Hearing Date: 4/16/2024
Department: 53

Superior Court of California

County of Los Angeles – Central District

Department 53

jane doe ; Plaintiff, vs. religious technology center , et al.; Defendants.	Case No.: 22STCV40862 Hearing Date: April 16, 2024 Time: 10:00 a.m. **[Tentative] Order RE:** (1) plaintiff's motion to seal (2) defendants' motion to compel arbitration

MOVING PARTY: Plaintiff Jane Doe

RESPONDING PARTY: Unopposed

(1) Motion to Seal

MOVING PARTIES: Defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center (joined by defendant Gavin Potter on September 21, 2023)

RESPONDING PARTY: Plaintiff Jane Doe

(2) Motion to Compel Arbitration

The court considered the moving papers filed in connection with the motion to seal. No opposition papers to the motion to seal were filed.

The court considered the moving, joinder, amended opposition, and amended reply papers filed in connection with the motion to compel arbitration.[1]

EVIDENTIARY OBJECTIONS

The court sustains defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center's evidentiary objection, filed on February 8, 2024, to the October 13, 2023 declaration of Jane Doe (submitted as Exhibit 3 to plaintiff Jane Doe's opposition to the motion to compel arbitration) in its entirety because the declaration was not "certified or declared by [plaintiff Jane Doe] to be true under penalty of perjury" as required. (Opp., Ex. 3, Oct. 13, 2023 Jane Doe Decl.; Code Civ. Proc., § 2015.5.)

The court rules on defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center's evidentiary objections, filed on February 8, 2024, to the February 2, 2024 declaration of Jane Doe (submitted as Exhibit 4 to plaintiff Jane Doe's opposition to the motion to compel arbitration) as follows:

Objections Nos. 1-4, 6-7, and 9-20 are overruled.

Objections Nos. 5 and 8 are sustained.

PLAINTIFF'S MOTION TO SEAL

Plaintiff Jane Doe ("Plaintiff") moves the court for an order sealing documents numbered as CSI 00024-32, attached as exhibits 6 and 8 to the "Supplemental Declaration of Sarah Heller in Support of Church Defendants' Motion to Compel Religious Arbitration" filed by defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center on February 8, 2024.[2] (Supp. Heller Decl., Ex. 6 [redacted version of CSI 00024], Ex. 8 [redacted versions of CSI 00025-00032].)

Generally, court records are presumed to be open unless confidentiality is required by law.¿ (Cal. Rules of Court, rule 2.550, subd. (c).)¿ If the presumption of access applies, the court may order that a record be filed under seal "if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest."¿ (Cal. Rules of Court, rule 2.550, subd. (d).)

The court finds that (1) there exists an overriding interest that overcomes the right of public access to the record since the documents set forth (i) Plaintiff's name and (ii) reflections of a highly personal nature, (2) the overriding interest supports sealing the record to ensure that Plaintiff's identity and sensitive, personal information about her are not disclosed, (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed, (4) the proposed sealing is narrowly tailored, and (5) no less restrictive means exist to achieve the overriding interest. (Cal. Rules of Ct., rule 2.550, subd. (d); Supp. Heller Decl., Exs. 6, 8.) The court therefore grants Plaintiff's motion.

DEFENDANTS' MOTION TO COMPEL ARBITRATION

Defendants Church of Scientology International ("Church of Scientology"), Bridge Publications, Inc. ("Bridge"), and Religious Technology Center ("RTC") ("Church Defendants"), joined by defendant Gavin Potter ("Potter") (collectively, "Defendants"), move the court for an order compelling Plaintiff to submit all the claims alleged in her Second Amended Complaint to binding arbitration.

1. Applicability of Federal Arbitration Act

As a threshold matter, the court finds that Defendants have met their burden to show that the Federal Arbitration Act (the "FAA") (9 U.S.C. § 1 et seq.) governs this motion. (*Evenskaas v. California Transit, Inc.* (2022) 81 Cal.App.5th 285, 292 ["The party asserting the FAA applies to an agreement has 'the burden to demonstrate FAA coverage by declarations and other evidence'"] [internal citation omitted].)

"'The FAA's basic coverage provision, section 2, makes the FAA

applicable to contracts "evidencing a transaction involving commerce." (9 U.S.C. § 2.) Courts broadly construe section 2 to "provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause." [Citation.] "Accordingly, in most cases, the FAA mandates arbitration when contracts involving interstate commerce contain arbitration provisions." ' [Citations.]" (*Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 761-762; 9 U.S.C. § 2 ["A written provision in . . . a contract evidencing a transaction involving commerce" to arbitrate a controversy shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for revocation of any contract].) "The United States Supreme Court has identified 'three categories of activity that Congress may regulate under its commerce power: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, . . ."; and (3) "those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce." ' [Citations.]" (*Evenskaas*, *supra*, 81 Cal.App.5th at p. 293.)

