No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIRST APPELLATE DISTRICT

DIVISION NO. _____

CHRISSIE CARNELL BIXLER, ET AL.,

Plaintiffs and Petitioners,

v.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF LOS ANGELES,

Respondent.

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

Defendants and Real Parties in Interest.

PLAINTIFFS/PETITIONERS' PETITION FOR WRIT OF MANDATE

Los Angeles County Superior Court Case No. 19STCV29458
Honorable Steven J. Kleifield
Department No. 57

Robert W. Thompson (SBN: 250038)
bobby@tlopc.com
Thompson Law Offices, P.C.
700 Airport Boulevard, Suite 160
Burlingame, CA 94010
Telephone: (650) 513-6111
Facsimile: (650) 513-6071

Attorney for Plaintiffs/Petitioners

CERTIFICATE OF INTERESTED ENTITIES

(Cal. Rules of Court, Rules 8.208, 8488)

Petitioners Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1, and Jane Doe #2 know of no other entity or person that must be listed as an interested party under Rules 8.208 and 8.488.

Date: February 23, 2021

By 

Robert W. Thompson
Attorney for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Petitioners in this case are victims of violent sexual assault and rape by Defendant Daniel Masterson (with the exception of Petitioner Bixler-Zavala who is the husband of Petitioner Carnell-Bixler) on various occasions. Petitioners Carnell-Bixler, Jane Doe #1, and Jane Doe #2, are former Scientologists; Petitioners Bixler-Zavala have never been members of the Church of Scientology.

After Petitioners reported the sexual assaults to legal authorities in violation of Church dogma, all the Petitioners relevant to this motion were all deemed "Suppressive Persons"—individuals who Defendants declare to be an enemy of Scientology. Scientology doctrine holds that reporting any crime by any member of the Church to police is considered a "high crime" in the faith and subject to punishment. (See 1 EP 13). ("Police and courts offer an open-armed opportunity to the vicious and corrupt to establish themselves in a position of safety while satisfying their strange appetites or perverted viciousness toward their fellow man."). As a result of reporting and/or speaking out about the rapes, Petitioners were relentlessly terrorized, stalked, and harassed as part of a "Fair Game campaign" designed to "shudder [them] into silence," "obliterate [them],"and "ruin [them] utterly." Petitioners alleged these acts occurred both while they were in the religion and after they exited the religion. Defendants hired private investigators to surveil, follow, videorecord, and photograph Petitioners. Petitioners' phones were illegally tapped, their emails and bank accounts hacked, home security systems breached, and property destroyed. As a result, Petitioners live in constant fear for their safety and that of their family members.

When Petitioners sued Defendants for stalking, physical invasion of privacy, constructive invasion of privacy, intentional infliction of emotional distress, and loss of consortium, Defendants moved to compel arbitration pursuant to their so-called "arbitration agreements," which are in reality unenforceable "religious services agreements" that four Petitioners (Carnell-Bixler, Bixler-Zavala, Jane Doe #1, and Jane

Doe #2) were made to sign when they were members and/or participated in religious services. The courts in this case are being asked to enforce religious retribution against individuals who were raped and who have rejected the faith.

Despite this, and in violation of Petitioners' First Amendment and California constitutional right to freedom of religion and their California constitutional rights under Marsy's Law which guaranty specific rights to crime victims like Petitioners, the trial court ordered that they submit to "Religious Services Arbitration," which is controlled by the Church and is being wielded as a sword to re-traumatize these rape victims. Accordingly, writ relief is warranted.

PETITION FOR WRIT OF MANDATE

To the Honorable Presiding Justices and Honorable Associate Justices of the California Court of Appeal, Second Appellate District:

I. Issues presented.

This Petition presents the following novel issues:

(1) Does a rape victim and nonbeliever have the right to refuse a "religious services arbitration" under the First Amendment where such "arbitration" process specifies that all "arbitrators" shall be ministers of the religion who are charged with applying that religion's "doctrine"?

(2) Does the First Amendment permit a court to force a rape victim who left the faith to submit to religious services "arbitration" regarding punishment inflicted upon the victims by the religious organization for reporting the rape to the authorities?

(3) Are rape victims protected against being forced into a so-called religious services arbitration with their perpetrator and his agents during the pendency of the criminal case where: (a) the criminal court issued a protective order against

their perpetrator; and (b) the California Constitution guarantees against the harassment of crime victims?

These issues warrant review to determine the proper analysis of the First Amendment right to freedom of religion, including the right to exit a religious organization, and Petitioners' rights under Marsy's Law while criminal proceedings are ongoing in the context of "religious services arbitration agreements" drafted and imposed by a religious institution.

II. Relief sought.

1. Petitioners seek a peremptory writ of mandate to compel the respondent court to vacate its order compelling religious arbitration.

III. Request for Stay.

2. A stay is presently required, and Petitioners have requested a separate stay if to allow these writ proceedings to conclude before any commencement of arbitration.

IV. Authenticity of Exhibits.

3. All exhibits accompanying this petition are true copies of original documents that were either filed publicly or lodged with respondent court except the true copies of the original Reporter's Transcripts of Proceedings on January 30, 2020 and August 11, 2020. The exhibits, filed under separate cover titled "Exhibits to Petition For Peremptory Writ of Mandate" ("EP") are consecutively paginated, and are cited herein by volume and page number (e.g., "3 EP 689" refers to Volume 3 of the Exhibits to Petition, page 689).

V. The Parties.

4. Petitioners are Chrissie Carnell-Bixler, Cedric Bixler-Zavala, Jane Doe #1, Jane Doe #2, Plaintiffs in the action now pending in the Superior Court of Los Angeles, Case No. 19STCV29458.

5. Respondent is Los Angeles Superior Court where the action is pending.

6. Real parties in interest are the defendants in that action, the Church of Scientology International, Religious Technology Center, David Miscavige, and Daniel Masterson.

VI. Factual background.

7. This matter arises from the stalking, harassment, and intimidation of Petitioners Chrissie Carnell-Bixler, Cedric Bixler-Zavala, Jane Doe #1, and Jane Doe #2 by defendants in retaliation for petitioners' reporting crimes committed by Defendant Daniel Masterson ("Masterson"). As alleged in the Complaint, each Petitioner was sexually assaulted and abused by Masterson (with the exception of Petitioner Bixler-Zavala who is the husband of Petitioner Carnell-Bixler) and as a result of reporting and/or speaking out about the abuse each was relentlessly terrorized, stalked and harassed in an effort to intimidate and silence them. (See 1 EP 21- 33 (Bixler, Bixler-Zavala), 1 EP 33-45 (Jane Doe #1), 1 EP 50-54 (Jane Doe #2), 1 EP 46-49 (Bobette Riales)).

