No. 20-1647

IN THE

# Supreme Court of the United States

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VALERIE HANEY,

*Petitioner,*

v.

CHURCH OF SCIENTOLOGY INTERNATIONAL AND RELIGIOUS TECHNOLOGY CENTER, DAVID MISCAVIGE, AND DOES 1-25,

*Respondents.*

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**On Petition for a Writ of Certiorari to the Court of Appeal of California, Second Appellate District, Division Five**

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## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Assuming the merits question could ever be reached, does enforcement of a private and voluntary religious arbitration agreement between a minister and member of a religious order and her former church violate the First Amendment?

## RULE 29.6 STATEMENT

Respondents Church of Scientology International and Religious Technology Center are corporations. There are no parent corporations of Church of Scientology International or Religious Technology Center. There are no publicly held companies that own 10% or more of Church of Scientology International or Religious Technology Center.

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## INTRODUCTION

Certiorari should be denied because there is no final judgment or decree by a state court of last resort addressing *any* federal question – much less the federal question presented by the Petition for Writ of Certiorari.

The Trial Court's Order Granting Respondents' Motions to Compel Arbitration ("Arbitration Order") is an interlocutory order by a state court, which is not subject to review by this Court. Likewise, the orders denying Petitioner's Motion for Reconsideration of the Arbitration Order, Petitioner's Writ of Mandate seeking reversal of the Arbitration Order, and Petitioner's Petition for Review in the California Supreme Court are interlocutory orders merely denying Petitioner's requests for interlocutory review of the Arbitration Order.

Furthermore, *not one* of the orders addresses *any* federal question. Petitioner never timely and properly raised any argument based on the First Amendment to the United States Constitution in any state court. None of the state courts considered or decided the First Amendment arguments presented in the Petition. Each order rests on adequate and independent state law grounds. If the Court reached the Question Presented, it would be rendering an impermissible, advisory opinion, and the orders of the state courts would remain unchanged.

In addition to the jurisdictional obstacles, the Petition presents no basis for certiorari. The Petition's claimed basis for certiorari, a court "split over the judicial enforceability of religious arbitration agreements to disputes involving secular legal violations,"[1] is illusory. The Petition cites to no opinion by a United

[1] (Petition at 8 (initial capitalizations omitted).)

States Court of Appeals and only one opinion by a state court of last resort. The opinion by a state court of last resort, *Matter of Wertheim & Co. v. Halpert*, 48 N.Y.2d 681, 683 (N.Y. 1979), does not address the question presented or religious arbitration at all, does not conflict with the Arbitration Order, and has been abrogated.[2]

Certiorari is not warranted based on the Petition's only stated ground for certiorari and should be denied because there is no final judgment by a state court of last resort on a federal question.

## STATEMENT

### A. Petitioner's Role in the Church and the Agreements to Arbitrate

Up until 2017, Petitioner was a life-long member of the Scientology religion and chose to live her adult life serving as a minister and member of the Church's religious order, the Sea Organization ("Sea Org"). (Pet.'s App. at 13; 1 EP 61-62;[3] 3 EP 575; 3 EP 579.) The Sea Org religious order is composed of the most dedicated Scientologists – individuals who have committed their lives to the volunteer service of their religion. (1 EP 194 ¶ 4.) As befits a member of a

[2] *Matter of Wertheim & Co.* in *Fletcher v. Kidder, Peabody & Co., Inc.*, 81 N.Y.2d 623, 629, 631, 635 (N.Y. 1993).

[3] Citations to the documentary record not included in Petitioner's Appendix or Respondents' Appendix before this Court are to the record filed with the California Second District Court of Appeal and follow the citation format utilized by the Parties in that court. Specifically, all citations to Petitioner's Exhibits to Petition for Peremptory Writ of Mandate ("EP") filed in the California Second District Court of Appeal are referred to herein by volume and page number (*e.g.*, "1 EP 61" refers to Volume 1 of Petitioner's Exhibits, page 61).

religious order, Petitioner agreed to submit to Sea Org discipline, serve without pay, and live communally. (1 EP 194-196.)

Part of her commitments to service in the Sea Org included Petitioner's execution of the agreements at issue, all of which she signed when she was an adult. (Pet.'s App. at 23.) Respondents petitioned for arbitration based on five agreements containing arbitration provisions that Petitioner signed while a member of the Sea Org (the "Church Agreements"), and one agreement she signed upon her voluntary separation from the Sea Org in 2017 (the "Departure Agreement" and collectively with the Church Agreements (the "Agreements")). (Pet.'s App. at 14-19; 1 EP 41-64, 1 EP 214-234.)

### B. The Trial Court's Granting of Respondents' Motions to Compel Arbitration

Petitioner filed her Amended Complaint on September 30, 2019. Her Amended Complaint alleged a variety of torts relating to her indoctrination and discipline as a member of the Sea Org religious order, as well as claims that Respondents allegedly retaliated against her for statements that she made on a television show regarding her service in the Sea Org, in violation of her Departure Agreement. (Pet.'s App. at 9-11; *id.* at 25; 1 EP 8 at ¶ 1; 1 EP 16-21 at ¶¶ 45-65; 1 EP 23-26 at ¶¶ 68-80.) Respondents filed their Motions to Compel Arbitration on December 20, 2019 based on the Church Agreements and the Departure Agreement. (Pet's App. at 12-19; 1 EP 41-64, 1 EP 214-234.) In opposition to the motions, Petitioner argued chiefly that state law principles of duress and unconscionability rendered the agreements unenforceable. (2 EP 485-509.) Petitioner never argued in her Opposition to the Motions to Compel that Scientology

arbitration was a “religious ritual” or that participating in a Scientology arbitration would violate her First Amendment rights. (2 EP 485-509; 3 EP 565-66.) She raised those arguments for the first time in a reconsideration motion, (4 EP 942) the denial of which she has never challenged in the state courts, (Writ Petition at 10; CA Petition for Review at 32).

