UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GAWAIN BAXTER et al.,

Plaintiffs,

v. Case No.: 8:22-cv-00986-TPB-JSS

DAVID MISCAVIGE et al.,

Defendants.
_____/

Plaintiffs' Opposition to Church of Scientology Flag Ship Service Organization, Inc. (FSSO)'s Motion to Compel Arbitration, or in the Alternative, to Dismiss

Plaintiffs Gawain and Laura Baxter and Valeska Paris were forced into Scientology as children, put to work under harsh conditions for little to no pay, and subject to arbitrary punishments and physical and mental abuse at the hands of Defendants and their employees. During that time, Defendants presented them with forms and documents that they were ordered to sign without reading under threat of severe punishment. And when they were finally permitted to leave after years of forced servitude and abuse, they were ordered to sign more forms before they could make travel arrangements or have their passports or identification returned. At no point did Plaintiffs know what they were signing or have any real choice but to sign the documents presented to them. Now that Plaintiffs have filed suit to hold Defendants accountable, Defendants are trying to use the arbitration provisions hidden in those forms to force Plaintiffs to participate in a secretive "ecclesiastical" proceeding

governed by Scientology rules and overseen by Defendants' own employees. The Court should deny Defendants' motions to compel for at least four reasons.

First, Defendants have not met their burden of proving the existence of a valid arbitration agreement because they cannot even identify which agreements are controlling and because no agreements to arbitrate were ever formed due to duress, fraud, and lack of mutual assent. **Second**, the arbitration procedures amount to an unlawful prospective waiver of Plaintiffs' substantive rights. **Third**, forcing Plaintiffs to participate in an "ecclesiastical" dispute resolution process when they no longer believe in Scientology would violate their First Amendment right to leave their religion. **Fourth**, Plaintiffs incorporate in full the arguments in Plaintiffs' Opposition to CSI's Motion to Compel ("Pls. CSI Br."), including that the arbitration agreements are unconscionable and not enforceable by third parties. In short, due to the way Plaintiffs were coerced to sign the agreements and their content, the provisions are void and unenforceable.[1]

I. *Garcia* Does Not Control Here

Defendants are wrong to suggest that the Court should compel arbitration here simply because the Eleventh Circuit did so in *Garcia v. Church of Scientology Flag Serv. Org., Inc.*, No. 18-13452, 2021 WL 5074465, at *3 (11th Cir. Nov. 2, 2021). Although both cases involve Scientology arbitration agreements, that is the extent of their similarity. There, because the conditions of duress, coercion, and fraud that are central

[1]As to FSSO's Motion to Dismiss, Plaintiffs incorporate in full the arguments made in their Oppositions to the motions of Defendants CSI, RTC, FSO, and IASA.

to this case were not present, the plaintiffs did not dispute that valid arbitration agreements were formed, and they never argued that the agreements violated their statutory or constitutional rights. *Id.* at *2. Because the plaintiffs never raised those challenges, the court addressed only one defense to arbitration: unconscionability. *Id.* But even as to that issue, the substantial factual differences meant that the court did not consider the key arguments that Plaintiffs raise here. *See* Pls. CSI Br. at 4-5 (distinguishing *Garcia*). Thus, denying FSSO's motion to compel is entirely consistent with the *Garcia* decision.

II. Defendants have not met their burden of proving the existence of a valid agreement to arbitrate.

Because "arbitration is a matter of contract," Defendants cannot compel arbitration if no valid agreement to arbitrate exists. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002). Defendants move to compel arbitration under both the Federal Arbitration Act (FAA) and the Convention on the Enforcement of Foreign Arbitral Awards (CEFAA). Under both, district courts apply "a summary judgment-like standard," and "may conclude as a matter of law that parties did or did not enter into an arbitration agreement only if 'there is no genuine dispute as to any material fact' concerning the formation of such an agreement." *Bazemore v. Jefferson Cap. Sys., LLC*, 827 F.3d 1325, 1333 (11th Cir. 2016).[2] Defendants have not met their initial burden of identifying the arbitration provision they seek to enforce, and that alone is

[2] *See also Munoz v. Row Mgmt. Ltd.*, No. 21-61605-CIV, 2021 WL 8999594, at *2 (S.D. Fla. Dec. 2, 2021) (applying *Bazemore* under CEFAA).

grounds for denying the motion. Regardless, *all* the purported arbitration agreements are void under three contract formation principles—duress, fraud, and mutual assent.[3]

A. Defendants fail to identify which arbitration terms govern.

As the parties moving to compel arbitration, Defendants bear the burden of proving "the existence and terms of the contract [they] wish[] to enforce." *Bazemore*, 827 F.3d at 1334. Here, however, Defendants have not identified the controlling agreement to arbitrate. Instead, they have thrown out 13 different potential contracts—many of which contain directly conflicting terms[4]—to see what sticks. This moving-target strategy prejudices Plaintiffs and wastes judicial resources. It is also legally deficient. By failing to identify which arbitration provision controls, Defendants have not satisfied their burden in moving to compel arbitration. *See Chuc v. City Fibers, Inc.*, Nos. B299854 & B301008, 2021 WL 1959212, at *5 (Cal. Ct. App. May 17, 2021). The Court should deny Defendants' motions on this ground alone.