8. On January 6, 2020, Defendants Church of Scientology International ("CSI"), and Celebrity Center International ("CCI") filed Motions to Compel Religious Arbitration as to Petitioners and rape victims Chrissie Carnell-Bixler, Cedric Bixler, Jane Doe #1 and Jane Doe #2. (See 1 EP 64 (Jane Doe #2); 2 EP 517 (Jane Doe #1, Bixler, Bixler-Zavala)). On April 1, 2020, Defendant Religious Technology Center ("RTC") also filed Motions to Compel Religious Arbitration as to Petitioners and rape victims Chrissie Carnell-Bixler, Cedric Bixler, Jane Doe #1 and Jane Doe #2. (See 4 EP 968 (Jane Doe #2); 4 EP 999 (Jane Doe #1, Bixler, Bixler-Zavala)). It is not in dispute that said religious services arbitration must be conducted and adjudged by Scientologists "in good standing" (1 EP 189) and is controlled by Defendants (who are agents of rape Defendant Daniel Masterson) (5 EP 1220, 1290), individuals who are mandated to treat Petitioners as enemies of Scientology. It is also not in dispute that Defendant Masterson is a staff member of the Scientology defendants and any and all persons who will participate and/or arbitrate this matter are Masterson's agents (and vice versa). (5 EP 1220, 1290).

9. After the filing of this lawsuit, on or about June 16, 2020 Masterson was charged by the Los Angeles District Attorney with three counts of rape, based on police reports filed by the Petitioners in this lawsuit. (4 EP 1028). The criminal investigation of Masterson, initiated by the Petitioners in this lawsuit and referenced multiple times in the FAC, has become an active criminal case. Masterson is facing multiple felony charges for alleged conduct which forms the factual nucleus of Petitioners' civil claims against him.

10. In order to protect the Petitioners from any additional harm or harassment by Masterson or his agents (including the Scientology defendants in this case), on September 18, 2020, Honorable Miguel Espinoza, the judge overseeing the criminal case against Masterson, entered a Criminal Protective Order that precludes him from having any contact with Petitioners Chrissie Carnell-Bixler, Jane Doe #1 and Jane Doe #2 either directly or through a third party. (4 EP 1070). If the religious services arbitration were to proceed while the criminal matter and Judge Espinoza's Order are still pending, it would violate both that order, and Petitioners' state constitutional rights as crime victims under Marsy's law.

11. Additionally, on or about September 4, 2020, Jane Doe #1 propounded discovery on Masterson, consisting of a request to take Masterson's deposition, a Request for Production of Documents, and Special Interrogatories. Masterson objected to each and every discovery request, citing in part his United States Constitutional rights against self-incrimination. (4 EP 1032-70). Masterson's counsel contacted counsel for Petitioners asking for a stipulation to a stay of discovery pending the resolution of the criminal case. (5 EP 1198-99). Petitioners would agree to a stay but only as to all Petitioners and defendants because of the prejudice to Petitioners in having to proceed to arbitrate their cases without the participation of defendant Masterson. Counsel for defendants CSI, RTC, and CCI have refused to agree to a stay of any fashion.

12. On October 8, 2020, Masterson filed his Motion to Stay Discovery, or Alternatively, For A Protective Order. (5 EP 1200-13).

13. On December 31, 2020, this Court returned an Order granting the Motion to Compel Religious services arbitration of defendants' CSI, CCI, and RTC as to the claims of Petitioners Chrissie Carnell-Bixler, Cedric Bixler, Jane Doe #1 and Jane Doe #2. (6 EP 1496-1510). The case of Plaintiff Marie Bobette Riales was unaffected by this Order. Further, whether the claims of all Petitioners as to defendant Masterson were affected by this Order is unclear given that the trial court stated Masterson may "participate" in religious services arbitration although Masterson never affirmatively moved to enforce arbitration and no party fully and fairly briefed the issue before the trial court. Finally, the trial court failed to state whether the religious services arbitration was being compelled pursuant to the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA). The trial court has not clarified its order.

VII. Timeliness of Petition.

14. On December 31, 2020, the Superior Court returned an Order granting the Motion to Compel Religious Services Arbitration of defendants' CSI, CCI, and RTC as to the claims of Petitioners Chrissie Carnell-Bixler, Cedric Bixler, Jane Doe #1, and Jane Doe #2. (6 EP 1496-1510). This writ is filed within 60 days of the order and from service of the same. CRC 8.104(e); see also *McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1100 ("appellate courts have discretion to decide a writ petition filed after the 60-day period, and typically look to whether there is any prejudice to the opposing party in doing so"—no prejudice exists here since a date for the arbitration has not yet been set); see also *Polanski v. Superior Court* (2009) 180 Cal.App.4th 507, 531 (appellate court has discretion to entertain writ petition filed after 60-day deadline where one-day delay in filing was "truly minimal" and "any court interest in holding fast to the timeliness principle against a nonprejudicial one-day incursion is far outweighed by the interest in considering" the "grave" "misconduct alleged here").)

VIII. Basis for writ relief—this case meets all applicable Omaha factors.

15. Writ relief is essential. While writ review is extraordinary, it is proper where "the lower court's determination imposes unusually harsh and unfair results for which ordinary appellate review is inadequate." (*Science Applications Internat. Corp. v. Superior Court* (1995) 39 Cal.App.4th 1095, 1100-1101.) As explained below, Petitioners have no other adequate remedy and will suffer irreparable harm if the trial court's error is not remedied. At the same time, the harm to defendants is non-existent. Indeed, correcting this error now will reduce defendants' costs in having to defend what would otherwise (absent writ relief) additional proceedings.

16. By granting defendants' motion to compel arbitration, Respondent Court has clearly erred and substantially prejudiced Petitioners' case such that writ relief is justified. (*Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 160 (where arbitration would be unduly time-consuming or expensive, writ review of orders compelling arbitration is appropriate).

17. When deciding whether to grant writ review, courts consider the following:

(1) whether the issue tendered in the writ petition is of widespread interest or presents a significant and novel constitutional issue;

(2) whether the trial court's order deprived petitioners of an opportunity to present a substantial portion of their cause(s) of action;

(3) whether conflicting interpretations of the law require resolution;

(4) whether the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioners' case;

(5) whether petitioners lack an adequate means, such as a direct appeal, by which to attain relief; and

(6) whether the petitioners will suffer harm or prejudice in a manner that cannot be corrected on appeal.