Defendants have submitted evidence showing that (1) the Church of Scientology's Flag Service Organization in Clearwater, California (where the arbitration agreement was executed) "is the worldwide spiritual headquarters of the Scientology religion[,]" at which the Church of Scientology "ministers to Scientologists throughout the world who come to Clearwater for Scientology religious services, including services available only at" Flag Service Organization; (2) the arbitration provision that is the subject of this motion expressly states that the signee is waiving his or her right to file a lawsuit with regard to any claim or dispute against that church, all other Scientology churches, all organizations which espouse, present, propagate or practice Scientology, and all persons employed by any such entity; and (3) the agreement also includes procedures regarding the return of religious donations made to Scientology churches. (Heller Decl., ¶¶ 1, 3, 7; Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (a); Heller Decl., Ex. 1, Agreement, ¶ 5, subd. (c).)

The court finds that Defendants' evidence is sufficient to show that the subject agreement "substantially affect[s] interstate commerce" because it evidences transactions involving commerce since (1) the subject agreement was executed by and between Plaintiff and "the worldwide headquarters of the Scientology religion[,]" where the Church of Scientology ministers to its members "throughout the world[,]" and

of Scientology ministers to its members "throughout the world[,]" and (2) the agreement includes provisions concerning the religious donations made to its churches. (*Evenskaas*, *supra*, 81 Cal.App.5th at p. 293 [internal quotations omitted]; Heller Decl., ¶ 3; Heller Decl., Ex. 1, Agreement, ¶ 5, subd. (c).) Thus, the court finds that the FAA governs the arbitration agreement that is the subject of Defendants' motion.

2. <u>Existence of Written Agreement to Arbitrate</u>

The FAA requires courts to direct parties to proceed to arbitration on issues covered by an arbitration agreement upon a finding that the making of the arbitration agreement is not in issue.¿ (9 U.S.C. § 4; *Chiron Corp. v. Ortho Diagnostic Sys.* (9th Cir. 2000) 207 F.3d 1126, 1130.)¿ "The court's role under the [FAA] is therefore limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." ¿ (*Chiron Corp*., *supra*, 207 F.3d at p. 1130.)¿ The FAA reflects "both a 'liberal federal policy favoring arbitration,' [citation], and the 'fundamental principle that arbitration is a matter of contract,' [citation]."¿ (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.)¿¿¿

"' "The party seeking to compel arbitration bears the burden of proving the existence of an arbitration agreement, while the party opposing the petition bears the burden of establishing a defense to the agreement's enforcement." '"¿ (*Beco v. Fast Auto Loans* (2022) 86 Cal.App.5th 292, 302.)¿ To determine the existence of an agreement, the court uses "a three-step burden-shifting process." (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755.) "The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. [Citations.] A movant can bear this initial burden 'by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature.'" (*Ibid*. [internal citations omitted].) "If the movant bears its initial burden, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence . . . ." (*Ibid*.) If the opposing party meets its burden to "submit sufficient evidence to create a factual dispute" as to the existence of the agreement, the burden shifts back to the arbitration proponent, who retains the ultimate burden of proving its existence by a preponderance of the evidence. (*Ibid*.; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165-166.)

The court finds that Defendants have met their burden of producing

The court finds that Defendants have met their burden of producing prima facie evidence of an agreement to arbitrate this controversy. (*Iyere*, *supra*, 87 Cal.App.5th at p. 755.)

Defendants have submitted a copy of the "Religious Services Enrollment Application, Agreement and General Release" (the "Agreement"), entered into by and between Plaintiff, on the one hand, and Church of Scientology Flag Service Organization ("Church FSO"), on the other hand. (Heller Decl., ¶ 1; Heller Decl., Ex. 1, Agreement.) The Agreement includes an arbitration provision. (Heller Decl., Ex. 1, Agreement, ¶ 6.) The arbitration provision states, in relevant part, that, should any dispute, claim or controversy arise between Plaintiff and Church FSO, any other Scientology church, any other organization that espouses or practices the Scientology religion, or any person employed by such entity, Plaintiff "will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's internal Ethics, Justice, and binding religious arbitration procedures, which include application to senior ecclesiastical bodies including, as necessary, final submission of the dispute to the International Justice Chief of the Mother Church of the Scientology religion, Church of Scientology International ('IJC') or his or her designee." (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (d).) The Agreement further states that any dispute that remains unresolved after review by the IJC shall be submitted to binding religious arbitration in accordance with the Church of Scientology's arbitration procedures. (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (e).)