B. The arbitration agreements were signed under severe duress.

The agreements are void due to the duress under which Plaintiffs signed them, which included imprisonment and threats of economic, reputational, and physical harm. "[D]uress generally exists whenever one is induced by the unlawful act of

[3] "[S]tate law generally governs whether an enforceable contract or agreement to arbitrate exists." *Bazemore*, 827 F.3d at 1333 (under FAA) (emphasis omitted); *Ullrich v. Ullrich*, No. 3:21-cv-147-TJC-PDB, 2021 WL 6884736, at *11 (M.D. Fla. Sept. 3, 2021) (same under CEFAA). Here, the Court should apply California law because the "Departure Agreements" each provide that they will be governed by California law, *see* Weber Decl. Exs. E, F, I, both parties agree on the application of California law to the underlying contract defenses, *see* Dkt. 84 at 13 n.4, and there is no conflict between California law and Florida law—the law of the forum—as to these contract defenses. *See Nationmotor Club Inc. v. Stonebridge Cas. Ins. Co.*, No. 10-CV-81157, 2013 WL 6729664, at *11 (S.D. Fla. Oct. 29, 2013). Regardless, Plaintiffs' arguments apply with equal force under Florida law.

[4] *See* subsection D *infra*.

another to make a contract or perform some other act under circumstances that deprive him of the exercise of free will." *Tarpy v. Cnty. of San Diego*, 1 Cal. Rptr. 3d 607, 614 (Cal. Ct. App. 2003). There are three types of duress. First, statutory duress "arise[s] from an unlawful confinement of a person or an unlawful detention of the person's property," *id.*, or even "lawful" confinement if that confinement is "fraudulently obtained, or fraudulently made unjustly harassing or oppressive," Cal. Civ. Code § 1569.[5] Second, economic duress "does not necessarily involve an unlawful act, but may arise from an act that is so coercive as to cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract." *Tarpy*, 1 Cal. Rptr. 3d at 614; *see also Leader Global Sols., LLC v. Tradeco Infraestructura, S.A. de C.V.*, 155 F. Supp. 3d 1310, 1317-18 (S.D. Fla. 2016). Third, duress also includes threats, such as of confinement or of physical or reputational harm. *See* Cal. Civ. Code § 1570.[6] Plaintiffs were under all three types of duress when they signed each agreement.[7]

Departure Agreements.[8] At the time they signed the Departure Agreements, each Plaintiff was desperate to free themselves from the confinement, forced labor, and

[5] Florida does not have a statutory defense of duress, but Florida courts would recognize duress in the same circumstances. *See, e.g.*, *City of Miami v. Kory*, 394 So. 2d 494, 497 (Fla. Dist. Ct. App. 1981).
[6] *See also* Restatement (Second) of Contracts § 176 (threats that amount to duress); *AMS Staff Leasing, Inc. v. Taylor*, 158 So. 3d 682, 687 (Fla. Dist. Ct. App. 2015) (citing § 176 under Florida law).
[7] The duress invalidates Plaintiffs' agreements with all Defendants because all Defendants, "kn[ew] that it ha[d] taken place and [took] advantage of it by enforcing the contract." *Chan v. Lund*, 116 Cal. Rptr. 3d 122, 134 (Cal. Ct. App. 2010).
[8] Defendants rely primarily on two sets of agreements, which they term the "Enrollment Agreements," Weber Decl. Exs. A, B, G, and the "Departure Agreements," Weber Decl. Exs. E, F, I. Defendants also refer at times to the "Covenants" signed by Gawain and Laura, Weber Decl. Exs. C, D, and Valeska, Heller Decl. Ex. A, and the "2007 Release Agreement" signed by Valeska. Plaintiffs adopt that terminology in this brief.

harsh conditions they had been desperately trying to free themselves from for years, and they had no reasonable alternative to signing.[9] Plaintiffs' years of experience taught them that refusing or questioning even the smallest order would result in punishment. L. Decl. ¶¶ 28, 32; G. Decl. ¶¶ 25-26, 29; V. Decl. ¶¶ 15-16, 25. And they understood that, if they did not sign the agreements—or even if they asked for time to read the documents thoroughly—their departures would be delayed or canceled altogether, and they could be subject to punishment and abuse. L. Decl. ¶¶ 28, 32; G. Decl. ¶¶ 25-26, 29; V. Decl. ¶¶ 38, 42.[10] And even if Plaintiffs could have risked punishment instead of signing the agreements, they were unable to leave without signing because Defendants prevented them from accessing their passports—and in the case of Laura and Gawain, prevented them from even preparing or packing—until after they signed. L. Decl. ¶ 27; G. Decl. ¶ 24; V. Decl. ¶ 38, 42.[11] In other words, not only were Plaintiffs unlawfully confined, but their property—their passports and identification documents—was also unlawfully detained, and they were threatened with further confinement. *See* Cal. Civ. Code §§ 1569(a), 1570. As a result, they had no choice but to sign the documents, irrespective of their contents, to gain their freedom and return of their property. *See Dai v. E. Tools & Equip., Inc.*, 571 F. App'x 609, 611 (9th Cir. 2014). (finding duress where a man was released from unlawful

