DBRI v. AAA and Leydig)**

75. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

76. DBRI, Leydig and AAA are parties to an agreement for the administration of the Arbitration Proceeding, which is an enforceable contract governing the scope of the Arbitration Proceeding.

77. DBRI tendered performance under its agreement with Leydig and the AAA, and has satisfied all conditions precedent applicable to this matter.

78. Leydig has breached his agreement with DBRI in his mishandling of the Arbitration Proceeding, by (1) failing to abide by the terms of the Franchise Agreement, which defines the scope of the AAA's authority, (2) failing to abide by the FAA, which governs the scope of the AAA's authority, pursuant to the Franchise Agreement, and (3) failing to abide by the AAA's own rules, including Rule 22 and Rule 35.

79. Leydig has further allowed the Arbitrator to issue sanctions on Dickey's for the positions taken by the Non-Parties, in violation of state and federal law, as well as the AAA's own rules, including the Arbitrator's order that depositions occur in Miami, Florida, and the Arbitrator's stated consideration of death-penalty sanctions against DBRI.

80. The AAA has breached its agreement with DBRI in its misadministration of the Arbitration Proceeding, by condoning, allowing, or endorsing Leydig's abuses of the legal process and his continued failure to abide by the terms of the Franchise Agreement, the FAA, and the AAA's own rules.

81. As a result of Leydig's and the AAA's breaches, DBRI has suffered actual and consequential damages in an amount to be determined at trial, including amounts paid to the AAA and/or to Arbitrator Leydig in connection with this sham arbitration.

**Count 2: Abuse of Process (DBRI and Non-Parties v. AAA, Leydig, and G Six)**

82. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

83. Both DBRI and the Non-Parties have been purportedly served with process related to the Non-Party depositions, including subpoenas, deposition notices, and improper orders purporting to compel such depositions.

84. Defendants AAA, Leydig, and G Six have made illegal, improper, or perverted use of such process by attempting to (1) coerce the Non-Parties into submitting to the jurisdiction of the AAA; (2) coerce DBRI into producing witnesses for depositions which it has no obligation to produce; and (3) improperly handicap DBRI's defense in the Arbitration Proceeding by pursuing and imposing or otherwise allowing death-penalty sanctions based on the unlawful deposition subpoenas. *See Preston Gate, LP v. Bukaty*, 248 S.W.3d 892, 897 (Tex. App.—Dallas 2008, no pet.) (process is abused when “used to accomplish an end which is beyond the purview of the process and which compels a party to do a collateral thing which he could not be compelled to do.”); *RRR Farms, Ltd. v. Am. Horse Prot. Ass'n, Inc.*, 957 S.W.2d 121, 133 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (same).

85. As a result of Defendants' abuse of process, Plaintiffs have suffered actual and consequential damages, including in an amount to be determined at trial.

**Count 3: Breach of Contract (DBRI v. G Six)**

86. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

87. DBRI and G Six are parties to a Franchise Agreement, which is an enforceable contract governing the scope of the Arbitration Proceeding.

88. DBRI tendered performance under the Franchise Agreement and has satisfied all conditions precedent applicable to this matter.

89. G Six has breached the Franchise Agreement by seeking depositions that are categorically disallowed under the FAA, and by harassing DBRI and its employees (the Non-Parties) in its improper pursuit of these depositions.

90. As a result of G Six's breaches, DBRI has suffered actual and consequential damages in an amount to be determined at trial, including the costs of defending against G Six's continued harassment and efforts to obtain depositions that are disallowed under the plain terms of the FAA.

**EMERGENCY APPLICATION FOR TEMPORARY AND PERMANENT  
INJUNCTION**

91. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

92. Plaintiffs ask the Court to enter a temporary restraining order (“TRO”) after notice and hearing (and subsequently, a preliminary injunction) as follows:

Pending final resolution of this dispute, Defendants G Six and AAA, as well as their agents, servants, and employees, shall be immediately and preliminarily enjoined from (1) seeking, imposing, or otherwise purporting to enforce pre-hearing depositions of the Non-Parties to this dispute, whether directly or through their employer, DBRI; and (2) seeking, imposing, or otherwise purporting to enforce sanctions on DBRI related to such pre-hearing depositions.

The AAA shall further be ordered to remove Gary Leydig as Arbitrator over the Arbitration Dispute;

The Arbitration Proceeding shall be stayed pending final resolution of this Dispute.

**A. Applicable Legal Standard.**

93. Courts grant temporary injunctions to preserve the status quo of the litigation’s subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Tex. Aeronautics Comm’n v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971). The status quo to be preserved is “the last, actual, peaceable, noncontested status which preceded the pending controversy.” *Id.*

94. To obtain a temporary injunction, the applicant must demonstrate: “(1) a viable cause of action, (2) a probable right to recovery, and (3) a probable, imminent, and irreparable injury in the interim.” *Fuentes v. Fuentes*, 656 S.W.3d 703, 711 (Tex. App.—El Paso 2022, no pet.) (citations omitted). The applicant need not show it will ultimately

prevail on the merits—its burden is much lower. To obtain temporary injunctive relief, the applicant must merely “present enough evidence to raise a bona fide issue as to its right to ultimate relief.” *Smith v. Nerium Int’l, 23 LLC*, No. 05-18-00617-CV, 2019 WL 3543583, at \* 3 (Tex. App.—Dallas Aug. 5, 2019, no pet.). As detailed below, Plaintiffs have satisfied this threshold.

