UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

PETER DAVID ULLRICH,
MONICA ULLRICH, and
STEPHEN ULLRICH,

Petitioners,

v. Case No. 3:21-cv-147-TJC-PDB

CLARISSE ULLRICH,
individually and as a
Personal Representative of
the Estate of Peter Fritz Ullrich

Respondent.

ORDER

This a multi-million-dollar dispute between family members playing out in both Colombia and Florida raising issues involving removal, arbitration, and the Panama Convention. The case comes before the Court on Petitioners Peter David Ullrich, Monica Ullrich, and Stephen Ullrich's (the "Ullrich Descendants") Corrected Motion for Remand (Doc. 10) and Clarisse Ullrich's ("Mrs. Ullrich") Motion to Stay Action and to Compel Arbitration (Doc. 6). The Court must determine (1) whether Mrs. Ullrich properly invoked the Inter-American Convention on International Commercial Arbitration (the "Panama Convention"), Jan. 30, 1975, O.A.S.T.S. No. 42, to remove a state court action to this Court; (2) whether Stephen Ullrich's Verified Petition claims (Doc. 5) are due

to be arbitrated; and (3) whether the Ullrich Descendants' Verified Petition claims should be stayed.

The parties presented their arguments at the August 4, 2021 telephone hearing, the record of which is incorporated herein. The Court also provided the parties an opportunity to file supplemental briefing on pertinent issues. Doc. 22.

I. BACKGROUND

A. Ownership Interests in the Colombian Companies

In 2015, Mrs. Ullrich married the Ullrich Descendants' late father Peter Fritz Ullrich (the "Decedent"). Doc. 5 ¶¶ 7, 9. The Decedent founded and owned four flower companies in Colombia, Flores Esmeralda, Flores de Tenjo, Esmeralda Breeding and Biotechnology S.A.S., and Tecnoviv S.A.S (collectively the "Colombian Companies"). See Doc. 5 at 1–2. Over time, the Decedent transferred shares of the Colombian Companies to the Ullrich Descendants. See Docs. 1 at 6; 5 at 1–2. As a result, each of the three Ullrich Descendants had (or have) distinct ownership interests in the Colombian Companies. See Doc. 5 at 2. Nevertheless, the Decedent did not inform the Ullrich Descendants of the exact number of shares they owned or the exact percentage of each company they owned. See Doc. 5 ¶ 6. The Ullrich Descendants were also not involved in the operation or management of the Colombian Companies. See Doc. 5 ¶ 5.

A few weeks before the Decedent's death on June 29, 2016, see Doc. 5 ¶¶ 7, 9, 18–19, the Decedent's attorney notified the Ullrich Descendants that they

only held "small minority interests" in the Colombian Companies and asked them to transfer their shares to the Decedent or Mrs. Ullrich. Doc. 5 ¶¶ 9–12. In early June 2016, following the attorney's request, Monica Ullrich and Peter David Ullrich each signed stock purchase agreements to transfer what they understood to be their entire interests in the Colombian Companies (based on the Decedent's attorney's representations concerning their share ownership) to Mrs. Ullrich in exchange for $5 million. See Doc. 5 at 4–6. Similarly, Stephen Ullrich executed an agreement transferring what he believed to be his entire interests in the Colombian Companies. See Docs. 1-1 at 73; 5 at ¶¶ 16–17, 32.[1] Following the Ullrich Descendants' share transfers, the Ullrich Descendants learned that the Decedent may have also transferred his shares in the Colombian Companies to Mrs. Ullrich before he died. See Doc. 5 at ¶ 18.