[9] Declaration of Laura Baxter attached as Exhibit 1 ("L. Decl."), ¶¶ 3-26, 28, 32; Declaration of Gawain Baxter attached as Exhibit 2 ("G. Decl."), ¶¶4-23, 25, 29; Declaration of Valeska Paris ("V. Decl.") attached as Exhibit 3, ¶¶ 4-37, 42.

[10] *See also* Declaration of Michael Rinder attached as Exhibit 1 ("Rinder Decl."), ¶ 23-24.

[11] For Valeska, the threat of immigration consequences was explicit, with officials telling her they would help her get a visa to stay in Australia only if she signed. V. Decl. ¶ 38.

imprisonment only when he signed a contract).

Moreover, these circumstances certainly meet the less stringent requirements for economic duress. *See Tarpy*, 1 Cal. Rptr. 3d at 614. The already coercive situation described above was compounded by Defendants' economic power. Plaintiffs would be leaving Sea Org with no means to get a bank account or a job, or to even travel to their destination, without help from Defendants. L. Decl. ¶ 22; G. Decl. ¶ 20; V. Decl. ¶ 21. In short, there was no true choice for Plaintiffs between signing unknown documents that would finally buy their freedom and staying under the control of Sea Org. No reasonable person would have felt they had any alternative but to sign, and Plaintiffs have testified they would not have signed them if they thought they could have left without doing so. L. Decl. ¶ 33; G, Decl. ¶ 30; V. Decl. ¶ 42.[12]

Enrollment Agreements and Covenants.[13] By the time they signed the Enrollment Agreements and Covenants, Plaintiffs had each already been subjected to years of

[12] Even if the Departure Agreements were not signed under duress, they are invalid for two other reasons. First, they lack consideration. In return for their freedom—to which they were already "lawfully entitled," the Baxters were forced to agree to a one-sided contract that imposed onerous legal obligations on them and conferred no benefits at all. Cal. Civ Code §§ 1550, 1605. And although Valeska's contract lists a payment of $10,000 as consideration, it was the duress, not that payment, that prompted her to sign the agreement. V. Decl. ¶ 44. Thus, because consideration must "actually be bargained for as the exchange for the promise," *Steiner v. Thexton*, 226 P.3d 359, 421 (Cal. 2010), her contract also lacked consideration. Second, no FSSO representative signed on the line on the Baxters' Departure Agreements to indicate FSSO's assent. Though arbitration agreements generally need not be signed by both parties to be enforceable, there is no mutual assent where agreements provide a space for both parties' signatures but one party never signed. *See, e.g.*, *Juen v. Alain Pinel Realtors, Inc.*, 244 Cal. Rptr. 3d 411, 414 (Cal. Ct. App. 2019); *Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co.*, 80 Cal. Rptr. 2d 147, 148 (Cal. Ct. App. 1998). Here, there was both a line for a signature and a bolded and underlined section above the line entitled "Execution of Agreement by CSFSSO" that was left blank.

[13] Valeska signed the 2007 Release Agreement under similar circumstances, so that was also signed under duress. *See* Declaration of Valeska Paris attached as Exhibit 4 ("V. Decl."), ¶¶ 30-31.

trafficking, forced labor, and indoctrination, and they had been severely punished on multiple occasions for failure to comply with Defendants' directives. G. Decl. ¶¶ 3-12; L. Decl. ¶¶ 4-18; V. Decl. ¶¶ 2-23. They understood well that if they were ordered to sign a document, they had to do it or they would face punishment, including being forced to work in the hot and cramped engine room, put under surveillance, forced to work without pay, or forced to undergo abusive interrogations. G. Decl. ¶¶ 10-11, 20-21; L. Decl. ¶¶ 9, 16-18; V. Decl. ¶¶ 19-20, 25, 27-28. For Plaintiffs, it would be unthinkable to refuse an order to sign, even though they did not know what they were signing. *See* L. Decl. ¶¶ 14, 18; G. Decl. ¶¶ 14, 18; V. Decl. ¶¶ 16, 25, 42; *see also* subsection C *infra*.[14] In short, the threat of physical, economic, and reputational harm if they did not sign the agreements was real and immediate, and more than sufficient to constitute duress. *See, e.g.*, *Canales v. Performance Team Triangle W.*, 2003 WL 361242, at *2 (Cal. Ct. App. Feb. 20, 2003) (finding duress where employer threatened to withhold pay if employee did not sign agreement that she was not able to examine or understand).[15]

[14] In addition to being signed under duress, Laura' Enrollment Agreement was invalid because no FSSO representative signed on the line in the agreement to indicate FSSO's assent. *See* note 11 *supra*.

