No. 22-____

IN THE

Supreme Court of the United States

CHURCH OF SCIENTOLOGY INTERNATIONAL, RELIGIOUS TECHNOLOGY CENTER & CHURCH OF SCIENTOLOGY CELEBRITY CENTRE INTERNATIONAL,

Petitioners,

v.

CHRISSIE CARNELL BIXLER, CEDRIC BIXLER-ZAVALA, JANE DOE #1 & JANE DOE #2,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where a parishioner freely executes a religious arbitration agreement with her church, does the First Amendment prohibit enforcement of the agreement if the parishioner leaves the faith?

Does the First Amendment restrict the terms on which a Church may accept members into its faith?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The Church of Scientology International, Church of Scientology Celebrity Centre International, and Religious Technology Center are each a church in the Scientology religion (collectively, "Petitioners" or the "Church Parties"). These entities were each a defendant in the trial court, a real party in interest in the California Court of Appeal and the California Supreme Court, a petitioner in the California Supreme Court, and are a petitioner in this Court.

Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe No. 1 and Jane Doe No. 2 (collectively, "Respondents") were each a plaintiff in the trial court, a petitioner in the Court of Appeal and the California Supreme Court, a respondent in the California Supreme Court, and are a respondent in this Court.

The Superior Court for the State of California, County of Los Angeles, was a respondent in the California Court of Appeal and the California Supreme Court.

Another plaintiff involved in this case, Bobette Riales, remains a plaintiff in the trial court. She did not sign an agreement to arbitrate, and therefore, her claims were not the subject of the orders at issue in the proceedings in the California Court of Appeal or the California Supreme Court or in this Petition for Writ of Certiorari.

Daniel Masterson, is a defendant in the trial court. He was not named as a real party in interest in the Petition for Writ of Mandate, but joined in the Church Parties' briefing in the California Court of Appeal and the California Supreme Court as a real party in interest.

David Miscavige, is named as a defendant in the trial court. Mr. Miscavige has not been served and was not named as a real party in interest in the Petition for Writ of Mandate or in the California Supreme Court. Mr. Miscavige has not appeared in the action.

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

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the Superior Court of California, County of Los Angeles, the California Court of Appeal, and the California Supreme Court:

Chrissie Carnell Bixler, et al. v. Church of Scientology International, et al., Case No. 19STCV29458 (Cal. Super. Ct. Dec. 30, 2020) (order granting petition to compel arbitration) (App. 41a-63a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. B310559 (Cal. Ct. App. Mar. 9, 2021) (order summarily denying petition for writ of mandate) (App. 68a-69a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. S267740 (Cal. May 26, 2021) (order granting review and directing order to show cause to issue) (App. 70a-71a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. B310559 (Cal. Ct. App. Jun. 4, 2021) (issuing order to show cause) (App. 72a-73a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. B310559 (Cal. Ct. App. Sept. 22, 2021) (ordering supplemental briefing) (App. 64a-65a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. B310559, 2022 WL 167792 (Cal. Ct. App. Jan. 19, 2022) (granting petition and directing order denying the motions to compel arbitration) (App. 1a-37a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. B310559 (Cal. Ct. App. Feb. 15, 2022) (summarily denying petition for rehearing and taking judicial notice of oral proceedings) (App. 38a-39a);

Chrissie Carnell Bixler, et al., Petitioners v. Superior Court for the State of California, County of Los Angeles, Respondent; Church of Scientology International, et al., Real Parties in Interest, Case No. S273276 (Cal. Apr. 20, 2022) (summarily denying request for review) (App. 40a).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Church of Scientology International, Church of Scientology Celebrity Centre International, and Religious Technology Center (collectively, "Petitioners" or the "Church Parties") respectively petition for a writ of certiorari to review the decision of the California Court of Appeal, of which the California Supreme Court denied discretionary review.

OPINIONS BELOW

The California Supreme Court's order denying the Church Parties' petition for review is unpublished and is reproduced in the Appendix at App. 40a. The California Court of Appeal's opinion directing an order denying the motions to compel arbitration is unpublished, but is available at 2022 WL 167792, and is reproduced in the Appendix at App. 1a-37a. The order of the Superior Court of California, County of Los Angeles, granting the Church Parties' petition to compel arbitration is unpublished and is reproduced in the Appendix at App. 41a-63a.

JURISDICTION

The California Court of Appeal entered its decision on January 19, 2022. (App. 1a.) The California Supreme Court denied the Church Parties' timely petition for review on April 20, 2022. (App. 40a.) This Petition is timely filed. (Sup. Ct. R. 13.1).

This Court has jurisdiction under 28 U.S.C. § 1257(a). 9 U.S.C. § 16; Cal. Civ. Proc. Code § 1294(a); *Kowis v. Howard*, 3 Cal.4th 888, 894, 898 (1992) ("When the appellate court issues an alternative writ, the matter is fully briefed, there is an opportunity for oral argument, and the cause is decided by written opinion[,] [t]he resultant holding establishes law of the

case upon a later appeal from the final judgment" and noting that "a party dissatisfied with [a writ ruling] that establishes law of the case must immediately petition this court for review or forever lose the issue.").

The Court also has jurisdiction to review the challenged order because the order definitively resolved the federal issues presented, which are independent of any other matters remaining to be litigated, and which the Church Parties cannot raise again in state court. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480-81, 485-86 (1975); *Kowis*, 3 Cal.4th at 894, 898.

RELEVANT CONSTITUTIONAL PROVISION

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

STATUTORY PROVISION INVOLVED

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, provides: "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, of an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract."

STATEMENT OF THE CASE

Contracts are contracts, even when a church is a party. It should go without saying that contracts with churches are entitled to the same protection under the law as contracts with secular entities. The California Court of Appeal disagrees. It held that a voluntary party to an otherwise enforceable contract with a church may annul that contract by asserting a First Amendment right to "leave the faith" and "extricate" themselves from the church. While secular entities can enforce contracts over the objections of a party that no longer wishes to be bound, churches now cannot, as long as a party asserts a change of faith. The Court of Appeal deprived churches of the contractual right that really matters – the right to enforce. And it did so expressly because churches are religious.

The dispute here is simple. The Respondents, as a condition for joining Petitioners' church, repeatedly and expressly agreed to religious arbitration of any disputes between them and Petitioners, regardless of when those disputes arose. The agreement to submit disputes to religious arbitration is not anomalous. American courts have long recognized the right of religious institutions to use dispute resolution procedures derived from and guided by their foundational beliefs and scripture. Secular courts have placed agreements to submit disputes to religious arbitration on equal footing with agreements calling for secular arbitration – and declined invitations to discriminate against religious arbitration just because it is religious.

At some point, Respondents changed their minds, and their faith. They argued that their change of faith should free them from their contractual obligations to submit their disputes with Petitioners to the chosen religious forum. The California Court of Appeal

agreed. It became the first court in the nation to overturn a freely executed religious arbitration agreement based on the objection by a party that the selected forum was exactly what the party agreed to – religious. The Court of Appeal arrived at this result by finding state action in the judicial enforcement of religious arbitration agreements, while acknowledging that the enforcement of secular arbitration agreements does not amount to state action.

In addition to propounding a rule that purposely discriminates against religions, the Court of Appeal determined that the First Amendment may impose restrictions on how religions admit members to their faith. It acknowledged that "[a]n '***irrevocable***' agreement" to submit disputes to Scientology arbitration "is one of the prices of joining [the Scientology] religion." (App. 36a.) But, rather than conclude that a court may not second guess or re-write the terms on which a religion accepts its members, the Court of Appeal ruled that the "Constitution forbids a price that high." (*Id.*) The notion that the First Amendment empowers the state to regulate the covenant between a church and its congregation could not be more wrong or dangerous. Rather, the First Amendment *forbids* the state to weigh the reasonableness of the "price" of joining a religion, whether that price be a baptism, bris, holy communion, or an agreement to be bound by ecclesiastical law in all dealings with the religion.

This unprecedented decision from the most populous state in the Union violates the fundamental constitutional right that the law should not discriminate against persons on the basis of religion. It relies on a novel theory of state action that could be deployed to bar enforcement of any contract with a religious organization where one of the contracting parties

professes to have a change of faith. The Opinion also dictates how religions may accept members into the faith. And, it departs from all other courts – both federal courts and state appellate courts – that have expressly rejected challenges to enforcement of religious arbitration agreements on state action grounds. Those other courts recognized that adopting a special rule discriminating against enforcement of religious arbitration agreements was plainly unconstitutional. It is thus no surprise that the Opinion, which opposing counsel has lauded as a "watershed moment" and a "landmark First Amendment ruling,"[1] has drawn criticism from leading First Amendment scholars as generating "serious doctrinal problems,"[2] and being "inconsistent with both the Constitution and federal law."[3]

As shown immediately below, religious arbitration is a long-recognized institution that is increasing in use throughout the United States and across religions. Review by this Court is necessary to settle the

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[1] Press Release, University of Pennsylvania, *Marci Hamilton: "A Landmark First Amendment Ruling" in Scientology Abuse Case* (Jan. 20, 2022), *available at* https://www.sas.upenn.edu/news/marci-hamilton-landmark-first-amendment-ruling-scientology-abuse-case.

[2] Eugene Volokh, *Scientology Arbitration and the First Amendment: Some Questions About* Bixler v. Superior Court, REASON MAGAZINE (Jan. 25, 2022), *available at* https://reason.com/volokh/2022/01/25/scientology-arbitration-and-the-first-amendment-some-questions-about-bixler-v-superior-court/ (quoting Prof. Michael Helfand).

[3] Michael J. Broyde, Op.-Ed., *Faith Can't Abrogate a Contract*, WALL STREET JOURNAL (Jan. 25, 2022), *available at* https://www.wsj.com/articles/faith-cant-abrogate-a-contract-religious-exemptions-legal-rights-court-freedom-bixler-scientology-11643145135.

confusion created by the California Court of Appeal. Religious organizations need this Court to remove any doubt that their contracts – including their agreements to arbitrate disputes before a religious forum – cannot be voided by a party's professed change of mind. Churches have the right to know that their contracts are equal under law and not subject to ad hoc and unprecedented application of a state action theory by judicial officers.

A. Religious Arbitration and Its Enforcement.

"Since time immemorial, third parties have peacefully intervened in every manner of dispute, and much of this intervention has been rooted [in] the world's countless religious traditions. Before there were courts, there were temples; before there were judges, there were elders and priests, and before there were lawyers, there were clergymen, relatives, and neighbors." R. Seth Shippee, *Blessed are the Peacemakers: Faith-Based Approaches to Dispute Resolution*, 9 ILSA J. Int'l & Comp. L. 237, 237-38 (2002).

"These time-honored institutions did not whither away and die with the founding of the American Arbitration Association." *Id.,* 238. Quite the contrary, religious arbitration remains common and most major religious denominations have a method of private dispute resolution.

"In the United States, members of all three primary Abrahamic faith communities employ forms of religious arbitration." Michael A. Helfand, *Arbitration's Counter-Narrative: The Religious Arbitration Paradigm*, 124 Yale L.J. 2994, 3015 (2015). A faith's requirement to utilize religious dispute resolution procedures – and the procedures themselves – often derive from foundational beliefs and scripture.

For example, the *beth din*, or rabbinical court, utilized by the Jewish community is likely the most well-known of the faith-based forms of religious arbitration. Helfand, 124 Yale L.J. at 3015. "Judaism is a faith tradition grounded in the observance of legal norms based on God's revealed will, and . . . Jews are obligated to resolve their disputes in religious courts, called *batei din* . . ." Michael J. Broyde, et al., *The Pillars of Successful Religious Arbitration: Models for American Islamic Arbitration Based on the Beth Din of America and Muslim Arbitration Tribunal Experience*, 30 Harv. J. Racial & Ethnic Just. 33, 36 (2014). Rabbinical courts "adjudicate commercial disputes, divorce and family matters, and other issues contemplated and regulated by *halakha*, or Jewish religious law." Broyde, 30 Harv. J. Racial & Ethnic Just. at 36.

Participants in rabbinical courts need not themselves be Jewish. Rather, the procedures are available to anyone who has agreed to submit their dispute to the rabbinical court. *See Michael J.* Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of America Precedent*, 57 N.Y.L. Sch. L. Rev. 287, 295 (2013) ("many litigants who come before the [Beth Din of America] do not adhere to Jewish law themselves" and instead appear "in compliance with a binding arbitration agreement").

Christianity also "has a strong, rich tradition of faith-based dispute resolution." Shippee, 9 ILSA J. Int'l & Comp. L. at 240. Christian dispute resolution is "deeply rooted in basic Christian doctrine" drawn "from the Bible, particularly the teachings of Jesus Christ." *Id.*, 241. Christian forms of dispute resolution include options for binding arbitration, and there are a range of Christian dispute resolution providers. Helfand, 124 Yale L.J. at 3018. The most well-known

of these providers, the Institute for Christian Conciliation (the "ICC"), mandates that "the Holy Scriptures (the Bible) shall be the supreme authority governing every aspect of the conciliation process." *Id.* Participants in Christian Conciliation before the ICC are not required to adhere to any religion. (*See, e.g.*, ICC Rules Nos. 16.D., 17.)[4]

Similarly in Islamic religio-legal practice, "[p]rivate dispute resolution has long been an accepted legitimate alternative to formal adjudication, . . . and the history of Islamic law includes a rich tradition of dispute resolution through a variety of formal and informal methods." Michael J. Broyde, Ira Bedzow & Shlomo C. Pill, *The Pillars of Successful Religious Arbitration: Models for American Islamic Arbitration Based on the Beth Din of America and Muslim Arbitration Tribunal Experience*, 30 Harv. J. Racial & Ethnic Just. 33, 33-34 (2014). The Quran, Islam's holiest book, "gives Muslims numerous, explicit instructions as to how they should resolve their disputes." Shippee, 9 ILSA J. Int'l & Comp. L. at 245. For example, in the context of marital disputes, the Quran instructs that the disputing parties "appoint an arbitrator from his people and an arbitrator from her people. If they both want to set things right, Allah will bring about reconciliation between them." *Id.*, 246. Islam gives its followers specific guidance on how to handle disputes between themselves and people of other faiths, and its "emphasis on peaceful resolution of disputes between all persons, including non-Muslims, has its roots" in Islam's religious teachings. *Id*.

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[4] The ICC Rules are available at https://www.aorhope.org/icc-rules.

B. Religious Arbitration in the Scientology Religion.

While Scientology is a relatively new religion, it shares with these older faiths dispute resolution procedures anchored in religious belief and scripture and guided by religious precepts.

Scientologists believe that spiritual progress and proper conduct are inextricably linked, and the precepts of ethics in Scientology are reflected in the large body of Scientology Scripture.[5] (App. 82a, ¶ 16].) Scientology Scripture also sets forth a formalized Ethics and Justice system designed for fair and equitable treatment. (*Id.*, 82a, ¶ 18.) The system includes codes of conduct and discipline derived from the religion's core beliefs that are to be applied by all members of the religion. (*Id.*, 79a, ¶ 12; *id.*, 82a-84a, ¶¶ 17-21, 23.) This system of jurisprudence is required to be used in all matters relating to Scientology organizations, groups, and concerns. (*Id.*, 82a, ¶ 18.) While Scientology dispute resolution procedures are based on Scientology Scripture, one need not be a practicing Scientologist to participate in these procedures. (*Id.*, 83a-84a, ¶ 23.) They do not require participants to make a profession of faith, undergo Scientology auditing,[6] or participate in any religious ceremony or service as part of presenting a dispute to the arbitrators. (*Id.*)

Scientology Scripture states that "[Scientologists] have a superior law code and legal system which gives

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[5] The Scripture of the Scientology religion is comprised of the written and spoken words of L. Ron Hubbard, the Founder of Scientology. (App. 76a-77a, ¶¶ 2-3; *id.*, 82a, ¶ 16.)

[6] Auditing, a unique form of spiritual counseling, is a core religious practice of the Scientology faith. (App. 77a-79a ¶¶ 7-11.)

real justice to people," and mandates that "[Scientologists] *must* use Scientology . . . justice in all [their] affairs." (*Id.*, 83a, ¶ 20.)

Any person who wishes to participate in the religion must sign a written contract committing himself or herself to resolve all disputes with the Church through the Scientology internal justice system and in accordance with Scientology tenets, policies, and principles. (*Id.*, 83a, ¶ 22.) If a person refuses to make this commitment, they are not permitted to participate in the faith. (*Id.*; *see also* App.15a-16a)

This written agreement, which was freely executed by each Respondent repeatedly over many years, is the agreement that the California Court of Appeal refused to enforce in this case.

C. Court Enforcement of Religious Arbitration Agreements.

Outside of California, secular courts routinely enforce freely executed agreements requiring resolution of disputes through religious arbitration and governed by religious principles and confirm the resulting awards. *See, e.g.*, *Garcia v. Church of Scientology Flag Serv. Org., Inc.*, No. 18-13452, 2021 WL 5074465 (11th Cir. Nov. 2, 2021) (affirming orders compelling "binding religious arbitration in accordance with the arbitration procedures of the Church of Scientology International" and declining to vacate resulting arbitration award); *Prescott v. Northlake Christian Sch.*, 141 Fed.Appx. 263, 274 (5th Cir. Jul. 8, 2005) (upholding award from arbitration under ICC Rules where damages were based on breach of contractual commitment to resolve differences "according to biblical principles"); *Elmora Hebrew Ctr., Inc. v. Fishman*, 125 N.J. 404, 416-17 (1991) (New Jersey Supreme Court declining to reach

a Free Exercise challenge to religious arbitration because the party's consent to the tribunal precludes such a challenge); *Encore Prods., Inc. v. Promise Keepers*, 53 F.Supp.2d 1101, 1113 (D. Col. 1999) ("it may not be proper for a district court to refer civil issues to a religious tribunal in the first instance, [but] if the parties agree to do so, it is proper for a district court to enforce their contract"); *Spivey v. Teen Challenge of Fla., Inc.*, 122 So.3d 986, 992 (Fla. Dist. Ct. App. 2013) (the "presumption in favor of arbitration" applies with equal force to "private religious arbitration, which is exceedingly common in our pluralistic religious society"); *Gen. Conf. of Evangelical Methodist Church v. Evangelical Methodist Church of Dalton, Ga., Inc.*, 807 F.Supp.2d 1291, 1294, 1300, 1301 (N.D. Ga. 2011) (enforcing church rules that "believers should resolve disputes among themselves or within the Church wherever possible," and "by means of Christian conciliation, mediation, or arbitration"); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 359-364 (D.C. 2005) (reversing order dismissing synagogue's action to compel arbitration before a Beth Din, a rabbinical court); *Jabri v. Qaddura*, 108 S.W.3d 404, 412-14 (Tex. App. 2003) (ordering Islamic arbitration to determine the enforceability of a marriage contract); *Jenkins v. Trinity Evangelical Lutheran Church*, 825 N.E.2d 1206, 1213 (Ill. App. 2005) (enforcing Lutheran doctrine mandating church-based arbitration of disputes); *Easterly v. Heritage Christian Sch., Inc.*, No. 1:08-cv-1714, 2009 WL 2750099, at *1-*2, *4 (S.D. Ind. Aug. 26, 2009) (finding teachers at Christian school agreed to resolution of differences "following the biblical pattern of Matthew 18:15-17" and waived right to file lawsuit); *Ortiz v. Hobby Lobby Stores, Inc.*, 52 F.Supp.3d 1070, 1075 (E.D. Cal. 2014) (enforcing employer/employee arbitration under the

ICC's Rules for Christian Conciliation); *Abd Alla v. Mourssi*, 680 N.W.2d 569, 574 (Minn.Ct.App. 2004) (confirming arbitration award under Islamic law).