B. The Settlement Agreement

Upon the death of the Decedent, the Ullrich Descendants initiated proceedings in the Circuit Court of the Fourth Judicial Circuit in Nassau County, Florida ("State Court") to have Mrs. Ullrich removed as personal representative

[1] The Ullrich Descendants claim that Stephen Ullrich transferred his shares in Primacide, but not Tecnoviv to Mrs. Ullrich. See Docs. 1-1 at 73 ("I signed a document titled an 'Assignment of Purchased Interests' transferring my interest in Primacide . . . ."); 5 at ¶¶ 16–17, 32. Mrs. Ullrich has filed an affidavit explaining that Tecnoviv was previously named Primacide, See Docs. 1-2 at 2; 6 at 2; 1 ¶ 1, and the Ullrich Descendants have not submitted any evidence to rebut this. Thus, for purposes of this Order, Primacide and Tecnoviv are one and the same.

of the Decedent's more than $100,000,000 estate (the "Estate") and to set aside the Decedent's will (the "Estate Proceedings"). See Docs. 1-1 at 85; 5 ¶¶ 7, 9, 18–20; 10 at 3; 16-8 at 2. The Ullrich Descendants commenced the proceedings because they believed Mrs. Ullrich fraudulently transferred assets from the Estate and they disputed their ownership interests in the Colombian Companies. See Docs. 5 ¶ 19; 10 at 3. In February 2018, Mrs. Ullrich and the Ullrich Descendants reached a mediated settlement agreement ("the Settlement Agreement") to resolve the Estate Proceedings. See Docs. 10 at 3; 5 ¶¶ 23, 28; 16-8 at 2.

The Settlement Agreement's scope of release, which contains a forum-selection clause, was fixed later at a March 2018 hearing before the State Court. See Docs. 5 ¶ 23; 10 at 3; 10-1 at 68, 74. The scope of release barred the Ullrich Descendants from reopening or asserting claims against Mrs. Ullrich regarding their ownership interests in the Colombian Companies. See Docs. 5 ¶¶ 27–28; 10 at 3. The enforceability of the scope of release was conditioned on the truthfulness of representations made by Mrs. Ullrich at the March 2018 hearing that, prior to his death, the Decedent transferred all of his shares of Flores Esmeralda, Flores de Tenjo, and Tecnoviv to her and that she owned 100 percent of these companies' shares. See Docs. 5 ¶¶ 23, 25, 28; 10 at 3–4. The Ullrich Descendants allege that, if it is proven that Mrs. Ullrich made false representations, the Settlement Agreement's scope of release would no longer

bar the Ullrich Descendants from bringing claims against Mrs. Ullrich pertaining to their ownership interests in the Colombian Companies. See Doc. 5 ¶¶ 26–28.

After the Settlement Agreement entered into force, the Ullrich Descendants uncovered documents that allegedly indicate Mrs. Ullrich's representations were false, see Docs. 5 at 10; the documents suggest that the Ullrich Decedents did not sell all of their shares to Mrs. Ullrich in 2016 because, at that time, the Ullrich Descendants owned more shares than the Decedent's attorney and Mrs. Ullrich led them to believe. See Docs. 5 at 10–11; 10 at 5. The Ullrich Descendants' discovery of this information has led the Ullrich Descendants to initiate litigation in various fora.

C. The Verified Petition Action

On October 5, 2020, Mrs. Ullrich filed a Motion to Enforce Settlement Agreement in the State Court, claiming that a key aspect of the settlement is a recognition by the parties that one hundred percent of the Colombian Companies' shares are vested in Mrs. Ullrich. See Docs. 5 ¶ 42; 10 at 7. In response, the Ullrich Descendants filed the four-count Verified Petition in the State Court on November 24, 2020. See Doc. 1 at 1. In Count I, the Ullrich Descendants seek a declaration of their ownership interests in the Colombian Companies and of Mrs. Ullrich's breach of the Settlement Agreement. See Doc. 5 ¶¶ 45–57. In Count II, they request an accounting of their shares in the Colombian Companies. See Doc.

5 ¶ 64. In Count III, the Ullrich Descendants request that a constructive trust be imposed on their shares and the assets of the Estate and that Mrs. Ullrich restore to the Ullrich Descendants their respective shares. See Doc. 5 at 18–20. In Count IV, the Ullrich Descendants allege that Mrs. Ullrich wrongfully and knowingly converted their shares in the Colombian Companies and wrongfully and knowingly diverted funds from the Colombian Companies. See Doc. 5 at 21.