The Motions to Compel Arbitration were heard on January 30, 2020. After the argument of Counsel, (3 EP 651-668), the Trial Court granted the Motions to Compel by Minute Order, (Pet.’s App. at 7-32), and directed a written order be prepared, (*id.* at 27). The Trial Court signed and filed the Arbitration Order on February 18, 2020. (*Id*. at 4-6.)

In the Arbitration Order, the Trial Court considered the evidence and argument of both sides. The Trial Court rejected Petitioner’s claims of procedural and substantive unconscionability, specifically finding that Petitioner’s declaration as to the circumstances of her executing the Church Agreements was “conclusory and lacks sufficient factual statements to refute Defendants’ showing.” (Pet.’s App. at 24.) The Trial Court found that Petitioner did not provide competent evidence showing that the Church Agreements were signed under duress. (*Id.* at 25.) In connection with the Departure Agreement, the Trial Court found that “the transcript of her signing the Departure Agreement contradicts her [claims in the Trial Court] declaration” that she signed the Departure Agreement under duress. (*Id.* at 24.) Petitioner never challenged the Trial Court’s evidentiary rulings or credibility determinations in the California appellate courts.

### C. The Trial Court's Denial of Petitioner's Motion for Reconsideration

On March 3, 2020, Petitioner filed a Motion for Reconsideration of the Arbitration Order in the Trial Court. (4 EP 731.) The Motion for Reconsideration argued for the first time that Petitioner's participation in Scientology arbitration violated her First Amendment rights. Petitioner did not explain her failure to previously raise the argument. (4 EP 748-49.)

On August 11, 2020, the Trial Court denied the Motion for Reconsideration on state law procedural grounds ("Reconsideration Order"). (Pet.'s App. at 35-36, 39.) The Trial Court ruled that Petitioner failed to satisfy the procedural standard for a motion for reconsideration, ruling: "Plaintiff has failed to demonstrate . . . new facts, circumstances or law within the meaning of [California Code of Civil Procedure] section 1008." (*Id*. at 39.) Due to the procedural infirmity, the Trial Court declined to consider Petitioner's newly-raised arguments based on the First Amendment, which is the Federal Question presented by the Petition. (*Id*. at 42.)

### D. The California Court of Appeal's Denial of Petitioner's Petition for Writ of Mandate

On September 10, 2020, Petitioner filed a Petition for Writ of Mandate ("Writ Petition") challenging only the Arbitration Order – and not the Reconsideration Order. The Writ Petition argued that the Arbitration Order violated Petitioner's First Amendment rights, and the Trial Court erred in compelling arbitration because the Agreements were unconscionable under state law. (Writ Petition at 28-40.) In opposition, Respondents principally argued the Writ Petition was untimely and did not satisfy the requirements for

extraordinary writ relief.[4] (Defs.' Opp. to Writ Petition at 36-55.)

On October 22, 2020, the Court of Appeal summarily denied the Writ Petition ("Writ Order") as "untimely" under California's writ procedures:

> The court has read and considered the petition for writ of mandate filed September 10, 2020, the preliminary opposition filed September 21, 2020, the reply filed October 1, 2020, and the amicus briefs filed by the National Center on Sexual Exploitation and the National Crime Bar Victim Association. ***The petition is denied as untimely***. (*Reynolds v. Los Angeles County Superior Court* (1883) 64 Cal. 372, 373; *Volkswagen of Amer., Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701; *see also United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 1582 ["A party does not waive his right to attack the order [compelling arbitration] by proceeding to arbitration; the order is reviewable on appeal from a judgment confirming the award"].)

(Resp. Appx. at 1a-2a (emphasis added).)[5]

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[4] Respondents' Opposition also noted that Petitioner's arguments lacked merit, and the First Amendment argument was not properly raised below. (Defs.' Opp. to Writ Petition at 56-78.) However, Respondents indicated they would fully brief the substantive issues on the merits if the California Court of Appeal intended to reach them. (*Id.* at 59.)

[5] Petitioner's Appendix fails to include the complete Writ Order of the Court of Appeal. Therefore, Respondents have attached it as an Appendix to this Brief In Opposition.

### E. The California Supreme Court's Denial of Petitioner's Petition for Review

On October 30, 2020, Petitioner filed a Petition for Review in the California Supreme Court. The California Supreme Court denied the Petition for Review without comment ("Review Order"). (Pet.'s Appx. at 46 ("The petition for review is denied.").)

## MISSTATEMENTS OF FACT IN THE PETITION

The Petition falsely claims that the religious arbitration required by the Agreements is a "religious service," (Petition at 7, 8), or a "religious ritual," (*id.* at 14, 15, 18, 19, 25). There is no factual support in the record and no factual predicate for this assertion.

As a threshold matter, Petitioner never timely presented her arguments regarding the First Amendment to the Trial Court. Instead, Petitioner first made the "ritual" argument in her Motion for Reconsideration. In support, she relied on two declarations, the Declaration of Michael Rinder and the Declaration of Hana Whitfield. (4 EP 740; 4 EP 748-49.) Respondents submitted numerous objections to the Rinder and Whitfield Declarations, which the Trial Court considered "meritorious"; however, the Trial Court declined to specifically rule on the objections because "the failure to establish the predicate for this motion makes rulings on specific inadmissible evidence unnecessary." (Pet.'s Appx. at 39.) There was no admissible evidence in support of the claim in the Trial Court, and the argument and "evidence" was never considered by the Trial Court, California Court of Appeal, or California Supreme Court. Accordingly, there is no evidence in support of the claim in this Court.

The Petition tries to skirt the evidentiary failure by pointing out that Scientology arbitration requires disputes to be resolved in accordance with Scientology principles and that the arbitrators are to be members of the Scientology faith. (Petition at 5-7.) The ***argument*** that such provisions render the arbitration a "religious ritual" or a "religious service" is not evidence. Nevertheless, as shown below, the question of whether such provisions violate the First Amendment was not adjudicated below. REASONS FOR DENYING THE PETITION, Section II, *infra.* And even if considered on the merits, enforcement of private *religious* arbitration agreements does not violate the First Amendment, REASONS FOR DENYING THE PETITION, Section V, *infra*.