Indeed, even an earlier California appellate decision – *Dial 800 v. Fesbinder*, 118 Cal.App.4th 32, 50 (2004), affirmed enforceability of judgment to be rendered in religious arbitration where arbitrators were rabbis and decision would follow Jewish law). The Court of Appeal was provided with this authority and chose to disregard it.

D. The Parties' Agreements and Allegations.

The Church of Scientology International, Church of Scientology Celebrity Centre International, and Religious Technology Center are each a church in the Scientology religion.

Respondents Chrissie Carnell Bixler, Jane Doe No. 1, and Jane Doe No. 2 represent that they are former parishioners of the Scientology religion. Respondent Cedric Bixler-Zavala claims he never joined the Church "but simply obtained services from the Church." (App. 6a, n.5.) Bixler, Jane Doe No. 1, Jane Doe No. 2, and Bixler-Zavala are referred to collectively as "Respondents."

Respondents executed multiple Religious Services Enrollment Agreements ("Agreements") over the years pledging their commitment to Scientology ecclesiastical justice procedures in all their dealings with the Church – past, present, and future – as a condition to join the Church and participate in Scientology religious services. (*Id.*, 9a-13a.) In the Agreements, Respondents agreed to resolve "any dispute, claim or controversy" that might arise between them and Petitioners "exclusively through Scientology's Internal Ethics, Justice, and binding religious arbitration

procedures." (*Id.*, 11a.) Respondents also agreed that they were "forever" waiving their recourse to civil courts in their dealings with Petitioners. (*Id.*, 10a.)

Respondents allege that between 2000 and 2003, Daniel Masterson, another Church parishioner, assaulted them. (*Id.*, 4a.) But these alleged assaults are not the basis of Respondents' claims in this lawsuit. (*Id.*) Instead, Respondents allege that Church officials supposedly improperly handled Respondents' reporting of the alleged assaults. (*Id.*, 5a.) Respondents also allege that when they discussed and reported the assaults outside the Church, Petitioners allegedly retaliated against them. (*Id.*, 5a.) Respondents further allege that this retaliation was supposedly required by an imagined Church doctrine called "Fair Game." (*Id.*) The operative complaint asserts causes of action for stalking, harassment, invasion of privacy and intentional infliction of emotional distress, among other claims.[7] (*Id.*, 4a-5a.)

E. State Court Proceedings.

The Church Parties moved to compel arbitration of Respondents' claims under both the Federal Arbitration Act (the "FAA") and California Code of Civil Procedure section 1281.2. (App. 14a.) The trial court compelled arbitration, finding "that the plain words of the agreements encompassed all claims against Scientology." (*Id.*, 21a-22a; *see also id.*, 59a-60a.) It also rejected Respondents' First Amendment-based

[7] Respondents' allegations are false. Petitioners did not commit any tortious act against Respondents. Furthermore, the Church has no doctrine forbidding members from reporting crimes to law enforcement or otherwise discussing them, no doctrine called "Fair Game," and no doctrine that permits (let alone requires) the illegal acts of harassment alleged here.

argument that "they are no longer 'believers' in Scientology, and therefore cannot be compelled to participate in a church arbitration." (*Id.*, 54a-55a.) The trial court found there "is nothing to indicate that a condition of the arbitration agreement was that the individual signatory must be a 'believer' in order to be bound by it," and that to "the extent that the arbitration has a religious component, that was something agreed to by the signatory"; therefore, "ordering the signatory to participate is not coercive." (*Id.*)

Respondents petitioned for writ relief to the California Court of Appeal to challenge the trial court's order compelling arbitration. Respondents again argued that enforcement of their waiver of civil trial and of their agreement to arbitrate violated their free exercise rights under the First Amendment. (*Id.*, 26a.) The California Court of Appeal first denied the writ petition summarily. (*Id.*, 22a-23a.) The California Supreme Court granted review and transferred the case back to the California Court of Appeal with instructions to vacate the denial and issue an order to show cause why the writ should not be granted. (*Id.*)

After briefing and argument, the California Court of Appeal granted the writ petition and directed the trial court "to vacate its order granting the Church's petitions to compel arbitration and enter a new and different order denying the motions." (*Id.*, 37a.) The Opinion holds that religious arbitration agreements cannot be enforced against individuals who "had terminated their affiliation with the Church" when the claims sought to be arbitrated are "based on alleged tortious conduct occurring after their separation from the Church and do not implicate resolution of ecclesiastical issues." (*Id.*, 3a.) This is the Opinion challenged through this Petition.

The Opinion's determination of the scope of the arbitration provisions is divorced from the Agreements' express language, which requires arbitration of "any dispute, claim or controversy" between Respondents and Petitioners regardless of timing or subject matter. (*See id.*, 11a.) Instead, the Opinion finds that Respondents' agreement to submit disputes to religious arbitration is unenforceable on First Amendment grounds. Specifically, the Opinion holds that Respondents have an *inalienable* First Amendment right to leave a faith – a right that allows them to invalidate and escape their freely executed waivers of civil trial and election of a private arbitration forum with the Church Parties. (*Id.*, 24a.)

In reaching this unprecedented holding, the California Court of Appeal declined to endorse Respondents' argument that Scientology arbitration was a "religious ritual" and thus enforcement amounted to a forced religious practice. Instead, the Opinion finds that "[w]hether Scientology arbitration is a ritual is immaterial to our analysis." (*Id.*, 26a.) Thus, the Opinion finds a First Amendment *right* to break a private contract with a religious institution regardless of any religious obligations imposed by the contract. As such, the decision below nebulously defines the right to exit a religion as the "right to extricate themselves from the faith" and not be "bound by Scientology dispute resolution"– an express contractual promise. (*Id.*, 36a & 35a.)

Furthermore, the Opinion finds that court-enforcement of a freely-executed religious arbitration agreement constitutes state action for the purposes of a constitutional violation, even though enforcement of a secular

arbitration agreement does not. (*Id.*, 26a-27a, n.20.)[8] The Opinion conscribes this dispositive issue to a footnote and cites authority that does not address the state action requirement. (*Id.*)

The Church Parties petitioned for rehearing to the California Court of Appeal on the grounds that the Opinion makes several dispositive mistakes of law, including (a) misapplication of the state action requirement, (b) violation of the First Amendment's antidiscrimination principles, (c) impermissible interference with the Church's right to set the terms of its membership; and (d) failure to correctly apply the commands of the FAA to the Agreements.[9] (Church Defs.' Pet. for Rehearing, Case No. B310559 (filed 2/3/2022).) The California Court of Appeal denied the petition for rehearing. (App. 38a-39a.)

Respondents and amicus curiae sought publication of the Opinion in the California Court of Appeal. Petitioners opposed the request for publication on the grounds that the Opinion is incorrectly decided. The California Court of Appeal did not rule on the requests for publication and submitted them to the California Supreme Court with a recommendation to deny the request for publication. (*Id.*, 66a-67a.)

Petitioners petitioned for review to the California Supreme Court on February 25, 2022. (Church Defs.'

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[8] Petitioners timely raised the absence of state action in the Trial Court and the Court of Appeal. (App. 26a-27a, n.20; App. 54a-55a; *see also* Plaintiffs' Exs. To Pet. for Writ of Mandate, Volume 5, pages 1249-50.)

[9] The rehearing petition also argued that the Court of Appeal's decision misstated the record and turned on factual and legal issues that were not briefed by the Parties. *See* Cal. Gov. Code § 68081.

Pet. for Review, Case No. S273276 (2/25/2022).) Respondents did not oppose the petition for review, and four amicus curiae letters were submitted in support of review. On April 20, 2022, the California Supreme Court summarily denied Petitioners' petition for review and Respondents' and amici curiae's requests for publication of the Opinion. (App. 40a.)

REASONS FOR GRANTING THE WRIT

Review is warranted because the California Court of Appeal's Opinion creates a split from the rest of the Nation on an important question of federal law: namely, whether the First Amendment prohibits the enforcement of religious arbitration agreements over a *religious* objection by a contracting party, even though that party already agreed to the religious nature of the forum. Before this case, all courts to address this issue held that a party's religious objection to enforcement of a religious arbitration agreement posed no First Amendment concerns because enforcement of contract terms generally did not constitute state action. The Court of Appeal's decision finding state action in the enforcement of religious arbitration agreements creates an exception to contract law that discriminates against religions and imperils all agreements where a church is a party. Furthermore, this Court has never addressed the enforceability of religious arbitration agreements, and this case presents an ideal vehicle to do so. Review is further warranted because the Opinion decides several important federal questions in ways that conflict with this Court's precedent.

I. The Enforceability of Religious Arbitration Agreements After a Contracting Party Has Left the Faith Is an Important Federal Question That Should Be Settled by This Court.

The California Court of Appeal denied arbitration here because Respondents "had terminated their affiliation with the Church." (App. 3a.) The Opinion holds that Respondents have an *inalienable* "First Amendment right to leave a religion" that allows them to invalidate and escape their freely executed waivers of civil trial and election of a private arbitration forum with the Church. (*Id.*, 3a, 8a, n.7, 24a.)

By introducing this previously unknown limitation on religious arbitration, the Opinion casts a considerable chill on the rich tradition of religious arbitration practiced by many faiths. By the Opinion's reasoning, arbitration agreements specifying a religious tribunal may not be enforced once a party has – or claims to have – a change of heart. And, to be clear, the issue is not whether a person is bound by the contract to not have a change of heart or leave a faith. Respondents *have* left the faith. The issue resolved by the California Court of Appeal, and of importance for all religious organizations or religious adherents contracting for religious arbitration, is whether a person may revoke her freely executed arbitration agreement *because of* a change of faith. The California Court of Appeal's decision is not limited to Scientology religious arbitration, but applies to *all* agreements calling for *any* faith-based dispute resolution procedure, including submission to a *Beth Din*, Christian Conciliation, or Muslim arbitration.

Furthermore, the Opinion's articulation of an inalienable right to leave a religion is unbounded. The

decision below defines the right to exit a religion as the "right to extricate themselves from the faith" and not be "bound by Scientology dispute resolution"–an express contractual promise. (*Id.*, 36a & 35a.) There is no end to this "right," which could permit modification of other contractual relationships with religious institutions. One leading First Amendment scholar has already sounded the alarm that this decision "[t]aken to its logical conclusion, [] could be read to stand for the proposition that courts must invalidate agreements for religious goods and religious services whenever one of the parties changes relevant religious beliefs or affiliation. ***Such impact would be far reaching***."[10] Another leading First Amendment scholar explained that the Opinion's holding is "inconsistent with both the Constitution and federal law, ***and it has troubling implications***."[11] He further opined that allowing a litigant's faith to abrogate contractual obligations "open[s] contracts to a subjective faith-test that further frays the neutrality of law, in what ought to be an especially neutral area of law."[12] As discussed below, this Court has already cautioned that judicial rules based on a party's religious status "would require courts to delve into the sensitive question of what it

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[10] Eugene Volokh, *Scientology Arbitration and the First Amendment: Some Questions About* Bixler v. Superior Court, REASON MAGAZINE (Jan. 25, 2022), *available at* https://reason.com/volokh/2022/01/25/scientology-arbitration-and-the-first-amendment-some-questions-about-bixler-v-superior-court/ (quoting Prof. Michael Helfand) (emphasis added).

[11] Michael J. Broyde, Op.-Ed., *Faith Can't Abrogate a Contract*, WALL STREET JOURNAL (Jan. 25, 2022), *available at* https://www.wsj.com/articles/faith-cant-abrogate-a-contract-religious-exemptions-legal-rights-court-freedom-bixler-scientology-11643145135 (emphasis added).

[12] *Id.*

means to be a 'practicing' member of a faith" and "risk judicial entanglement in religious issues." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2069 (2020); *see* Section II.C, *infra.* Conversely, permitting the mere statement of a change of faith to eliminate contractual obligations invites gamesmanship.

The Opinion's unpublished status should not stand as a barrier to this Court's review. *C.I.R. v. McCoy*, 484 U.S. 3, 7 (1987) ("[T]he fact that the Court of Appeals' order under challenge here is unpublished carries no weight in [this Court's] decision to review the case."); *see also Smith v. United States*, 502 U.S. 1017, 1020 (1991) (Blackmun, J., dissenting from denial of certiorari) ("The fact that the Court of Appeals' opinion is unpublished is irrelevant."). Indeed, California state court's use of unpublished opinions (which cannot be cited to or relied upon in California courts)[13] has drawn criticism because a California intermediate court "bent on reaching a particular outcome, or one unsure of the correctness of its analysis, can exploit the no-citation rule to discourage [California] supreme court review." Rafi Moghadam, *Judge Nullification: A Perception of Unpublished Opinions*, 62 Hastings L.J. 1397, 1399 (2011).

The Opinion's unpublished status does not eliminate the Opinion's harm. Nothing will stop litigants in jurisdictions other than California state courts from relying on the erroneous decision. *See, e.g.*, Fed. R. App. P. 32.1 (permitting citation to unpublished decisions in federal court). Both litigants and the federal courts frequently cite unpublished opinions in subsequent cases, and many state jurisdictions permit citation to unpublished opinions. David R. Cleveland,

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[13] Cal. R. Ct. 8.1115(a).

Overturning the Last Stone: The Final Step in Returning Precedential Status to All Opinions, 10 J. App. Prac. & Process 61, 159 (2009); Lauren S. Wood, *Out of Cite, Out of Mind: Navigating the Labyrinth That is State Appellate Courts' Unpublished Opinion Practices*, 45 U. Balt. L. Rev. 561, 569-71, 595-604 (2016). Furthermore, despite the California Rule of Court forbidding citation to or reliance upon unpublished decisions, the author of the Opinion has suggested in a different case that a California Superior Court could consider "the reasoning set forth in [the Opinion]" to reconsider a prior ruling compelling religious arbitration. (App. 86a.)

Moreover, the decision has already received significant press coverage,[14] which will further highlight the uncertainty of the enforceability of religious arbitration agreements and agreements with religious institutions more generally.

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[14] *See, e.g.*, Deborah Netburn, *Appeals court says accusers' case against Church of Scientology can proceed*, L.A. TIMES (Jan. 20, 2022), *available at* https://www.latimes.com/california/story/2022-01-20/appeals-court-says-former-scientologists-can-take-the-church-to-court; Mike Leonard, *Scientology, Danny Masterson Lose Appeal Over Harassment Claims*, BLOOMBERG LAW, US LAW WEEK (Jan. 20, 2022), *available at* https://news.bloomberglaw.com/us-law-week/scientology-danny-masterson-lose-appeal-over-harassment-claims; Mike Curley, *Scientology Can't Arbitrate Harassment Suit By Non-Members*, LAW 360 (Jan. 20, 2022), *available at* https://www.law360.com/articles/1456930/scientology-can-tarbitrate-harassment-suit-by-non-members; Gene Maddaus, *Danny Masterson's Accusers Do Not Have to Go to Scientology Arbitration*, VARIETY (Jan. 20, 2022), *available at* https://variety.com/2022/tv/news/danny-masterson-scientologyarbitration-appeals-ruling-1235158495/; Marjorie Hernandez, *Danny Masterson rape accusers free from Scientology arbitration rules*, N.Y. POST (Jan. 20, 2022), *available at* https://nypost.com/2022/01/20/danny-masterson-rape-accusers-free-from-scientology-arbitration/.

The Opinion will chill the free exercise of religion, even absent publication, and review is warranted. Among other amici, forty-one leaders of religious and faith communities jointly submitted an amicus curiae letter to the California Supreme Court urging review of the Opinion. [15]

This case is an ideal vehicle for deciding the question of enforceability of religious arbitration agreements after an individual has left the faith. It is undisputed that the Agreements were freely executed, (App. 8a, n.7), and the sole issue decided by the California Court of Appeal is that the First

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[15] The amici curiae who submitted letters in support of review of the Opinion in the California Supreme Court were: Professor Michael J. Broyde, Professor of Law at Emory University and Professor Ronald J. Colombo, Professor of Law at the Maurice A. Deane School of Law at Hofstra University; the Church Law Institute; Donald A. Westbrook, Ph.D., of the University of Texas at Austin, School of Information; and 41 leaders of religious and faith communities affiliated with the following organizations: the International Multi-Faith Coalition; Multifaith Coalition; Queens Federation of Churches; Adams Inspirational African Methodist Episcopal Church; Redondo Beach Church of Christ; First Tabernacle Beth El, Washington, D.C.; Archdiocese North American Unitarian Church; Church of Living God; United Muslims of America Interfaith Alliance; Patmos Institute; Muslim Women Speakers Movement; Institute for Religious Tolerance, Peace and Justice; Centro Cristiano Rhema Church in Inglewood; Professional Chaplain Inc.; Holy Spirit Ass. for the Unification of World Christianity; St. John Baptist Church; Temple Beth Hillel; Muslim Peace Fellowship; Christian Chaplain Foundation; Evangelical Church Mergloym Fountain of Life; L.A. Multi-Faith Based Community Partnership Advisory Cabinet; Ministry Tearing Down Fortress; The Church of the Messiah; Spiritual Heritage Education Network; International Ministry United by the Holy Spirit; Pentecostal Church Cristocentrica; Esperanza de Vida Eterna Church; Second AME Zion Church; Mt. Sinai Worship Center NYC.

Amendment prohibited court enforcement of the religious arbitration agreements, (*id.*, 23a). The Opinion decides the question presented on purely legal grounds, which are applicable to all religious arbitration agreements.

This Court has not directly addressed the enforceability of religious arbitration agreements generally or their enforceability following a contracting party's departure from the faith. Given the nationwide importance of religious dispute resolution procedures and their utilization in many faith traditions, the Court should grant review to confirm the continued validity of this time-honored practice, upon which the erroneous Opinion has cast doubt.

II. The Opinion Incorrectly Decides Several Important Questions of Federal Law in Ways That Conflict With this Court's Precedent.