[15] Defendants contend that Plaintiffs' allegations of duress attack the agreements "as a whole" and thus are reserved for the "arbitral forum" to adjudicate. Dkt. 84 at 17 n.7. But Supreme Court precedent does not require a plaintiff to raise a *different* challenge to the validity of the arbitration agreement than would apply to the agreement as a whole. *See Nielsen Contracting, Inc. v. Applied Underwriters, Inc.*, 232 Cal. Rptr. 3d 282, 291–92 (Cal. Ct. App. 2018), *as modified on denial of reh'g* (May 23, 2018). To the contrary, it requires only that Plaintiffs specifically challenge the arbitration provision with a defense that would apply if that provision stood alone, which they have done here. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967) (court can adjudicate claims that "go[] to the 'making' of the agreement to arbitrate"); *cf. Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006) (court could not adjudicate claim that "contract as a whole" was invalid due to finance charge separate from arbitration provision); *see also Matterhorn, Inc. v. NCR Corp.*, 763 F.2d 866, 869 (7th Cir. 1985) ("There would . . . be a severe problem of bootstrapping if a party

C. The arbitration agreements are void due to fraud in the execution.

Fraud in the execution is when "the promisor is deceived as to the nature of his act, and actually does not know what he is signing, . . . mutual assent is lacking, and the contract is *void*." *Najarro v. Super. Ct. of San Bernadino Cnty.*, 285 Cal. Rptr. 3d 700, 714 (Cal. Ct. App. 2021) (cleaned up); *see also Oce N. Am., Inc. v. Caputo*, 416 F. Supp. 2d 1321, 1328 (S.D. Fla. 2006). Thus, "there is simply no arbitration agreement to be enforced." *Rosenthal v. Great W. Fin. Secs. Corp.*, 926 P.2d 1061, 1074 (Cal. 1996).

"For a contract to be negated by fraud, Plaintiff[s] must show that [they were] misled as to the basic character of the documents [they] signed and had no reasonable opportunity to learn the truth." *Garcia v. U.S. Bancorp*, No. CV 12-01596 SJO (RZx), 2012 WL 12892153, at *3 (C.D. Cal. June 25, 2012) (internal quotation marks omitted). Here, Plaintiffs were barely given any information about the documents they were ordered to sign, and they were never informed about arbitration at all. L. Decl. ¶¶ 12, 18, 29; G. Decl. ¶¶ 13-14, 17, 26; V. Decl. ¶¶ 15, 24, 31, 40-41. For example, all three Plaintiffs were told that signing the Departure Agreements was necessary before they could leave Sea Org, but none of them were told about arbitration. L. Decl. ¶¶ 27, 29; G. Decl. ¶¶ 24, 26; V. Decl. ¶¶ 40. *See Najarro*, 285 Cal. Rptr. 3d at 717-18 (finding fraud in the execution because employer told employees only that the documents were required "for 'insurance' purposes" and that they had to sign the documents to work).

Moreover, Plaintiffs also had no reasonable opportunity to learn the truth about

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to a contract could be forced to arbitrate the question whether he had been coerced or deceived into agreeing to arbitrate disputes arising under the contract.").

the arbitration agreements. Plaintiffs were never permitted to read the agreements in full. L. Decl. ¶¶ 12-13, 18, 31; G. Decl. ¶¶ 14, 17, 28; V. Decl. ¶¶ 15, 17, 24-25, 31, 40.[16] Defendants' agents usually simply pointed to where they should sign and pressured them into quickly signing. L. Decl. ¶¶ 12, 18; G. Decl. ¶¶ 14, 17; V. Decl. ¶¶ 15, 24, 40. And based on their experience, Plaintiffs knew they would be punished if they asked to read the documents or asked questions about their contents. L. Decl. ¶¶ 14, 18, 28, 32; G. Decl. ¶¶ 14, 17-18, 25, 28; V. Decl. ¶¶ 16, 25, 31; *see Najarro*, 285 Cal. Rptr. 3d at 717 (finding fraud in the execution where plaintiff testified that "Defendants presented me with the documents, flipped to the signature pages and pointed where I needed to sign, and would not allow me to read over the documents"). In short, Plaintiffs have established fraud in the execution because they were "not given an opportunity to review [the agreements] on their own," and they were ordered to sign them "without either a basic explanation of [their] terms or even an opportunity to view [them] unobstructed." *Id.* As a result, no arbitration agreements were formed.