Furthermore, the only competent evidence in the record demonstrates Petitioner's claim is false. While the Petition never explains what "religious ritual" or "religious service" means, Lynn Farny, Corporate Secretary of Respondent Church of Scientology International, submitted an unchallenged declaration in opposition to Petitioner's Motion for Reconsideration stating "there is no requirement that one must be a practicing Scientologist or a Scientologist in good standing to participate in [Scientology arbitration] procedures. Furthermore, a party to Church dispute resolution procedures, including Church arbitration procedure, is not required to make a profession of faith, undergo Scientology auditing, or participate in any religious ceremony or service as part of presenting a dispute." (4 EP 962 ¶ 4.) Even if Petitioner had presented evidence and argument in support of her "ritual" claim in the Trial Court, Respondents' statement of their doctrine controls. *See Watson v. Jones*, 13 Wall. 679, 727, 20 L.Ed. 666 (1872) ("[T]he rule of action which should govern the civil courts . . . is, that, whenever

the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Amer.*, 344 U.S. 94, 116 (1952); *see also Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) ("Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters "'of faith and doctrine'" without government intrusion [citing *Kedroff*].") Thus the "religious ritual" argument is a red herring: religious arbitration – arbitration by ministers under the laws of a religion – is permissible, and the question of whether such arbitrations are "rituals" is beyond the capacity of civil courts to address.

Petitioner also characterizes her disputes with Respondents as "purely secular." That is not how she has pled her case or how the Trial Court characterized her claims. The first five causes of action of her Amended Complaint concern the conditions of her voluntary service in the Sea Org religious order including claims relating to indoctrination, discipline, and assignment to facilities. (Pet's App. at 9-11; 1 EP 26-30 at ¶¶ 84-118.) Other claims concern her public disparagement of her experiences in the Sea Org – a violation of her Departure Agreement – and Respondents' alleged response to her breach. (Pet's App. at 10-11.) Indeed, in the Trial Court Petitioner did not dispute that her claims fell within the scope of her agreement to submit claims to religious arbitration under Scientology ecclesiastical law. As the Trial Court found: "[Petitioner's] opposition does not dispute the meaning and scope of these agreements as written

or that her claims come within the scope of the arbitration agreements." (Pet's App. at 18.) The Arbitration Order itself recognizes the religious nature of her allegations, stating: "many of her allegations regarding 'brainwashing' and coercion involve the *substance of her dispute over the Scientology practices that are part of its religious doctrine*." (*Id*. at 25 (emphasis added).)

Finally, the Petition also includes false and unsupported factual allegations that are not relevant to the Question Presented. (*See* Petition at 3-7.) Respondents will not burden the Court with a refutation and response to each of Petitioner's irrelevant, unsupported allegations. Nonetheless, it bears noting that the majority of Petitioner's "facts" that were actually presented in connection with the Arbitration Order are refuted by the evidentiary record – as determined by the Trial Court and not challenged in the California appellate courts.

For example, Petitioner claims that during her time in the Sea Org, Petitioner was trafficked and physically restrained. (*Id.* at 3-4.) Yet, the Trial Court expressly rejected Petitioner's claim that during her time in the Sea Org she was "confined" or a "prisoner." (Pet.'s App. at 21, 23-24.) Based on unchallenged and undisputed evidence submitted by Respondents, the Trial Court found that during her time in the Sea Org "Plaintiff travelled with location shoot teams all over Southern California ([1 EP 74] ¶ 23), she had a car and a phone and would be totally on her own at times ([1 EP 74] ¶ 24), was in a loving marriage, ([1 EP 75] ¶ 25), served as a host for social affairs with the non-Scientology community ([1 EP 75] ¶ 28), and vacationed in Oregon, Florida and Nevada and returned to Sea Org ([1 EP 75] ¶ 29)." (Pet.'s App. at 23-24.)

Similarly, the Petition claims that Petitioner signed the Agreements under "conditions of duress, coercion, and unconscionability," (Petition at 5), but the Trial Court specifically found that Petitioner's declaration in support of these claims "is conclusory and lacks sufficient factual statements to refute Defendants' showing." (Pet.'s App. at 24.) Petitioner never challenged the Trial Court's evidentiary rulings or credibility determinations in the California appellate courts. She does not – and cannot – challenge them in this Court. *See Lopez v. Bartlett Care Cntr.,* LLC, 39 Cal.App.5th 311, 317 (2019) ("[T]he resolution of an evidentiary conflict is within the sole province of the trier of fact."); *Santa Clara County Corr. Peace Officers' Assn., Inc. v. County of Santa Clara*, 224 Cal.App.4th 1016, 1027 (2014) (the rule of appellate deference to the trial court's credibility determinations is the same for written declarations as for oral testimony); *Fritelli, Inc. v. 350 N. Canon Drive, LP,* 202 Cal.App.4th 35, 41 (2011) (a party who fails to attack the trial court's evidentiary rulings on appeal forfeits any contentions of error concerning those rulings).

## REASONS FOR DENYING THE PETITION

### I. THIS COURT LACKS JURISDICTION TO GRANT CERTIORARI BECAUSE THE STATE COURT ORDERS BELOW ARE NOT FINAL JUDGMENTS OR DECREES

This Court has jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . ." 28 U.S.C. § 1257(a). Congress has limited this Court's jurisdiction to review state court decisions "to cases in which the State's judgment is final." *Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 80 (1997). "To be reviewable by this Court, a state-court judgment must be final 'in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of the final court.'" *Id.* (quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). "[T]he finality rule 'is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system.'" *Jefferson*, 522 U.S. at 81 (quoting *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945)).