On February 15, 2021, after the parties had conducted litigation activities in the State Court (e.g., Mrs. Ullrich filed a motion to dismiss the Verified Petition), Mrs. Ullrich filed a notice of removal to this Court. See Docs. 1; 10 at 8–10.

D. Related Ongoing Court and Arbitration Proceedings

Proceedings are ongoing in Colombian civil courts to uncover information on the ownership of the Colombian Companies. See Doc. 5 ¶ 36; 10 at 9 n.4. Colombian civil courts have ordered the Colombian Companies and Mrs. Ullrich to produce documents and provide information on the ownership of the Colombian Companies, but they have not complied. See Docs. 5 ¶ 35; 1-1.

In addition, there are two ongoing arbitrations in Colombia (the "Colombian Arbitrations"). Doc. 1 at ¶ 17. Invoking the arbitration provisions contained in the Flores de Tenjo Bylaws and Flores Esmeralda Bylaws (the

Colombian Companies' bylaws are collectively referred to as the "Bylaws"),[2] Monica Ullrich initiated arbitration against Flores de Tenjo, Doc. 16-2 at 1, and Peter David Ullrich initiated arbitration against Flores Esmeralda, Doc. 16-1 at 1.

In the Colombian Arbitrations, Monica Ullrich requests that the arbitrator declare her the holder of 12,750 shares in Flores de Tenjo and that she was not called to any Flores de Tenjo shareholder assembly meetings from June 2016 to present.[3] Doc. 16-2 at 8–9. In addition, Monica Ullrich alleges that because of her exclusion from shareholder assembly meetings that all corporate decisions made by the assembly since June 2016 are invalid.[4] Doc. 16-2 at 9. The

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[2] The bylaws of the Columbian Companies adopted in 2009 and 2010 are most relevant. The most recently adopted bylaws were adopted when the Ullrich Descendants were not reflected in the Colombian Companies' corporate documents as shareholders, see Doc. 10 at 7 n.3; Mrs. Ullrich is recorded as the sole shareholder, see Doc. 27 at 8. Moreover, there are questions concerning the validity of the most recently adopted bylaws. For example, "[t]o modify the arbitration clause established in the [2010 Tecnoviv Bylaws], the affirmative vote of the 100% of the subscribed shares is required." Doc. 16-4 at 20. Yet, the parties dispute whether Mrs. Ullrich was sole owner of Tecnoviv shares when she unilaterally modified the arbitration clause in 2019, see Docs. 16-6; 27 at 6–7.

[3] Mrs. Ullrich has allegedly operated Flores de Tenjo and Flores Esmeralda without allowing participation from Peter David Ullrich and Monica Ullrich, despite their alleged status as shareholders. See Doc. 5 ¶¶ 38–39.

[4] The Ullrich Descendants allegedly learned that, if the Decedent transferred shares to Mrs. Ullrich before his death, the transfers would violate the Bylaws. See Doc. 10 at 7. Under the Bylaws, a shareholder seeking to transfer shares must first offer to sell to other shareholders, and the Ullrich Descendants were not provided an opportunity to purchase their father's shares. See Doc. 5 ¶

arbitrator has determined that Monica Ullrich's claims are arbitrable and joined Mrs. Ullrich to the arbitration proceeding as a necessary third-party litigant. See Docs. 32; 32-1.

Peter David Ullrich requests that the arbitrator declare him the holder of 21,465,600 shares in Flores Esmeralda and that that he was not called to any Flores Esmeralda shareholder assembly meetings from June 2016 to present. Doc. 16-1 at 8–9. Peter David Ullrich further alleges that because of his exclusion from shareholder assembly meetings all corporate decisions made by the assembly since June 2016 are invalid. Doc. 16-1 at 9. The parties have not indicated whether the arbitrator has determined the arbitrability of Peter David Ullrich's claims.

II. THE ULLRICH DESCENDANTS' MOTION TO REMAND

"[W]hen an action is removed from state court, the district court first must determine whether it has original jurisdiction over the plaintiff's claims." Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). On a motion to remand, the removing party bears the burden of establishing federal subject matter jurisdiction. City of Vestavia Hills v. Gen. Fid. Ins. Co., 676 F.3d 1310, 1313 n.1 (11th Cir. 2012).