Review is further warranted because the Opinion is wrongly decided. In reaching its erroneous result, the Opinion contradicts several separate lines of this Court's precedent: (a) it weaponizes the First Amendment to discriminate against religions by creating exceptions to the state action requirement and the FAA only applicable to religious arbitration agreements; (b) it impermissibly interferes with a religion's right to set the terms of its membership; and (c) it creates a rule for enforceability of contracts based on a contracting party's religious status.

A. The Opinion conflicts with this Court's precedent prohibiting government discrimination against religions and religious conduct.

The Opinion weaponizes the First Amendment against religious freedom, holding that the First Amendment *requires* limitations applicable only to religious – and not to secular – arbitration agreements. "The Constitution neither mandates nor tolerates that kind of discrimination." *See Kennedy v. Bremerton Schl. Dist.*, ___ U.S. ____ (2022) (slip op. 28, 32) ("Such a rule would be a sure sign that our Establishment Clause jurisprudence had gone off the rails. In the name of protecting religious liberty, the District would have us suppress it."); *see also Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1606 (2022) (Gorsuch, J. concurring) ("*Lemon* [*v. Kurtzman*, 403 U.S. 602 (1971)] led to a strange world in which local governments have sometimes violated the First Amendment in the name of protecting it").

The First Amendment prohibits rules that single out religions for disfavored treatment just because they are religious. The Free Exercise Clause "forbids discrimination on the basis of religious status." *Carson v. Makin*, 596 U.S. ____, ____ (2022) (slip op., at 16). It "protects religious observers against unequal treatment" and against "laws that impose special disabilities on the basis of religious status." *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020) (quotes omitted). "Under the Constitution, a government may not treat religious persons, religious organizations, or religious speech as second-class." *Shurtleff*, 142 S. Ct. at 1595 (Kavanaugh, J. concurring). "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all

religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

"[T]he government . . . cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop, Ltd. v. Colorado Civ. Rights Com.*, 138 S. Ct. 1719, 1731 (2018). "Applying that basic principle, this Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only be a state interest 'of the highest order.'" *Trinity Lutheran Church of Colombia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017); *Carson*, 596 U.S. at ____ (slip op., at 9-10) ("A law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases.").

Here, the Opinion sets out two distinct rules that apply only to religious arbitration agreements – and not to their secular counterparts. Specifically: (1) the Opinion finds state action present in the enforcement of religious arbitration agreements, in violation of this Court's precedent; and (2) the Opinion creates an exception for the types of claims that can be arbitrated in religious arbitration, in violation of this Court's precedent and the FAA.

(1) The Opinion discriminates against religious conduct by finding that enforcement of *religious* arbitration agreements – and not *secular* arbitration agreements – constitutes state action.

The state action requirement recognizes that the Bill of Rights limits *government* power, not private parties' power to make contracts among themselves. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982). It is a "judicial obligation" to apply the state action requirement to "preserve an area of individual freedom by limiting the reach of federal law." *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001) (alterations omitted). This Court has repeatedly refused to constitutionalize private agreements: "Private use of state-sanctioned private remedies or procedures does not rise to the level of state action." *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 485 (1988). As a result, a "threshold requirement of any constitutional claim is the presence of state action." *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 837 (9th Cir. 2017).

"It is well established that judicially enforcing arbitration agreements does not constitute state action." *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 838, n.1 (9th Cir. 2017); *Desiderio v. Nat'l Ass'n of Sec. Dealers, Inc.*, 191 F.3d 198, 207 (2d Cir. 1999) ("[W]e find no state action in the application or enforcement of the arbitration clause."); *see also Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1191 (11th Cir. 1995) ("we agree with the numerous courts that have held that the state action element of a due process claim is absent in private arbitration cases"); *Elmore v. Chicago & Illinois Midland Ry. Co.*, 782 F.2d 94, 96 (7th Cir.

1986) ("[T]he fact that a private arbitrator denies the procedural safeguards that are encompassed by the term 'due process of law' cannot give rise to a constitutional complaint.").

Despite this clear and binding authority, the Opinion does not apply the above line of cases to find no state action here. Instead, the California Court of Appeal distinguished the state action authority because it "do[es] not involve compelling a party to participate in *religious* arbitration." (App. 26a-27a, n. 20 (emphasis added).) Conscribing this dispositive issue to a footnote, the California Court of Appeal created a new exception to the state action requirement for constitutional violations, holding that court enforcement of religious arbitration agreements constitutes state action. To reach this result, the Opinion relies on a trio of child custody cases that do not address the state action requirement:

> We believe cases such as *In re Marriage of Weiss, supra*, which specifically hold that a party cannot bargain away her constitutional right to change religions, are the appropriate precedent. In contrast to Scientology's theory that enforcing agreements which limit the right to change religions would not constitute state action,[16] those authorities recognize that court enforcement of such an agreement

[16] This mischaracterizes the Church's position. The Church has never argued that agreements designating the religious arbitration forum somehow "limit the right to change religions." As stated above, Respondents have left the faith.

> would encroach on a person's fundamental constitutional right.[17]

(App. 26a-27a, n.20.)

Accordingly, the Opinion holds that court enforcement of religious arbitration agreements constitutes state action while enforcement of secular arbitration agreements does not. In so doing, it impermissibly discriminates against religious arbitration agreements, subjecting them to constitutional scrutiny not applicable to their secular counterparts.

In addition to violating the First Amendment's strictures and the state action requirement, the determination is completely unprincipled. ***All arbitration agreements*** necessarily surrender constitutionally guaranteed rights – including the rights to have a claim heard in court and by a jury guaranteed by the First and Seventh Amendments. *See, e.g.*, *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741 (1983) (First Amendment includes "right of access to the courts"); *City of Monterey v. Del Monte Dunes at*

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[17] The Opinion also misstates the holding of the cited authority. The cited cases – *In re Marriage of Weiss*, 42 Cal.App.4th 106, 118 (Cal. App. 1996), *Zummo v. Zummo*, 574 A.2d 1130, 1146 (Pa. Super. 1990), and *Abbo v. Briskin*, 660 So.2d 1157, 1160 (Fla. Dist. Ct. App. 1995) – do not address the state action requirement. Instead, they invalidated premarital agreements dictating the religious upbringing of children, after finding that those agreements contravene public policy. They are further inapplicable to the question presented by this case because while courts of a state may declare premarital agreements to be "against public policy," courts have no such power when it comes to arbitration agreements. *Compare AT&T Mobility v. Concepcion*, 563 U.S. 333, 342 (2011) (courts cannot declare "arbitration against public policy") *with In re Marriage of Bonds*, 24 Cal.4th 1, 14 (2000) (courts may declare premarital agreements "against public policy").

Monterey, Ltd., 526 U.S. 687, 708 (1999) (Seventh Amendment jury right in civil cases). Yet, the Opinion purports to treat religious arbitration agreements differently because they "encroach on a person's fundamental constitutional right." (App. 26a-27a, n.20.) This evinces the precise hostility to religious conduct that the First Amendment forbids. *See Kennedy*, ___ U.S. at ____ (slip. op., at 13-14) ("A government policy will fail the general applicability requirement if it 'prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way' . . . .").

And nothing in the Opinion's reasoning would limit this state action determination to a religious *arbitration* agreement, as opposed to contracts for religious goods and services more generally. The decision below defines the right to exit a religion as the "right to extricate themselves from the faith" (App. 36a), and finds state action is present when enforcement of a private contract "would encroach" on that right, (App. 26a-27a, n. 20). As such, the Opinion imperils all contracts for religious goods and services when one contracting party argues against enforcement on the ground that they have changed their religious beliefs and wish to "extricate themse[lf] from the faith." Scholars have already recognized the "far-reaching – and unanticipated – consequences that the decision may have."[18]

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[18] Eugene Volokh, *Scientology Arbitration and the First Amendment: Some Questions About* Bixler v. Superior Court, REASON MAGAZINE (Jan. 25, 2022), *available at* https://reason.com/volokh/2022/01/25/scientology-arbitration-and-the-first-amendment-some-questions-about-bixler-v-superior-court/ (quoting Prof. Michael Helfand).

(2) The Opinion discriminates against religious conduct by creating a judicial exception to the FAA for religious arbitration.

The Opinion's holding also violates the FAA.[19]

Nearly a century ago, Congress enacted the FAA "to reverse longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). Congress "directed courts to abandon their hostility and instead treat arbitration agreements as 'valid, irrevocable, and enforceable,'" establishing "a liberal federal policy favoring arbitration agreements." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018). The FAA reflects that the "fundamental principle that arbitration is a matter of contract" and requires courts to enforce arbitration provisions "according to their terms." *AT&T Mobility v. Concepcion*, 563 U.S. 333, 339 (2011); *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 218 (1985) (the FAA "mandates that [] courts shall direct the parties to proceed to arbitration on issues to which an arbitration agreement has been signed."). The FAA "requires courts 'rigorously' to

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[19] The FAA applies. (App. 48a; *see also id.*, 14a.) Courts routinely apply the FAA to agreements to submit disputes to religious arbitration. *Dial 800*, 118 Cal.App.4th at 49 (noting that a religious arbitration agreement "falls within" the FAA); *Garcia*, 2021 WL 5074465, at *1 (applying the FAA to religious arbitration agreement); *Encore*, 53 F.Supp.2d at 1101 ((applying FAA to arbitration agreement under Institute for Christian Conciliation rules); *Ortiz*, 52 F.Supp.3d at 1075 (applying FAA to arbitration agreement under Institute for Christian Conciliation rules); *Easterly*, 2009 WL 2750099, at *2 (applying FAA to arbitration agreement under Institute for Christian Conciliation rules).

'enforce arbitration agreements according to their terms, including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted.'" *Epic Sys. Corp.*, 138 S. Ct. at 1621.

The Agreements require arbitration of "any dispute, claim or controversy." That language encompasses Respondents' claims in the operative complaint. Rather than enforce the Agreements, the Opinion holds that claims arising after an individual has left the faith and not implicating ecclesiastical issues are categorically non-arbitrable in a religious arbitral forum. (App 3a.) This distinct rule limits the scope of religious arbitration agreements regardless of their express terms, and advances a rule applicable only to the enforcement of religious arbitration agreements, and not their secular counterparts. Furthermore, the FAA itself specifies exceptions. 9 U.S.C. § 1. It does not exclude religious arbitration or after arising tort-claims that do not implicate ecclesiastical issues. The statute should be construed based on the plain meaning of its text. *See Southwest Airlines v. Saxon*, 142 S. Ct. 1783, 1788 (2022) (interpreting the language of a provision of the FAA "according to its "'ordinary, contemporary, common meaning'"") (citations omitted); *see also New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 535 (2019).

In short, under the commands of the First Amendment, where, as here, the parties execute an agreement requiring religious arbitration of disputes, they are entitled to have that agreement enforced according to its terms and in the same manner as an agreement to secular arbitration. Review is required to reaffirm these principles and confirm the enforceability of religious arbitration agreements.

B. The Opinion conflicts with this Court's precedent prohibiting state interference with matters of religious governance.

Churches have a constitutional right to impose conditions upon membership free from government intrusion. Any "attempt by the government to dictate or even to influence" the terms of joining a faith "would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Morrissey-Berru*, 140 S. Ct. at 2060; *see also Watson v. Jones*, 80 U.S. 679, 729-32 (1871).

The Opinion acknowledges that "[a]n '***irrevocable***' agreement to '***forever***' waive civil proceedings and submit to Scientology Ethics and Justice Codes in 'any dispute' with the Church of Scientology is a condition for participation in the religion" and "this is one of the prices of joining [the Scientology] religion." (App. 36a (emphasis original).) Then, the Opinion concludes that the "***Constitution forbids a price that high***." (*Id.* (emphasis added).)

The Opinion proclaims that the Constitution forbids *the Church* from conditioning membership in its faith on an agreement to submit disputes to religious arbitration and declares the California Court of Appeal to be the arbiter of the appropriate grounds for Church membership. This is exactly backwards.

> All who unite themselves to [a church] do so with an implied consent to [its] government, and are bound to submit to it. . . . We cannot decide who ought to be members of the church. . . . [W]hen they became members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the

> ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals.

Watson, 80 U.S. at 729-32 (internal quotation marks and citations omitted). Under *Watson* and its progeny, the California Court of Appeal cannot sit in judgment of the terms or "price" for initiation into a religion – be it a baptism, a bar mitzvah, or an agreement for religious services – any more than it can amend any other religious doctrine. Yet, the decision below expressly states that it is doing just that. This violation of religious liberty, contrary to all existing authority, is reason enough for review by this Court.

C. The Opinion conflicts with this Court's instruction that a judicial test based on a party's religious status is impermissible.

This Court has declared that judicial rules based on a party's religious status "would require courts to delve into the sensitive question of what it means to be a 'practicing' member of a faith" and "risk judicial entanglement in religious issues." *Morrissey-Berru*, 140 S. Ct. at 2069. Courts cannot implement such an approach:

> Expanding the 'co-religionist' requirement, [citation], to exclude those who no longer practice the faith would be even worse, [citation]. Would the test depend on whether the person in question no longer considered himself or herself to be a member of a particular faith? Or would the test turn on whether the faith tradition in question still regarded the person as a member in some sense?

Id.

This case presented such difficult questions, yet the California Court of Appeal glossed over them to reach its desired result.

For instance, Respondent Bixler-Zavala, "asserts that he never joined the Church at all, but simply obtained services from the Church on a few occasions." (App. 6a, n.5 & 7a, n.6.) Respondent Jane Doe #1 "does not allege that she voluntarily left the Church," but was instead excluded from participating in a religious service by the Church. (*Id.*, 27a-28a.) It is unclear how the Opinion can be applied to these two of the four Respondents. If Bixler-Zavala "never joined" the Church, was he ever a member of the faith? If he "never joined" the Church, when did he "separate[] from the church," (*see id.,* 3a), or "le[ave] the Church," (*id.*, 36a & 22a-23a, n.19)? If Jane Doe #1 never "voluntarily left the Church" when did she "lea[ve] the Church," (*see id.*, 36a & 22a-23a, n.19), or "expressly or impliedly [] withdraw [her] consent to be governed by its religious rules," (*see id.*, 35a)?

In addition to being impracticable, the Opinion also created – and then impermissibly resolved – a doctrinal issue, which constitutes an improper judicial entanglement with religious issues. The Opinion concludes that the arbitration agreements are unenforceable as to Jane Doe #1 on the ground that: "Having excluded Jane Doe #1 from its religious services . . . the Church cannot now enforce against Jane Doe #1 the arbitration clause in an agreement she signed in order to obtain the religious services from which she has been excluded." (*Id.*, 27a-28a.) In reaching this conclusion, the Court assumed (and incorrectly so) that Jane Doe #1's supposed exclusion from one form of religious service meant that she was no longer in the Church or not eligible for other religious services (such

as Ethics courses) and then equated this exclusion with her departure from the faith.[20] (*Id.*, 27a-28a.) This assumption about Scientology doctrine is both incorrect and an impermissible interpretation of religious doctrine by a secular authority. *See Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 450 (1969) (holding the First Amendment forbids civil courts from determining "matters at the very core of a religion – the interpretation of particular church doctrines and the importance of those doctrines to the religion").

The Opinion's rule conditioning enforceability of the arbitration agreements on a contracting party's status as a member of the faith violates this Court's precedent and creates the precise implementation difficulties and entanglement problems this Court predicted when it rejected such an approach. Review is required to abrogate the unconstitutional opinion.

[20] By analogy, to refuse a Catholic communion for failure to go to confession does not mean that Catholic has "left" Catholicism.

CONCLUSION

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

Respectfully submitted,

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July 19, 2022

APPENDIX

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APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

[Filed January 19, 2022]

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B310559

(Los Angeles County Super. Ct. No. 19STCV29458)

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CHRISSIE CARNELL BIXLER, *et al*.,

Petitioners,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent;

CHURCH OF SCIENTOLOGY INTERNATIONAL, *et al*.,

Real Parties in Interest.

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ORIGINAL PROCEEDING; petition for writ of mandate. Steven J. Kleifield, Judge. Petition granted; remanded with directions.

Thompson Law Offices, Robert W. Thompson and Marci A. Hamilton for Petitioners.

Leslie C. Griffin, University of Nevada, Las Vegas, William S. Boyd School of Law, for Law and Religion Professors as Amici Curiae for Petitioners.

No appearance for Respondent.

Winston & Strawn, William H. Forman, David C. Scheper and Margaret E. Dayton for Real Parties in Interest Church of Scientology International and Church of Scientology Celebrity Centre International.

Jeffer Mangels Butler & Mitchell, Robert E. Mangels and Matthew D. Hinks for Real Party in Interest Religious Technology Center.

Lavely & Singer, Andrew B. Brettler and Martin F. Hirshland for Real Party in Interest Daniel Masterson.

Petitioners in this writ proceeding are former members of the Church of Scientology who reported to the police that another Church member had raped them. They allege that, in retaliation for their reports, the Church encouraged its members to engage in a vicious campaign of harassment against them. After petitioners brought suit in superior court against the Church and related entities and persons, some of those defendants moved to compel arbitration, relying on agreements that provided all disputes with the Church would be resolved according to the Church's own "Ethics, Justice and Binding Religious Arbitration system." That system was created to decide matters "in accordance with Scientology principles of justice and fairness."

The trial court granted the motion to compel, and petitioners sought writ relief. We issued an order to

show cause, and now grant the petition. Individuals have a First Amendment right to leave a religion. We hold that once petitioners had terminated their affiliation with the Church, they were not bound to its dispute resolution procedures to resolve the claims at issue here, which are based on alleged tortious conduct occurring after their separation from the Church and do not implicate resolution of ecclesiastical issues. We issue a writ directing the trial court to vacate its order compelling arbitration and instead to deny the motion.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Allegations of the Operative Complaint*

The operative complaint is the first amended complaint. Plaintiffs are Chrissie Carnell Bixler, her husband Cedric Bixler-Zavala, Jane Doe #1, Jane Doe #2, and Marie Riales. Riales was not a member of the Church, was not subject to the order compelling arbitration, and is not party to the current writ proceeding. As such, we use "petitioners" to refer to all plaintiffs except Riales.

The defendants are Church of Scientology International, Religious Technology Center, Church of Scientology Celebrity Centre International, Daniel Masterson and David Miscavige.[1] Plaintiffs allege that Church of Scientology International and Religious Technology Center "along with a network of Scientology organizations that sit underneath [them], including

[1] Miscavige was alleged to be the Chairman of the Board of one of the institutional defendants and the de facto leader of them all. He was not served in this action, did not move to compel arbitration, and is not a real party in interest to this writ proceeding. We do not discuss him further.