Here, the Court should not grant certiorari because there is no final judgment or decree in this case.

The Trial Court's Arbitration Order, which orders arbitration to proceed and stays the action "pending the completion of arbitration," (Pet.'s App. at 8), is an interlocutory, non-appealable order under both the California Arbitration Act ("CAA") and the Federal Arbitration Act ("FAA"). *See Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 87 n.2 (2000)

("Had the District Court entered a stay instead of a dismissal in this case, that order would not be appealable. 9 U.S.C. § 16(b)(1).") (applying the FAA); *Int'l Film Inv. v. Arbitration Tribunal of Directors Guild*, 152 Cal.App.3d 699, 703 (1984) ("interlocutory decisions as to arbitrability, and in fact ultimate orders to compel arbitration, *are not appealable* while on the other hand an order *denying a petition to compel arbitration is appealable*. ([Cal.] Code Civ. Proc. § 1294.)") (applying the CAA) (emphasis original). Furthermore, the Arbitration Order is subject to further review by the state courts following the completion of the arbitration. *United Firefighters of Los Angeles v. City of Los Angeles*, 231 Cal.App.3d 1576, 1582 (1991) (applying the CAA); *Langere v. Verizon Wireless Serv., LLC*, 983 F.3d 1115, 1117 (9th Cir. 2020) (citing 9 U.S.C. § 16(a)(1)(3), (b)(1)-(3)). Indeed, the Court of Appeal's summary denial expressly states the Arbitration Order is subject to further review: "A party does not waive his right to attack the order [compelling arbitration] by proceeding to arbitration; the order is reviewable on appeal from a judgment confirming the award." (Resp.'s App. at 2a (quoting *United Firefighters of Los Angeles v. City of Los Angeles*, 231 Cal.App.3d 1576, 1582 (1991).) Therefore, the Arbitration Order is "subject to further review" in the state tribunals and therefore, is not a final judgment or decree that can be reviewed by this Court. *See Jefferson*, 522 U.S. at 80.[6]

To the extent Petitioner challenges the Reconsideration Order (which she did not challenge in the California

[6] While Petitioner includes the Reconsideration Order, the Writ Order, and the Review Order in her Appendix, Petitioner appears to challenge only the Arbitration Order. (Petition at 7-8.) Because none of the Orders are final orders subject to review, each is addressed in turn.

Court of Appeal or California Supreme Court), it too is an interlocutory, non-appealable order. See Cal. Civ. Proc. Code § 1008(g) ("An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order."); *Powell v. County of Orange*, 197 Cal.App.4th 1573, 1577 (2011).

Similarly, the Court of Appeal's summary denial of Petitioner's Petition for Writ of Mandate is also not a final judgment or decree. "A summary denial of a writ petition does not establish law of the case whether or not that denial is intended to be on the merits or is based on some other reason." *Kowis v. Howard*, 3 Cal.4th 888, 899 (1992). Because a summary denial does not establish the law of the case, the parties can await a later appeal to present that and all other issues to this court. *Id.* at 898. While no federal question was determined by the summary Writ Denial, even if it had been, that determination would be subject to further review by the state tribunals; and therefore, is not a final judgment or decree. *See Jefferson*, 522 U.S. at 80.

Nor is any order "an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *See Jefferson*, 522 U.S. at 80; *see also San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 632, 633 (1981) (where further proceedings are necessary or contemplated, the state court decision is not final). Here, the Arbitration Order did not determine any of Petitioner's claims. Instead, it stayed the action pending their resolution in the contractual forum, religious arbitration. Similarly,

the Reconsideration Order, the Writ Order, and the Review Order did not determine any of Petitioner's claims, but rather rejected Petitioner's attempts to obtain interlocutory review of the Arbitration Order – none of which adjudicated the federal question presented in the Petition. No order of any of the state tribunals below is the "the final word of the final court,"[7] and therefore, this Court lacks jurisdiction to grant certiorari. *See Jefferson*, 522 U.S. at 80; 28 U.S.C. § 1257.

## II. THE FEDERAL QUESTION ON WHICH PETITIONER SEEKS REVIEW WAS NOT PRESSED OR PASSED UPON BY THE STATE COURTS

The Petition should also be denied because the federal question Petitioner relies upon to seek review was not pressed or passed upon by the state courts. The Petition seeks review of the question "Whether, under the First Amendment, a court may subject a person who has rejected the faith to participate in a religious 'arbitration' where arbiters must be members of that religion in good standing and must apply religious principles to resolve a dispute involving violations of civil law." (Petition at 1.) Petitioner did not timely or properly raise this argument, or any argument based on the First Amendment, in the state courts, and as such, no state court considered Petitioner's arguments based on the First Amendment. The Court should deny the Petition because there is no state court decision of a federal question for the Court to review.

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[7] Precisely for this reason, Presiding Justice Rubin indicated that he "would deny the petition only on the ground that petitioner has an adequate remedy on appeal." (Resp.'s App. at 2a.)

It is the well-settled practice of the Court to review only cases where the federal question presented was properly raised in the state courts or the federal courts below. *See Bankers Life Cas. Co. v. Crenshaw*, 486 U.S. 71, 78 (1988); *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 533 (1992) ("In reviewing judgment of state courts under the jurisdictional grant of 28 U.S.C. § 1257, the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below."); *Webb v. Webb*, 451 U.S. 493, 495 (1981) ("the federal question was not raised below and [] we are without jurisdiction in this case."); *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (federal question must be "raised and decided in the state court below" for the Court to have jurisdiction).[8] "[A]t a minimum . . . there should be no doubt from the record that a claim under a *federal* statute or the *Federal* Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the

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[8] The Court has sometimes characterized the "not pressed or passed upon" rule as a jurisdictional bar against review of state court decisions in which a federal issue was not properly raised and considered, and sometimes viewed the rule as a prudential restriction. *Illinois v. Gates*, 462 U.S. 213, 218-19 (1983) (discussing cases); *Bankers Life Cas. Co.*, 486 U.S. at 79 (discussing the issue but declining to decide it). Regardless of the characterization of the rule, with very rare exceptions, this Court has consistently refused to review state court decisions in which a federal question was not properly raised. *Yee*, 503 U.S. at 533. Even if the "not pressed or passed upon" rule does not act as a jurisdictional bar against review of state court decisions, "the longstanding rule that this Court will not consider such claims creates, at the least, a weighty presumption against review." *Heath v. Alabama*, 474 U.S. 82, 87 (1985). Thus review is particularly improper here.

manner required by state law." *Bankers Life Cas. Co.*, 486 U.S. at 78 (emphasis original).