(*Omaha Indemnity Co. v. Superior Court* (Greinke) (1989) 209 Cal.App.3d 1266, 1273-1274 ("Omaha") (citations omitted).

18. All applicable *Omaha* factors support writ relief in this case, as follows:

Omaha Factor 1: The unenforceability of a religious arbitration services agreement on First Amendment grounds is a novel issue and the enforceability of arbitration agreements is an issue of widespread interest to litigants and courts alike. No Constitutional rights are more sacred than First Amendment freedoms and no California court has ever ruled on whether an arbitration that violates the First Amendment is enforceable. Moreover, as arbitration and the burgeoning privatization of the justice system continues, courts need to know what to do when religious institutions try to utilize arbitration to curtail the rights of victims of rape, abuse, and trafficking. A Westlaw search shows that 1,712 California appellate decisions addressed arbitration in the 20 years since the California Supreme Court's seminal decision in *Armendariz v. Foundation Health Psychcare Services, Inc., 2*4 Cal.4th 83, 6 P.3d 669, 99 Cal.Rptr.2d 745, (the total number of decisions by California appellate courts including unpublished cases is 7,275). Furthermore, and with respect to Marsy's Law, this is a matter of first impression as to whether or not crime survivors like Petitioners Carnell-Bixler, Jane Doe #1, and Jane Doe #2 can be forced into a religious arbitration in direct violation of both their state constitutional rights under Marsy's Law and a protective order entered in an active criminal case for their protection.

Omaha Factor 2: The trial court's order wholly deprives Petitioners of their First Amendment rights, their right to a jury trial, and the ability to present their civil claims, which are based on neutral principles of law, to an unbiased trier of fact. The order similarly deprives Petitioners of their rights under Marsy's Law including their right to be free from intimidation, harassment, and abuse and to refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant.

Omaha Factor 3: The trial court's order strips Petitioners of the protections afforded to them as crime victims under Marsy's Law, and stands in direct conflict with the criminal court's protective order. If Petitioners are compelled to arbitrate before the conclusion of criminal proceedings, the parties will be forced to violate the criminal no-contact order entered for the protection of Petitioners.

Omaha Factor 4: The trial court's order is both clearly erroneous as a matter of law and substantially prejudices Petitioners by forcing them to submit to a process with their rapist and his agents, even though they have disavowed the religion and seek the civil protections of the law. The order is clearly erroneous because it: (1) forces Petitioners, survivors of sexual assault, to participate in a religious procedure with their rapist in violation of their First Amendment freedom of religion and to be adjudged according to that religion's doctrine and by that religion's ministers, (2) compels Petitioners' participation in a religious arbitration in violation of the Establishment Clause, and (3) deprives Petitioners of the rights afforded to them as crime victims under the California constitution.

19. For the fifth and sixth *Omaha* factors, see the dedicated sections below.

IX. Absence of Adequate Remedy

20. While in most cases the availability of a post-trial appeal is an adequate remedy (see *Phelan v. Superior Court of San Francisco* (1950) 35 Cal.2d 363, 370-371), review by writ is proper when exceptional circumstances render a post-trial appeal inadequate. (*Roberts v. Superior Court* (1973) 9 Cal.3d 330, 336.) Absent writ review, Petitioners will be forced to participate in a religious ritual in violation of their First Amendment rights to freedom of religion and thus the First Amendment issue would "effectively evade appellate review, establishing the lack of an adequate remedy of law necessary for a writ." (*Szetela v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1098.). If Petitioners are forced to arbitrate, they will be interviewed and subject to questioning, harassment, and intimidation before a committee of Scientologists, including the

Defendant perpetrator, in violation of Petitioners' constitutional protections under Marsy's Law. (CAL CONST. ART. I § 28 (b)(5).)

21. A later appeal is not an adequate remedy here, because Petitioners' constitutional rights will be violated if forced to submit to the religious ritual conducted by the agents of their rapist. The courts lack an adequate remedy to make up for the fact they have forced rape victims who are now nonbelievers to submit to religious services conducted by their attacker and his agents. (6 EP 1509). Moreover, they would be required to proffer their case twice, first in the religious services arbitration and later in an appeal, causing Petitioners an unreasonable financial burden, unneeded trauma, along with a great inconvenience to all of the experts and percipient witnesses. (*Parada v. Superior Court* (2009) 176 Cal.App.4th 758, 768 (high cost of arbitrating and the amount of time necessary to complete arbitration justify reviewing the order compelling arbitration by writ of mandate).) When an erroneous ruling will require a retrial if reversed on appeal, the exercise of writ review is not only appropriate but essential to prevent a waste of judicial resources in unnecessary multiple trials. (*Barrett v. Superior Court* (1990) 222 Cal.App.3d 1176, 1183 ("were we not to issue the writ . . . and were the order here under review determined to have been incorrect, then a second trial would be required, with the attendant waste of judicial resources")). Therefore, a later appeal is not an adequate remedy.

22. Issuance of a writ is appropriate to prevent forcing a party to participate in "unnecessary trial proceedings," (*Olson v. Cory* (1983) 35 Cal.3d 390, 400-401), including arbitration proceedings. (*Nguyen v. Applied Med. Resources Corp.* (2016) 4 Cal.App.5th 232, 244-245 (appeal was treated as writ of mandate 'to avoid an arbitration based on erroneous rulings of law, which may result in needless delay and expense).)

23. Petitioners have no adequate remedy other than to seek relief in this Court and extraordinary writ relief is necessary to prevent multiple duplicative proceedings.

X. Irreparable harm.

24. As discussed below, Petitioners will suffer irreparable harm and prejudice in a manner that cannot be corrected on appeal. Where, as here, Petitioner "would suffer irreparable injury if a second trial were required because of an erroneous summary adjudication by the trial court," writ relief is proper. (*Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1056.) Writ relief is appropriate where "unnecessary trial proceedings" would result from delaying review of the issue. (*Olson v. Cory*, *supra*, 35 Cal.3d at 400-401.) The Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (*Elrod v. Burns* (1976) 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547.) As applied to participation in religious services, the Supreme Court held that "[t]here can be no question" that restricting participation in religious services "will cause irreparable harm," and that such restriction "strike(s) at the very heart of the First Amendment's guarantee of religious liberty." (*Roman Catholic Diocese of Brooklyn v. Cuomo* (2020) 141 S. Ct. 63, 67-68.) In December 2020, a similar California case was remanded for further consideration in light of these holdings. (*Harvest Rock Church v. Newsom, Gov. of CA* (U.S. Dec. 3, 2020) No. 20A94, 2020 WL 7061630, at *1.)