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Mrs. Ullrich's sole basis for removal is that the Panama Convention is applicable and the Court, therefore, has removal jurisdiction under 9 U.S.C. §§ 205 and 302. See Docs. 1 at 1; 10 at 12; Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte Int'l GmbH, 921 F.3d 1291, 1299–30 (11th Cir. 2019) ("[R]emoval jurisdiction is not necessarily coterminous with subject-matter jurisdiction.").

Under the Panama Convention's implementing legislation:

> [w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement . . . falling under the Convention, the defendant . . . may, at any time before the trial thereof, remove such action or proceeding to the district court . . . embracing the place where the action or proceeding is pending.

9 U.S.C. §§ 205, 302; see also Outokumpu Stainless USA, LLC v. Converteam SAS, 902 F.3d 1316, 1323–24 (11th Cir. 2018) ([T]he "relates to" language of Section 205 provides for broad removability of cases to federal court."), abrogated on other grounds by GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC, 140 S. Ct. 1637 (2020).[5] The Convention's implementing legislation further provides that federal district courts "shall have original jurisdiction over [an action or proceeding falling under the Convention],

[5] The Court relies on case law interpreting the New York Convention to the extent the case law is consistent with the Panama Convention. See Guarinao v. Productos Roche S.A., 839 F. App'x 334, 337 (11th Cir. 2020) ("[T]he case law interpreting provisions of the New York Convention is largely applicable to the [Panama] Convention."); see also Productos Roche S.A. v. Iutum Servs. Corp., No. 20-20059-Civ-Scola, 2020 WL 1821385, at *1 (S.D. Fla. Apr. 10, 2020).

regardless of the amount in controversy." 9 U.S.C. §§ 203, 302; see also Aqua-Chem, Inc. v. Bariven, S.A., No. 3:16-cv-553, 2018 WL 4870603, at *1 n.2 (E.D. Tenn. Mar. 16, 2018) ("Chapter 3 [of the Federal Arbitration Act]. . . . grants federal courts original jurisdiction in suits 'falling under the Convention.'") (quoting 9 U.S.C. § 302).[6]

The initial jurisdictional inquiry upon removal "is distinct from a determination of whether the parties are bound to arbitrate." Outokumpu, 902 F.3d at 1324. The Eleventh Circuit has instructed that "in determining jurisdiction . . . district court[s] need not—and should not—examine whether the arbitration agreement binds the parties before it." Id. at 1324. District courts must instead "engage in a two-step inquiry to determine jurisdiction, limiting [their] examination to the pleadings and the removal notice." Id. (citing 9 U.S.C. § 205); see also Max King Realty, LLC v. Certain Underwriters at Lloyd's

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[6] The phrase "falling under the Convention" is defined in Section 202:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states.

9 U.S.C. §§ 202, 302.

London, No. 6:20-cv-329-Orl-37GJK, 2020 WL 6065435, at *1 (M.D. Fla. Apr. 13, 2020). First, district courts "should determine whether the notice of removal describes an arbitration agreement that may 'fall[ ] under the Convention' . . . employ[ing] the test articulated in Bautista[v. Star Cruises, 396 F.3d 1289, 1295–96 ns.7 & 9 (11th Cir. 2005)] . . . ." Outokumpu, 902 F.3d at 1324. Second, district courts "must determine whether there is a non-frivolous basis to conclude that agreement sufficiently 'relates to' the case before the court such that the agreement to arbitrate could conceivably affect the outcome of the case." Id. "If the two-step jurisdictional inquiry is satisfied, a court with proper jurisdiction . . . may consider compelling arbitration." Hodgson v. Seven Seas Cruises, No. 19-22881-CIV-KMW, 2020 WL 6120478, at *3 (S.D. Fla. Mar. 27, 2020).

Here, the Ullrich Descendants contend that Mrs. Ullrich has not met her burden under either prong of the jurisdictional test. See Doc. 10 at 2, 11. They also argue that Mrs. Ullrich waived her removal right and that the probate exception to federal jurisdiction is applicable. Id. at 20–24.