Accordingly, where review of a state-court judgment is sought, the Petition for a Writ of Certiorari "shall contain" "specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), **so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari**." U.S. Sup. Ct. R. 14.1(g)(i) (italics original, bold added).

The Petition does not satisfy the requirements of Rule 14.1, subdivision (g)(i), because it cannot do so. None of the state court orders and opinions in this case contains any analysis regarding the federal question on which Petitioner seeks review (a purported violation the First Amendment) because Petitioner never properly presented the argument to the state courts. The phrase "First Amendment" does not appear on any page of Petitioner's Appendix containing the state-court orders and opinions that she contends are at issue. (Pet.'s Appx. at 1-46.) Because the state courts never analyzed the federal question, this case does not present a federal question that the Court can review.

Nor is the state courts' failure to address Petitioner's First Amendment arguments erroneous. The state courts did not address Petitioner's First Amendment

arguments because Petitioner never timely or properly presented the arguments, and therefore, the state courts properly declined to consider them on state law grounds.[9]

In the Trial Court, Petitioner did not present any argument based on the First Amendment in her papers or at the hearing in opposition to Respondents' Motions to Compel Arbitration. (2 EP 485-509; 3 EP 565-66.) Therefore, the Arbitration Order does not consider the issue.

Instead, Petitioner raised arguments based on the First Amendment for the first time in a procedurally-defective motion for reconsideration. (2 EP 486-509; 3 EP 650-668; 4 EP 748; 4 EP 942; Pet.'s Appx. at 39, 42.) Because the motion for reconsideration was improper under California Code of Civil Procedure Section 1008, the Trial Court did not consider Petitioners' argument based on the First Amendment. (Pet.'s App. at 42; *see also id*. at 33-42 *generally*.) This decision by the Trial Court was correct. *See* Cal. Code Civ. Proc. § 1008; *Midwest Television, Inc. v. Scott, Lancaster, Mills & Atha, Inc.*, 205 Cal.App.3d 442, 454 (1988) (legal arguments that could have been raised in the original briefing cannot be raised for the first time on a motion for reconsideration).

In the Court of Appeal, Petitioner made arguments based on the First Amendment in her Writ Petition. However, the Court of Appeal summarily denied the Writ Petition "as untimely" under California's writ procedures. (Resp. Appx. at 1a-2a.) As such, not one of

[9] As set forth below, Petitioner's procedural failures constitute an independent state procedural ground, which separately warrants denial of the Petition. *See Webb*, 451 U.S. at 498 n. 4; REASONS FOR DENYING THE PETITION, Section III, *infra*.

Petitioner's arguments in the Writ Petition was timely raised, and the Court of Appeal properly did not reach Petitioner's First Amendment arguments – or any of Petitioner's arguments – on state law procedural grounds.[10]

In the California Supreme Court, Petitioner sought discretionary review of the Court of Appeal's denial of the untimely Petition for Writ of Mandate and presented arguments based on the First Amendment. However, because Petitioner's federal question was not properly or timely raised in the Trial Court or the Court of Appeal, it was also not properly before the California Supreme Court. Cal. R. Ct. 8.500(c)(1) ("As a policy matter, on a petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal."). Nor did the California Supreme Court consider the argument: the Petition for Review was denied without opinion. (Pet.'s Appx. at 46.) The California Supreme Court's denial of discretionary review "expresses no view as to the merits." *Yee*, 503

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[10] Even if the Writ Petition had been timely, the federal question would not have been properly raised in the Court of Appeal because it was not properly raised in the Trial Court below. *See Medical Bd. Of Calif. v. Superior Court*, 227 Cal.App.3d 1458, 1462 (1991) (on a writ petition, the court's "concern is whether the respondent court acted properly on the record before it"); *Parsons v. Superior Court*, 149 Cal.App.4th Supp. 1, 6-7 (2007) (declining to consider evidence and argument presented for the first time in writ proceedings) (*disagreed with on other grounds by Borsuk v. Appellate Division of Superior Court*, 242 Cal.App.4th 607 (2015)). Petitioner did not challenge the Reconsideration Order in the Court of Appeal. She sought reversal of the Arbitration Order only – an Order which followed briefing and argument where she never once raised the First Amendment as grounds to deny the Motion to Arbitrate.

U.S. at 533 (citing *People v. Triggs*, 8 Cal.3d 884, 889-91 (1973)). Accordingly, the California Supreme Court's order does not address Petitioner's federal question. *See id.* (finding "no state court has addressed [the federal claim]" where it was presented in a petition for review to the California Supreme Court that was denied).

Because the Question Presented in the Petition was not pressed or passed upon by the state courts, the Court should not grant certiorari.

## III. THE STATE COURT ORDERS REST ON ADEQUATE AND INDEPENDENT STATE LAW GROUNDS

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945) (citations omitted). "This rule applies whether the state law ground is substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 730 (1991), *superseded by statute on other grounds*, 28 U.S.C. § 2254(b)(2). "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Id.*; *Herb*, 324 U.S. at 125-26 ("Our only power over state judgment is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views

of federal laws, our review could amount to nothing more than an advisory opinion."). "When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the *judgment*; if resolution of the federal question[11] cannot affect the judgment, there is nothing for the Court to do." *Coleman*, 501 U.S. at 730.