25. Forcing Petitioners into religious services arbitration prior to this Court's review would be a violation of their Marsy's Law rights and be, by nature, traumatic and irreversible. Likewise, forcing Petitioners into services arbitration would wholly deprive Petitioners of their First Amendment right to choose their own religion, including the right to exit. There can be no right to believe what one chooses if one cannot also choose to reject a faith.

26. One of the main purposes of Marsy's Law is to reduce the re-traumatization of victims of violent crime. The Honorable Miguel Espinoza acknowledged the irreparable harm Petitioners' would experience by being forced to interact with defendant Masterson in his Criminal Protective Order of September 18, 2020. (4 EP 1070). The court below

failed to take this Order and Petitioners' Constitutional Rights as crime victims into account.

27. The Court has compelled all Petitioners except Plaintiff Riales to submit to religious services arbitration as to CSI, CCI, and RTC. (See 1 EP 92; 2 EP 544). The Court expressly stated in its order that Masterson may participate in this arbitration. (6 EP 1509). Further complicating the matter, the Court stated that Masterson may "participate" in the religious services arbitration without Masterson formally moving by way of a written motion to enforce arbitration in the first place. Instead the Court, *sua sponte*, seemingly without any invitation, and assuredly without any briefing on the matter, compelled the claims of Petitioners as to Masterson into the religious services religious arbitration. Given that Masterson did not actually seek to compel arbitration and no party was given full and fair opportunity to brief the issue as to Masterson's entitlement to enforce arbitration in the first place, Petitioners are severely prejudiced by the trial court's decision to allow Masterson to "participate" in the arbitration (though what his "participation" would even entail was never defined by the trial court). Masterson himself has filed a Motion to Stay Discovery and yet his attorney, after the Court's decision to grant the motion of CSI, CCI, and RTC to Compel Arbitration, stated that Masterson "looked forward to arbitrating the claims" compelled to religious services arbitration. (5EP 1200). Masterson's counsel has since filed with the court a supplemental brief in which he agrees to participate in arbitration while maintaining his right not to speak or incriminate himself under the Fifth Amendment. The fact that Masterson may "participate" in the religious services arbitration while invoking his rights against self-incrimination only further compounds the prejudice to Petitioners.

28. It is deeply re-traumatizing to force victims of crime, especially victims of rape, to be confronted by the person or entities who caused their abuse before they are ready. BESSEL A. VAN DER KOLK, M.D., et al., TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY (2006); Negar Katirai, *Retraumatized in Court*, 62 AZ. L. REV. 81, 93 (2020). The religious services arbitration

in this case would, without question, be re-traumatizing for the rape victims involved in these cases, and they would be irreparably harmed by undergoing the religious arbitration before the final determination of this Court.

29. If compelled into Religious Services Arbitration before the issues are decided, Petitioners' constitutional right to not undergo a coercive religious services arbitration will be violated, and this case will be rendered moot, resulting in irreparable harm. There is ample Supreme Court precedent to stay a case where the injury is capable of repetition, yet evading review. (*Fed. Election Comm'n v. Wisconsin Right To Life, Inc*. (2007) 551 U.S. 449, 450, 127 S. Ct. 2652, 2654, 168 L. Ed. 2d 329 (challenging Bipartisan Campaign Reform Act); *Honig v. Doe* (1988) 484 U.S. 305, 320, 108 S. Ct. 592, 602, 98 L. Ed. 2d 686 (plaintiffs suspended from school for conduct related to disabilities); *Brock v. Roadway Exp., Inc*. (1987) 481 U.S. 252, 253, 107 S. Ct. 1740, 1743, 95 L. Ed. 2d 239 (challenging the Department of Labor's order to reinstate an employee before the appeal could be litigated); *Singleton v. Wulff* (1976) 428 U.S. 106, 117, 96 S. Ct. 2868, 2876, 49 L. Ed. 2d 826 (pregnant plaintiffs challenging Texas criminal abortion statutes); *Roe v. Wade* (1973) 410 U.S. 113, 125, 93 S. Ct. 705, 713, 35 L. Ed. 2d 147, holding modified by *Planned Parenthood of Se. Pennsylvania v. Casey* (1992) 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (challenging Missouri Abortion Statute)). Therefore, the proceedings should be temporarily stayed until the constitutional issues have been fully litigated.

30. Marsy's Law is designed to protect crime victims, with a hopeful effect of encouraging crime reporting by alleviating some of the fears and barriers many victims face. Many societal benefits result from victims reporting crimes to police, including evidence collection, recovering stolen property, qualification for victim compensation programs, while benefits to the individual victim include a "solidarity effect" from encouraging other similar victims to make reports, incapacitation of the perpetrator preventing them from committing the same or similar crime against this or another victim, "psychic benefits" from seeing a perpetrator brought to justice. Roger Bowles, et

al., *Crime Reporting Decisions and the Costs of Crime*, EUR. J. CRIM. POLICY RES. 365, 368-69 (2009) (discussing the costs and benefits of reporting crimes). Marsy's law is to encourage reporting by removing barriers.

31. Finally, given that the trial court did not express whether it was compelling arbitration pursuant to the FAA or CAA, Petitioners are prejudiced because they cannot determine what procedural protections they have the ability to enforce.

XI. This Court Should Stay The Underlying Case Until It Decides This Petition

32. This Court can and sometimes does stay trial court proceedings pending determination of a writ petition. (See, e.g., *Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, 35.) Petitioners respectfully asks that it do so here, as soon as reasonably possible.

33. It is of vital interest to Petitioners to stay arbitration and litigation in this case. Staying the arbitration and litigation will protect Plaintiffs from being confronted by their abuser or his agents as per the September 18, 2020 protective order (see II(b)), while preserving their California Constitutional rights under Marsy's Law. Further, as it stands now, Plaintiffs will be forced to litigate the same matter involving the same facts but with different Defendants in different venues.