A. Striking Mrs. Ullrich's Declaration

The Ullrich Descendants assert that Mrs. Ullrich's declaration (Doc. 1-2) describing the content and scope of the Bylaws' arbitration agreements should be stricken because it relies on Spanish-language versions of the Bylaws that have not been translated to English by a certified translator. See Doc. 10 at 14–15. The Court generally agrees but adopts a more limited view of the elements

of the record that should be stricken. See Rivas-Montano v. U.S., No. 8:03-cr-47-T-24EAJ, 2006 WL 1428507, at *1 (M.D. Fla. May 22, 2006) (collecting cases). Only paragraph three of Mrs. Ullrich's declaration relies on the Spanish-language documents, and thus only this paragraph is due to be stricken. Also, only the Spanish language documents in the exhibits attached to the declaration (Docs. 1-3 through 1-10) are due to be stricken; the English language documents contained in those exhibits need not be stricken.

Relatedly, the Ullrich Descendants contend that this case should be remanded because Mrs. Ullrich's notice of removal relies on the untranslated Spanish-language versions of the Bylaws' arbitration agreements. See Doc. 10 at 12, 14–15. However, as Mrs. Ullrich notes, when ascertaining jurisdiction on removal, the actual text of the arbitration agreements are immaterial; courts need only examine the pleadings and notice of removal. See Bautista, 396 F.3d at 1301 ("Section 205 does not require a district court to review the putative arbitration agreement—or investigate the validity of the signatures thereon—before assuming jurisdiction . . . ."); Doc. 16 at 9–10. Accordingly, the removing defendant does not have to file a copy of the relevant arbitration agreements with her notice of removal. Id.

B. Satisfying the "Falls Under" Requirement

To establish that an agreement falls under the Panama Convention, defendants must articulate on a non-frivolous basis:

> (1) that there is an agreement in writing, that is, an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams;[7] (2) that the agreement provides for arbitration in the territory of a signatory of the Convention; (3) that the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) that a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relationship with one or more foreign states.[8]

Outokumpu, 902 F.3d at 1324 (citing Bautista, 396 F.3d at 1295–96 n.7 & n.9); Goel v. Ramachandran, 823 F. Supp. 2d 206, 212 (S.D.N.Y. 2011) ("The matter need not fall under the Convention; rather, the Agreement must fall under the Convention . . . .").

Mrs. Ullrich seeks removal on the basis that the arbitration agreements in the Flores de Tenjo Bylaws, the Flores Esmeralda Bylaws, and the Tecnoviv's Bylaws are applicable to the Ullrich Descendants' Verified Petition claims and fall under the Convention. See Doc. 1 at 2, 5–6. In arguing that Mrs. Ullrich has not met her burden, the Ullrich Descendants misconstrue the relevant scope of inquiry on removal: the Ullrich Descendants reject Mrs. Ullrich's

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[7] Article 1 of the Panama Convention specifies that an arbitration agreement "must be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications." See 9 U.S.C. § 301; Freaner v. Valle, 966 F. Supp. 2d 1068, 1083–84 (S.D. Cal. 2013) ("An exchange involving contemporary forms of communication that leave a record, such as fax or e-mail, is also believed to be sufficient.").

[8] These factors are referred to in this Order as the Bautista/Outokumpu factors and as the Panama Convention jurisdictional prerequisites.

characterization of the arbitration agreements in the notice of removal, see Doc. 10 at 13–16, and invite the Court to look beyond the notice and pleadings to uncover the true terms and character of the arbitration agreements, see, e.g., id. at 14 ("The Bylaws attached unambiguously state that they concern disputes concerning the Bylaws themselves, and regarding the companies."). In short, accepting such invitation would run afoul of Congress's intent that district courts examine the pleadings and notice of removal to ascertain removal jurisdiction under the Panama Convention's implementing legislation. See 9 U.S.C. §§ 205, 302; Bautista, 396 F.3d at 1301 ("Section 205 does not require a district court to review the putative arbitration agreement . . . before assuming jurisdiction: The language of § 205 strongly suggests that Congress intended that district courts continue to be able to assess their jurisdiction from the pleadings alone.") (internal quotation marks omitted); Outokumpu, 902 F.3d at 1324 (instructing district courts to limit their jurisdictional analysis on removal to the pleadings and notice of removal) (citing 9 U.S.C. § 205). Therefore, at this stage, the determination of whether the Bylaws' arbitration agreements fall under the Panama Convention shall be based on the pleadings and notice of removal.