Here, the state courts did not reach the federal question presented by the Petition because Petitioner's First Amendment arguments were never properly before the state courts. Therefore, any opinion by this Court expressing "its views of federal laws" would be an advisory opinion because "the same judgment would be rendered by the state court" regardless of the substance of an opinion by this Court.

Each Order Petitioner presents in her Appendix is supported ***solely by an adequate and independent state law ground*** and ***does not even address Petitioner's federal question***.

In opposing Respondents' Motions to Compel Arbitration, Petitioner argued chiefly state law principles of duress and unconscionability precluded enforcement of the arbitration provisions. (2 EP 485-509.) The Arbitration Order addressed Petitioner's state law defenses to enforcement (duress and unconscionability), rejected her arguments, and granted Respondents' Motions to Compel Arbitration. (Pet.'s Appx. at 19-26.) Petitioner never argued that Scientology arbitration was a "religious ritual" or that participating in Scientology arbitration would somehow violate her First Amendment

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[11] As set forth above, there is no state court opinion that resolves a federal question – correctly or incorrectly – for this Court to review. REASONS FOR DENYING THE PETITION, Section II, *supra*.

rights, (2 EP 485-509; 3 EP 565-66), and therefore, has waived the argument under state procedural law, *see Parsons*, 149 Cal.App.4th Supp. 1 at 6-7; *Sommer v. Martin*, 55 Cal.App. 603, 610 (1921) ("The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them."); *Midwest Television, Inc.*, 205 Cal.App.3d at 454. An opinion by this Court concerning whether or not compelling a "person who has rejected the faith" to participate in religious arbitration violates the First Amendment would be an advisory opinion: it would not affect the Arbitration Order because the Arbitration Order never addresses the issue and Petitioner waived the argument by failing to raise it.

While Petitioner raised arguments based on the First Amendment in her Motion for Reconsideration, (4 EP 748; 4 EP 942), the Trial Court denied Petitioner's Motion for Reconsideration on state law procedural grounds, (Pet.'s Appx. at 40.) Under California Code of Civil Procedure Section 1008, the party moving for reconsideration must demonstrate "new or different facts, circumstances, or law" warranting reconsideration of the prior order. (Pet.'s Appx. at 40.) The Trial Court denied Petitioner's Motion for Reconsideration for failure to meet the requirements of California Code of Civil Procedure Section 1008, and therefore, declined to reach the parties' other arguments – including Petitioner's First Amendment arguments. (*See* Pet.'s Appx. at 39, 42.) An opinion by this Court concerning whether or not compelling a "person who has rejected the faith" to participate in religious arbitration violates the First Amendment would be an advisory opinion: it would not affect the Reconsideration Order denying

Petitioner's Motion for Reconsideration on state procedural grounds.[12]

Petitioner again improperly raised her First Amendment arguments to the Court of Appeal in her Writ Petition, to again be denied on state procedural law grounds. The Writ Order denied Petitioner's Writ "as untimely" under California's general rule that a writ petition should be filed within the 60-day period applicable to appeals, (Resp. Appx. at 1-2 (citing *Volkswagen of Amer., Inc.*, 94 Cal.App.4th at 701)), and because the Arbitration Order "is reviewable on appeal from a judgment confirming the award," (*id.* at 2). An opinion by this Court concerning whether or not compelling a "person who has rejected the faith" to participate in religious arbitration would be an advisory opinion: it would not affect the Writ Order denying Petitioner's Motion for Reconsideration as untimely under state law.

The Petition does not acknowledge – much less challenge – the independent state law grounds for each of the relevant orders. Nor could it. This Court cannot grant review of the state court orders based solely on adequate and independent state law grounds. *See Coleman*, 501 U.S. at 729.

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[12] Petitioner includes the Reconsideration Order in her Appendix and identifies it as a "relevant proceeding below." (Appx. at 33-45; Petition at 8.) The Petition appears to challenge only the Arbitration Order. (Petition at 7-8.) Because the Reconsideration Order rests on adequate and independent state law grounds, it cannot be properly reviewed by this Court, to the extent Petitioner seeks such review.

## IV. THE PETITION PRESENTS NO SPLIT OF AUTHORITY WARRANTING REVIEW BY THIS COURT

By rule, this Court generally looks to whether "a United States court of appeals" or a "state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals." *See* Sup. Ct. R. 10(a), (b).

Despite claiming that lower courts are split regarding "under what conditions a religious arbitration agreement or religious tribunal decision can be upheld by the secular courts," (Petition at 10), the Petition identifies no split that warrants review by this Court, (*see* Petition at 9-15). In identifying the cases that the Petition claims demonstrate a "split" on "the application of First Amendment principles to disputes involving religious arbitration agreements," (*id.* at 9 (initial capitalizations omitted)), the Petition cites to ***no opinion by a United States Court of Appeals and only one opinion by a state court of last resort***, (*id.* at 10-15 (identifying cases).) The only cited opinion by a state court of last resort, the New York Court of Appeals, is *Matter of Wertheim & Co. v. Halpert*, 48 N.Y.2d 681, 683 (N.Y. 1979). *Matter of Wertheim & Co.* addresses arbitration of "a claim of discriminatory conduct in employment" and does not address religious arbitration or First Amendment rights. 48 N.Y.2d at 683. Moreover, the New York Court of Appeal abrogated *Matter of Wertheim & Co.* in *Fletcher v. Kidder, Peabody & Co., Inc.*, 81 N.Y.2d 623, 629, 631, 635 (N.Y. 1993). The Petition does not identify a single decision by a federal Court of Appeals or a state court of last resort that has even considered the Question Presented, much less any such decision

"decided . . . in a way that conflicts" with the orders below. Sup. Ct. R. 10. The Petition does not present a split of authority that warrants review by this Court.