34. All Petitioners should not be forced to arbitration as to CSI, CCI, and RTC, an arbitration in which Masterson will participate, while Plaintiff Riales litigates her case only as to CSI, CCI, and RTC with her claims against Masterson stayed (should the trial court grant Masterson's Motion to Stay Discovery). Indeed, should this occur Plaintiff Riales, for example, could be forced to litigate her entire case as to CSI, CCI, and RTC before the criminal prosecution of Masterson is completed and, should he be convicted, his appellate rights exhausted then forcing her to engage in entirely duplicative discovery practice as to Masterson once the threat to his rights against self-incrimination has extinguished.

35. All the while, Masterson has from one side of his mouth asked the trial court to stay discovery in the litigation and yet has, from the other side of his mouth, embraced the opportunity to participate in arbitration (in whatever form that may take). This is all in the context of three Petitioners whose accounts form the basis of charges in the criminal case against Masterson. Not only do all Petitioners have an interest in staying all stages of this case until the disposition of the criminal case as to Masterson, but they also have a vital interest in not being forced to litigate their entire case but only as to some of the Defendants and in different venues.

36. In reality, every victim of crime in California has an interest in the decision of whether to stay arbitration in this case. If the provisions of Marsy's Law and the protective order of Judge Espinoza, are not given their full power by parallel civil courts, the Constitutional rights of victims everywhere in the state of California may be infringed.

PRAYER

Wherefore, Petitioner prays:

1. That this Court, after giving notice under *Palma v. U.S. Industrial Fasteners, Inc*. (1984) 36 Cal.3d 171, 178-180, issue a peremptory writ of mandate and/or prohibition, or such other extraordinary relief as is warranted, directing Respondent court to vacate its order compelling arbitration entered on December 31, 2020 and enter a new order denying defendants' motion; or

2. That, alternatively, this Court issue an alternative writ directing Respondent to show cause why it should not be so directed, and upon return of the alternative writ, issue a peremptory writ as set forth above;

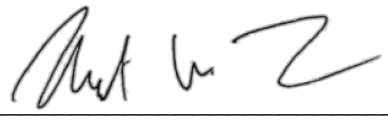
3. That this Court allow Petitioners to file a reply brief if this Court requests opposition from either Respondent or defendants;

4. That Petitioners be awarded her costs in this proceeding;

5. That this Court immediately stay the case in its entirety; and

6. Grant such other relief as may be just and proper.

Date: February 23, 2021

By 

Robert W. Thompson
Attorney for Petitioners

VERIFICATION

I, Robert W. Thompson, Esquire, declare as follows: I am one of the attorneys for Petitioners Chrissie Carnell Bixler, Cedric Bixler-Zavala, Jane Doe #1, and Jane Doe #2. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the Respondent Court proceedings, I, rather than the Petitioners, verify this Petition.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California and that this verification was executed on February 23, 2021, in San Mateo County, California.

Robert W. Thompson
Attorney for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Standard of Review: Orders compelling arbitration are reviewed de novo.

Where, as here, no material facts are in dispute, courts review orders compelling arbitration de novo. (*Davis v. Kozak*, (2020) 2020 WL 5000760; *see also Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1522; *Gatton v. T-Mobile* (2007) 152 Cal.App.4th 571, 579.)

II.

Novel First Amendment Issue: Because the arbitration agreement violates Petitioner's First Amendment rights, the trial court's order compelling arbitration must be reversed.

In an issue no California appellate court has yet addressed, defendants' motion to compel arbitration attempts to subject Petitioners, non-believers who survived abuse and harassment at the hands of defendants, to undergo a religious ceremony where Scientology "ministers" are the "arbitrators" and Scientology "doctrine" is the "law" to be applied. This violates her First Amendment right to freedom of religion. The trial court thus engaged in unconstitutional coercion by forcing former Scientologists to now be subjected to the Scientology religious services arbitration.

A. The First Amendment Guarantees Absolute Freedom of Religion.

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*" (First Amendment, U.S. Constitution (emphasis added).) The right to believe as one chooses is absolute. (*Cantwell v. State of Connecticut* (1940) 310 U.S. 296, 303.) Long-settled constitutional doctrine "guarantee[s] religious liberty and equality to the

infidel, the atheist, or the adherent of a non-Christian faith." (*City. of Allegheny v. ACLU* (1989) 492 U.S. 573, 590.)

The inalienable liberty interest protected by the religion clauses is, at its core, the individual's right to "freedom of conscience" which encompasses the right to "select any religious faith or none at all." See generally, U.S. Const. Amend. I; *Emp't Div. v. Smith* (1990) 494 U.S. 872, 877; *Sherbert v. Verner* (1963) 374 U.S. 398, 404; *West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, 634; *Cantwell v. Connecticut* (1940) 310 U.S. 296 303-04; *Reynolds v. United States* (1878) 98 U.S. 145, 164; *see also Wallace v. Jaffree,* 472 U.S. 38, 50, 53 (1985); *In re Marriage of Weiss,* 49 Cal. Rptr. 2d 339, 341, 347 (Cal. Ct. App. 1996) (Declining to enforce a pre-nuptial agreement because, to do so, would "encroach[] upon the fundamental right of individuals to question, to doubt, and to change their religious convictions."); *Zummo v. Zummo,* 574 A.2d 1130, 1146-48 (Pa. Super. Ct. 1990) (recognizing the "fundamental [constitutional] right of individuals to question, to doubt, and to change their religious convictions" and that the "[r]eligious freedom... recognized by our founding fathers [was] to be *inalienable*" and thus could not be bargained way). There can be no meaning to the right to join a particular religion under the concepts of *Barnett, Cantwell, Employment Vision v. Smith,* and *Reynolds,* if the freedom of conscience does not also comprehend the freedom to change one's religious beliefs and to exit from one's religious faith as Petitioners argue here.

The Religious Services Arbitration agreement signed by the Petitioners in this case is unenforceable because it bargained away their inalienable religious freedoms, including their right to change their religious minds. The Petitioners adherence to the arbitration agreement is not a result of their own free conscience, because the trial court has compelled them to adhere to the same. The government act of compelling an individual to follow a particular religion's principles and practices, by itself, results in the denial of one's religious freedom.

B. The Religious Services Arbitration Agreement forces participation in a religious ritual.

All of the agreements recite the "ecclesiastical nature" of any possible dispute and Scientology's requirement that any dispute be resolved 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. (See, e.g., 1 EP 188-89.)