Employing the proper Eleventh Circuit analytical framework reveals that Mrs. Ullrich has met her removal burden by showing that all four Bautista/Outokumpu factors (or Panama Convention jurisdictional

prerequisites) are satisfied. Initially, the Court was concerned that Mrs. Ullrich had not met her burden as to the first Bautista/Outokumpu factor (or the signed written agreement requirement), because, in her notice of removal, Mrs. Ullrich does not appear to allege that a signed agreement exists between Mrs. Ullrich and the Ullrich Descendants or between the Ullrich Descendants and the Colombian Companies. See Doc. 1 at 10–12. However, after reviewing the parties' supplemental briefing, the Court is satisfied that, for purposes of the removal analysis, a signed written agreement exists between the Ullrich Descendants and the relevant Colombian Companies. This determination is based on the Ullrich Descendants' statement in their supplemental briefing that they signed the Bylaws. See Doc. 27 at 7 ("[Mrs. Ullrich] produced . . . four . . . bylaws which were signed in 2009 and 2010 by the Ullrich Descendants for the Colombian Companies"); see also Docs. 10 at 7; 28 at 2. Cf. GE Energy, 140 S. Ct. at 1648–49 (indicating that all parties to a case need not be signatories to the arbitration agreement being invoked to compel arbitration under the New York Convention).

As for the second, third, and fourth factors, Mrs. Ullrich's notice of removal provides that: the Bylaws provide for arbitration in Colombia, a signatory to the Panama Convention,[9] Doc. 1 at 5–6, 11; the Bylaws govern the commercial

[9] Both Colombia and the United States are signatories to the Panama Convention. See ORGANIZATION OF AMERICAN STATES, Signatories and

relationship between the Colombian Companies and their shareholders, see Docs. 1 at 2, 5, 11; 16 at 4–5; the Colombian Companies and their shareholders are party to the Bylaws (including the arbitration agreements contained within), Docs. 1 at 2, 5, 11; 16 at 5; and the commercial relationship between the Colombian Companies and their shareholders is significantly connected to Colombia, where the Colombian Companies are incorporated and operate and conduct business, see Docs. 1 at 1, 11; 16-1 at 1; 16-2 at 1.[10] The notice of removal also indicates that Colombian substantive law governs the Bylaws. See Docs. 1 at 11; 16-1 at 1; 16-2 at 1. This is sufficient.

To be sure, "[t]his initial jurisdictional inquiry is distinct from a determination of whether the parties are bound to arbitrate." Outokumpu, 902 F.3d at 1324; see also Ytech 180 Units Miami Beach Investments LLC v. Certain Underwriters at Lloyd's, London, 359 F.Supp.3d 1253, 1262 (S.D. Fla. 2019)

Ratification for the Inter-American Convention on International Commercial Arbitration (B-35), http://www.oas.org/juridico/english/sigs/b-35.html.

[10] Corporate bylaws may establish a commercial relationship. See CTA Lind & Co Scandinavia AB v. Lind, No. 8:08-cv-1380-T-30TGW, 2009 WL 961156 (M.D. Fla. Apr. 7, 2009) (confirming award where a company arbitrated claims against a shareholder pursuant to an arbitration clause in corporate bylaws); see also Belize Social Development Ltd. v. Government of Belize, 794 F.3d 99, 104 (D.C. Cir. 2015) ("A matter or relationship may be commercial even though it does not arise out of or relate to a contract, so long as it has a connection with commerce . . . .") (internal quotation marks omitted). Cf. EGI-VSR, LLC v. Coderch Mitjans, 963 F.3d 1112, 1125 (11th Cir. 2020) (reasoning that an arbitration award rendered pursuant to the arbitration clause of a shareholders' agreement should be confirmed under the Panama Convention).