**B. Plaintiffs have pleaded viable causes of actions against Defendants.**

95. In order to meet the first requirement for obtaining a TRO, Plaintiffs need only establish that they have a cognizable cause of action. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993) (“[T]he issue in determining whether an applicant has met the first qualification for a temporary writ of injunction is .... whether the applicant has a cause of action at all.”); *Shoreline Gas, Inc. v. McGaughey*, 13-07-364-CV, 2008 WL 1747624, at \*3 (Tex. App.—Corpus Christi—Edinburg Apr. 17, 2008, no pet.) (when claims are cognizable under Texas law, the first requirement for a temporary injunction is met).

96. Plaintiffs have satisfied this requirement with each of its three causes of action against Defendants.

97. DBRI has brought to the court’s attention the terms of the valid Franchise Agreement between DBRI and G Six, as well as the arbitration agreement between DBRI and the AAA, and Defendants’ breaches of such agreements by the Franchisee Defendants, through the improper deposition requests, subpoenas, and orders; the repeated harassment of DBRI’s employees; and the threats of death penalty sanctions

against DBRI based on the meritorious position taken by the Non-Parties. The resulting harm to DBRI is apparent on its face.

98. Similarly, DBRI and the Non-Parties have pleaded a valid claim abuse of process based on the same conduct.

**C. Plaintiffs have established a probable right to relief.**

99. The second requirement for the issuance of a temporary injunction is a showing of a probable right to relief upon a final trial on the merits. *See Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968); *Anderson v. CMGP, Inc.*, 14-01-01259-CV, 2002 WL 1407174, at \*3 (Tex. App.—Houston [14th Dist.] June 27, 2002, no pet.) (“The trial court does not abuse its discretion in issuing a temporary injunction when, as in this case, the original petition alleges a cause of action and the party seeking the injunction presents evidence tending to sustain the cause of action.”); *RP & R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (same).

**1. DBRI’s Breach of Contract Claims**

100. DBRI has a reasonable probability of succeeding on the merits of both of its breach of contract claims. To do so, DBRI need only show (1) the existence of a valid contract; (2) performance or tendered performance; (3) the Franchisee Defendants’ breach; and (4) damages. *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018). These elements cannot genuinely be disputed.

101. DBRI has valid contracts with the AAA and Leydig, as well as G Six, and has performed under both agreements.

102. Under the scope of the Franchise Agreement between DBRI and G Six, the Arbitration Dispute is governed by the FAA, as well as by the AAA's Commercial Rules. The AAA, Leydig, and G Six have breached their respective agreements by seeking and/or allowing the depositions of Non-Party individuals when such depositions are prohibited by the FAA, the Franchise Agreement, the AAA rules, and state and federal law. *See supra*, Section VII(A)(I).

103. The AAA, Leydig, and G Six have furthered breached their respective agreements by seeking and/or allowing the imposition of sanctions against DBRI for the positions taken by Non-Parties to the arbitration agreement, who have not submitted to the authority of the AAA.

## **2. Plaintiffs' Abuse of Process Claims**

104. Similarly, Plaintiffs have a valid claim for abuse of process because (1) Defendants made an illegal, improper or perverted use of the process, a use neither warranted nor authorized by the process; (2) Defendants had an ulterior motive or purpose in exercising such illegal, perverted or improper use of the process; and (3) Plaintiffs have been damaged as a result of such illegal act. *Cooper v. Trent*, 551 S.W.3d 325, 334 (Tex. App.—Houston [14th Dist.] 2018, pet. denied).

105. Specifically, Defendants have sought, imposed, or allowed subpoenas for pre-hearing depositions to be issued to the Non-Parties (either directly or through their employer, DBRI) when such depositions are prohibited by the FAA (and are therefore themselves a violation of the Franchise Agreement governing the scope of the Arbitration Proceeding).

106. Defendants have further weaponized the improper subpoenas to compel or coerce the Non-Parties into waiving their rights by submitting to depositions and to coerce or compel DBRI to force its Non-Party employees to submit to such depositions under threat of death-penalty sanctions on DBRI. *See Preston Gate*, 248 S.W.3d at 897 (process is abused when “used to accomplish an end which is beyond the purview of the process and which compels a party to do a collateral thing which he could not be compelled to do.”); *RRR Farms*, 957 S.W.2d at 133 (same).