The court finds that Defendants have met their burden to produce evidence of an agreement to arbitrate this controversy between Plaintiff and Church FSO which extends, as express third-party beneficiaries, (1) to defendant Church of Scientology (as "any other Scientology church or organization"), (2) to defendant RTC (as "any other Scientology church or organization"), (3) to defendant Bridge (as "any other organization which espouses, presents, [or] propagates . . . the Scientology religion"), and (4) to defendant Potter (as a "person employed" by the entities delineated in the agreement). (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (d) [extending arbitration provision to all Scientology churches, entities espousing its religion, and persons employed by those entities]; McShane Decl., ¶ 4 [stating that RTC is a church of Scientology and that its "central role and function . . . is to ensure the orthodoxy of the Scientology religion"]; Farny Decl., ¶¶ 2, 4, 7 ["Bridge serves as the primary publishing arm of Scientology

7 [Bridge serves as the primary publishing arm of Scientology Scripture"]; SAC ¶ 57 [Potter "acted as an agent and employee of" Church Defendants]; *Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 552 ["'a third party beneficiary of an arbitration agreement may enforce it'" if the third party shows that the arbitration clause was made expressly for its benefit].) The court further finds that Defendants have shown that the arbitration agreement encompasses the claims alleged in Plaintiff's operative complaint since the agreement applies to "*any* dispute, claim or controversy" arising between Plaintiff and Defendants. (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (d) [emphasis added].)

The court finds that Plaintiff has not met her burden to identify a factual dispute as to the Agreement's existence. (*Iyere*, *supra*, 87 Cal.App.5th at p. 755.)

Plaintiff has not argued that she did not sign the Agreement or that it is not authentic for any other reason. (Opp., pp. 2:20-21 [Plaintiff "signed the agreement"].) Instead, Plaintiff contends that the Agreement is invalid because (1) Defendants did not sign it, and (2) there was no implied-in-fact agreement between the parties.

First, the court acknowledges that the Agreement was not signed by any of the Church Defendants or the Church FSO. (Heller Decl., Ex. 1, Agreement, p. 6 [leaving blank the signature line for the Church of Scientology].) "However, the writing memorializing an arbitration agreement need not be signed by both parties in order to be upheld as a binding arbitration agreement." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 176.) Specifically, "'it is not the presence or absence of a *signature* [on an agreement] which is dispositive; it is the presence or absence of evidence of an *agreement* to arbitrate which matters.' [Citation.]" (*Ibid*.) Thus, the absence of Church FSO's signature, alone, does not invalidate the Agreement.

Second, the court finds that Plaintiff has not shown that the Agreement was not accepted or agreed to by Church FSO.

The Agreement states that it "will become a legally binding agreement between [the member] and the Church upon its acceptance by the Church or upon [the member's] commencing [his or her] participation in a Scientology Religious Service, whichever occurs first." (Heller Decl., Ex. 1, Agreement, ¶ 8.) Plaintiff asserts that, because she did not commence participation in religious services at Flag, the Agreement did

not become binding. (Opp., pp. 3:5-10, 14:15-19.) However, as noted by Church Defendants in their reply papers, the Agreement does not state that it becomes binding upon the commencement of participation of religious services with *Church FSO*, and instead becomes binding "upon [Plaintiff's] commencing [her] participation in a *Scientology Religious Service*[.]" (Heller Decl., Ex. 1, Agreement, ¶ 8 [emphasis added].) "Religious Services" are defined to be "the beliefs and practices set forth in the writings and spoken words of [L. Ron Hubbard] on the subjects of Dianetics and Scientology published with the identifying S and double triangle or Dianetics triangle symbol, and all services or application of the principles of Mr. Hubbard provided to [the signing member] by the ministers or staff of the Church [FSO] *and all other Scientology churches and organizations* . . . ." (Heller Decl., Ex. 1, ¶ 2, subd. (d) [emphasis added].)

Thus, Plaintiff has not shown that the Agreement did not become binding solely because she might not have participated in religious services offered by Church FSO as she contends. (Opp., p. 14:17-19 [Plaintiff "*did not* participate in Religious Services *at FLAG* after signing the Agreement"] [emphasis added].) Moreover, the court notes that Plaintiff's declaration indicates that (1) she resumed her studies at Advanced Org Los Angeles—Plaintiff's "home Scientology base"—in March and April of 2002 (i.e., after she signed the Agreement), and (2) completed independent work, dated April 16, 2002, assigned to her by Advanced Org Los Angeles. (Doe Decl., ¶¶ 3 [stating she'd been granted a temporary leave from "Advanced Org Los Angeles," which she describes as her "home Scientology base"], 13.) Plaintiff has not shown that the independent work and resumed studies at Advanced Org Los Angeles did not constitute religious services (i.e., work relating to the beliefs and practices set forth in L. Ron Hubbard's writings). The court therefore finds that Plaintiff has not shown that, after signing the Agreement, she did not participate in any "Religious Services" as defined by the Agreement, such that the Agreement did not become binding.