The religious services contracts at issue are simply that which someone would sign and agree to memorialize their commitment to a particular religious faith. These agreements purportedly bind Petitioners not to arbitration, in the traditional legal sense, but to the "religious procedures of Scientology" and a religious ritual called "committee of evidence." Petitioners never entered into a secular arbitration agreement with the Church of Scientology; they agreed to a religious services agreement. Petitioners have since abandoned the faith and now Defendants, by and through the courts, is attempting to force Petitioners back into the religious fold to be subjected to religious services that are controlled by a panel of high-ranking Scientologists and governed according to Church doctrine, which is exactly what their system requires. If Defendants are permitted to move forward with arbitration, Petitioners would be forced to assert their legal rights in a religious context, rather than a secular context, leading to concerns that their treatment before the religious arbitrator would depend on their religious affiliation or their standing in the religious community.

C. Courts lack the power to compel non-believers to participate in a religious ritual.

The Establishment Clause prohibits the Government from compelling an individual to participate in religion or its exercise, or otherwise from taking action that has the purpose or effect of promoting religion or a particular religious faith. (U.S.

Const. Amend. I.; *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich* (1976) 426 U.S. 696, 712-20; *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449-50; *Kreshik v. Saint Nicholas Cathedral* (1960) 363 U.S. 190, 191; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.* (1952) 344 U.S. 94, 113-15; *see also Williams v. California*, C.D.Cal.2012, 990 F.Supp.2d 1009, affirmed 764 F.3d 1002.)

As the United States Supreme Court stated: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." (*West Virginia State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 642; *see also Sherbert v. Verner* (1963) 374 U.S. 398, 404 (holding unconstitutional state law requiring believer to choose between her beliefs and benefits under the law); *Sch. Dist. of Abington Twp. v. Schempp* (1963) 374 U.S. 203, 305 ("The fullest realization of true religious liberty requires that government neither engage in *nor compel* religious practice."); *see also Inouye v. Kemna,* 504 F.3d 705, 712 (9th Cir. 2007) (noting government coercion to participate in religious activities "strikes at the core" of the First Amendment)). Courts may not compel the exercise of religion in any forum, whether at a place of worship or in arbitration, and it cannot interfere an individual's right to change their religious mind; "[t]he First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." (*Lee v. Weisman* (1992) 505 U.S. 577, 589.)

The constitutional prohibition on government coercion of religion has been applied in a variety of circumstances, including: (i) school prayer; (ii) probationers, parolees, and prisoners ordered to participate in rehabilitative programs that include religious prayers and exercises and (iii) requirements that state employees attend conferences with religious presentations. *See* Rex Ahdar, *Regulating Religious Coercion,* 8 STAN. J. CIV. RTS. & CIV. LIBERTIES 215, 220-24 (2012) (listing examples). This prohibition on government coercion should apply also in this case.

This Court would be engaging in unconstitutional coercion if it were to force the four former Scientologists to now be subjected to a religious ritual to settle a secular dispute even if it is misleadingly labeled "arbitration". (*Lee v. Weisman* (1992) 505 U.S. 577, 587, 588, 592; *Mitchell v. Helms* (2000) 530 U.S. 793, 870 (Souter, J., Stevens, J., & Ginsburg, J., dissenting); *Amer. Legion v. Amer. Humanist Ass'n* (2019) 139 S. Ct. 2067, 2096 (Thomas, J., concurring).) The trial courts order in this case violates this anti-coercion principle and therefore the relief requested simply cannot be granted.

D. The Trial Court violated the Establishment Clause when it compelled Petitioners to Participate in Proceedings Governed by Arbitrators "in Good Standing" with the Church of Scientology.

The trial court violated the Religion Clauses of the federal and California state constitutions, when it compelled Petitioners to participate in proceedings governed by the laws of Scientology. Specifically, the trial court is coercing Petitioners to exercise religion as by compelling Petitioners to participate in a process 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 procedure and dispute." "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise. *Lee v. Weisman,* 505 U.S. 577, 587 (1992). The trial court overlooked this fundamental principle of constitutional law when it compelled Petitioners to arbitrate the dispute in accordance with the "faith," "custom," and "law of the Scientology Religion." (*See*, 1 EP 188).

Indeed, compelling Petitioners to engage in religious arbitration results in religious coercion that is far more pervasive and extensive than the coercion found unconstitutional in other contexts. For example, in *Santa Fe,* the U.S. Supreme Court found that student-led and initiated prayer at a high school football game which was voluntary to be unconstitutionally coercive. (*See* 530 U.S. at 311-12). Unlike the indirect coercion in *Santa Fe*, the trial court is directly compelling Petitioners to comply with the ecclesiastical laws of Scientology.

The fact that Petitioners *may* have voluntarily agreed to abide by the terms of the Religious Services Agreement is inconsequential; even when individuals voluntarily agree to adhere to a set of religious principles and practices, the constitution does not permit courts to compel enforcement of such agreements to resolve secular disputes. Not every private agreement into which a party knowingly and voluntarily enters may be enforced by a court. For example, our constitutions prohibit a court from enforcing a party's voluntary, private agreement to refrain from selling his property to buyers of a certain race. (*See Shelley v. Kraemer,* 334 U.S. 1, 19-22 (1948).) As the Weiss court aptly noted, "religious development is a lifelong dynamic process *even when [one] continue[s] to adhere to the same religion, denomination, or sect."* (49 Cal. Rptr. 2d at 347 (emphasis added)). Under the First Amendment, individuals may pick and choose their religious beliefs and practices—they are free to follow a particular religious practice one day, and they are free to abandon this religious practice the very next day. Petitioners have a right to exit a religious affiliation. (*In re Marriage of Weiss* (Cal. Ct. App. 1996) 49 Cal. Rptr. 2d 339, 347; *Abbo v. Briskin* (Fla. 4th DCA 1995) 660 So. 2d 1157, 1159; *Zummo v. Zummo* (Pa. Super. Ct. 1990) 574 A.2d 1130, 1146-48)). Petitioners should not, as nonbelievers, be required to undergo religious arbitration of their secular claims arising from an agreement for religious services.

The acts described by Petitioners in their complaint include many acts perpetrated against them after leaving Scientology and no longer believed in its principles. The court-ordered requirement that they arbitrate such claims in a forum governed by the very religious principles Petitioners have renounced is a clear and flagrant violation of the Establishment Clause of the First Amendment.

E. Courts can review the validity of religious arbitration agreements under neutral, generally applicable laws without offending the Ecclesiastical Abstention Doctrine.