("Issues of validity, enforceability, and contractual interpretation [of an arbitration agreement] are not part of the Court's jurisdictional calculus."). In ruling on the Motion to Stay Action and to Compel Arbitration, the Court is required, under Eleventh Circuit precedent, to comprehensively analyze the record and the relevant agreements. But not for purposes of determining whether the case is properly removed.

C. Satisfying the "Relatedness" Requirement

The Ullrich Descendants argue that Mrs. Ullrich has not satisfied the "relatedness" standard, but, again, misconstrue Mrs. Ullrich's burden on removal. See Docs. 10 at 16–18. The "relatedness" standard is not stringent. "[A]s long as the argument that the case 'relates to' the arbitration agreement is not immaterial, frivolous, or made solely to obtain jurisdiction, the relatedness requirement is met for purposes of federal subject matter jurisdiction." Outokumpu, 902 F.3d at 1323–24. Indeed, the pertinent inquiry is whether a (or any) claim could conceivably be brought under the Bylaws' arbitration agreements that could affect the outcome of the Verified Petition claims. See Inversiones, 921 F.3d at 1299–30 (reasoning that a case must "sufficiently relate to an agreement or award subject to the Convention, such that the agreement or award 'could conceivably affect the outcome of the case.'") (quoting Outokumpu, 902 F.3d at 1324).

Here, Mrs. Ullrich has demonstrated that a dispute brought under the Bylaws' arbitration clauses could conceivably affect the Ullrich Descendants' current and former shareholder interests, which in turn, could impact the viability of at least some of the counts alleged in the Verified Petition. In the Verified Petition, the Ullrich Descendants allege four counts against Mrs. Ullrich, requiring a determination of the Ullrich Descendants' present and former shareholder interests in several of the Colombian Companies. See Docs. 5; 1 at 3–4; 10 at 6. For example, in Count I of the Verified Petition, the Ullrich Descendants seek a declaratory judgment as to the percentage of shares that Peter David Ullrich owns in Flores Esmeralda and the percentage of shares that Monica Ullrich owns in Flores de Tenjo. Doc. 5 at 14–17. Based on the notice of removal, similar declaratory judgment actions pertaining to shareholders' ownership interests in the Colombian Companies can be brought under the Bylaws' arbitration agreements. Mrs. Ullrich asserts that disputes concerning violations of the Bylaws and disputes among shareholders fall within the scope of the Bylaws' arbitration agreements. See Docs. 1 at 5–8; 16 at 3–5, 11. Mrs. Ullrich also highlights that Monica Ullrich and Peter David Ullrich invoked the bylaws of Flores de Tenjo and Flores Esmeralda to initiate the Colombian Arbitrations in which Monica Ullrich and Peter David Ullrich seek declarations that they presently hold shares in Flores de Tenjo and Flores Esmeralda. See Docs. 1 at ¶¶ 21–22, 29; see also 16-1 at 8–9; 16-2 at 8–9. Thus, for removal

purposes, Mrs. Ullrich has sufficiently shown that the arbitration agreements relate to the Ullrich Descendants' Verified Petition claims.

D. Waiver of the Right to Remove Under the Panama Convention

Section 205 stipulates, "When the subject matter of an action pending in a State court relates to an arbitration agreement . . . falling under the Convention, [a] defendant . . . may, at any time before the trial thereof, remove such action . . . ." Contrary to Mrs. Ullrich's position, see Doc. 16 at 13–14,[11] the right to removal under this statute can be waived, see Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Account, 618 F.3d 277, 289 (3d Cir. 2010); Outokumpu Stainless, LLC v. Siemens Indus., Inc., No. 15-00243-KD-N, 2015 WL 6966150, at *8 (S.D. Ala. Oct. 20, 2015), report and recommendation adopted, 2015 WL 6964667, at *1 (S.D. Ala. Nov. 10, 2015) ("Siemens"). Nevertheless, the waiver analysis for removal under § 205 is distinct from the more typical waiver analysis for removal under 28 U.S.C. § 1446. Assad v. Josefsson, No. CV 18-2470 PSG (JPRx), 2018 WL 3046958, at *7 (C.D. Cal. Jun. 19, 2018) ("[T]he standard waiver analysis is inapposite here, given that removal under § 205 is distinct from traditional removal under 28 U.S.C. § 1446 in terms of timing and