D. There was no mutual assent to the terms of the arbitration provisions.

There is no meeting of the minds on the terms of a contract if the parties have purportedly agreed to multiple contracts with inconsistent and contradictory terms. *See Ragab v. Howard*, 841 F.3d 1134, 1138 (10th Cir. 2016) (holding that "the conflicting details in the multiple arbitration provisions indicate that there was no meeting of the minds with respect to arbitration"). Here, Defendants rely simultaneously on the

[16] Additionally, at the time Laura signed her Enrollment Agreement and Covenant, she had limited English skills and thus would not have been able to understand them even if she had been given time to read them. *See* L. Decl. ¶ 13.

arbitration provisions in three sets of contracts, which are supposedly in effect all at once.[17] But the terms of the arbitration provisions conflict. For example, the Enrollment Agreements do not provide for an appeal process, *see* Weber Decl., Exs. A, B, G, but the Departure Agreements do, *see id.*, Exs. E, F, I. And the Enrollment Agreements provide for a panel of three Scientologist arbitrators, *see id.*, Exs. A, B, G, but the Covenants and Departure Agreements provide only for resolution by the IJC, *see id.*, Exs. C, D, E, F, I. Finally, the arbitration provisions in the Enrollment Agreements apply to "any dispute, claim or controversy" without limitation, *see id.*, Exs. A, B, G, while the Departure Agreements apply only to enumerated disputes, *see id.*, Exs. E, F, I. These conflicting material terms cannot be reconciled, and therefore there was no meeting of the minds as to arbitration.

III. The arbitration agreements are void because they waive Plaintiffs' substantive rights under the TVPRA

This Court may not enforce the arbitration agreements because they unlawfully waive Plaintiffs' substantive rights under the TVPRA, both through the choice of ecclesiastical law and through procedures that prevent Plaintiffs from vindicating their rights.[18] It is well-established that a prospective waiver of Plaintiffs' substantive federal rights is void. *See, e.g.*, *14 Penn Plaza v. Pyett*, 556 U.S. 247, 273 (2009). That the waiver appears in an arbitration agreement does not make it enforceable. As the Supreme

[17] Indeed, the Departure Agreements contain provisions incorporating and reaffirming past contracts between Plaintiffs and FSSO. *See, e.g.*, Weber Decl. Exs. E, F ("I re-affirm covenants I signed when I became a member of the Church's staff and the Sea Organization, or signed from time to time").

[18] A court—not an arbitrator—must determine if an agreement unlawfully waives statutory rights "because the presence of an unlawful provision in an arbitration agreement may serve to taint the entire arbitration agreement." *Paladino v. Avnet Comp. Techs, Inc.*, 134 F.3d 1054, 1058 (11th Cir. 1998).

Court recently reaffirmed in *Viking River Cruises, Inc. v. Moriana*, "the FAA does not require courts to enforce contractual waivers of substantive rights and remedies" because "the FAA requires only the enforcement of 'provision[s]' to settle a controversy 'by arbitration,' and not any provision that happens to appear in a contract that features an arbitration clause."[19] 142 S. Ct. at 1919 & n.5 (2022) (citation omitted). The same logic applies to the CEFAA. *See* CEFAA, art. II, ¶¶ 1, 3; *see also* 9 U.S.C. § 208 (act implementing CEFAA incorporates FAA to the extent it does not conflict).

Although the Eleventh Circuit has "suggest[ed]" that prospective waiver may be raised under the CEFAA only at the award enforcement stage, *Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 545 (11th Cir. 2016), *Viking River* abrogates that precedent by clarifying that the statutory mandate to enforce arbitration agreements does not displace the rule against prospective waiver. In other words, the prospective waiver doctrine should not be analyzed as an "affirmative defense under the Convention," *Suazo*, 822 F.3d at 552, but as a separate question of whether a prospective waiver can be enforced, with or without arbitration.[20] As *Viking River*

[19] Although the waiver of substantive rights in *Viking River* was explicit, the Supreme Court has also adopted the "effective vindication" doctrine, holding that arbitration agreements that waive substantive rights through procedural mechanisms are invalid. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985) (arbitration can be compelled "so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum"). Regardless of whether a prospective waiver of federal rights is a standalone provision or is inherent in the procedural rules for arbitration, neither the FAA nor the NY Convention require its enforcement.