As a nation governed by "ordered liberties," the First Amendment does not provide an unrestricted license to engage in harmful conduct under the auspices of religious freedom. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972) ("[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests."); *Reynolds*, 98 U.S. at 166-67 ("Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."). Congress may enact neutral principles of law that apply to secular *and* religious organizations' conduct, *Jones v. Wolf* (1979) 443 U.S. 595, 602–03, but it cannot interfere with internal, ecclesiastical disputes. (*Milivojevich*, at 708–10; *Hull Church*, at 449.) "The First Amendment does not provide churches with absolute immunity to engage in tortuous conduct. So long as liability is predicated on secular conduct and does not involve the interpretation of church doctrine or religious beliefs, it does not offend constitutional principles." (*In re Catholic Bishop of Spokane*, (Bankr. E.D. Wash. 2005) 329 B.R. 304, 315, *aff'd in part sub nom. Comm. of Tort Litigants v. Catholic Diocese of Spokane*, (E.D. Wash. Jan. 24, 2006) No. CV-05-0274-JLQ, 2006 WL 211792, and *rev'd in part sub nom. Comm. of Tort Litigants v. Catholic Diocese of Spokane*, (E.D. Wash. 2006) 364 B.R. 81 (*citing C.J.C.* v. *Corporation of the Catholic Bishop of Yakima*, 138 Wash.2d 699, 728, 985 P.2d 262, 277 (1999)).) In *In re Roman Catholic Archbishop* (Bankr. D.Or. 2005) 335 B.R. 842, the bankruptcy court refused to apply the Code of Canon Law to determine the secular question concerning who owned certain property. The court observed that "[w]ho owns the property is, quite simply, not a theological or doctrinal matter." (*Id*. at 853.) Courts may even consider religious law where it provides context to the parties' intent. (*Committee of Tort Litigants v. Spokane* (E.D. Wash. 2006) 364 B.R. 81, 94.)

Here, the question of whether enforcing the religious arbitration agreement violates Petitioners First Amendment rights, and whether defendants committed a series of harassment-based offenses does not require a court to make a doctrinal finding. This Court may consider the issues of this case without treading on ecclesiastical disputes, because they arise from neutral, generally applicable laws that all other secular individuals and organizations are subject to. The Supreme Court in *Jones v. Wolf* explained, "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity . . . [and] thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." (443 U.S. 595, at 603.) As applied to religious arbitration agreements, this court may apply neutral, generally-applicable principles of contract law to determine whether there is an enforceable agreement and, if so, whether the parties' dispute falls within its scope.

However, if this Court finds that the overall agreement is too mired by "religious doctrine" for a court to consider, then the religious arbitration procedures, that are defined by the Church doctrine and principles, and the status of arbitrators as Scientologists "in good standing," must also be beyond the court's assessment and approval. (*See* 1 EP 189.)

The religious arbitration at issue is not just tangentially impacted by religious doctrine—it is defined by it. (*See generally*, 1 EP 185-90). Finding that an overall religious agreement for religious services is above scrutiny while upholding the religious arbitration procedures embedded within that agreement creates a haven for any religious institution to deem any cause of action "religious," thus shielding it from the courts.

In sum, the agreements allegedly bind Petitioners not to arbitration but to the "religious procedures of Scientology," in violation of their First Amendment right to religious freedom, and the court's approval of those procedures is a violation of the ecclesiastical abstention doctrine.

III.

The trial Court Order Compelling religious arbitration infringes on Petitioners' rights guaranteed under the California Constitution as well as the parallel protective order of the California Criminal Court when parallel proceedings are ongoing.

There is an ongoing criminal matter (where Defendant Danny Masterson, agent of Defendants, has been criminal charged for sexually assaulting three Petitioners), meriting the constitutional protections afforded to crime victims in Mary's Law. (CAL. CONST. ART. I, § 28, section (b). *Lizarraga v. City of Nogales*, No. CV06474, 2007 WL 4218972, at *3 (D. Ariz. Nov. 29, 2007) (order) (staying a civil case because the risk of mental and emotional harm to the victim "outweighed the disadvantage to the defendant of not proceeding with the civil case"); *State v. Deal*, 740 N.W.2d 755 (Minn. 2007) (state and public interest in protecting minors and victims of sexual abuse outweighs concerns about criminal and civil process); *State v. Lee*, 245 P.3d 919 (Ariz. Ct. App. Jan. 13, 2011) (protection against depositions extends to parallel civil proceedings)).

Defendants CSI, CCI and RTC admit in their reply to Plaintiffs' Opposition to their Motion to Compel Arbitration that Defendant Danny Masterson is their agent and CSI, CCI and RTC are agents of Defendant Masterson and as such, Defendant Masterson retains the same right to demand arbitration in this matter as CSI, CCI and RTC. (5 EP 1247, 1308, 6 EP 1509). For these reasons, arbitration cannot be compelled against the Petitioners as to do so would violate their constitutional rights as victims under California Constitution Article I, § 28, section (b), commonly known as Marsy's law. After the within lawsuit was filed, defendant Masterson was charged with raping three of the four Petitioners. (4 EP 1028-31). Those charges remain pending. Moreover, the Court has issued a protective order in the criminal case to prevent any contact by defendant Masterson or his agents/third parties (RTC, CSI and CCI) of the Petitioners in this case, which would be violated if the Court compels arbitration. (4 EP 1070). As a result, in

addition to the constitutional protections afforded to the Petitioners by the United States Constitution that mandate denial of defendants' Motion to Compel Arbitration, Petitioners enjoy constitutional protection under California law and a current protective order as well that mandate same.

Marsy's Law significantly expands the rights of victims in California, and those rights offer guidance to civil courts. Under Marsy's Law, the California Constitution article I, § 28, section (b) now provides victims in criminal cases with many enumerated rights, including but not limited to:

> "(8)(b)(1) To be treated with fairness and respect for his or her privacy and dignity, and to be *free from intimidation, harassment, and abuse*, *throughout the criminal or juvenile justice process*. (2) To be *reasonably protected from the defendant and persons acting on behalf of the defendant* . . . (4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which *could be used to locate or harass the victim or the victim's family* or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law. (5) *To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents*."

(CAL. CONST. ART. I, § 28, section (b) (emphasis added).) "Marsy's Law clearly demands a broad interpretation protective of victims' rights." (*Santos v. Brown*, 238 Cal.App.4th 398, 418 (Cal. Ct. App. June 2, 2015).) Marsy's Law was adopted with the goal to protect victims of crime; although those protections were put in place in the criminal context, they extend beyond strictly criminal actions and should do so in this case, especially considering there is an ongoing criminal matter relating to same.