Even if Plaintiff had produced evidence showing that she did not participate in the types of religious services contemplated by the Agreement, the court would find that (1) Defendants met their ultimate burden in proving the existence of an arbitration agreement by submitting evidence showing that Plaintiff did participate in religious services at Church FSO in the spring of 2002, and therefore (2) met

their burden of showing that the Agreement became binding, at the latest, in the spring of 2002. (Supp. Heller Decl., ¶¶ 17 [Plaintiff "participated in Ethics programs at Flag in the Spring of 2002"], 18 ["Ethics programs involve the study and application of the religious technology" of L. Ron Hubbard]; Lowrey Decl., ¶¶ 4 ["I ministered an Ethics Program, a religious service, to [Plaintiff] to assist with her spiritual development"], 6 [Exhibit 8 documents "pertain to the Ethics Program I ministered to [Plaintiff] at Flag"]; 7-8; *Golden Door Properties, LLC v. Superior Court of San Diego County* (2020) 53 Cal.App.5th 733, 774 [exception to rule barring new evidence in reply "is for points 'strictly responsive' to arguments made for the first time in opposition"].)

Thus, the court finds that Defendants have met their burden (1) to prove the existence of an arbitration agreement, and (2) to show that they, as non-signatories, may enforce the arbitration agreement as third-party beneficiaries of the Agreement.

3. <u>Validity of Agreement</u>

Plaintiff contends that the arbitration provision in the Agreement is invalid as a matter of law (1) pursuant to the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (the "EFAA") (9 U.S.C. § 401 et seq.), and (2) under the reasoning set forth in *McGill v. Citibank* (2017) 2 Cal.5th 945 ("*McGill*").

Preliminarily, the court notes that Defendants have argued that "the threshold questions of invalidity and scope are to be determined by the ecclesiastical arbitrators, not the Court[,]" because "the parties made clear that civil courts should not hear *any* claim asserted against the Church Defendants." (Mot., p. 17:2-4, 17:18-19.) The court disagrees.

"Courts have held that ' "[t]here are two prerequisites for a delegation clause to be effective. First, the language of the clause must be clear and unmistakable. [Citation.] Second, the delegation must not be revocable under state contract defenses such as fraud, duress, or unconscionability." ' [Citation.]" (*Mendoza*, *supra*, 75 Cal.App.5th at p. 773.) Here, Defendants contend that the court cannot adjudicate the scope of the Agreement because Plaintiff (1) consented "to be bound exclusively by the discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the Scientology religion . . . in all [her] dealings of any nature with the Church[,]" and (2) agreed that any

claims shall be resolved through their arbitration procedures. (Heller Decl., Ex. 1, ¶ 6, subds. (a), (d).) However, the court finds that these provisions are not "clear and unmistakable" clauses that delegate the issues of arbitrability and validity to Church Defendants' arbitrators. (*Mendoza*, *supra*, 75 Cal.App.5th at p. 773.) Thus, the court will determine whether the arbitration agreement set forth in the Agreement is valid and enforceable. (*Ibid*.)

i. EFAA

The EFAA, enacted on March 3, 2022, "voids predispute arbitration clauses in cases . . . involving sexual harassment allegations." (*Murrey v. Superior Court* (2023) 87 Cal.App.5th 1223, 1230.) Under the EFAA, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute . . . , no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." (9 U.S.C. § 402, subd. (a).)

The court finds that Plaintiff has met her burden to show that the arbitration agreement set forth in the Agreement is a predispute arbitration agreement relating to a sexual assault dispute and is therefore invalid and unenforceable pursuant to the EFAA. (9 U.S.C. § 402, subd. (a).)