[Celebrity Centre International], make up what is informally known to the public as 'The Church of Scientology' or 'Scientology.' " We collectively refer to the institutional defendants as "Scientology" or "the Church." Defendant Masterson is an individual member of the Church. Plaintiffs allege both that Masterson was an agent of the Church, and that the Church was an agent of Masterson.[2] The Church and Masterson are real parties in interest in this writ proceeding.

Plaintiffs Bixler, Jane Doe #1, Jane Doe #2, and Riales each allege that Masterson raped them. This, however, is not the gravamen of their complaint in this case; in fact, they state no cause of action against Masterson for sexual assault.[3] Instead, they allege causes of action against all defendants for stalking (Civ. Code, § 1708.7), physical invasion of privacy (§ 1708.8, subd. (a)), constructive invasion of privacy (*id.*, at subd. (b)), intentional infliction of emotional distress, and (as to plaintiff Bixler-Zavala) loss of

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[2] Masterson did not move to compel arbitration. At a case management conference after the trial court compelled petitioners to arbitrate their claims against Scientology, Masterson's counsel represented that he had "verbally in court" joined Scientology's motion to compel. The reporter's transcripts in our record do not reflect this. In any event, the trial court ruled he may "participate" in the arbitration. He joins Scientology's briefing in connection with this writ petition, and our disposition applies equally to him.

[3] At one point in their trial court briefing, plaintiffs argued that the "underlying substance of the claims" was "rape and harassment in retaliation for reporting rape." A later filing explained, "Although the claims are not *for* sexual assault, the facts and events surrounding the assaults give rise to each of Plaintiffs' causes of action."

consortium. We summarize the allegations supporting these causes of action:[4]

According to plaintiffs, Scientology forbids members from contacting police to report a crime committed by a member. It instructs members that reporting such incidents is considered a "high crime" and subjects the reporting member to punishment. Scientology utilizes so-called "Fair Game" tactics to "attack, harass, embarrass, humiliate, destroy, and/or injure individuals who Defendants declare to be an enemy of Scientology, known in Scientology as a 'Suppressive Person' . . . ." Masterson is a television actor; Scientology granted him special treatment when he achieved "celebrity status." To that end, Scientology worked to prevent plaintiffs from reporting Masterson's crimes and, once they did, declared plaintiffs Suppressive Persons. Scientology then mobilized an aggressive Fair Game campaign against them.

While the Fair Game campaigns against each plaintiff differed, collectively plaintiffs allege Scientology's agents committed the following acts against them: surveilled them, hacked their security systems, filmed them, chased them, hacked their email, killed (and attempted to kill) their pets, tapped their phones, incited others to harass them, threatened to kill them, broke their locks, broke into their cars, ran them off the road, posted fake ads purporting to be from them soliciting anal sex from strangers, broke their windows, set the outside of their home on fire, went through their trash, and poisoned trees in their yards. This conduct was alleged to be pursuant to Scientology's policies and procedures. According to plaintiffs' com-

[4] We emphasize that these are the allegations of the complaint; Scientology denies their truth.

plaint, Scientology's directives are that Suppressive Persons are to be silenced by whatever means necessary. Scientology instructs members "to damage the person's professional reputation, file frivolous lawsuits, and harass and surveil 'the enemy.' " Scientology's "policies and procedures encourage and/or instruct followers to 'ruin [the individual] utterly.' "

It will become relevant to our analysis whether the claimed tortious conduct on which petitioners sue took place before or after they left Scientology.[5] While petitioners have clearly represented they are not seeking to recover from Scientology for the sexual assaults themselves, the allegations of petitioners' complaint include allegations relating to Scientology's attempts to cover up the sexual assaults while petitioners were still members. These include, for example, Jane Doe #1's allegation that, when she reported that Masterson had raped her to her Scientology ethics officer, he required her to do an ethics program which pressured her into confessing the "evil purposes" she had toward Masterson and Scientology. Jane Doe #1 alleged that, while she was still a member, she was given a formal censure within the church, called a "non-enturbulation order." Similarly, Bixler alleged that, while she was still a member, Scientology forced her to sign a document stating she would never speak publicly about her relationship with Masterson or sue him for any reason.

In addition to events occurring while still a Scientology member, each petitioner alleged an

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[5] One petitioner, Bixler-Zavala, claims he never joined the Church at all, but simply obtained services from the Church on a few occasions. Plaintiff Riales, it is to be remembered, was never a member, and is not a petitioner here.

invasive Fair Game campaign occurring entirely after she had left the church.[6] Bixler alleged that she formally terminated her relationship with the Church in October 2016, then reported Masterson to the police. It was only after her report that she was declared a Suppressive Person and she and her husband were subjected to the Fair Game campaign. Jane Doe #1 learned in June 2005 that she had been declared a Suppressive Person and was no longer permitted to engage in religious services at the Church. More than a decade later (after she asked the LAPD to reopen its investigation into Masterson), the Church commenced its Fair Game campaign against her. Jane Doe #2 ceased practicing Scientology entirely in 2004. In 2017, she reported Masterson's assault to the LAPD, at which point the Fair Game harassment began.

As to whether the conduct that occurred while petitioners were still Church members was actionable, or merely background, the complaint was not entirely clear. Plaintiffs included conspiracy allegations, which alleged Scientology "engaged in wrongful conduct, including but not limited to information suppression, coercion, deception, stalking, harassment, surveillance, threats, vandalism, theft, and/or fraud." "Information suppression" and "coercion" could include the pre-Fair Game (and pre-separation) attempts to force petitioners to be silent about the rapes. However, when it came time to allege the facts supporting each individual cause of action, plaintiffs' focus was limited to the Fair Game campaigns themselves. For example,

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[6] Again, Bixler's husband, Bixler-Zavala, asserts he never joined the Church. Bixler and Bixler-Zavala claim they were targeted by a single "Fair Game" campaign after Bixler left the Church.

the cause of action for intentional infliction of emotional distress: Although the cause of action incorporates the earlier foundational facts, it does not allege that any wrong took place prior to separation. Instead, the cause of action alleges, "Defendants surveilled, harassed, stalked, and photographed Plaintiffs. Specifically, Defendants trespassed on Plaintiffs' personal property, looked in windows, followed and stalked, hacked personal online accounts and emails, engaged in surveillance of and interference with Plaintiffs' daily lives, and/or called, and/or texted, and/or otherwise attempted to communicate repeatedly." In sum, it appears that the vast bulk of the operative allegations related to facts occurring after the petitioners left Scientology. As we shall discuss, the trial court attempted to obtain clarity from plaintiffs' counsel as to whether the complaint sought relief for any pre-separation conduct by the Church.

2. *The Arbitration Agreements*

Before we turn to the motions to compel arbitration, we set out the language of the agreements on which Scientology relied to support its motion.[7] Specifically, defendants represented that all petitioners had signed agreements containing arbitration clauses in connec-

[7] Petitioners did not recall signing the documents, and represented that they often signed documents that Scientology had directed them to sign without reading them first. Their writ petition is not based on an argument that they did not sign the agreements or that they did so under duress. We therefore assume, for purposes of this writ proceeding, that the documents were freely executed.

tion with their receipt of specific Scientology services and/or their enrollment in Scientology in general.[8]

Petitioners Bixler, Bixler-Zavala and Jane Doe #1 executed the same version of the Religious Services Enrollment Application, Agreement and General Release.[9] It provides, in pertinent part:

"This Contract memorializes my freely given consent to be bound exclusively by the discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the Scientology religion . . . in all my dealings of any nature with the Church, and in all my dealings of any nature with any other Scientology church or organization which espouses, presents, propagates or practices the Scientology religion. By signing this Contract, I recognize, acknowledge and agree that:

"a. My freely given consent to be bound exclusively by the discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the Scientology religion . . . in all my dealings of any nature with the Church, and in all my dealings of any nature with any other Scientology church or organization which

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[8] As we shall discuss, the agreements provided for dispute resolution of "any dispute, claim or controversy with the Church" as well as disputes arising from the specific service or services identified in the agreements. If the dispute resolution clauses apply, they apply because of the "any dispute" language, not because the dispute in this case arose out of any particular religious services provided pursuant to the agreements. As such, we omit reference to the portions of the dispute resolution clauses that relate to disputes arising from specific services.

[9] Petitioner Bixler executed at least seven of these agreements from 2002 through 2012. Her husband, Bixler-Zavala, signed his agreement on November 26, 2012. Jane Doe #1 signed an agreement with the same language on February 25, 2002.

espouses, presents, propagates or practices the Scientology religion means that I am forever abandoning, surrendering, waiving, and relinquishing my right to sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy against the Church, all other Scientology churches, all other organizations which espouse, present, propagate or practice the Scientology religion, and all persons employed by any such entity both in their personal and any official or representational capacities, regardless of the nature of the dispute, claim or controversy.

"b. The abandonment, surrender, waiver, and relinquishment to which I refer in the immediately preceding subparagraph is unconditional and irrevocable and applies equally to anyone acting or purporting to be acting on my behalf or for my benefit, whether I am alive or dead, whether I am disabled or incapacitated, and under any and all circumstances foreseen or unforeseen, in perpetuity, without exception or limitation.

"c. Should I or anyone acting or purporting to be acting on my behalf ever sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy against the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity, regardless of the nature of the dispute, claim or controversy, I intend for the submission of this Contract to the presiding judicial officer to be a complete and sufficient basis for the immediate dismissal of any and all such proceedings with prejudice to further proceedings of any kind.

"d. In accordance with the discipline, faith, internal organization, and ecclesiastical rule, custom, and

law of the Scientology religion, and in accordance with the constitutional prohibitions which forbid governmental interference with religious services or dispute resolution procedures, should any dispute, claim or controversy arise between me and the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity, which cannot be resolved informally by direct communication, I will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's Internal Ethics, Justice, and binding religious arbitration procedures, which include application to senior ecclesiastical bodies, including, as necessary, final submission of the dispute to the International Justice Chief of the Mother Church of the Scientology religion, Church of Scientology International ('IJC') or his or her designee.

"e. Any dispute, claim or controversy which still remains unresolved after review by the IJC shall be submitted to binding religious arbitration in accordance with the arbitration procedures of Church of Scientology International, which provide that:

"i. I will submit a request for arbitration to the IJC and to the person or entity with whom I have the dispute, claim or controversy;

"ii. in my request for arbitration, I will designate one arbitrator to hear and resolve the matter;

"iii. within fifteen (15) days after receiving my request for arbitration, the person or entity with whom I have the dispute, claim or controversy will designate an arbitrator to hear and resolve the matter. If the person or entity with whom I have the dispute, claim or controversy does not designate an arbitrator

within that fifteen (15) day period, then the IJC will designate the second arbitrator;

"iv. the two arbitrators so designated will select a third arbitrator within fifteen (15) days after the designation of the second arbitrator. If the arbitrators are unable to designate a third arbitrator within the fifteen (15) day period, then the IJC will choose the third arbitrator;

"v. consistent with my intention that the arbitration be conducted in accordance with Scientology principles, and consistent with the ecclesiastical nature of the procedures and the dispute, claim or controversy to which those procedures relate, it is my specific intention that all such arbitrators be Scientologists in good standing with the Mother Church."

The fourth petitioner, Jane Doe #2 signed an earlier version of the agreement several times between 1997 and 2001. Pursuant to that agreement, in exchange for being permitted to participate in specific religious services, Jane Doe #2 agreed, in part, as follows:

"I understand and acknowledge that because of constitutional prohibitions which forbid governmental interference with religious services or dispute resolution procedures, that in the event I have any dispute, claim or controversy with the Church . . . which cannot be resolved informally by direct communication, resolution of the dispute, claim or controversy may be pursued solely through the internal procedures of the Church's Ethics, Justice and Binding Religious Arbitration system. . . . I understand and acknowledge that the Church's religious dispute resolution procedure includes application to senior ecclesiastical bodies, including, as necessary, final

submission of the dispute to the International Justice Chief of the Mother Church – Church of Scientology International – ('IJC') or his designate.

"Any dispute, claim or controversy which still remains unresolved after submission to the IJC shall be submitted to Binding Religious Arbitration in accordance with the published arbitration procedures of the Church of Scientology International, which provide [similar procedures for selecting the three-arbitrator panel]. Consistent with the intent that the arbitration be conducted in accordance with Scientology principles of justice and fairness, and consistent with the ecclesiastical nature of the procedures and the dispute, claim or controversy to which such procedures relate, all arbitrators shall be Scientologists in good standing with the Mother Church."[10]

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[10] A final paragraph, in all capital letters, states: "IN ACCORDANCE WITH THE RELIGIOUS NATURE OF THE SERVICES TO BE PROVIDED, I ACKNOWLEDGE, UNDERSTAND AND AGREE THAT IN NO EVENT SHALL ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF MY PARTICIPATION IN THE SERVICE BE SUBMITTED TO A COURT FOR JUDICIAL DETERMINATION. MOREOVER, I UNDERSTAND AND AGREE THAT BY SIGNING AND SUBMITTING THIS APPLICATION/AGREEMENT, I AM WAIVING ANY RIGHT WHICH I MAY HAVE TO HAVE SUCH DISPUTES, CLAIMS OR CONTROVERSIES DECIDED IN A COURT OF LAW, BEFORE A JUDGE OR A JUDGE AND JURY." By the express language of this paragraph, it applies only to disputes, claims or controversies "arising out of my participation in the service." This clause, unlike the earlier dispute resolution clause, does not appear to extend to "any dispute, claim or controversy" with the Church.

3. *Scientology's Motions to Compel Arbitration*

The Church moved to compel arbitration pursuant to Code of Civil Procedure section 1281.2.[11] However, Scientology argued that the religious nature of the arbitration exempted it from certain standards which would apply to routine civil arbitrations. The Church argued that its arbitration agreements with petitioners were enforceable under either the California Arbitration Act or the Federal Arbitration Act. "More importantly," the Church argued, "under the Free Exercise and Establishment Clauses of the United States and California Constitutions the Church may establish its own rules governing its relationship with its members exempt from civil law. The Church's ecclesiastical arbitration is a condition of participating in Scientology services. This Court may not interfere with this condition by imposing civil rules for arbitration."[12] "The only permissible inquiry is what [petitioners] and the Church agreed to. This Court may not impose its own notions of 'fairness' in deciding whether [petitioners'] agreements with the Church are fair or right. To do so would interfere with a Church's

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[11] The record submitted in connection with this writ petition includes four operative motions to compel arbitration. Specifically, one defendant (Religious Technology Center) filed its own motions, while the other Scientology defendants (Church for Scientology International and Celebrity Centre International) filed jointly. In turn, both groups filed separate motions as to Jane Doe #2 and the other petitioners. As the Scientology defendants joined in each other's motions, we consolidate their arguments in our discussion.

[12] The Church explained, "The United States and California Constitutions prohibit this Court from imposing civil concepts of due process when adjudicating disputes between a church and its members. Rather, a church's procedures for addressing such disputes is all but unreviewable."

rules over its members, which is clearly forbidden by *Serbian E[.] Orthodox* [*Diocese v. Milivojevich* (1976) 429 U.S. 696]."[13]

The Church supported its motion with the declaration of Lynn Farny, one of its corporate officers and ordained ministers, who explained the Scientology Ethics and Justice system, and the level to which it was intertwined with the Scientology religion. Farny declared, "The justice codes and procedures are an inherent part of the religion, and are derived from our core beliefs." Farny set forth, in some detail, the ways in which Scientology's beliefs are interwoven with its justice principles.[14] Scientology justice "contains exact procedures for resolving matters ranging from Chaplain's Courts (to resolve matters of dispute between individuals) to a fact-finding body addressing all other disputes (called a Committee of Evidence)." Scientology jurisprudence "is required [to] be used in

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[13] As we later discuss, in *Serbian E. Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at page 710, the Supreme Court held that, whenever " '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.' [Citation.]"

[14] In brief, Farny explained that Scientologists believe the "urge to survive" is the primary motivation of life; this is called the "dynamic principle of existence." This principle, in turn, is broken down into eight different dynamics, including, for example, self-survival, group survival, and species survival. "In Scientology, the concepts of good and evil/right and wrong are defined in terms of the eight dynamics, and, indeed, can only be understood in the context of these dynamics: Acts are good which are more beneficial than destructive along these dynamics. Evil is the opposite of good, and is anything which is destructive more than it is constructive along any of the various dynamics."

all matters relating to Scientology organizations, groups and concerns." Farny stated, "The decisions, findings, judgments or other determinations made in a Scientology justice proceeding reflect fundamental religious beliefs, such as the 'greatest good for the greatest number of dynamics.' Therefore, it is a matter of Scientology doctrine that only specially qualified members of the Church, who are well-versed in Scientology policy, can adjudicate disputes concerning the proper interpretation and application of its religious laws."[15]

4. *Criminal Proceedings Against Masterson*

Between the time Scientology's motions to compel and petitioners' opposition were filed, criminal proceedings were commenced against Masterson. He was charged with three counts of forcible rape, against victims Bixler, Jane Doe #1, and Jane Doe #2, (Pen. Code, § 261, subd. (a)(2)) and pleaded not guilty.[16]

5. *Petitioners' Opposition to the Motion to* Compel

Petitioners jointly opposed all of Scientology's motions to compel. Among a number of grounds for opposition, they argued that the dispute resolution procedure Scientology was attempting to compel was not an arbitration at all, but a religious ritual – a "form of religious punishment for nonbelievers who did not follow church doctrine."[17] This encompassed two

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[15] This last statement seems to refer only to the Church's internal dispute resolution procedures prior to arbitration, not the arbitration itself, which requires only that the arbitrators be Scientologists in good standing.

[16] The record does not reflect the current status of the criminal case.

[17] Petitioners relied on the declaration of Michael Rinder, a former member of the Church, who explained, in great detail, his

subsidiary arguments. First, petitioners argued it was unconstitutional to force them to participate in such a ritual, as they have exercised their constitutional right to change religions. Petitioners supported their motion with declarations stating that the campaign of harassment occurred after they left the church. Second, they argued they would be unable to receive a fair adjudication because, as they had been declared Suppressive Persons, any arbitration panel comprised of "Scientologists in good standing" would be required, by the Fair Game doctrine, to rule against them, or risk being declared Suppressive Persons themselves.

6. *Scientology's Reply*

In reply, Scientology took the position that its dispute resolution proceedings were not religious rituals. Scientology argued that its dispute resolution procedures were to be governed by Scientology law, claiming, the "[a]greement to be bound by Scientology law, including Scientology dispute resolution procedures and arbitration, is a condition for acceptance into Scientology religion."