[20] The concerns that prompted the Eleventh Circuit to hold that addressing prospective waiver was "premature" at the motion to compel stage are also not present here because there is no question the arbitration procedure would waive Plaintiffs' rights. *See Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 540 (1995) (noting that if the court were "persuaded" that the choice-of-law clause operated as a substantive waiver it "would have little hesitation" in invalidating the agreement at motion to compel stage). And the concern that a prospective waiver defense could not be applied neutrally before international tribunals also misses the mark because it focuses on prospective waiver

makes clear, it cannot.[21] Indeed, if the Court were to compel Plaintiffs to waive their substantive rights under the CEFAA when that same waiver would be void in a non-arbitration contract, it would run afoul of the Supreme Court's directive in *Morgan v. Sundance, Inc.*, that "a court may not devise novel rules to favor arbitration over litigation." 142 S. Ct. 1708, 1713 (2022). In short, to the extent the Eleventh Circuit suggested that the Court should not consider Plaintiffs' prospective waiver argument at this time, recent Supreme Court cases clarify that it must.

Defendants' agreements deny Plaintiffs the ability to effectively vindicate their federal statutory rights—and therefore prospectively waive them—in three ways, each of which is sufficient alone to invalidate the agreements. **First,** the agreements "disclaim the application of state and federal law" by requiring that the sole substantive law to be applied is the religious law of Scientology.[22] *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 126 (2d Cir. 2019). By allowing claims only under Scientology ecclesiastical law, the agreements expressly require Plaintiffs to waive their rights under federal law, including the TVPRA. *See* Rinder Decl. ¶ 26. But an arbitration agreement may not "waive[] a potential claimant's federal rights through the guise of a choice of law clause." *Hayes v. Delbert Servs. Corp.*, 811 F.3d 666, 675 (4th Cir. 2016);

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as a defense available *under* the CEFAA, when in fact *Viking River* holds it is not.

[21] Even if the Court finds that effective vindication can be raised under the CEFAA only at the post-award stage, the CEFAA does not apply to the Baxters' Departure Agreements or Laura's Enrollment Agreement because those agreements are not signed by a representative from Scientology and thus are not "signed by the parties." CEFAA, art. II, ¶ 2.

[22] *See, e.g.*, Weber Decl. Exs. A, B, G (signatories are "bound exclusively by the . . . ecclesiastical rule, custom, and law of the Scientology religion" and arbitration will occur "[i]n accordance with" the same); E, F (arbitration "solely by Scientology ecclesiastical authorities applying the principles of the Scientology system of Ethics and Justice").

Gingras, 922 F.3d at 127. Although parties are generally free to choose which law will apply to their dispute, "a party may not underhandedly convert a choice of law clause into a choice of no law clause—it may not flatly and categorically renounce the authority of federal statutes to which it is and must remain subject." *Hayes*, 811 F.3d at 675 (citing cases). Thus, because Defendants use the choice of ecclesiastical law to waive Plaintiffs' federal statutory rights, the agreements are invalid and unenforceable.

Second, the arbitration agreements do not allow for selection of an impartial decision-maker, an essential condition for effective vindication of statutory rights. *See, e.g.*, *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1482 (D.C. Cir. 1997) (neutral arbitrator is necessary for effective vindication of rights); *see also Murray v. United Food & Com. Workers Int'l Union*, 289 F.3d 297, 303 (4th Cir. 2002) (by signing an arbitration agreement, parties "do not agree to forego their right to have their dispute fairly resolved by an impartial third party"). The Supreme Court has directed courts to be extremely "scrupulous [in] safeguard[ing] the impartiality of arbitrators," especially since they "have completely free rein to decide the law as well as the facts and are not subject to appellate review." *Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145, 149 (1968). Under the arbitration agreements here, Defendants employ or control the arbitrator(s) and have unilateral control over the pool of potential arbitrators. The disputes either must be decided solely by the International Justice Chief (IJC), an employee of Scientology who is controlled directly by Defendant CSI, or by a panel of Scientology arbitrators who are controlled by the IJC. *See* Rinder Decl.

¶ 25. In other words, Defendants would be adjudicating their own dispute. *See Trout v. Organización Mundial de Boxeo, Inc.*, 965 F.3d 71, 79–80 (1st Cir. 2020) (holding that an arbitrator-selection provision cannot allow one entity "to act as both 'party and judge'"); *Am. Exp. Co.*, 570 U.S. at 242 (Kagan, J., dissenting) (agreements to "appoint as an arbitrator an obviously biased person," such as an employee or officer of the defendant, would run afoul of the effective vindication doctrine).[23]

Moreover, the panel of arbitrators provided for in the Enrollment Agreements must be members of Scientology "in good standing," a criteria that only Defendants control. Weber Decl. Exs. A, B, G; Rinder Decl. ¶ 25; *see McMullen v. Meijer, Inc.*, 355 F.3d 485, 494 (6th Cir. 2004) (one party's control of arbitrator pool "prevents [the forum] from being an effective substitute for a judicial forum because it inherently lacks neutrality"). Indeed, as demonstrated by Plaintiffs' experiences, Defendants use threats of harm, intense interrogation sessions, and punishments such as forced labor, reduced pay, and 24-hour surveillance to control their members. Thus, the pool of arbitrators would likely include those who fear being punished if they render an arbitration award against Scientology. Further, any member of Scientology would have been required to sign agreements similar to those signed by Plaintiffs, Rinder Decl. ¶ 22, which give Defendants enormous power, including allowing Defendants to keep a folder of likely compromising information about their past transgressions. *See, e.g.*, Weber Decl. Exs. A, B, G. Under those circumstances, no person otherwise