Furthermore, none of the cited authority demonstrates a conflict among lower courts regarding the Question Presented: "Whether, under the First Amendment, a court may subject a person who has rejected the faith to participate in a religious 'arbitration' where arbiters must be members of that religion in good standing and must apply religious principles to resolve a dispute involving violations of civil law," (*see* Petition at i). Five cases cited by the Petition in support of the "split" do not address religious arbitration at all.[13] Three of the cases cited by the Petition in support of the "split" hold that certain matters cannot be arbitrated under New York state law and based on public policy grounds, while taking no issue with the religious nature of the arbitration and never discussing the First Amendment.[14] While

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[13] *Matter of Wertheim & Co.*, 48 N.Y.2d 681 (addressing arbitration of employment discrimination claims); *Nestel v. Nestel*, 38 A.D.2d 942 (N.Y. App. Div. 1972) (addressing arbitration of child custody matters); *Matter of Goldmar Hotel Corp.*, 283 A.D. 935 (N.Y. App. Div. 1954) (addressing arbitrability of violations of lease provisions); *In re Marriage of Weiss*, 42 Cal.App.4th 106 (Cal. Ct. App. 1996) (addressing enforceability of antenuptial agreement to raise children in a certain faith); *Abbo v. Briski*, 660 So. 2d 1157 (Fla. Dist. Ct. App. 1995) (addressing enforceability of antenuptial agreement to raise children in a certain faith).

[14] *Matter of Teitelbaum*, 10 Misc.3d 659, 662-63 (N.Y. Sup. Ct. 2005) ("Proceeding under Jewish law by agreeing to go before a Beit Din [a religious court] is akin to an agreement to arbitrate a matter."); *Matter of Berger*, 81 A.D.2d 584, 584 (N.Y. App. Div. 1981) ("The probate of an instrument purporting to be the last will and testament of a deceased and the distribution of an estate cannot be the subject of arbitration . . . and any attempt to arbitrate such issue is against public policy."); *Matter of*

the Petition chastises these decisions as "side-step[ping] First Amendment issues by simply refusing to enforce religious arbitration agreements on public policy grounds," (Petition at 11), by the "settled canons of constitutional adjudication" constitutional issues should only be reached and decided if the matter cannot be resolved without reaching them, *Clay v. Sun Ins. Office Ltd.*, 363 U.S. 207, 209-10, 211-12 (1960) (court of appeals should not have decided a constitutional issue where "[t]he disposition of either of two unresolved state law questions may settle this litigation"). In another case cited by the Petition, *Aflalo v. Aflalo*, the petitioning party did not request the court order the parties to appear before a religious tribunal; she sought for the court to order a Jewish law divorce or sanction her husband for refusing to provide one. 295 N.J. Super. 527, 532, 541 (N.J. Super. Ct. Ch. Div. 1996) (cited by Petition at 12). The case does not "refus[e] to enforce an agreement to arbitrate a religious divorce dispute" as the Petition claims. (*See* Petition at 12.)

The handful of cases Petitioner cites concerning enforcement of religious arbitration neither supports her position nor demonstrates an inconsistent approach by lower courts. (*See* Petition at 15 (claiming "[t]here is no consistent application of First Amendment principles protecting individuals who have rejected a faith from being compelled into religious rituals. Further, courts inconsistently apply, and fail to apply,

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*Jacobovitz*, 58 Misc. 2d 330, 334 (N.Y. Surr. Ct. 1968) ("The probate of an instrument purporting to be the last will and testament of a deceased and the distribution of an estate cannot be the subject of an arbitration under the Constitution and the law as set forth by the Legislature of the State of New York and any attempt to arbitrate such issue is against public policy.").

neutral principles of law to cases involving religious arbitration agreements and secular claims.").) The cases apply neutral principles of law to determine if the parties have an enforceable agreement to arbitrate in the religious tribunal. *See Garcia v. Church of Scientology Flag Serv. Org., Inc.*, No. 8:13-cv-220-T-27TBM, 2015 WL 10844160, at *4 (M.D. Fla. Mar. 13, 2015) (cited by Petition at 13) ("Neutral principles of Florida law can be applied in determining the enforceability of the arbitration clauses without consideration of Scientology doctrine. It follows that the First Amendment does not prevent the court from resolving the instant motion according to 'objective, well-established, neutral principles of law.'") (citation omitted); *Sieger v. Sieger*, 8 Misc.3d 1029, No. 6975/98, 2015 WL 2031746, at *50-*51 (N.Y. Sup. Ct. June 29, 2005) (cited by Petition at 11-12) ("To do so [compel religious arbitration] under the circumstances of this case would violate the First Amendment because the engagement contract does not contain a provision that expressly provides for the resolution of disputes before a Beth Din [Rabbinical Court], ***which would allow the court to decide the issue on neutral principles of contract law, without reference to any religious principles***." & "this court cannot compel plaintiff to arbitrate his claims before the Beth Din under circumstances ***where plaintiff did not agree to submit to the religious tribunal***.") (emphasis added); *In re Ismailoff (Golan)*, No. 342207, 2007 WL 431024, at *2 (N.Y. Surr. Ct. Feb. 1, 2007) (cited by Petition at 12-13) ("The grantor argues that the parties intended to empanel a 'Beth Din' (rabbinical court). However, the agreement specifically provides for enforcement of the rights of the parties under New York law. In addition, ***in the absence of any reference in the agreement to a 'Beth Din,' the***

***First Amendment to the United States Constitution prohibits the appointment of a religious tribunal***.") (citing *Sieger v. Sieger*, 297 A.D.2d 33 (N.Y. Ct. App. Div. 2 2002) (emphasis added).[15]

## V. THE ARBITRATION ORDER IS CORRECT

The Arbitration Order does not violate the First Amendment, and Petitioner's argument that the First Amendment prohibits a trial court from compelling religious arbitration when "a person has rejected the faith" is contrary to established law. Review by this Court is unnecessary because Petitioner's contentions are meritless, as briefly described below.[16]