The Church argued, "Plaintiffs ask this Court to adopt a radical position never embraced by any court in the United States: Agreements to submit disputes to religious arbitration are null and void when one of the signatories later decides to leave the religion. The

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belief that Scientology does not conduct traditional arbitrations, and would instead subject petitioners to a religious punishment procedure through a Committee of Evidence. Scientology's objections to the Rinder declaration were sustained in their entirety, and petitioners do not challenge this ruling in their writ petition. Petitioners have therefore forfeited any contentions of error regarding those evidentiary rulings. (*Fritelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41.)

entire thrust of the Opposition is that an apostate – a person who has left a religion – may not be 'forced' to participate in religious arbitration for fear of violating the First Amendment. This argument runs counter to every principle of contract law and arbitration law, and itself creates an impermissible and unconstitutional separate standard for adjudicating agreements entered into by churches."

The Church represented that petitioners had not, in fact, been declared Suppressive Persons, but argued that, in any event, this was a "dispute over orthodoxy" which should be "litigated 'exclusively' in an ecclesiastical setting. This court may not adjudicate what is and is not Scientology doctrine, or whether Plaintiffs have been 'declared' by the Church under its doctrine, but that is what Plaintiffs seek."[18]

As part of its Reply, Scientology submitted an additional declaration of Lynn Farny. Farny declared that "Fair Game" is not a Church doctrine and that, in fact, "[i]n the authorized published works of the Church, comprising some 70 million printed and spoken words, the phrase 'Fair Game' *never* appears." Plaintiffs had relied on a 1967 Scientology document indicating that the penalty for an "ENEMY" was "SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." Farny represented that this

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[18] We fail to see anything in the record indicating that petitioners sought a court ruling as to whether they had been declared Suppressive Persons or whether any such declaration was appropriate under Scientology doctrine. It was petitioners' view that they had brought suit, under California law, for torts allegedly committed against them, and sought resolution of their complaint in a judicial, as opposed to a religious, forum.

document was canceled in 1968, and is no longer Church doctrine.

7. *Sur-reply Raising Additional Issues*

In response to the reply, petitioners filed an unauthorized sur-reply, in which they raised new arguments against arbitration. Specifically, they had obtained a criminal protective order against Masterson, and argued that compelling arbitration would violate both the protective order and Marsy's Law (Cal. Const., art. I, § 28), in that the Scientology proceedings would enable Masterson to continue to harass them. They even envisioned a scenario in which Masterson, as a Scientologist in good standing, could be appointed one of the three arbitrators. Although the trial court did not consider the unauthorized sur-reply, it made a point of reviewing the protective order to ensure that it would not forbid arbitration.

8. *Hearing*

On November 6, 2020, the court held a hearing on the motions to compel. The court expressed concern that the acts underlying the complaint occurred after the petitioners' relationship with the Church had terminated. Scientology argued that the complaint included allegations "that they were abused by the Church while they were at the Church, that the Church ignored their complaints about Mr. Masterson, but they covered up complaints about Mr. Masterson while they were at the Church. And these are incorporated into all their claims, that these incorporate facts that go to their participation in the Church into their claims. So there's that part of the scope." The court asked petitioners' counsel if there was a legal distinction, for purposes of enforcing the arbitration agreement, between claims based on

events that occurred after a former member left the church and claims based on events that happened while the former member was still a member. Petitioners' counsel declined to specifically answer the question, taking the position that, since the Scientology arbitration itself would be a religious procedure, what mattered was that petitioners had left the Church prior to the proposed arbitration, not whether they had left prior to the alleged tortious conduct.

Scientology argued that the agreement to arbitrate survived termination of the agreement itself, stating, "this is a pledge for as long as you might have claims against the Church to arbitrate your issues against the Church." In response, petitioners again argued that the contemplated procedure was a religious ritual, and they had a First Amendment right to leave the Church and no longer be compelled to participate in that ritual.

9. *Additional Briefing*

The court sought additional briefing and argument on the applicability of the Federal Arbitration Act. The Church again argued that petitioners' claims had their genesis in their relationship to the Church and the Church's alleged cover-up (pursuant to Church doctrine) of the rapes.

Petitioners' December 9, 2020 opposition brief took the position – for the first time in unequivocal language – that the causes of action did not, in fact, rely on conduct arising before they left the Church: "All claims alleged by Plaintiffs occurred after Plaintiffs left Scientology and therefore do not arise from the agreements which covered Plaintiffs' religious services when they were members."

10. *Ruling*

The court issued its ruling on December 30, 2020. The court agreed with petitioners' limited view of their complaint, stating, "Defendants state that Plaintiffs' claims against them as entities are that they were subject to mistreatment pursuant to official Church doctrine after they filed police reports; contentions that they could have prevented the violence against them committed by Masterson; and allegations of traumatic experiences while they were part of the Church. [Citations.] [¶] The causes of action begin at paragraph 262 of the complaint and incorporate all preceding paragraphs. However, the charging allegations of the causes of action themselves are limited to the alleged harassment Plaintiffs experienced after they came forward regarding the alleged sexual violence."

Turning to the merits, the court rejected petitioners' argument that compelling arbitration would force petitioners to engage in a religious ritual, on the basis that they had submitted no admissible evidence to prove it was a ritual. To the extent the arbitration may have a religious component, petitioners voluntarily agreed to it.

The court determined that, under the agreements, the issue of arbitrability was for the court to determine. Although the court agreed with petitioners that their complaint was limited to post-separation conduct, the court concluded the conduct was nonetheless arbitrable. The court reasoned that the plain words of the agreements encompassed all claims against Scientology and not merely those arising from the contracts.

The court declined to address petitioners' challenges to the fairness of the procedure, stating, "whether the rules of Scientology are fair as applied to Plaintiffs would require the Court to delve into the doctrines of Scientology. The First Amendment Free Exercise Clause prevents the court from engaging in that inquiry." The court concluded this would be an inquiry of faith, which must be left to adjudication of the Church itself, under the doctrine of religious abstention.

11. *Writ Proceedings*

Petitioners filed a petition for writ of mandate. On March 9, 2021, in a divided opinion, we denied the petition on the basis that petitioners had an adequate remedy by way of appeal if the court entered an order confirming an adverse arbitration award. On May 26, 2021, the Supreme Court granted review and transferred the matter back to this court with directions to vacate the denial and issue an order to show cause. We did so. The case has been fully briefed and argued, and we now issue the writ.[19]

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[19] On the day of oral argument on these writ proceedings, the Eleventh Circuit issued its opinion in *Garcia v. Church of Scientology Flag Service Organization, Inc.* (11th Cir. 2021) 2021 WL 5074465. In that case, former members of the Church (the Garcias) had sued for a refund of money they had donated to the church while members. The district court compelled arbitration over the Garcias' assertion of unconscionability, and, following arbitration, denied their motion to vacate. On the Garcias' appeal, the Eleventh Circuit affirmed. In its opinion, the court described the Garcias' arbitration as the first in the history of Scientology. (*Id.* at p. *3.) The Church brought the Eleventh Circuit's *Garcia* opinion to our attention, as it affirmed orders compelling and confirming what may have been the only Scientology arbitration to occur to date. While we find *Garcia*

DISCUSSION

This case involves both petitioners' First Amendment rights to leave a faith and Scientology's right to resolve disputes with its members without court intervention. When applied to a dispute that arose after petitioners left the faith, and which can be resolved on neutral principles of tort law, we find petitioners' right to leave the faith must control.

We first discuss the constitutional right to leave a faith; then we turn to the potential applicability of the religious abstention doctrine.

1. *Standard of Review*

The party seeking to compel arbitration has the burden of proving the existence of an enforceable arbitration agreement by a preponderance of the evidence, and the party opposing the petition bears the burden of proving by a preponderance any fact necessary to its defense. (*Caballero v. Premier Care Simi Valley LLC* (2021) 69 Cal.App.5th 512, 517.) When the evidence is not in conflict, we review the court's ruling on a petition to compel arbitration de novo. (*Banc of California, National Assn. v. Superior Court* (2021) 69 Cal.App.5th 357, 367.) Here, although certain facts may be contested, the core facts necessary to resolve the issues before us are not disputed. Accordingly we employ the de novo standard of review.

2. *The Constitutional Right to Leave a Faith*

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relevant to Scientology's constitutional argument, and discuss it in that context, we recognize that the Garcias had sought the return of funds donated while they were members. The case therefore did not consider whether former members could be compelled to arbitrate claims arising from torts committed after they had left the church.

We begin by considering the constitutional implications of a member's decision to leave a faith. An individual possesses an "*inalienable* First Amendment right to the free exercise of religion, which includes her right to change her religious beliefs . . . ." (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 118.) "The constitutional freedom to question, to doubt, and to change one's convictions, protected by the Free Exercise and Establishment Clauses, is important for very pragmatic reasons. For most people, religious development is a lifelong dynamic process even when they continue to adhere to the same religion, denomination, or sect." (*Zummo v. Zummo* (Pa. Super. 1990) 574 A.2d 1130, 1146.) "The First Amendment specifically preserves the essential religious freedom for individuals to grow, to shape, and to amend this important aspect of their lives, and the lives of their children. Religious freedom was recognized by our founding fathers to be inalienable. It remains so today." (*Id.* at p. 1148, italics omitted.) "One of the fundamental purposes of the First Amendment is to protect the people's right to worship as they choose. Implicit in the right to choose freely one's own form of worship is the right of unhindered and unimpeded withdrawal from the chosen form of worship." (*Guinn v. Church of Christ of Collinsville* (Okla. 1989) 775 P.2d 766, 777, fn. omitted (*Guinn*) [concluding plaintiff had a right to leave her church even when the church took the position withdrawal was doctrinally impossible].)

California precedent counsels against enforcing agreements that would violate an individual's right to change religions. The issue arose in *In re Marriage of Weiss, supra,* 42 Cal.App.4th 106. There, prior to marrying her Jewish husband, a woman converted to Judaism and executed a written "Declaration of

Faith," in which she pledged to rear all their children " 'in loyalty to the Jewish faith and its practices.' " (*Id.* at p. 109.) After the couple divorced, the woman returned to Christianity. (*Ibid*.) She was attending church and had enrolled the couple's child in Sunday school. The child also attended a weekly club meeting at the church and had attended church summer camp. The father "acknowledged [the mother] had the right to expose the minor to her religion, but objected to the minor's being indoctrinated in the Christian faith or being enrolled in any activity 'that would be contrary to his Jewish faith.' " (*Id.* at p. 110.)

The trial court refused to restrain the mother's religious activity with the child. The father appealed, arguing the court erred in not enjoining the mother from engaging the child in Christian religious activity. (*In re Marriage of Weiss, supra,* 42 Cal.App.4th at p. 110.) The Court of Appeal affirmed, recognizing the rule in California that a parent cannot enjoin the other parent from involving their child in religious activities in the absence of a showing of harm to the child. (*Id.* at p. 112.) The father argued that the written antenuptial agreement should be enforced as an exception to that rule and that the mother should be bound by her promise. (*Id.* at p. 117.) Relying heavily on the analysis of the Pennsylvania appellate court in *Zummo v. Zummo, supra,* 574 A.2d 1130, the *Weiss* court disagreed. (*Weiss,* at pp. 117-118.) The court concluded the agreement was legally unenforceable for two reasons: enforcement would result in improper judicial entanglement in religious matters and would violate the mother's First Amendment right to change her religion. (*Id.* at 118.) As Presiding Justice Klein wrote, "Further, in view of [the mother's] *inalienable* First Amendment right to the free exercise of religion, which includes the right to change her

religious beliefs and to share those beliefs with her offspring, her antenuptial commitment to raise her children in [the father's] faith is not legally enforceable for that reason as well." (*Ibid.*) While a parent's religious freedom may yield to other competing interests, " 'it may not be bargained away.' [Citation.]" (*Ibid.*)

We pause to point out that, in the briefs filed both in the trial court and this court, petitioners spend considerable time on whether Scientology arbitration constitutes a religious ritual, such that compelling their participation in the ritual would violate their First Amendment rights for that reason. Whether Scientology arbitration is a ritual is immaterial to our analysis. The issue properly phrased is: after petitioners have left the faith, can Scientology still require that all of Scientology's future conduct with respect to petitioners – including torts of whatever kind – be governed by Scientology law, with disputes to be resolved solely in Scientology tribunals by Scientology members? We conclude it cannot. Just like written antenuptial agreements to raise children in a particular faith are not enforceable against a parent who has left the faith, Scientology's written arbitration agreements are not enforceable against members who have left the faith, with respect to claims for subsequent non-religious, tortious acts. To hold otherwise would bind members irrevocably to a faith they have the constitutional right to leave.[20]

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[20] Relying on cases which do not involve compelling a party to participate in religious arbitration, Scientology argues that judicial enforcement of a contract does not constitute state action; therefore, enforcement of the arbitration agreements could not violate petitioners' free exercise rights. (E.g. *Rifkind & Sterling, Inc. v. Rifkind* (1994) 28 Cal.App.4th 1282, 1292-1293 [only a

Our analysis takes a somewhat different path to the same result with respect to Jane Doe #1. Jane Doe #1 does not allege that she voluntarily left the Church; instead, she learned in 2005 that she had been declared a Suppressive Person and was told she was no longer permitted to engage in religious services at the Church. Having excluded Jane Doe #1 from its religious services, and allegedly committed torts against her more than 10 years later, the Church cannot now enforce against Jane Doe #1 the arbitration clause in an agreement she signed in order to obtain the religious services from which she has been excluded. If the religious relationship has been terminated – by either party – and the parishioner is no

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limited degree of state action is involved in confirming an arbitration award; it does not require a full panoply of due process rights]; *Roberts v. AT&T Mobility LLC* (9th Cir. 2017) 877 F.3d 833, 838, fn. 1 [enforcing an arbitration agreement does not constitute state action violative of a signatory's First Amendment right of petition]; *Ohno v. Yasuma* (9th Cir. 2013) 723 F.3d 984, 987 [recognition and enforcement of a Japanese monetary judgment does not constitute state action triggering direct constitutional scrutiny of whether the judgment violates the judgment debtor's free exercise rights].) We believe cases such as *In re Marriage of Weiss, supra,* which specifically hold that a party cannot bargain away her constitutional right to change religions, are the appropriate precedent. In contrast to Scientology's theory that enforcing agreements which limit the right to change religions would not constitute state action, those authorities recognize that court enforcement of such an agreement would encroach on a person's fundamental constitutional right. (*Id.* at p. 118; *Zummo v. Zummo, supra,* 574 A.2d at p. 62. See also *Abbo v. Briskin* (Fla.Dist.Ct.App. 1995) 660 So.2d 1157, 1160 [the law will enforce premarital agreements on a number of topics, as long as they are not against public policy; the court has "grave doubts" that it could or should enforce an agreement to raise a child in a particular faith where the parent suffers a good faith change of religious conscience].)

longer a member of the Church, the arbitration clause does not survive to cover disputes arising from future non-religious tortious conduct.

3. *The Religious Abstention Doctrine Does Not Change the Analysis*

Scientology's motion described itself as a motion to compel "religious arbitration." That Scientology sought to compel an arbitration that was religious, rather than secular, in nature was a critical part of its motion. Scientology argued that because it was seeking to compel religious arbitration, the court could not review the proposed arbitration procedures for "fairness." It argued that its right to govern its relations with its members was protected by the First Amendment, and rendered its procedures "all but unreviewable." This argument invokes the legal doctrine of religious abstention.

We do not purport to review the procedures of Scientology arbitration. We do find that a discussion of religious abstention as imposed on courts and the reasons for, and limitations of, this doctrine, supports our conclusion.

Religious (or ecclesiastical) abstention compels courts to abstain from resolving religious issues. Courts instead yield to the decision of the highest religious tribunal to address the issue. "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their

decisions as binding upon them." (*Serbian E. Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at pp. 724-725.)

Religious abstention first arose in *Watson v. Jones* (1871) 80 U.S. 679, a case involving a Kentucky Presbyterian church whose members, in the years leading up the Civil War, split over the issue of slavery. The schism in the church membership led to a dispute over which side controlled the property owned by the church. The overarching institution, the Presbyterian Church of the United States, supported emancipation and therefore sided with the anti-slavery faction. (*Id.* at pp. 690-692.) When the dispute reached the U.S. Supreme Court, the court yielded to the resolution of the mother church, saying, "In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority 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." (*Id.* at p. 727.)

Over the years, the doctrine has been applied in additional cases involving disputes over church property (e.g., *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church* (1969) 393 U.S. 440, 449-450; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, 109) and disputes between a church and its ministers (e.g., *Serbian E. Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at pp. 697-698.) In the latter setting, religious abstention manifests in the so-

called "ministerial exception," which exempts religious organizations' decisions regarding the employment of ministers and teachers from employment discrimination laws. (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC* (2012) 565 U.S. 171, 188 [ministerial exception barred EEOC and individual claims of discrimination under the American with Disabilities Act]; *Our Lady of Guadalupe Sch. v. Morrissey-Berru* (2020) ___ U.S. ___ [140 S. Ct. 2049, 2055, 2060] [extending ministerial exception to religious school teachers who are not ministers].)

Religious abstention does not control the result in this case for the reason that the doctrine is restricted to the adjudication of religious matters. Civil law must defer to a religious authority's resolution of ecclesiastical questions. If the matter does not concern "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them," there is no cause for abstention. (*Watson v. Jones, supra,* 80 U.S. at p. 733.)

This limitation was recognized in *Garcia v. Church of Scientology Flag Service Organization, Inc., supra,* 2021 WL 5074465, the Eleventh Circuit case confirming an arbitration award in what may have been the first Scientology arbitration held. There, a religious tribunal directed the Church to refund part of a donation former parishioners had made to the Church when they were members. The former members moved to vacate the award because they claimed the amount did not fully compensate them. The district court denied the motion to vacate and the Eleventh Circuit affirmed. In doing so, the court rejected Scientology's argument that *Milivojevich* and other religious abstention cases limited the court's review of the

arbitration. "Those decisions make clear that civil courts may not disturb the decisions of ecclesiastical tribunals on matters of church discipline and governance, minister selection, and other matters of faith and doctrine. [Citations.] But the Garcias do not ask us to disturb an ecclesiastical tribunal's resolution of a dispute that is 'ecclesiastical in its character,' such as a dispute about 'theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.' [Citation.] They instead ask us to review a monetary award issued by an arbitration panel. Our review of that award poses no risk of intruding upon the authority of the Church of Scientology in matters of 'ecclesiastical cognizance.' [Citation.]" (*Id.* at p. *10.) The Eleventh Circuit also held religious abstention did not bar the court from reviewing whether the arbitrators exhibited partiality or committed misconduct. A civil court conducting such review uses neutral principles of law; it is not a question of religious doctrine. (*Id.* at p. *11.)

Similarly, in a case specifically involving imposition of discipline by a church on a former member, the Oklahoma Supreme Court held that religious abstention did not apply because the issue was whether the actions of church elders violated the plaintiff's right to be free from torts, not whether the discipline was appropriate under church doctrine. (*Guinn, supra,* 775 P.2d at p. 773 & fn. 25.)