[23] A party may not "may not reserve unto itself the power to name the sole arbitrator" under any circumstances, let alone when it is one of its employees. 97 Am. Jur. Trials 319 § 6 (2005).

eligible to serve as an arbitrator could maintain neutrality.[24]

Third, Plaintiffs cannot effectively vindicate their rights because they are not allowed counsel of their choice. *See Garcia*, 2021 WL 5074465, at *3 (under arbitration agreement identical to Enrollment Agreement, attorney was informed procedures did not allow "secular lawyers" to play a substantive role); Rinder Decl. ¶ 27. Not only is retaining counsel necessary to "have a fair opportunity to vindicate effectively statutory rights," *Rembert v. Ryan's Fam. Steak Houses, Inc.*, 596 N.W.2d 208, 230 (Mich. Ct. App. 1999), but it is in of itself a fundamental statutory and constitutional right. *See Powell v. Alabama*, 287 U.S. 45, 69 (1932) (recognizing that "refus[ing] to hear a party by counsel, employed by and appearing for him" is "a denial of a hearing, and, therefore, of due process in the constitutional sense"); *F.T.C. v. Lalonde*, 545 F. App'x 825, 832 (11th Cir. 2013) ("A civil litigant has the right to retain counsel of his choice under the Fifth Amendment's Due Process Clause."); *see also* 28 U.S.C. § 1654. Plaintiffs cannot be compelled to arbitrate without this basic due process protection.

In short, not only do the arbitration provisions prospectively waive Plaintiffs' TVPRA rights by applying only Scientology substantive law, but the arbitration procedures make it impossible for Plaintiffs to effectively vindicate those rights in arbitration. For that reason, they cannot be upheld. And the offending provisions are

[24] Deciding that arbitrators would not be neutral for these reasons would not require the court to delve into ecclesiastical questions because it is based on Plaintiffs' testimony about the way they and others in Scientology were treated and the contract terms, not on Scientologists' religious beliefs. *See Garcia*, 2021 WL 5074465, at *11 (recognizing that neutrality of arbitrators did not implicate religious doctrine); *see also* Pls. CSI Br. at 4-7(discussing religious abstention issue).

not severable because the arbitration agreements' "central purpose" is "tainted with illegality." *Castillo v. CleanNet USA, Inc.*, 358 F. Supp. 3d 912, 948 (N.D. Cal. 2018); *see also Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 896 (9th Cir. 2002) (refusing to sever "objectionable provisions" where they "pervade the entire contract"). Indeed, excising the arbitrator, the procedures, and the substantive law from the agreement would leave "nothing meaningful" to enforce. *Gingras*, 922 F.3d at 128. And even if anything would be left, courts do not sever provisions "when a party uses its superior bargaining power to extract a promise that offends public policy." *Dillon v. BMO Harris Bank, N.A.*, 856 F.3d 330, 337 (4th Cir. 2017). Here, "one of the animating purposes of the arbitration agreement was to ensure that [Defendants] could engage in [illegal conduct] free from the strictures of any federal law," *Hayes*, 811 F.3d at 676; Rinder Decl. ¶ 22, and thus the Court should "opt not to redraft an agreement to enforce another promise in that contract," *Dillon*, 856 F.3d at 337.

IV. Forcing Plaintiffs into a religious adjudication process would violate their First Amendment Rights

Plaintiffs have an "*inalienable* First Amendment right to the free exercise of religion, which includes the right to change [their] religious beliefs." *In re Marriage of Weiss*, 49 Cal. Rptr. 2d 339, 347 (1996); *see Abbo v. Briskin*, 660 So. 2d 1157, 1159 (Fla. Dist. Ct. App. 1995) ("The freedom to choose any religion necessarily comprehends the freedom to change religions.").[25] And "[i]mplicit in the right to choose" a religion "is

[25] Although Plaintiffs are not U.S. Citizens and reside abroad, the First Amendment still applies because, if the Court were to compel arbitration in the United States as the agreements provide, the First Amendment violation would be committed by a U.S. Court in the United States. *See, e.g.*,

the right of unhindered and unimpeded withdrawal" from it. *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 777 (Okla. 1989). Indeed, it is "axiomatic that neither contract nor court order can deprive [Plaintiffs] of the right to change [their] mind where religion is involved." *Hackett v. Hackett*, 146 N.E.2d 477, 482 (Ohio Ct. Com. Pl. 1957), *aff'd*, 150 N.E.2d 431 (Ohio Ct. App. 1958).