"The term 'predispute arbitration agreement' means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement." (9 U.S.C. § 401, subd. (1).) A sexual assault dispute is defined to mean "a dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18 or similar applicable Tribal or State law, including when the victim lacks capacity to consent." (9 U.S.C. § 401, subd. (3).) "[T]he date that a dispute has arisen for purposes of the [EFAA] is a fact-specific inquiry in each case, but a dispute does not arise solely from the alleged sexual conduct. A dispute arises when one party asserts a right, claim, or demand, and the other side expresses disagreement or takes an adversarial posture. [Citation.] In other words, '[a] dispute cannot arise until both sides have expressed their disagreement, either through words or actions.' [Citation.] Until there is a conflict or disagreement, there is nothing to resolve in litigation." (*Kader v. Southern California Medical Center, Inc.* (2024) 99 Cal.App.5th 214, 222-223 [internal

citations omitted].) "[A] dispute does not arise simply because the plaintiff suffers an injury; it additionally requires a disagreement or controversy." (*Id.* at p. 223.)

The court acknowledges, as Church Defendants point out, that Plaintiff has alleged that the sexual abuse that is the subject of this action occurred from 1991 to approximately 1997-1998. (SAC ¶¶ 65, 77-78.) However, as set forth above, a dispute does not arise when the alleged sexual assault occurs. (*Kader*, *supra*, 99 Cal.App.5th at p. 222.) Church Defendants contend that Plaintiff has alleged that the dispute occurred before she signed the Agreement in 2002 by alleging that she reported defendant Potter's sexual assault to Church Defendants, who subsequently forced her to choose between marrying Potter or facing disciplinary action. The court disagrees.

Plaintiff did not allege that she reported Potter to Church Defendants, and instead has alleged (1) she confided in a coworker regarding the sexual abuse committed by Potter, (2) that coworker thereafter informed Church officials, and (3) Church Defendants responded to the disclosure of that information by presenting Plaintiff with two options: marry Potter or be branded for the Rehabilitation Project Force. (SAC ¶¶ 70, 96, subd. (g).) Plaintiff did not allege, in the paragraphs cited by Church Defendants in their reply papers, that (1) she communicated a claim or complaint to Church Defendants based on the sexual assault alleged in her complaint, or (2) she demanded redress for Potter's actions. (Reply, p. 6:11-15 [citing SAC ¶¶ 96, subd. (g), 116, 126, 130]; *Kader*, *supra*, 99 Cal.App.5th at pp. 218, 224.) Further, Church Defendants have not pointed to any other evidence establishing that Plaintiff asserted a right, claim, or demand to Church Defendants at any other time. The only evidence as to the first time that Plaintiff asserted such a claim or demand is the date of filing of this action.

Thus, the court finds that (1) the sexual assault dispute that is the subject of this action arose on December 29, 2022, i.e., the date on which Plaintiff filed the Complaint in this action; (2) Plaintiff signed the Agreement containing the arbitration provision on February 25, 2002, and therefore it is a predispute arbitration agreement; and (3) the dispute arose after the date that the EFAA was enacted (March 3, 2022) and therefore invalidates the predispute arbitration agreement. (*Kader*, *supra*, 99 Cal.App.5th at p. 225 [because the dispute in the case arose after the effective date of the EFAA, "[t]he trial court properly concluded that the Act applied to invalidate the predispute arbitration agreement"

that the Act applied to invalidate the predispute arbitration agreement in that case].)

ii. *McGill*

The court finds that Plaintiff has not met her burden to show that the holding in *McGill* bars Defendants from enforcing the arbitration agreement against Plaintiff.

In *McGill*, the Supreme Court of California (1) addressed the question of "the validity of a provision in a predispute arbitration agreement that waives the right to seek [the statutory remedy of injunctive relief provided by the Consumers Legal Remedies Act, the unfair competition law, and the false advertising law] *in any forum*[,]" and (2) held "that such a provision is contrary to California public policy and is thus unenforceable under California law." (*McGill*, *supra*, 2 Cal.5th at pp. 951-952 [emphasis added]; *Id*. at p. 963 ["the FAA does not require enforcement of a provision in a predispute arbitration agreement that . . . waives the right to seek *in any forum* public injunctive relief under the UCL, the CLRA, or the false advertising law"] [emphasis in original].) While the court recognizes that Plaintiff has prayed for injunctive relief (SAC ¶ 8), Plaintiff has not directed the court to any provision set forth in the Agreement that constitutes a waiver of her right to seek injunctive relief "in any forum." (*McGill*, *supra*, 2 Cal.5th at p. 951; Opp., p. 9:1-12.)

Thus, the court finds that Plaintiff has not shown that *McGill* precludes enforcement of the arbitration agreement.

4. Unconscionability

Plaintiff further contends that the court cannot enforce the arbitration provision in the Agreement because it is unconscionable.

As a threshold matter, the court notes that Church Defendants have argued that the First Amended bars any unconscionability challenge to the Agreement, relying on *Serbian Eastern Orthodox Diocese for U.S. of America and Canada v. Milivojevich* (1976) 426 U.S. 696 ("*Milivojevich*").