Here, petitioners' lawsuit against Scientology is based on neutral principles. They are not alleging that the "Fair Game" campaign against them did not comport with Scientology law; they are alleging that the conduct the Church engaged in was tortious under California law. California courts can resolve this issue

under neutral principles of law.[21] Similarly, the issue of arbitrability itself can be resolved under neutral principles of law – here, petitioners' constitutional right to change religions. The issue is not one of Scientology doctrine, but generally applicable principles of law.

Religious abstention has its roots in consent – specifically, an individual's voluntary membership in, or employment by, a church, or a local church's voluntary alignment with a mother church. In *Watson v. Jones, supra,* the court explained its rationale in this manner: "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government,* and are bound to submit to it." (*Watson v. Jones, supra,* 80 U.S. at pp. 728-729, emphasis added; *Serbian E. Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at

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[21] In an apparent attempt to pursue vicarious liability for the harassment campaign allegedly waged against them, plaintiffs alleged that Fair Game was, in fact, part of Scientology's practices. Scientology, through the declaration of Farny, represented that it was not. We express no opinion on the merits of this particular dispute. But plaintiffs allege the Church is liable for the tortious acts because they were committed "by or at the direction of Defendants' employees, agents, and/or representatives." They further allege that "each of the aforementioned Defendants lent aid and encouragement and knowingly financed, ratified, and/or adopted the acts of the other." These bases for vicarious liability can be resolved independent of any determination of Church doctrine.

pp. 710-711 [quoting *Watson*].) Here, petitioners withdrew their consent when they left the faith. The notion of consent no longer exists as the necessary predicate for religious abstention.

4. *Denying Arbitration Does Not Evince Hostility to Religion*

In a related argument, Scientology contends that failing to enforce the arbitration clause in its agreements violates its Free Exercise rights, in that our conclusion shows hostility to religion. The argument continues that, because as a general principle, arbitration contracts may survive termination of the underlying contractual relationship, the same should be true for religious arbitration. We reject Scientology's premise; it has provided no authority upholding an arbitration agreement ad infinitum, and the California case on which Scientology relies for this proposition is distinguishable. In *Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, a physician formerly employed by a medical group sued the medical group for wrongful termination and for torts allegedly committed after he was discharged. Specifically, he alleged that after he left, the medical group informed his patients that he had left the medical group for a variety of false reasons (e.g., marital or mental problems). He alleged causes of action for defamation, negligent interference with prospective business advantage, and unfair competition. (*Id.* at pp. 1404-1405.) When the medical group sought to compel arbitration, based on an arbitration clause in his employment agreement, the physician argued that the arbitration clause did not apply to the tortious conduct which occurred after he was terminated. The Fourth District Court of Appeal rejected this argument, on the basis that his tort claims "stem[med] from the

contractual relationship between the parties," and were therefore within the scope of the arbitration agreement. (*Id.* at p. 1403.) Here, petitioners' claims against Scientology do not stem from the contractual relationship; they stem from the alleged "Fair Game" campaign Scientology engaged in as retribution for reporting Masterson to police after they left the Church. This harassment allegedly arose because of petitioners' relationship with Masterson and their reporting his conduct to police, not because of their prior affiliation with Scientology. Indeed, plaintiff Riales alleged a similar Fair Game campaign of harassment, and it is undisputed she was never a member.

As we recognized at the outset, this case involves two free exercise rights: petitioners' right to leave a faith *and* Scientology's right to resolve disputes with its members without court intervention. Resolving this tension does not reflect hostility to religion.

5. *The Court Erred in Compelling Arbitration*

Scientology takes the position that petitioners agreed to its dispute resolution procedures as a condition of joining the Church (or, as to Bixler-Zavala, as a condition of receiving services from the Church). It argues that, even though petitioners have left the Church, they are still bound by the terms of their contracts.

We reject this argument. Much like the mother in *Weiss* who by written agreement covenanted to raise her child Jewish but then left the faith, petitioners have a constitutional right to disassociate from a religious community. Having exercised this right to disassociate, they are no longer members subject to the

Church's religion and rules, which otherwise would bind them to Scientology dispute resolution for life.

We acknowledge that petitioners have not been entirely consistent about whether the alleged facts on which they base their causes of action were limited to those occurring after they separated from the Church; they ultimately represented that such was the case, and the trial court found it to be so. In this court, petitioners first asserted that they "allege these acts occurred both while they were in the religion and after they exited the religion." But in response to our request for supplemental letter briefing, petitioners state that "their causes of action are based on conduct after they left the Church . . . ." Our decision is predicated on that final representation, and we construe petitioners' claims for relief as limited to conduct occurring after they left the faith. The alleged campaign of harassment which forms the basis of petitioners' lawsuit occurred after petitioners had left Scientology and expressly or impliedly had withdrawn their consent to be governed by its religious rules.

As we stated at the outset of this opinion, we hold that once petitioners terminated their affiliation with the Church, they were not bound to its dispute resolution procedures to resolve the claims at issue here, which are based on alleged tortious conduct occurring after their separation from the Church and do not implicate resolution of ecclesiastical issues.[22]

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[22] We do not express an opinion on either of two matters. First, whether arbitration could properly be compelled if petitioners were to bring claims for acts occurring while they were church members. Second, whether evidence of conduct allegedly occurring prior to petitioners' separation from the church is admissible at trial.

Scientology argues that petitioners simply agreed to be bound by Scientology dispute resolution procedures no matter what. As Scientology puts it, "An '***irrevocable***' agreement to '***forever***' waive civil proceedings and submit to Scientology Ethics and Justice Codes in 'any dispute' with Churches of Scientology is a condition for participation in the religion." It argues that this agreement should be enforced like any other agreement. Enforcing this provision without regard to petitioners' First Amendment rights would mean that if the Church or a Church member committed any intentional or negligent tort against a former member of the Church, that former member would be bound by Scientology dispute resolution procedures regardless of the fact that the member had left the Church years, even decades, before the tort. In effect, Scientology suggests that one of the prices of joining its religion (or obtaining a single religious service) is eternal submission to a religious forum – a sub silencio waiver of petitioners' constitutional right to extricate themselves from the faith.[23] The Constitution forbids a price that high.

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[23] Courts must closely scrutinize waivers of constitutional rights, and indulge every reasonable presumption against a waiver of First Amendment rights, which may only be made by a clear and compelling relinquishment. (*No Doubt v. Activision Publishing, Inc.* (2011) 192 Cal.App.4th 1018, 1035, fn. 7.) The parties did not brief whether the language of the agreement constitutes a clear and compelling relinquishment of the right to leave the faith and/or the concomitant right to withdraw consent to be ruled by the faith. On their face these agreements do not purport to waive petitioners' right to leave the church.

DISPOSITION

The petition is granted. Let a writ of mandate issue directing respondent court to vacate its order granting the Church's petitions to compel arbitration and enter a new and different order denying the motions. Petitioners shall recover their costs.

/s/ Rubin
RUBIN, P. J.

I CONCUR:

/s/ Moor
MOOR, J.

Chrissie Bixler v. The Superior Court of Los Angeles County B310559

BAKER, J., Concurring

I join the opinion of the court, with the exception of Part 3 of the Discussion section.

/s/ Baker
BAKER, J.

APPENDIX B

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

[Filed February 15, 2022]

B310559

(Los Angeles County Super. Ct. No. 19STCV29458)

CHRISSIE CARNELL BIXLER, *et al*.,

Petitioners,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES,

Respondent;

CHURCH OF SCIENTOLOGY INTERNATIONAL, *et al*.,

Real Parties in Interest.

ORDER DENYING PETITION FOR REHEARING

BY THE COURT:

The court takes judicial notice of the oral proceedings that took place in this matter on November 2, 2021, as memorialized in an MP3 audio file maintained as part of this court's docket. The court denies the request to take judicial notice of the transcript of the oral proceedings lodged by real parties in interest.

Real parties in interest's petition for rehearing is denied.

/s/ Rubin	/s/ Baker	/s/ Moor
RUBIN, P.J.	BAKER, J.	MOOR, J.

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA

En Banc

[Filed April 20, 2022]

S273276

CHRISSIE CARNELL BIXLER *et al.*,

Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al.*,

Real Parties in Interest.

The petition for review is denied.

The requests for an order directing publication of the opinion are denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CIVIL DIVISION
CENTRAL DISTRICT
Stanley Mosk Courthouse, Department 57

19STCV29458

CHRISSIE CARNELL BIXLER, *et al*.

v.

CHURCH OF SCIENTOLOGY INTERNATIONAL, *et al*.

December 30, 2020
2:53 PM

Judge: Honorable Steven J. Kleifield
Judicial Assistant: J. Jimenez
Courtroom Assistant: None
CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:
For Plaintiff(s): No Appearances
For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order re Motions to Compel

According to the first amended complaint, Defendants stalked, harassed, invaded the privacy of Plaintiffs and Plaintiffs' families, and intentionally inflicted emotional distress on Plaintiffs, who are four women sexually assaulted by Defendant Daniel Masterson, a "field staff member" or recruiter for Church of Scientology and Religious Technology, which organizations are allegedly lead by Defendant David Miscavige (collectively "Defendants"). Defendants' conduct was allegedly to retaliate against Plaintiffs for reporting the alleged sexual assaults to the police.

Plaintiffs allege Defendant Masterson, a high-ranking member of Church of Scientology and Religious Technology, sexually assaulted Plaintiff Chrissie Bixler at various times between 1996 and 2002 while the two were dating and cohabitating. Plaintiffs allege David Miscavige, Church of Scientology, and Religious Technology and their agents coerced, by threats of violence and ostracization, Plaintiff Bixler not to report the sexual assaults to law enforcement. In 2016, Bixler reported the assaults by Masterson to the Los Angeles Police Department ("LAPD"). Following Bixler's 2016 report to the present, Plaintiffs Bixler and Bixler-Zavala suffered various trespasses, invasive surveillance, stalking, threats of violence, defamation, sexual harassment, destruction of property – particularly pets, identity theft, assaults using automobiles, harassing phone calls, text messages, and social media messages, and wire taping; all purportedly from agents of the Defendants. Plaintiffs allege this conduct is designed to dissuade Bixler from, and punish Bixler for, cooperating with law enforcement.

Plaintiffs allege that: in September 2002 Masterson drugged and sexually assaulted Plaintiff Jane Doe #1; and in April 2003 Masterson drugged and sexually assaulted Jane Doe #1 while strangling her and threatening her with a firearm. Agents for Defendants attempted to coerce, with threats of violence and ostracization, Jane Doe #1 to not report the sexual assaults to law enforcement. In June 2004, Jane Doe #1 reported the sexual assaults to the LAPD. Agents of Defendants coerced Jane Doe #1 to sign a non-disclosure agreement regarding the sexual assaults. In 2016, Jane Doe #1 asked the LAPD to reopen the investigation into Masterson's sexual assaults against her. Following Jane Doe #1's 2016 request to the present, Jane Doe #1 suffered harassing phone calls, text messages, and social media messages, stalking, witness tampering, invasive surveillance, defamation, various trespasses, larceny, property damage, identity theft, threats of violence, assaults, sexual harassment, and wire taping; all purportedly from agents of the Defendants. Plaintiffs allege this conduct is designed to dissuade Jane Doe #1 from, and punish Jane Doe #1 for, cooperating with law enforcement.

On August 22, 2019, Plaintiffs Chrissie Carnell Bixler ("Bixler"), Cedric Bixler-Zavala ("BixlerZavala"), Jane Doe #1, Marie Bobette Riales ("Riales"), and Jane Doe #2 (collectively, "Plaintiffs") filed a complaint against Defendants Church of Scientology International ("CSI") and Church of Scientology Celebrity Centre International ("CCI"), Defendant Religious Technology Center ("RTC"), Defendant Daniel Masterson ("Masterson"), Defendant David Miscavige and Does 1-25 (collectively, "Defendants") for (1) stalking in violation of Civ. Code § 1708.7, (2) physical invasion of privacy in violation of Civ. Code § 1708.8, (3) constructive invasion of privacy in violation of Civ. Code

§ 1708.8, (4) intentional infliction of emotional distress, and (5) loss of consortium.

On February 28, 2020, Plaintiffs filed a first amended complaint against Defendants for the same causes of action: (1) stalking in violation of Civ. Code § 1708.7, (2) physical invasion of privacy in violation of Civ. Code § 1708.8, (3) constructive invasion of privacy in violation of Civ. Code § 1708.8, (4) intentional infliction of emotional distress, and (5) loss of consortium.

On October 6, 2020, the Court heard a demurrer and motion to strike portions of the first amended complaint. The Court sustained the demurrer as to Plaintiff Riales's claims in the second cause of action and the motion to strike was granted with respect to attorney's fees and/or penalties, treble damages, and punitive/exemplary damages pursuant to Civil Code §§ 1708.5 (3)(b) and 1782(2).

On April 1, 2020, RTC filed two motions to compel arbitration and CSI and CCI filed two motions to compel arbitration. Oppositions and replies followed. The Court heard argument on Nov. 6, 2020 and took the matter under submission. The Court later vacated the submission and requested further briefing on the application of the Federal Arbitration Act. After briefing and further argument the matter was again taken under submission.

A. RTC's Motions to Compel Arbitration

(a) Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala and Jane Doe #1

RTC moves for an order compelling Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala and Jane Doe #1 to comply with their written agreements

with the Church of Scientology, which requires them to resolve "any dispute, claim or controversy" that may arise between each of them and Church of Scientology Celebrity Centre International ("CC") (in the case of Plaintiffs Chrissie Carnell Bixler and Cedric Bixler-Zavala) and Flag Services Organization, a Church of Scientology in Clearwater, Florida (in the case of Plaintiff Jane Doe #1) or "any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity," through internal Ethics, Justice, and binding religious arbitration procedures. RTC also seeks an order staying this matter pending final conclusion of those proceedings. This motion is made pursuant to the Federal Arbitration Act and California Code of Civil Procedure Section 1281.2, et seq., on the grounds that written agreements to arbitrate the entire controversy exist and that Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala and Jane Doe #1 have refused to arbitrate the controversy.

RTC also joins and incorporates the motion filed by CSI.

(b) Plaintiff Jane Doe #2

Defendant RTC also moves for an order compelling Plaintiff Jane Doe #2 to comply with her written agreements with the Church of Scientology Celebrity Centre International ("CC"), which require her to resolve "any dispute, claim or controversy" that may arise between her and CC through internal Ethics, Justice, and binding religious arbitration procedures. RTC is sued herein as an alleged agent of CC and is therefore entitled to enforce the arbitration provisions of Plaintiff's agreement with CC. RTC also seeks an order staying this matter pending final conclusion of

those proceedings. This Motion is made pursuant to the Federal Arbitration Act and California Code of Civil Procedure Section 1281.2, et seq., on the grounds that written agreements to arbitrate the entire controversy exist and that Plaintiff Jane Doe #2 has refused to arbitrate the controversy.

RTC again joins and incorporates the motion made by CSI and CCI as to Jane Doe #2.

B. CCI and CSI's Motions to Compel Arbitration

(a) Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala and Jane Doe #1

CCI and CSI move for an order compelling Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala, and Jane Doe #1 to comply with their written agreements. Those agreements require them to use Scientology internal Ethics, Justice, and binding religious arbitration procedures to resolve "any dispute, claim or controversy" that may arise between each of them and "any . . . Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity." CCI and CSI also seek an order staying this matter pending final conclusion of those proceedings. This motion is made pursuant to the Federal Arbitration Act and California Code of Civil Procedure Section 1281.2, et seq., on the grounds that written agreements to arbitrate the entire controversy exist and that Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala, and Jane Doe #1 have refused to arbitrate the controversy.

CCI and CSI also join and incorporate the motion by RTC.

(b) Plaintiff Jane Doe #2

CCI and CSI move for an order compelling Plaintiff Jane Doe #2 to comply with her written agreements, which require Plaintiff to resolve through ecclesiastical justice procedures "any dispute, claim or controversy" that may arise between them. Those agreements require Plaintiff to litigate the causes of action she alleges in this lawsuit against CCI and CSI, if at all, through a religious arbitration. CCI and CSI also seek an order staying this matter pending final conclusion of those proceedings. This Motion is made pursuant to the Federal Arbitration Act and California Code of Civil Procedure Section 1281.2, et seq., on the grounds that written agreements to arbitrate the entire controversy exist and that Plaintiff Jane Doe #2 has refused to arbitrate the controversy.

CSI and CCI again join and incorporate the motion made by RTC.

Declaration of Michael Rinder

In Plaintiffs' omnibus opposition, they cite repeatedly to the "Rinder Decl." – the first time it is mentioned is the introduction on page 1, lines 6-8. There was no "Rinder Declaration" submitted with the opposition.

There was a declaration by Michael Rinder submitted by Plaintiffs on September 28, 2020 but it appears to be made in support of a motion for an order to serve by publication – it "appears" as such because there is no mention in the declaration of the documents it is meant to support.

Objecting Defendants CSI and CCI also point the Court to a March 6, 2020 declaration by Michael Rinder, which was submitted in support of Plaintiffs'

prior opposition to a motion compel arbitration that was taken off calendar (due to the filing of the first amended complaint).

Defendants argue the Court should disregard the March 6, 2020 declaration because Rinder is biased, dedicated to falsely attacking the Church and has no foundation for much of his testimony. CSI and CCI also make specific objections to the declaration.

Plaintiffs were given leave to properly submit the declaration in support of the oppositions to the instant motions. Plaintiffs submitted the same declaration that was submitted on March 6, 2020. Upon review of the declaration Defendants objections to the declaration are sustained. The declaration is filled with unsupported assumptions, foundational deficiencies, irrelevant matters, improper opinions, and arguments.

Motion to Compel Arbitration

Under both Title 9 section 2 of the United States Code (known as the Federal Arbitration Act, hereinafter "FAA") and Title 9 of Part III of the California Code of Civil Procedure commencing at section 1281 (known as the California Arbitration Act, hereinafter "CAA"), arbitration agreements are valid, irrevocable, and enforceable, except on such grounds that exist at law or equity for voiding a contract. (Winter v. Window Fashions Professions, Inc. (2008) 166 Cal.App.4th 943, 947.)

The court first decides whether an enforceable arbitration agreement exists between the parties, and then determines whether the plaintiff's claims are covered by the agreement. (Omar v. Ralphs Grocery Co. (2004) 118 Cal.App.4th 955, 961.)

1. Existence of an Agreement to Arbitrate

"The party seeking arbitration bears the burden of proving the existence of an arbitration agreement, and the party opposing arbitration bears the burden of proving any defense, such as unconscionability." (Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 236.)