Courts emphasize the importance of protecting victims of crime from intimidation and harassment, recognizing that the risk of harm is even higher in cases involving victims of sexual crime or minor victims. (*Lizarraga v. City of Nogales*, No. CV06474, 2007 WL 4218972, at *3 (D. Ariz. Nov. 29, 2007) (order) (staying a civil case because the risk of mental and emotional harm to the victim "outweighed the disadvantage to the Defendant

of not proceeding with the civil case.")). In *State v. Deal*, 740 N.W.2d 755 (Minn. 2007), the Minnesota Supreme Court stayed civil discovery depositions of a minor sexual assault victim by a criminal defendant, finding that the state and the public had a compelling interest in protecting minors and victims of sexual abuse that outweighed any public interest in the integrity of the criminal and civil process. (*Id.* at 767 n. 12-13.) Similar to *Deal,* this case involves the claims arising out of criminal sexual behavior. The Petitioners in this case are victims who have already been traumatized by the prospect of undergoing a forced religious ritual. The protections outlined in CAL CONST. ART. I § 28, section (b) are even more critical since the defendants have admitted that the perpetrator of the underlying crimes in this case is an agent of the defendants. (5 EP 1220, 1290). Defendant RTC's Reply in Support of Motions to Compel Religious Arbitration at 10. Compelling them to undergo the process involves an almost definite risk of the kind of harassment and intimidation that CAL CONST. ART. I § 28 was passed to circumvent.

In *State v. Lee*, 245 P.3d 919 (Ariz. Ct. App. Jan. 13, 2011), the court found that "victims retain their constitutional right to refuse defendant's request for a deposition under Arizona's Victim Bill of Rights" where the defendants in a criminal action attempted to force a deposition of the victim in a parallel civil lawsuit. (*Id*., at 921-24 (citing portions of the Arizona Bill of Rights that are nearly identical to Cal. Const. art. I §§ 28, section (b)(1), (b)(5)).) According to the court, the plain language of the Victim Bill of Rights did not "limit the proceedings to which the right [to refuse an interview, deposition, or other discovery request] extends." (*Id.* at 923.) Similar to Arizona, CAL CONST. ART. I § 28 section (b)(5) limits a defendant's ability to compel discovery or depositions, but it does not limit the proceedings covered by those protections.

If this Court enforces the religious services arbitrations, they will needlessly strip Petitioners of any protection against both the perpetrator of the crimes against them, and the defendants who harassed them, contrary to California law. They would be forced to appear, without their attorneys present and without any reasonable conditions to protect them, to disclose confidential information and be interviewed and subject to questioning,

harassment and intimidation before a committee of Scientologists (which, by defendants' own admission, could include defendant Masterson) who, by mandate, must treat Petitioners as enemies of Scientology. This would clearly violate Petitioners' constitutional protections to "be free from intimidation, harassment and abuse throughout the criminal process . . . to be reasonably protected from the defendant or those acting on behalf of defendant . . . to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney or anyone acting on behalf of the defendant that could be used to locate or harass the victim or the victim's family . . . to refuse an interview, deposition or discovery request by the defendant, the defendant's attorney or anyone acting on behalf of the defendant and to set reasonable conditions on the conduct of any such interview to which the victim consents" under California law. (CAL CONST. ART. I § 28 section (b)(5).)

Every victim of crime in California has an interest in the decision of whether to stay arbitration in this case. If the provisions of Marsy's Law and the protective orders judges like Judge Espinoza make in light of those provisions are not given their full power by parallel civil courts, victims' willingness to bring civil litigation will be impacted. The public has a critical interest in the administration of this case. The determination of whether to stay arbitration will serve to inform future victims and plaintiffs in California about their rights, while setting expectations about the protections they will receive under Marsy's law when there are parallel proceedings.

CONCLUSION

Respondent Court erred in granting defendants' motion to compel. The religious services agreements are unenforceable because they violate the First Amendment's guarantee of freedom of religion and infringe on the rights guaranteed to crime victims under Marsy's Law and the protective order issued by the California Criminal in parallel proceedings.

For these reasons, Petitioners respectfully request this Court reverse the Respondent court's order compelling arbitration.

Date: February 23, 2021

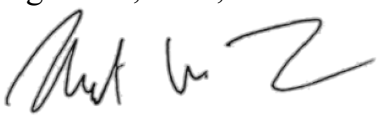
THOMPSON LAW OFFICES, P.C.

By: 

Robert W. Thompson
Attorney for Petitioners

CERTIFICATION

I hereby certify this petition, excluding tables, is 10,563 words long.

By: 

Robert W. Thompson

PROOF OF SERVICE
(C.C.P. §1013(a), 2015.5)

I, the undersigned, hereby declare under penalty of perjury as follows: I am a citizen of the United States, and over the age of eighteen years, and not a party to the within action; my business address is 700 Airport Boulevard, Suite 160, Burlingame, California 94010. On this date, I served the interested parties in this action this Petition for Writ of Mandate and all 6 Volumes of the Record of Appeal via the court's online True Filing system as follows:

William H. Forman, Esq.
David C. Scheper, Esq.
Margaret E. Dayton, Esq.
Scheper Kim & Harris LLP
800 West Sixth Street, 18th Floor
Los Angeles, California 90017-2701
Email: wforman@scheperkim.com
Email: dscheper@scheperkim.com
Email: pdayton@scheperkim.com
Attorneys for Defendants Church of Scientology International and Celebrity Centre International

Robert W. Mangels, Esq.
Matthew D. Hinks, Esq.
Jeffer, Mangels, Butler & Mitchell, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Email: rmangels@jmbm.com
Email: mhinks@jmbm.com
Attorneys for Defendant Religious Technology Center

Andrew B. Brettler
Lavely & Singer, P.C.
2049 Century Park E., Suite 2400
Los Angeles, California 90067
Email: abrettler@lavelysinger.com
Attorney for Defendant Daniel Masterson

I, the undersigned, also hereby declare under penalty of perjury as follows: I am a citizen of the United States, and over the age of eighteen years, and not a party to the

within action, my business address is 700 Airport Boulevard, Suite 160, Burlingame, California 94010. On this date, I caused to be mailed this Petition for Writ of Mandate and all 6 Volumes of the Record of Appeal to be mailed to:

Los Angeles County Superior Court (via USPS)
Central District, Stanley Mosk Courthouse, Dept. 57
111 North Hill Street
Los Angeles, CA 90012

Executed at San Mateo County, California on February 23, 2021.

By: 

Robert W. Thompson