The court acknowledges that, in deciding *Milivojevich*, the Supreme Court of the United States explained that (1) "the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters[,]"

and (2) "[w]hen this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." (*Milivojevich*, *supra*, 426 U.S. at pp. 724-725.) However, the *Milivojevich* case concerned the removal of a Bishop and the decision of the Supreme Court of Illinois which held that such removal was procedurally and substantively defective under the internal regulations of the church and was therefore invalid. (*Id.* at p. 698.) The *Milivojevich* Court held that "[t]he fallacy fatal to the judgment of the Illinois Supreme Court [was] that it rest[ed] upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of th[e] hierarchical church upon the issues in dispute, and impermissibly substitute[d] its own inquiry into church policy and resolutions based thereon of those disputes." (*Id.* at p. 708.) Doing so violated the First and Fourteenth Amendments because, thereunder, "'civil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law (to decide such disputes) [,]'" because to do so would allow the court to decide religious law. (*Id*. at pp. 708-709.) Here, however, Plaintiff has not requested that the court reverse a decision made by Church Defendants or to interpret religious law and governing church polity. Instead, Plaintiff has requested that the court find that the arbitration provision is unconscionable.

Thus, the court finds that Church Defendants have not met their burden to show that the decision in *Milivojevich* bars the court from determining whether the Agreement is unconscionable and therefore unenforceable. The court therefore evaluates whether Plaintiff has shown that the arbitration agreement is unconscionable.

"'[A]greements to arbitrate [may] be invalidated by "generally applicable contract defenses, such as fraud, duress, or unconscionability." '" (*Beco*, *supra*, 86 Cal.App.5th at p. 302.) "The burden of proving unconscionability rests upon the party asserting it."¿ (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 (*Kho*).)¿ "Unconscionability entails an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party."¿ (*Iyere*, *supra*, 87 Cal.App.5th at p. 759 [internal quotations omitted].)¿ It "'has both a "procedural" and a "substantive" element,' the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results."

¿ (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 [citations omitted].)¿ "As a matter of general contract law, California courts require both procedural and substantive unconscionability to invalidate a contract."¿ (*Torrecillas v. Fitness International, LLC* (2020) 52 Cal.App.5th 485, 492 (*Torrecillas*).)¿ Courts "apply a sliding scale, meaning if one of these elements is present to only a lesser degree, then more evidence of the other element is required to establish overall unconscionability.¿ In other words, if there is little of one, there must be a lot of the other."¿ (*Ibid.*)¿¿¿

i. Procedural Unconscionability

"Procedural unconscionability pertains to the making of the agreement . . . ."¿ (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795.)¿ Procedural unconscionability ""focuses on two factors: 'oppression' and 'surprise.'¿ [Citations.]¿ 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of meaningful choice.' [Citations.]¿ 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms.""¿ (*Zullo v. Superior Court* (2011) 197 Cal.App.4th 477, 484 [citations omitted].)¿¿¿¿¿¿

1. Oppression¿

As set forth above, "[*o*]*ppression* occurs where a contract involves lack of negotiation and meaningful choice . . . ." (*Kho*, *supra*, 8 Cal.5th at p. 126 [internal quotations and citations omitted].) "Oppression generally 'takes the form of a contract of adhesion, "'which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.'""¿ [Citation.]"¿ (*Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 84 (*Carmona*).) "'The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract as aided by an attorney.'" (*Kho*, *supra*, 8 Cal.5th at pp. 126-127.)

Plaintiff has submitted her declaration [2] in which she states that (1)

Plaintiff has submitted her declaration,[3] in which she states that (1) officials at Church FSO noted that she was not partaking in training; (2) she was informed that Church FSO needed to have paperwork showing that she was on base for a legitimate purpose; (3) the Agreement was presented to her for that purpose; (4) she was told that the failure to sign the Agreement and other presented documents would result in Plaintiff and Flag officers getting in trouble; (5) she was told that the documents "were meaningless to [her] but would allow [her] to stay at" the Church FSO; (6) she was not given an opportunity to read the documents; and (7) she was not told that the Agreement contained an arbitration provision. (Doe Decl., ¶¶ 6-7, 9.) The court finds that Plaintiff's testimony on these points is credible.

The court finds that Plaintiff has shown the existence of oppression because she has shown that (1) the Agreement was a form contract that was offered to Plaintiff on a take-it-or-leave-it basis (and thus was an adhesion contract), (2) Plaintiff was expressly told by Church officials that failure to sign would get her and other Flag officials in trouble (and therefore shows that she was subjected to pressure to sign the Agreement in order to avoid getting both herself and other officials in trouble), and (3) Plaintiff was not given the opportunity to review the Agreement.