(a) Existence of documents with signatures and arbitration provisions

Defendants present agreements as follows:

1. Jane Doe #2 (Marmelojo Decl. ¶ 10; Exhs. 1-6)

Exhibits 1-6 each at their respective paragraph 9 states "in the event I have any dispute, claim or controversy with the Church including, but not limited to any dispute, claim or controversy arising under this Application/Agreement or in connection with my participation in the Service, which cannot be resolved informally by direct communication, resolution of that dispute, claim or controversy may be pursued solely through the Internal procedures of the Church's Ethics, Justice and Binding Religious Arbitration system. Moreover, I hereby expressly agree that any controversy arising under this Application/Agreement or In connection with my participation in the Service shall be resolved by such Binding Religious Arbitration.

Any dispute, claim or controversy which still remains unresolved after submission to the IJC shall be submitted to Binding Religious Arbitration in accordance with the published arbitration procedures of Church of Scientology International, which provide that:

a. I shall submit a request for arbitration to the IJC with a copy to the Church, and shall designate one arbitrator with my request;

b. Within fifteen (15) days after receiving the request for arbitration, the Church shall designate an arbitrator. If the Church has not designated an arbitrator within fifteen (15) days, then the IJC shall designate the second arbitrator.

c. The two arbitrators so designated shall select a third arbitrator within fifteen (15) days after the designation of the second arbitrator. If the arbitrators are unable to designate a third arbitrator within the fifteen (15) day period, then the IJC shall choose such arbitrator. Consistent with the Intent that the arbitration be conducted in accordance with Scientology principles of justice and fairness, and consistent with the ecclesiastical nature of the procedures and the dispute, claim or controversy to which such procedures relate, ail arbitrators shall be Scientologists In good standing with the Mother Church.

IN ACCORDANCE WITH THE RELIGIOUS NATURE OF THE SERVICES TO BE PROVIDED, I ACKNOWLEDGE, UNDERSTAND AND AGREE THAT IN NO EVENT SHALL ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF MY PARTICIPATION IN THE SERVICE BE SUBMITTED TO A COURT FOR JUDICIAL DETERMINATION. MOREOVER, I UNDERSTAND AND AGREE THAT BY SIGNING AND SUBMITTING THIS APPLICATION/

> AGREEMENT, I AM WAIVING ANY RIGHT WHICH I MAY HAVE TO HAVE SUCH DISPUTES, CLAIMS OR CONTROVERSIES DECIDED IN A COURT OF LAW, BEFORE A JUDGE OR A JUDGE AND JURY."

It appears Plaintiff's signature (blocked out to protect privacy rights) are on the final page of each document.

2. Plaintiff Bixler-Zavala (Marmelojo Decl. ¶ 8; Exh. 14);

Exhibit 14 at paragraph 6(a) states: "My freely given consent to be bound exclusively by the discipline, faith. Internal organization, and ecclesiastical rule, custom, and law of the Scientology religion In all matters relating to Scientology Religious Services, In all my dealings of any nature with the Church, and In all my dealings of any nature with any other Scientology church or organization which espouses, presents, propagates or practices the Scientology religion means that 1 am forever abandoning, surrendering, waiving, and relinquishing my right to sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy against the Church, all other Scientology churches, all other organizations which espouse, present, propagate or practice the Scientology religion, and all persons employed by any such entity both In their personal and any official or representational capacities, regardless of the nature of the dispute, claim or controvert."

Paragraph 6(d.) states: "should any dispute, claim or controversy arise between me and the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any

such entity, which cannot be resolved informally by direct communication, I will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's internal Ethics, justice and binding religious arbitration procedures, which include application to senior ecclesiastical bodies, including, as necessary, final submission of the dispute to the international justice Chief of the Mother Church of the Scientology religion, Church of Scientology international ("IJC") or his or her designee."

Subdivision (e) of the same paragraph provides: "Any dispute, claim or controversy which still remains unresolved after review by the IJC shall be submitted to binding religious arbitration in accordance with the arbitration procedures of Church of Scientology International which provides that:

> i. I will submit a request for arbitration to the IJC and to the person or entity with whom I have the dispute, claim or controversy;
>
> ii. in my request for arbitration, I will designate one arbitrator to hear and resolve the matter;
>
> iii. within fifteen (15) days after receiving my request for arbitration, the person or entity with whom I have the dispute, claim or controversy will designate an arbitrator to hear and resolve the matter. If the person or entity with whom I have the dispute, claim or controversy does not designate an arbitrator within that fifteen (15) day period, then the IJC will designate the second arbitrator;
>
> iv. the two arbitrators so designated will select a third arbitrator within fifteen (15) days after the designation of the second

> arbitrator. If the arbitrators are unable to designate a third arbitrator within the fifteen (15) day period, then the IJC will choose the third arbitrator;
>
> v. consistent with my intention that the arbitration be conducted in accordance with Scientology principle, and consistent with the ecclesiastical nature of the principles and the dispute, claim or controversy to which those procedures relate, it is my specific intention that all such arbitrators be Scientologists in good standing with the Mother Church."

Plaintiff Bixler-Zavala's signature is on the final page of the document.

3. Plaintiff Bixler (Marmolejo Decl. ¶ 6; Exhs. 8-13);

Exhibits 8-13 contains the same language quoted above for Plaintiff Bixler-Zavala.

Exhibit 12 does not have initials next to the arbitration provisions. The other Exhibits contain Bixler's initials next to the provisions. There is a final page with Bixler's signatures on Exhibit 12 affirming agreement to everything within the contract. There is nothing in the agreement that states that, where there is no initial, the signing party did not agree.

4. Jane Doe #1 (Heller Decl. Exh. 7)

Exhibit 7 to the Heller Declaration at paragraph 6 also has the same language quoted above.

Exhibit 7 contains what is apparently the signature of Jane Doe #1 with initials on each section.

The existence of the arbitration agreements is not in dispute.

(b) Whether the proposed arbitration is actually a "religious ritual"

At oral argument, Plaintiffs counsel informed the Court that Plaintiffs' primary argument was that the Court could not order the arbitration because it would violate Plaintiff's First Amendment rights. They argue that enforcement of the arbitration agreements would amount to forcing them, who have become non-believers, to participate in a "religious ritual", in violation of the Establishment Clause of the First Amendment to the United States Constitution.

i. First Amendment

The First Amendment to the Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

On the general First Amendment claims, Plaintiffs are correct that the Court cannot compel an individual to participate in a religious ritual. However, Plaintiffs have submitted no evidence to indicate this would happen if the arbitrations were ordered. Nothing in the arbitration agreements describes any religious rituals. Indeed, the declaration of Lynn Farny states that there are no ceremonies, professions of religious belief, or other religious components. (Farny Decl. ¶ 23.)

Plaintiffs state that they are no longer "believers" in Scientology, and therefore cannot be compelled to participate in a church arbitration. There is nothing to indicate that a condition of the arbitration agreement was that the individual signatory must be a "believer" in order to be bound by it. To the extent that the

arbitration has a religious component, that was something agreed to by the signatory. Hence, ordering the signatory to participate is not coercive.

Plaintiffs have not shown that ordering them to religious arbitration would require then to practice a ritual in violation of their religious freedoms.

(c) Scope of claims for arbitration

i. Arbitratbility

Defendants argue that the issue of arbitrability must be designated to the arbitration panel.

The enforceability of an arbitration agreement is generally determined by the court. (See Aanderud v. Superior Court (2017) 13 Cal.App.5th 880, 891; Ajamian v. CantorCO2e, L.P. (2012) 203 Cal.App.4th 771, 781.) However, parties may agree to arbitrate gateway questions of arbitrability such as the enforceability of an arbitration agreement and whether claims are covered by the arbitration agreement. (See Rent-A-Center, West, Inc. v. Jackson (2010) 561 U.S. 63, 68-69; Aanderud, supra, 13 Cal.App.5th at 891-92; Ajamian, supra, 203 Cal.App.4th at 781.) "To establish this exception, it must be shown by 'clear and unmistakable' evidence that the parties intended to delegate the issue to the arbitrator." (Ajamian, supra, 203 Cal.App.4th at 781 (citing First Options of Chicago, Inc. v. Kaplan (1995) 514 U.S. 938, 944).)

"'There are two prerequisites for a delegation clause to be effective.'" (Aanderud, supra, 13 Cal.App.5th at 892 (quoting Tiri v. Lucky Changes, Inc. (2014) 226 Cal.App.4th 231, 242).) "'First, the language of the clause must be clear and unmistakable.'" (Id.) "'Second, the delegation must not be revocable under

state contract defenses such as fraud, duress, or unconscionability.'" (Id.)

Here, the arbitration agreements do not "clearly and unmistakably" state that the issue of arbitrability, specifically, was to be left to the arbitrators. Defendants argue the agreements do contain such language because they require all claims to be submitted. In support, Defendants cite to Henry Schein, Inc. v. Archer and White Sales, Inc (2019) 129 S. Ct. 524. However, the Supreme Court in that case stated "we express no view about whether the contract at issue in this case in fact delegated the arbitrability question to an arbitrator." (Id. at 531.) The terms of an arbitration agreement were not actually at issue in the case and the court did not find that "any and all" language creates a clear and unmistakable intent to have arbitrators determine arbitrability.

In deciding whether to compel arbitration, courts identify the controversy and then decide whether it is within the scope of the arbitration provisions. (Titolo v. Cano (2007) 157 Cal.App.4th 310, 316.)

> "To determine whether a particular dispute falls within the scope of an agreement's arbitration clause, a court should undertake a three-part inquiry." (Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc., 252 F.3d 218, 224 (2d Cir.2001).
>
> "First, recognizing there is some range in the breadth of arbitration clauses, a court should classify the particular clause as either broad or narrow. Next, if reviewing a narrow clause, the court must determine whether the dispute is over an issue that is on its face within the purview of the clause, or over a

> collateral issue that is somehow connected to the main agreement that contains the arbitration clause. Where the arbitration clause is narrow, a collateral matter will generally be ruled beyond its purview. Where the arbitration clause is broad, there arises a presumption of arbitrability and arbitration of even a collateral matter will be ordered if the claim alleged implicates issues of contract construction or the parties' rights and obligations under it."

(Id. (emphasis added; internal citations and quotations omitted).)

1. The causes of action

The causes of action in the complaint are for (1) stalking in violation of Civ. Code § 1708.7, (2) physical invasion of privacy in violation of Civ. Code § 1708.8, (3) constructive invasion of privacy in violation of Civ. Code § 1708.8, (4) intentional infliction of emotional distress, and (5) loss of consortium.

Defendants state that Plaintiffs' claims against them as entities are that they were subject to mistreatment pursuant to official Church doctrine after they filed police reports; contentions that they could have prevented the violence against them committed by Masterson; and allegations of traumatic experiences while they were part of the Church. (First amended complaint ¶¶ 70-77, 152,-163, 273, 279, 285, 293.)

The causes of action begin at paragraph 262 of the complaint and incorporate all preceding paragraphs. However, the charging allegations of the causes of action themselves are limited to the alleged harassment Plaintiffs experienced after they came forward regarding the alleged sexual violence.

2. The Arbitration Agreements

Plaintiffs Jane Doe #1, Bixler and Bixler-Zavala agreed to be bound in order to participate in "Religious Services of the Scientology Religion."

> "The term "Religious Services," as used in this Contract, means and refers to the beliefs and practices set forth in the writings and spoken words of LRH on the subjects of Dianetics and Scientology published with the identifying S and double triangle or Dianetics triangle symbol, and all services or application of the principles of Mr. Hubbard provided to me by the ministers or staff of the Church and all other Scientology churches and organizations, including without limitation: "auditing," which is Scientology's unique form of religious counseling encompassing all services on the Scientology Classification, Gradation and Awareness Charts which includes, without limitation, all levels, rundowns, grades, assists, reviews, repairs, seminars, co-audits; all Scientology congregational services of any description; "training," which is the study of the scripture of the Scientology religion on the road to achieving spiritual freedom and salvation and includes without limitation all services identified on the Scientology Classification, Gradation and Awareness Chart, all courses, internships exclusively and cramming; the application of Scientology Ethics and Justice technology, which are both exclusively religious components of the practice of

> the Scientology religion; the study and the application of the principles contained in the administrative writings of LRH used within the Church; and any and all other services or use of the technology of L. Ron Hubbard, without limitation, provided to me by the ministers or staff of the Church and all other Scientology churches and organizations."

(Marmolejo Decl. Exhs. 7-14; Heller, Exh. 7 sec.2 d.)

The arbitration clauses state that it will cover "any dispute, claim or controversy that arises between me and the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity . . ." (Id. Sec 6(d).) (emphasis added).

As to Jane Doe #2, the arbitration agreements cover ". . . any dispute claim or controversy including but not limited to [those] arising under this Application/ Agreement or in connection with my participation in the Service . . ." (Marmolejo Decl. Exhs. 1-6.) There is another statement that "in no event shall any dispute, claim, or controversy arising out of my participation in the service be submitted to a court . . ." (Id.)

The "Services" in the agreements are as follows: (1) "Personal values + integrity course" (Id. Exh. 1); "purification rundown" (Exh. 2); "[illegible] conduct" (Exh. 3.); "auditing" (Exh. 4); Blank description of Services (Exh. 5); "BSM retrieval" (Exh. 6).

While an arbitration agreement is tied to the underlying contract containing it, and applies "only where a dispute has its real source in the contract [because] the object of an arbitration clause is to implement a contract, not to transcend it" (Litton Fin.

Printing Div. v. NLRB (1991) 501 U.S. 190, 205), here, Plaintiffs Bixler, Bixler-Zavala, and Jane Doe #1 signed lifelong agreements to be bound to arbitrate any and all claims against Scientology. The plain words of the contract are that all claims against Scientology will be sent to arbitration.

All of the arbitration agreements apply to any dispute, and are not limited to claims that arise from the contracts. The agreements in the motion to compel cover the instant dispute.

2. Defenses to Enforcement

Plaintiffs argue the agreements are unconscionable. Defendants argue the First Amendment bars any unconscionability claim by a secular court.

In secular arbitration agreements, unconscionability is a valid reason for refusing to enforce an arbitration agreement under CCP section 1281 because it is a reason for refusing to enforce contracts generally. (See Armendariz v. Foundation Health Psychcare Servs. (2000) 24 Cal.4th 83, 113-27.)

The Court here cannot review the arbitration agreements for unconscionability without stepping into a mire of religious doctrine – whether the rules of Scientology are fair as applied to Plaintiffs would require the Court to delve into the doctrines of Scientology. The First Amendment Free Exercise Clause prevents the Court from engaging in that inquiry. As stated by the U.S. Supreme Court in Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 US 696:

"The rule of action which should govern the civil courts . . . I, 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." 426 U.S. at 709.

Time for Discovery

Plaintiffs request additional time for discovery to "reveal the unconscionability of these arbitration agreements and that Defendants so-called arbitration process is not an arbitration at all." (Opp. p. 17.) As the Court does not address the issue of unconscionability, the request is denied.

Whether the Court Should Deny Arbitration Pursuant to CCP sec. 1281.2 (c)

Plaintiffs request that the Court deny arbitration under CCP sec. 1281.2(c), which gives the Court discretion to deny arbitration when there is pending litigation between either party and a third party that involves issues of law or fact common to the arbitration.

1. Masterson

Plaintiffs argue that the Court should not compel the parties to arbitration because Defendant Masterson did not move to compel arbitration and is not a party to the agreements.

Defendants argue that Masterson is not a "third-party" because Plaintiffs have alleged that he is an agent of theirs and Masterson would therefore be entitled to the enforcement of the agreement.

"[W]hen a plaintiff alleges a defendant acted as an agent of a party to an arbitration agreement, the defendant may enforce the agreement even though the

defendant is not a party thereto." (Thomas v. Westlake (2012) 204 Cal.App.4th 605, 614.) This creates an "exception[] to the general rule that a nonsignatory ... cannot invoke an agreement to arbitrate, without being a party to the arbitration agreement." (Id. citing Westara v. Marcus & Milichap Real Estate Investment Brokerage Co. Inc. (2005) 129 Cal.App.4th 759, 765.)

Masterson does not object to participating in the arbitration and may therefore participate.

2. Plaintiff Marie Bobette Riales

Plaintiff Marie Bobette Riales did not sign an arbitration agreement with Defendants, and therefore cannot be ordered to participate in the arbitration.

While there may indeed be overlapping issue of fact or law, denying arbitration would have the effect of the Court wading into doctrinal issues, which the Court cannot do. The request to deny arbitration pursuant to CCP sec. 1281.2(c) is denied.

The motions to compel arbitration are granted. The action is stayed as to Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1, and Jane Doe #2.

The Motion to Compel Arbitration filed by Church of Scientology International, Church of Scientology Celebrity Centre International on 04/01/2020, Motion to Compel Arbitration filed by Church of Scientology International, Church of Scientology Celebrity Centre International on 04/01/2020, Motion to Compel Arbitration filed by Religious Technology Center on 04/01/2020, and Motion to Compel Arbitration filed by Religious Technology Center on 04/01/2020 are Granted.

Status Conference re Arbitration is scheduled for 06/30/21 at 08:30 AM in Department 57 at Stanley Mosk Courthouse.

There remains the case of Plaintiff Marie Bobette Riales. Earlier in the case the Court denied Defendants' demurrer for improper joinder. Given the order compelling arbitration of the other Plaintiffs' claims, the Court wishes to discuss whether her case should be severed from the claims of the others and proceed independently, or be stayed pending completion of the arbitrations. These matters will be addressed at the case management conference on January 29, 2021. The parties may file a brief on these matters no later than 5 court days before the case management conference, to be no longer than 3 pages.

Clerk to give notice to moving party who is to give notice.

Certificate of Mailing is attached.

APPENDIX E

COURT OF APPEAL STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

[SEAL]

Daniel P. Potter
Clerk of the Court / Executive Officer
300 South Spring Street
Second Floor, North Tower
Los Angeles, California 90013
(213) 830-7000

September 22, 2021

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Re: *Bixler v LASC (Church of Scientology International)* Case No.: B310559;
LASC Case No.: 19STCV29458

Dear Counsel:

The court has completed its initial review of the briefs and record in this matter, and seeks additional briefing on the following issue: Whether the compelled arbitration is sufficiently neutral to constitute

an enforceable arbitration. (Compare *Garcia v. Church of Scientology Flag Service Organization, Inc.* (M.D. Fla. 2018) 2018 WL 3439638, *3-*4, appeal filed Aug. 16, 2018 [recognizing that the partiality of Scientology arbitrators was "a given," but declining to apply secular notions of due process] with *Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 687-689, 691 [internal review committee procedure, in which the defendant employer was the decision-maker and disputes were resolved pursuant to employer's rules was not sufficient neutral to constitute an arbitration].)