**D. Plaintiffs will suffer probable, imminent, and irreparable injury if the Court does not grant their requested temporary injunction.**

107. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard, i.e., if there is no adequate remedy at law. *Fischer v. Clifford Fischer & Co.*, 05-20-00196-CV, 2022 WL 3367559, at \* 5 (Tex. App.—Dallas Aug. 16, 2022, no pet.) (citing *Campbell v. Wilder*, 487 S.W.3d 146, 152 (Tex. 2016)).

108. The threat of irreparable harm here is tangible. The Non-Parties risk waiving their rights to object to the AAA's jurisdiction over them for the purpose of such depositions. *E.g., Piggly Wiggly*, 611 F.2d at 584 (5th Cir. 1980) (“[T]he grievance submitted to the arbiter defines his authority without regard to whether the parties had a prior legal obligation to submit the dispute.”).

109. Further, DBRI has been burdened with death penalty sanctions that are case determinative—this injury cannot be adequately addressed by any pecuniary standard, and cannot be remedied on appeal. *In re Le*, 335 S.W.3d 808, 814 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (holding there is no adequate appellate remedy from a sanctions order if the sanctions are case determinative); *In re Ford Motor Co.*, 988 S.W.2d 714, 723 (Tex. 1998) (“We therefore hold that appeal is not an adequate remedy when a court imposes a monetary penalty on a party’s prospective exercise of its legal rights.”).

**E. Plaintiffs are willing to post bond.**

110. Plaintiffs are willing to post bond in an amount that the Court deems, but any such bond should be minimal given Defendants’ actions and Plaintiffs’ right to relief.

## **X. PRAYER**

Plaintiffs pray that Defendants be cited to appear and answer in this lawsuit, and that, after resolution on the merits, Plaintiffs recover judgment against Defendants in which the Court grant the following relief:

- a. Actual and consequential damages;
- b. Exemplary damages;
- c. Prejudgment and post-judgment interest accrued on the amount owed;
- d. Costs of suit, including costs of court and reasonable attorneys' fees; and
- e. Temporary and permanent injunctive relief as follows:
  - (1) Defendants are enjoined from seeking, imposing, or purporting to compel pre-hearing depositions of the Non-Parties to this dispute;
  - (2) Defendants are enjoined from seeking, imposing, or otherwise enforcing sanctions on DBRI related to such pre-hearing depositions;
  - (3) The AAA shall be ordered to remove Gary Leydig as Arbitrator of the Arbitration Dispute; and
  - (4) The Arbitration Proceeding shall be stayed pending resolution of this dispute.
- f. All other such relief to which Plaintiffs may be entitled.

Dated: April 1, 2025

Respectfully submitted,

*/s/ Mary Goodrich Nix*

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**DICKEY'S BARBECUE RESTAURANTS**

**INC., ROLAND DICKEY JR., JEFFREY**

**GRUBER, AND DEBORAH LONGWORTH**

CAUSE NO. DC-25-04677

DICKEY'S BARBECUE §  
RESTAURANTS, INC., ROLAND § IN THE DISTRICT COURT OF  
DICKEY, JR., JEFFREY GRUBER, §  
and DEBORAH LONGWORTH, §  
§ 162nd JUDICIAL DISTRICT COURT  
*Plaintiffs,* §  
v. §  
§  
AMERICAN ARBITRATION § DALLAS COUNTY, TEXAS  
ASSOCIATION, INC., GARY LEYDIG, §  
and G SIX CONSULTING LLC, §

*Defendants.*

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VERIFICATION OF PLAINTIFFS' ORIGINAL PETITION AND VERIFIED  
APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY  
INJUNCTION, AND PERMANENT INJUNCTION

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Pursuant to Texas Civil Practice & Remedies Code Section 132.001, I declare as follows

1. My name is Jeffrey Gruber. I am over the age of 21, of sound mind, and capable of providing this declaration. I have not been convicted of a felony or a crime involving dishonesty. Unless otherwise indicated, the facts stated in this declaration are within my personal knowledge, as well as my review of business records of Dickey's Barbecue Restaurants, Inc. ("DBRI") maintained in the ordinary course of business. These facts are true and correct.

2. I am the Senior Vice President of Franchise Relations for Dickey's, a role that I have held since 2014. I have been a DBRI employee since 2008. I am a custodian of records for DBRI.

3. I have read the foregoing Plaintiffs' Original Petition and Verified Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction (the "Petition"). I have personal knowledge of the facts alleged and they are true and correct.

4. Attached as **Exhibit A** to the TRO Application is a true and correct copy of the Franchise Agreement between G Six (initially signed by Demetrius Gibson) and DBRI, which governs the G Six's Dickey's Restaurant in Schaumburg, Illinois (the "Restaurant").

My name is Jeffrey Gruber, my date of birth is February 8, 1978, and my business address is 4514 Cole Avenue, Suite 1015, Dallas, Texas 75205, United States of America. I declare under penalty of perjury that the information contained in this Declaration is true and correct.

Executed in Dallas County, Texas, on March 31, 2025

Signature:  \_\_\_\_\_

Printed Name: Jeffrey Gruber