The court notes that, in reply, Church Defendants contend that Plaintiff's assertion of pressure cannot be used to support a defense to enforcement of an agreement. The court acknowledges that, as a general rule, a church "is entitled to stop associating with someone who abandons it" and to "warn that it will stop associating with members who do not act in accordance with church doctrine." (*Headley v. Church of Scientology Intern.* (9th Cir. 2012) 687 F.3d 1173, 1180.) However, even if this conduct is protected, Church Defendants have not shown that such threats cannot support a finding of oppression based on the exertion of pressure on a party to sign an agreement. (*Kho*, *supra*, 8 Cal.5th at pp. 126-127.)

The court finds that this evidence establishes a moderate level of procedural unconscionability.

2. Surprise

As discussed above, "[s]urprise is when a prolix printed form conceals the arbitration provision."¿ (*Torrecillas, supra,* 52 Cal.App.5th at p. 493; *Fisher v. MoneyGram Intern., Inc.* (2021) 66 Cal.App.5th 1084, 1095

Fisher v. MoneyGram Intern., Inc. (2021) 66 Cal.App.5th 1084, 1095 ["Surprise involves the extent to which 'the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms'"].)

The court finds that Plaintiff has not established surprise as to the form of the Agreement.

Although the court recognizes that the arbitration provision set forth in the Agreement is on the fourth page of the six-page agreement, the provision does not appear to have been concealed. (Heller Decl., Ex. 1, Agreement, p. 4.) Moreover, the sixth page of the Agreement, above the signature line, states, in all capital letters and bold typeface, that the signee understood that he or she was "forever giving up [his or her] right to sue the church, its staff and any of the hereinabove referenced releasees for any injury or damage suffered in any way connected with Scientology religious services." (*Id.* at p. 6.) Thus, the court finds that the form of the Agreement does not conceal the arbitration provision.

While the court has found that there was no surprise in regard to the form of the Agreement, the court (1) has found relevant, in evaluating the existence of oppression, that Plaintiff was told by Church officials that the Agreement (and other documents) "were meaningless" to her and concealed, in their representations, the existence of an arbitration agreement, and (2) notes that "[a] showing of *either* oppression or surprise may render a contract procedurally unconscionable[,]" such that this finding does not preclude the court's finding of a moderate level of procedural unconscionability. (*Fisher*, *supra*, 66 Cal.App.5th at p. 1095 [emphasis added].)

ii. Substantive Unconscionability

"'Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.¿ [Citations.]¿ A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be "so one-sided as to 'shock the conscience.'"'"¿ (*Carmona*, *supra*, 226 Cal.App.4th at p. 85.)¿ "'"[T]he paramount consideration in assessing [substantive] unconscionability is mutuality."'"¿ (*Ibid*.)¿¿

The court finds that Plaintiff has shown that the arbitration provision set forth in the Agreement is unilateral and lacks mutuality. Specifically, the

court has identified four provisions showing that the arbitration provision in the Agreement is not mutual.

First, in paragraph 6, subdivision (a), the Agreement states that Plaintiff's freely given consent to be bound by the rule and law of Scientology "means that *I* [i.e., Plaintiff[4]] am [is] forever abandoning, surrendering, waiving, and relinquishing *my* [Plaintiff's] right to sue, or otherwise seek legal resource with respect to any dispute, claim or controversy against the Church" and related, delineated entities. (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (a) [emphasis added].) This provision does not include a mutual obligation stating that Church Defendants (as entities related to Church FSO) are similarly abandoning, surrendering, waiving, and relinquishing their rights to sue or seek legal recourse against Plaintiff in court.

Second, in paragraph 6, subdivision (c), the Agreement states that, "[s]hould *I* or anyone acting or purporting to be acting on *my behalf* ever sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy" against any Scientology church or related entities as set forth in the Agreement, "*I* intend for the submission of this Contract to the presiding judicial officer to be a complete and sufficient basis for the immediate dismissal of any and all such proceedings with prejudice to further proceedings of any kind." (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (c) [emphasis added].) This provision (1) applies only to the initiation of a lawsuit by Plaintiff or anyone acting on her behalf, and (2) does not permit Plaintiff, if Defendants were to file a lawsuit against her, to use the Agreement to dismiss such proceedings. (*Ibid*.)

Third, in paragraph 6, subdivision (d), the Agreement further explains that "should any dispute, claim or controversy" arise between the parties, "*I* [i.e., Plaintiff] will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's" internal procedures. (Heller Decl., Ex. 1, Agreement, ¶ 6, subd. (d) [emphasis added].) This provision also obligates only Plaintiff and not Defendants.