The parties may address this issue by letter briefs, not to exceed 7 pages, to be filed on or before Friday, October 1, 2021. Responsive letter briefs, not to exceed 5 pages, shall be filed on or before Friday, October 8, 2021. All briefs must be filed through True Filing. The case will be taken off the court's October calendar and continued to the November calendar. New calendar notices will be issued.

Very truly yours,

DANIEL P. POTTER, Clerk

By: /s/ K. Dominguez
K. Dominguez, Deputy Clerk

APPENDIX F

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

———

MEMORANDUM

TO: THE SUPREME COURT OF THE STATE OF CALIFORNIA

FROM: PRESIDING JUSTICE LAURENCE D. RUBIN
ASSOCIATE JUSTICE LAMAR W. BAKER
ASSOCIATE JUSTICE CARL H. MOOR

DATE: February 15, 2022

RE: RECOMMENDATION TO DENY REQUEST FOR PUBLICATION
Compliance with California Rules of Court, rule 8.1120 *Bixler v. SCLA* (*RPI Church of Scientology*)
B310559
Opinion filed January 19, 2022

Attached is a copy of the typewritten opinion filed in the above case, not certified for publication. Also attached is the following: (1) a copy of a letter dated February 7, 2022, filed by Hub Law Offices of Ford Greene by Ford Greene, a non party to this action, requesting publication of the opinion; (2) a copy of a letter dated February 8, 2022, filed by Bobby Thompson, counsel for Plaintiff Chrissie Carnell Bixler, requesting publication of the opinion; (3) a copy of letter dated February 11, 2022, filed by Winston &

Strawn by William H. Forman, counsel for Defendants and Real Parties in Interest Church of Scientology International and Church of Scientology Celebrity Centre International opposing publication.

It is the view of this court that the issues involved are not such that the opinion meets the criteria for publication specified in rule 8.1120. This was the original view of the members of the panel participating in the opinion, and after re-examination and reconsideration of the matter of publication, we still consider that view to be valid. Inasmuch as the decision in this matter has become final as to this court, pursuant to rule 8.1120, this court is referring the matter to the Supreme Court in the above context.

Attachments

APPENDIX G

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

[Filed March 9, 2021]

B310559
(Super. Ct. No. 19STCV29458)

CHRISSIE CARNELL BIXLER *et al*.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al*.,

Real Parties in Interest.

(Steven J. Kleifield, Judge)

ORDER

THE COURT:

The court has read and considered the petition for writ of mandate filed February 23, 2021, the amicus curiae brief filed March 3, 2021, and the preliminary opposition filed March 5, 2021. The petition is denied. Petitioners have an adequate remedy by way of appeal if the trial court enters an order confirming an adverse arbitration award. (*Felisilda v. FCA US LLC* (2020)

53 Cal.App.5th 486, 495; *Atlas Plastering, Inc. v. Superior Court* (1977) 72 Cal.App.3d 63, 67 ["The preferred procedure is to proceed by arbitration and attack confirmation on appeal"].) The stay imposed by this court on February 25, 2021, is vacated.

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

I would issue an order to show cause returnable in this court.

/s/ Rubin
RUBIN, P. J.

APPENDIX H

IN THE SUPREME COURT OF CALIFORNIA

En Banc

[Filed May 26, 2021]

S267740

CHRISSIE CARNELL BIXLER *et al.*,

Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al.*,

Real Parties in Interest.

The petition for review is granted. The matter is transferred to the Court of Appeal, Second Appellate District, Division Five, with directions to vacate its order denying the petition for writ of mandate and to issue an order directing the respondent superior court to show cause why the relief sought in the petition should not be granted.

Cantil-Sakauye
Chief Justice

Corrigan
Associate Justice

Liu
Associate Justice

Cuéllar
Associate Justice

Kruger
Associate Justice

Groban
Associate Justice

Jenkins
Associate Justice

APPENDIX I

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

[Filed June 4, 2021]

B310559

(Super. Ct. No. 19STCV29458)

CHRISSIE CARNELL BIXLER *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al.*,

Real Parties in Interest.

(Steven J. Kleifield, Judge)

ORDER

TO THE SUPERIOR COURT OF LOS ANGELES COUNTY:

The court has read and considered the petition for writ of mandate filed February 23, 2021, the amicus curiae brief filed March 3, 2021, and the preliminary opposition filed March 5, 2021. Pursuant to the Supreme Court's May 26, 2021 order, you are directed to show cause before this court in its courtroom at 300

South Spring Street, Los Angeles, California 90013, on October 5, 2021, why the relief prayed for in the petition should not be granted.

The return to the order to show cause, if any, shall be filed on or before July 9, 2021.

A reply, if any, shall be filed on or before August 13, 2021.

The order compelling arbitration is stayed pending resolution of this matter or until further order of this court. Our March 9, 2021 order denying the petition for writ of mandate is vacated.

WITNESS THE HONORABLE LAURENCE D. RUBIN, Presiding Justice of Division Five of the Court of Appeal of the State of California, Second Appellate District.

ATTEST my hand and the seal of this court this 4th day of June, 2021.

DANIEL P. POTTER, Clerk

By /s/ K. Dominguez [SEAL]
Deputy Clerk

/s/ Rubin	/s/ Baker	/s/ Moor
RUBIN, P.J.	BAKER, J.	MOOR, J.

APPENDIX J

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES,
CENTRAL DISTRICT

Case No. 19STCV29458
[Assigned to Hon. Steven J. Kleifield, Dept. 57]

CHRISSIE CARNELL BIXLER; CEDRIC BIXLER-ZAVALA; JANE DOE #1; MARIE BOBETTE RIALES; and JANE DOE #2,

Plaintiff,

v.

CHURCH OF SCIENTOLOGY INTERNATIONAL; RELIGIOUS TECHNOLOGY CENTER; CHURCH OF SCIENTOLOGY CELEBRITY CENTRE INTERNATIONAL; DAVID MISCAVIGE; DANIEL MASTERSON; and DOES 1-25,

Defendants.

DECLARATION OF LYNN R. FARNY IN SUPPORT OF DEFENDANTS CHURCH OF SCIENTOLOGY INTERNATIONAL AND CHURCH OF SCIENTOLOGY CELEBRITY CENTRE INTERNATIONAL'S MOTION TO COMPEL RELIGIOUS ARBITRATION

[Filed Concurrently with: Notice of Motion and Motion To Compel Religious Arbitration; Memorandum of Points and Authorities;

Appendix of Non-California Authorities; Declarations of William H. Forman, Margaret Marmolejo, and Sarah Heller; [Proposed] Order and Proof of Service]

Dept.: 57
Date: July 21, 2020
Time: 8:30 a.m.

RESERVATION ID: 223516322910
Action filed: August 22, 2019
Trial date: Not yet set

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Attorneys for Church of Scientology International and Church of Scientology Celebrity Centre International

DECLARATION OF LYNN R. FARNY

I, Lynn R. Farny, declare as follows:

1. I began working in an official capacity for the Church of Scientology International ("CSI") in 1984. I have been a corporate officer of CSI since 1988. I have been an ordained minister of the Scientology religion since 1980. As such, I am intimately familiar with the tenets of the hierarchical Scientology religion, as well as the manner in which CSI accomplishes its religious mission. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

CHURCH OF SCIENTOLOGY INTERNATIONAL/ CHURCHES OF SCIENTOLOGY

2. CSI is a non-profit religious corporation incorporated in the State of California, with its principal place of activity in Los Angeles, California. CSI is the "Mother Church" of Scientology, the religion founded by L. Ron Hubbard. CSI has been and is committed and dedicated to the advancement and dissemination of the Scientology religion through the Scientology churches and missions that are under its ecclesiastical direction.

3. There are thousands of Scientology churches, missions and groups in more than 167 countries, including throughout the United States. Scientology is a religion that offers a precise path leading to a complete and certain understanding of one's true spiritual nature. Scientology comprises a body of knowledge which extends from certain fundamental truths developed by Mr. Hubbard. The ultimate goal of Scientology

is true spiritual enlightenment and spiritual freedom for all.

4. As the Mother Church of the Scientology religion, CSI's exclusive purposes are to oversee the ministry of religious services to Scientology parishioners by the churches and missions of Scientology, to minister religious services to staff of Scientology churches, to disseminate the beliefs and practices of Scientology, to promote the social betterment programs supported by the Church and to oversee the ecclesiastical administration of all Scientology churches and missions worldwide.

5. On October 1, 1993, the United States Internal Revenue Service recognized CSI as a church within the meaning of 26 U.S.C. section 170(b)(1)(A)(i), exempt from taxation as an organization described in 26 U.S.C. section 501(c)(3) of the Internal Revenue Code, organized and operated exclusively for religious and charitable purposes.

6. Within CSI is the Office of the International Justice Chief, the senior-most ecclesiastical position respecting Scientology justice procedures. I work closely with the International Justice Chief and staff of his office in my role as an officer of CSI.

SCIENTOLOGY RELIGIOUS SERVICES

7. Scientologists believe that ultimate salvation is dependent on increasing one's awareness of his true spiritual identity. In this regard, Scientology resembles the religions of the East, such as Buddhism and Hinduism. Rather than striving for an after-life in heaven, Scientologists believe that spiritual freedom is a transcendence of the endless cycle of birth to death. Spiritual freedom in Scientology requires the wisdom acquired through Scientology *training*, along

with the application of that wisdom through a unique form of spiritual counseling, called *auditing*.

8. The Scientology religion is composed in equal parts of the core religious services of *training* and *auditing*. The Scripture of Scientology embraces the study of all areas of life. Through Scientology *training* one obtains the wisdom to understand who he is, what he is, where he comes from and his relationship to the universe.

9. Auditing is ministered by a specially trained individual called an *auditor*. An auditor is precisely defined as *one who listens*, taken from the Latin *audire* which means "to hear or listen." Auditing is ministered in confidential one-on-one sessions between an auditor and a parishioner. The parishioner is referred to as either a *preclear* (meaning he has not yet achieved the state of Clear) or *pre-OT* (meaning he has achieved the state of Clear but has not yet reached the state of Operating Thetan). In Scientology, a spiritual being is called a *thetan*. We use *thetan* to avoid confusions with other concepts and beliefs regarding the soul or spirit. It isn't something you have. In Scientology one is a spiritual being and has a body. An auditor is a minister of the Scientology religion and a member of its clergy.

10. Scientology auditing is based on the principle that if an individual looks at his own existence, he can improve his ability to confront what he is and where he is, thereby ridding himself, as a spiritual being, of past negative experiences. In Scientology one ultimately realizes his full spiritual potential and increases his abilities as a spiritual being.

11. Scientology auditing uses *processes*—exact sets of questions asked or directions given by an

auditor to help a person locate areas of spiritual distress. There are many, many different auditing processes in Scientology, and each one improves the individual's ability to confront and handle part of his existence. When the specific objective of any one process is attained, the process is ended. Rather than mere talking—or other non-religious practices such as psychological free-association, psychoanalysis, etc.—the questions or directions of a Scientology auditing process are precisely delineated and serve to guide the parishioner to understand a specific part of his existence. An auditor of the Church never tells the parishioner what he should think about himself, nor offers his opinion about what is being audited. Auditing seeks to restore the parishioner's certainty in his own viewpoint so as to discover his own spiritual identity. An auditor shows kindness, affinity, and patience to assist the parishioner in confronting his past and areas of spiritual upset or difficulty.

SCIENTOLOGY ETHICS AND JUSTICE

12. The Scientology Ethics and Justice system has been in place for over five decades, functioning as the means by which Scientologists avail themselves of true justice in any sphere of their lives. The justice codes and procedures are an inherent part of the religion, and are derived from our core beliefs. As Mr. Hubbard wrote, "When we speak of ethics, we are talking about right and wrong conduct. We are talking about good and evil." The concepts of good and evil are defined in precise terms according to fundamental Scientology doctrine relating to one's ultimate survival. They are a central reason why the religion has developed and requires the use of its own internal justice and dispute resolution structure, as I further explain in the immediately following paragraphs.

13. Scientologists believe that the dynamic principle of existence is "Survive!" Scientology does not proclaim the fact that man is trying to survive as a new discovery. Rather, the discovery of Scientology is that "Survive!" is the only common denominator to every life form. This urge to survive is called the *dynamic principle of existence*, and thus the primary motivation of life itself. It is also held that this dynamic principle of existence is compartmented into eight different parts, all integral to the essence of life. Scientology refers to these as the *eight dynamics*:

a. The first dynamic is SELF. This is the effort to survive as an individual, to be an individual. It includes one's own body and one's own mind.

b. The second dynamic is CREATIVITY. Creativity is making things for the future and the second dynamic includes any creativity. The second dynamic contains the family unit and the rearing of children as well as anything that can be categorized as a family activity.

c. The third dynamic is GROUP SURVIVAL. This is the urge to survive through a group of individuals or as a group. A group can be a community, friends, a company, a social lodge, a state, a nation, a race or in short, any group.

d. The fourth dynamic is SPECIES. This is the urge toward survival through all mankind and as all mankind.

e. The fifth dynamic is LIFE FORMS. This is the urge to survive as life forms and with the help of life forms such as animals, birds, insects, fish and vegetation.

f. The sixth dynamic is the PHYSICAL UNIVERSE. The physical universe has four components: matter, energy, space and time.

g. The seventh dynamic is the SPIRITUAL DYNAMIC, the urge to survive as spiritual beings or the urge for life itself to survive. The seventh dynamic is life source. This is separate from the physical universe and is the source of life itself.

h. The eighth dynamic is the urge toward existence as INFINITY. The eighth dynamic also is commonly called God, the Supreme Being or Creator, but it is correctly defined as infinity. It actually embraces the allness of all. That is why, according to L. Ron Hubbard, "when the seventh dynamic is reached in its entirety one will only then discover the true eighth dynamic."

14. The dynamics can be illustrated as a series of concentric circles with the first in the middle and the eighth on the outside. Through the practice of Scientology, one brings these factors into harmony. The Scientology religion encompasses all of these dynamics, addressing every facet of an individual's existence as a necessary component to achieving spiritual salvation and freedom.

15. In Scientology, the concepts of good and evil/right and wrong are defined in terms of the eight dynamics, and, indeed, can only be understood in the context of these dynamics: Acts are good which are more beneficial than destructive along these dynamics. Evil is the opposite of good, and is anything which is destructive more than it is constructive along any of the various dynamics.

16. In Scientology, spiritual progress and proper conduct are inextricably linked. The precepts of ethics in Scientology are reflected in a large body of Scientology Scripture written by Mr. Hubbard, and which form an essential component of the Scientology religion. The procedures for Scientology Ethics and Justice are delineated in Church policy, directives and books, including *Introduction to Scientology Ethics*, which are published and made available to all Scientologists.

17. Mr. Hubbard developed much of the Scientology justice system in the mid-1960s. This system includes codes of conduct and discipline to be applied by all members of the religion. All Scientologists agree to abide by the Scientology Ethics and Justice Codes as a necessary condition for participation in the religion.

18. Scientology Justice is a formalized system designed for fair and equitable treatment. It contains exact procedures for resolving matters ranging from Chaplain's Courts (to resolve matters of dispute between individuals) to a fact-finding body addressing all other disputes called a Committee of Evidence. Mr. Hubbard set forth a system of jurisprudence that is acceptable to all members and it is required that it be used in all matters relating to Scientology organizations, groups and concerns.

19. These procedures include resolution through direct communication with Chaplains and Ethics Officers, written application to senior ecclesiastical bodies, ethics and justice procedures and final Scientology arbitration. It is a principle of Scientology that tolerance, mercy, understanding and the actual handling of the individual is attainable by decent and effective Ethics and Justice.

20. A core tenet of the Scientology religion is that parishioners and Scientology churches *must* resolve all disputes exclusively through the Scientology internal Ethics, Justice and binding religious arbitration procedures. Mr. Hubbard wrote that "we have a superior law code and legal system which gives real justice to people," and he mandates that "we *must* use Scientology . . . justice in all our affairs."

21. The decisions, findings, judgments or other determinations made in a Scientology justice proceeding reflect fundamental religious beliefs, such as the "greatest good for the greatest number of dynamics." Therefore, it is a matter of Scientology doctrine that only specially qualified members of the Church, who are well-versed in Scientology policy, can adjudicate disputes concerning the proper interpretation and application of its religious laws. It is apparent, then, why Scientologists have any disputes adjudicated through the Scientology justice system, founded, as it is, upon their most fundamental religious beliefs.

22. The doctrine requiring submission of all disputes to the Scientology internal justice system in accordance with Scientology tenets, policies and principles is by no means trivial. Every Scientologist who wishes to participate in the religion of Scientology must commit himself or herself in writing to that doctrine that he or she undertakes such participation. I have reviewed agreements showing that Plaintiffs Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1, and Jane Doe #2 committed themselves in writing to the use of Scientology internal justice procedures, including religious arbitration, as a condition for receiving Scientology religious services.

23. The Church internal justice and dispute resolution procedures, including Church arbitration,

are based on Scientology Scripture. However, one need not be a practicing Scientologist to participate in these procedures. For example, a party to a 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 to the arbitrators.

24. To my knowledge, none of the Plaintiffs in this action contacted CSI or any Church of Scientology in an attempt to resolve the issues raised in the complaint as required by the terms of their agreements. Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1 and Jane Doe #2 have failed and/or refused to submit their dispute to the Church's justice procedures (including, but not limited to, religious arbitration) in accordance with their prior written, religious agreements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 30 of March 2020 at Los Angeles, California.

/s/ Lynn R. Farny
Lynn R. Farny

APPENDIX K

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

[Filed May 27, 2022]

B320217
(Super. Ct. No. 19STCV21210)
(Richard J. Burdge, Jr., Judge)

VALERIE HANEY,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

CHURCH OF SCIENTOLOGY INTERNATIONAL *et al*.,

Real Parties in Interest.

ORDER

THE COURT:

The court has read and considered the petition for writ of mandate filed May 11, 2022, the preliminary opposition filed May 23, 2022, and the motion for sanctions filed May 23, 2022. The petition is denied. The respondent court properly denied the motion for reconsideration pursuant to Code of Civil Procedure section 1008. The motion for sanctions is also denied.

/s/ Rubin	/s/ Baker	/s/ Moor
RUBIN, P.J.	BAKER, J.	MOOR, J.

I have signed the Court's denial order but write separately to observe that in my view the order does not preclude respondent court from reconsidering its order compelling arbitration on its own motion in light of the reasoning set forth in *Bixler v. Superior Court* (Cal. Ct. App., Jan. 19, 2022, No. B310559) 2022 WL 167792, or other grounds. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103; *Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 34 ["Trial courts always have discretion to revisit interim orders in service of the paramount goal of fair and accurate decisionmaking"].)

/s/ Rubin
RUBIN, P. J.