To the extent Plaintiffs once sincerely believed in Scientology as a religion, none of them do now. L. Decl. ¶ 40; G. Decl. ¶ 37; V. Decl. ¶ 35, 45. Thus, compelling Plaintiffs to resolve their federal statutory claims through a proceeding governed by Scientology religious doctrine would violate their First Amendment right to withdraw from Scientology. In *Bixler v. Superior Ct. for the State of Cal.*, No. B310559, 2022 WL 167792, at *12-14 (Cal. Ct. App. Jan. 19, 2022), the California Court of Appeals held that compelling former Scientology members to participate in Scientology arbitration violated their First Amendment rights. The court emphasized that "a party cannot bargain away her constitutional right to change religions," and thus the court could not enforce an agreement in which the plaintiffs had agreed to have all disputes decided according to Scientology religious principles by Scientology members. *Id.* at *11 & n.20. "To hold otherwise would bind members irrevocably to a faith they have the constitutional right to leave." *Id.* at *11.

The *Bixler* court's holding addressed the facts before it, which involved claims based

Abdulkadir v. Hardin, No. 2:19-cv-120-SPC-MRM, 2021 WL 9406649, at *2 (M.D. Fla. Apr. 13, 2021) (applying Free Exercise Clause to foreign nationals in United States); *see also Trump v. Hawaii*, 138 S. Ct. 2392, 2416-18 (2018) (applying First Amendment to exclusion of non-citizens).

on conduct that occurred solely after those plaintiffs left Scientology. *See id.* at *15. The court did not reach the issue whether arbitration could be compelled if the plaintiffs brought claims based on conduct that occurred while they were still members. *Id.* at *15 n.22. But the court's reasoning applies with equal force here because Plaintiffs no longer believe in Scientology and seek to bring claims under federal statutory law that have nothing to do with their religious beliefs, ecclesiastical doctrine, or internal Scientology matters. *See id.* at *13; *see also* Pls. CSI Br. at 6-7. Compelling them to participate in a Scientology proceeding now would violate their rights in the same way it did for the plaintiffs in *Bixler*.[26]

Nothing in the FAA or the CEFAA mandates a different result. As the *Bixler* court recognized, requiring Scientology arbitration procedures here would be "a sub silencio waiver of petitioners' constitutional right to extricate themselves from the faith." *Id.* at *15. And as described in section III above, the Supreme Court recently reiterated in *Viking River* that the FAA—and by extension the CEFAA—does not empower the Court to enforce an otherwise illegal waiver of substantive rights. 142 S. Ct. at 1919 n.5. As a result, neither statue requires the Court to enforce an arbitration agreement that would waive Plaintiffs' First Amendment right to leave their religion.[27]

[26] Because Plaintiffs were forced to continue their participation in Scientology against their will, when they were no longer "members" of Scientology is not a logical point of distinction. Their compelled association with a religion should not be used to further compel their association with that religion.

[27] Refusing to enforce a waiver of Plaintiffs' First Amendment rights does not single out religious arbitration for different treatment as Defendants contend. To the contrary, courts will not enforce implied waivers of constitutional rights in any contract, and Scientology's religious arbitration agreement is no exception. *See Curtis Pub. Co. v. Butts*, 388 U.S. 130, 145 (court will not find waiver of First Amendment rights absent "clear and compelling" relinquishment).

CONCLUSION

The evidence produced by Plaintiffs is more than sufficient to allow the Court to deny FSSO's motion as a matter of law. But if the Court finds that there is a dispute of material fact, "the proper procedure is for the Court to 'proceed summarily' to a trial to determine whether an agreement to arbitrate exists."[28] *Mitchell v. Precision Motor Cars Inc.*, 2017 WL 1361528, at *4 (M.D. Fla. Apr. 14, 2017) (quoting FAA, 9 U.S.C. § 4); *see also* 9 U.S.C. § 208 (FAA fills gaps in CEFAA).[29] For the foregoing reasons, and the reasons described in Plaintiffs' Oppositions to the Motions of the other four Defendants, FSSO's Motion should be denied or, in the alternative, the Court should proceed with discovery and trial on any disputed issues of fact regarding arbitrability.

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Respectfully submitted,

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[28] If the Court follows this procedure, Plaintiffs request the opportunity to conduct limited discovery before trial because information needed to prove their defenses is in Defendants' sole possession. And if the Court decides the FAA trial procedure is not applicable, it should still order discovery if the motion to compel cannot be decided as a matter of law. *See Chamlee v. Jonesboro Nursing & Rehab. Ctr., LLC*, No. 1:18-CV-05899-ELR, 2019 WL 6042273, at *4 (N.D. Ga. Aug. 14, 2019) ("The Court has the discretion to allow limited discovery on the issue of arbitrability.").

[29] Indeed, that is the procedure the court followed in *Garcia*. *See* 2021 WL 6074465, at *2 (noting that the district court held an evidentiary hearing on the motion to compel).

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