Fourth, the language set forth in paragraph 6, subdivision (e) further shows that Plaintiff was the only party obligated to submit claims to arbitration. For example, in describing the arbitration procedure, the Agreement sets forth the following language: (1) "*I* will submit a request for arbitration to the IJC[;]" (2) "in *my* request for arbitration, *I* will designate one arbitrator[;]" and (3) "consistent with *my* intention that the arbitration be conducted . . . ." (Heller Decl., Ex. 1, Agreement, ¶ 6,

subd. (e) [emphasis added].) The language used in describing the arbitration procedure again contemplates that the obligation to submit any arising claims or disputes to arbitration applies only to Plaintiff, and therefore is not bilateral.

Finally, the court notes that Church Defendants contend that "Plaintiff's statement that she agrees to arbitration of disputes creates mutual obligation." (Reply, p. 12:1-2.) The court disagrees.

The court acknowledges that there are cases declining to find that "'the mere inclusion of the words "I agree" by one party in an otherwise mutual arbitration provision destroys the bilateral nature of the agreement.' [Citation.]" (*Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 252 [quoting *Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1473].) However, as set forth above, the arbitration provision in the Agreement here includes various terms establishing that the obligation to submit claims to arbitration is binding only on Plaintiff, and therefore is not "an otherwise mutual arbitration provision" within the meaning of those cases. (*Ibid*.; Heller Decl., Ex. 1, Agreement, ¶ 6, subds. (a), (c), (d), (e).)

The court finds that Plaintiff has established a high level of substantive unconscionability by showing that the arbitration provision set forth in the Agreement lacks mutuality and is "so one-sided as to shock the conscience." (*Carmona*, *supra*, 226 Cal.App.4th at p. 85 [internal quotations omitted].)

Thus, because Plaintiff has established (1) a moderate level of procedural unconscionability, and (2) a high level of substantive unconscionability, the court finds that Plaintiff has met her burden to show that the arbitration agreement is unconscionable and therefore unenforceable.

5. Conclusion

For the reasons set forth above, the court finds that (1) Defendants have met their burden to show the existence of an agreement to arbitrate this controversy, and (2) Plaintiff has met her burden to show that Defendants cannot enforce the arbitration provision against her (i) because it is void under the EFAA, and (ii) because it is unconscionable and therefore unenforceable under California law.

The court therefore denies Defendants' motion to compel arbitration.

ORDER

The court grants plaintiff Jane Doe's motion to seal.

The court orders that the "Supplemental Declaration of Sarah Heller in Support of Church Defendants' Motion to Compel Religious Arbitration," lodged with the court on or about February 8, 2024 by defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center, shall be filed under seal.

Pursuant to California Rules of Court, rule 2.551, subdivision (e), the court directs the clerk to file this order, maintain the records ordered sealed in a secure manner, and clearly identify the records as sealed by this order.¿¿

The court denies (1) defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center's motion to compel arbitration, and (2) defendant Gavin Potter's joinder to defendants Church of Scientology International, Bridge Publications, Inc., and Religious Technology Center's motion to compel arbitration.

The court orders plaintiff Jane Doe to give notice of this ruling.

IT IS SO ORDERED.

DATED: April 16, 2024

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Robert B. Broadbelt III

Judge of the Superior Court

[1] On February 14, 2024, the court issued an order noting several procedural defects with the parties' papers, including that the opposition papers filed by plaintiff Jane Doe violated California Rules of Court, rule 3.1113. The court continued the hearing on the motion to compel arbitration in order to allow the parties to file (1) an amended

opposition that complied with rule 3.1113, and (2) amended reply memoranda in response to the amended opposition.

[2] On February 8, 2024, the moving defendants filed an incomplete application to file these documents under seal. In its February 16, 2024 order, the court noted deficiencies with the request to seal and continued the hearing on the motion to compel arbitration to give the defendants an opportunity to file a revised application to seal that complied with California Rules of Court, rules 2.550-2.551. (Feb. 14, 2024 Order, p. 2:18-22.) Defendants (1) Religious Technology Center and (2) Church of Scientology International and Bridge Publications, Inc. separately filed, on February 28, 2024, notices of their intent not to file these exhibits under seal.

[3] As set forth above, the court has sustained Church Defendants' evidentiary objection to Plaintiff's October 13, 2023 declaration in its entirety because it does not comply with Code of Civil Procedure section 2015.5. The court therefore has not evaluated the facts set forth in that declaration.

[4] Paragraph 1 of the Agreement makes clear that "I" refers to Plaintiff. (Heller Decl., Ex. 1, Agreement, ¶ 1.)