***Courts routinely uphold arbitration agreements requiring resolution of disputes in ecclesiastical courts and governed by religious principles.*** *See, e.g.*, *Dial 800 v. Fesbinder*, 118 Cal.App.4th 32, 50 (2004) (affirming enforceability of judgment to be rendered in religious arbitration where arbitrators were rabbis and decision would be based on Jewish law); *Ortiz v. Hobby Lobby Stores, Inc.*, 52 F.Supp.3d 1070 (E.D. Cal. 2014) (enforcing employer/employee arbitration under the Institute for Christian Conciliation's Rules of Procedure for Christian Conciliation); *Gen. Conference of Evangelical Methodist Church v. Evangelical Methodist Church of Dalton, Georgia, Inc.*, 807 F.Supp.2d 1291, 1294 (N.D. Ga. 2011) (enforcing church rules that disputes should be resolved "by

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[15] These cases, and the Trial Court's Arbitration Order, are in accord with numerous other lower court decisions holding agreements to submit disputes to religious arbitration are enforceable. *See* REASONS FOR DENYING THE PETITION, Section V, *infra*.

[16] Should the Court grant certiorari, Respondents will file a full brief on the merits.

means of Christian conciliation, mediation or arbitration"); *Easterly v. Heritage Christian School, Inc.*, No. 1:08-cv-1714, 2009 WL 2750099, at *1 (S.D. Ind. Aug. 26, 2009) (teachers at Christian school agreed to resolution of differences by "following the biblical pattern of Matthew 18:15-17," and waived right to file lawsuit); *Jenkins v. Trinity Evangelical Lutheran Church*, 825 N.E.2d 1206, 1212-13 (Ill. App. 2005) (enforcing Lutheran Church doctrine mandating church-based arbitration of disputes); *Alla v. Moursi*, 680 N.W. 569 (Minn. Ct. App. 2004) (confirming arbitration award under Islamic law).

***Court enforcement of private agreements or arbitration awards that limit rights is not state action as to the contracting parties and therefore, does not violate the Petitioner's rights.*** *Roberts v. AT&T Mobility LLC*, 877 F.3d 833 (9th Cir. 2017) (telecommunication provider's attempt to compel arbitration was not state action on which customers could base a claim for violation of their First Amendment right to petition the government); *Fed. Deposit Ins. Corp. v. Air Florida Sys., Inc.*, 822 F.2d 833, 842 n. 9 (9th Cir. 1987); *Davis v. Prudential Securities*, 59 F.3d 1186, 1191-92 (11th Cir. 1995); *Elmore v. Chicago & Illinois Midland Ry. Co.*, 782 F.2d 94, 96 (7th Cir. 1986).

***Courts have rejected Petitioner's argument that enforcing contractually-agreed upon religious arbitration violates the First Amendment. Instead, courts hold that the parties' express consent to religious arbitration precludes such a challenge and constitutes "a knowing and voluntary waiver of their rights to pursue litigation in a secular court."*** *Encore Prods., Inc. v. Promise Keepers*, 53 F.Supp.2d 1101, 1112-13 (D. Colo. 1999)

(holding where "the parties agree" to refer disputes to a "religious tribunal" it "is proper for a district court to enforce their contract") (emphasis added); *see also Elmora Hebrew Ctr., Inc. v. Fishman*, 125 N.J. 404, 416-17 (N.J. 1991) (declining to reach free exercise challenge to religious tribunal because the party's consent to the tribunal precludes such a challenge); *Spivey v. Teen Challenge of Florida, Inc.*, 122 So.3d 986, 991-92, 994-95 (Fla. App. 2013) (rejecting representative of contracting party's challenge to religious arbitration involving Christian prayer because representative "stands in the shoes" of the party who expressly consented to the procedures).

***Refusal to enforce a religious arbitration agreement, which governs the requirements for membership in the Church's religious order, violates Respondents' First Amendment rights to church self-governance and retention of members of its religious order.*** *Our Lady of Guadalupe School v. Morrissey-Berru* (2020) 140 S. Ct. 2049, 2055 ("The First Amendment protects the right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'").

***Petitioner's foundational "factual" claim that Scientology arbitration is a "religious service" or "ritual" – and therefore violates her First Amendment rights – is unsupported, false, and cannot be adjudicated by civil courts. Respondents submitted evidence that Scientology arbitration is not a religious service or ritual of the Scientology religion.*** (4 EP 962 ¶ 4.) ***Civil courts cannot adjudicate or contradict the Church's statements regarding this matter of faith, doctrine, and ecclesiastical custom and rule.*** *See Watson*, 13

Wall. at 727; *Kedroff*, 344 U.S. at 116; *see also Our Lady of Guadalupe School*, 140 S. Ct. at 2060.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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June 25, 2021

# APPENDIX

**APPENDIX**

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

[Filed October 22, 2020]

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B307452

(Super. Ct. No. 19STCV21210)

(Richard J. Burdge, Jr, Judge)

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VALERIE HANEY,

*Petitioner*,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

*Respondent*.

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al*.,

*Real Parties in Interest*.

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ORDER

THE COURT:

The court has read and considered the petition for writ of mandate filed September 10, 2020, the preliminary opposition filed September 21, 2020, the reply filed October 1, 2020, and the amicus curiae briefs filed by the National Center on Sexual Exploitation and the National Crime Bar Victim Association. The petition is denied as untimely. (*Reynolds v. Los Angeles County Superior Court* (1883) 64 Cal. 372, 373; *Volkswagen of*

*America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701; see also *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 1582 ["'A party does not waive his right to attack the order [compelling arbitration] by proceeding to arbitration; the order is reviewable on appeal from a judgment confirming the award'"].)

| /s/ Baker | /s/ Moor |
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| BAKER, J. | MOOR, J |

I would deny the petition only on the ground that petitioner has an adequate remedy on appeal.

/s/ Rubin
RUBIN, P. J.