[11] Mrs. Ullrich relies on a mischaracterization of Andrade v. Royal Caribbean Cruises, Ltd., 1:09-cv-20929-FAM, 2009 WL 2045686, *1 (S.D. Fla. 2009), to argue that there are no grounds for removal waiver under the Panama Convention. See Docs. 16 ¶¶ 29–32; 20 at 3.

analysis."); see, e.g., Sheinberg v. Princess Cruise Lines, Ltd., 269 F. Supp. 2d 1349, 1352 (S.D. Fla. 2003) ("[G]iven the plain language of 9 U.S.C. § 205 regarding removal at any time before trial, the thirty day time limit does not apply to removal under the Convention.").

When removal is based on the Panama Convention, there is a strong preference for a federal forum. See Outokumpu, 902 F.3d at 1322–23 (reasoning that Congress included "broad grounds for removal" in the Panama Convention's implementing legislation); Paradigm Sols. Grp., Inc. v. Shanghai Precision Tech. Corp., No. 15-CV-539 JLS (JLB), 2015 WL 3466017, at *2 (S.D. Cal. Jun. 1, 2015). Accordingly, "there can be no waiver of a right to remove under [§ 205] in the absence of clear and unambiguous language requiring such a waiver." Suter v. Munich Reins. Co., 223 F.3d 150, 158 (3d Cir. 2000); see also Ensco Int'l, Inc. v. Certain Underwriters at Lloyd's, 579 F.3d 442, 443–44 (5th Cir. 2009) ("'For a contractual clause to prevent a party from exercising its right to removal, the clause must give a 'clear and unequivocal' waiver of that right.'") (quoting City of New Orleans v. Mun. Admin. Servs., Inc., 376 F.3d 501, 504 (5th Cir. 2004)); China North Indus. Tianjin Corp. v. Grand Field Co. Inc., 197 Fed. App'x 543, 544 (9th Cir. 2006) (applying a "clear and unequivocal" standard for removal waiver). Cf. Siemens, 2015 WL 6966150 at *8 n.5 ("While the Eleventh Circuit has not spoken on issue of waiver of [Federal] Arbitration Act removal, it has favorably cited the Third Circuit's [unequivocal waiver] standard for a removal

waiver pursuant to the Foreign Sovereign Immunities Act (FSIA)."). Moreover, short of proceeding to "trial" in state court, there is no litigation-based, or conduct-based, waiver under § 205. See Suter, 223 F.3d at 158 ("Under section 1441(d), a defendant may remove at any time for cause shown, and under section 205, a defendant may remove at any time before trial . . . . § 205 is . . . broader than § 1441(d) . . . .") (internal citations and quotation marks omitted); Infuturia Global Ltd. v. Sequus Pharm., Inc., 631 F.3d 1133, 1139 (9th Cir. 2011) ("The language of § 205 refers to the action being removed and 'the trial thereof.' The meaning of this section is clear: a defendant may remove a qualifying state court action to federal court at any time before the claims raised in the state court action have been adjudicated.") (emphasis omitted); Pan Atlantic Group, Inc. v. Republic Ins. Co., 878 F. Supp. 630, 638 (S.D.N.Y. 1995) ("The critical issue with respect to removal under Section 205 is whether the removal took place 'before the trial.'").[12]

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[12] The term "trial" has been interpreted by the Southern District of New York as a term of art. See Pan Atlantic, 878 F. Supp. at 641 (S.D.N.Y. 1995). In Pan Atlantic, the court reasoned:

> The comparatively generous time limit in Section 205 should not be read as an endorsement of the kind of tactical removal so arduously avoided under other removal statutes. An interpretation of "trial" that includes resolution of actively litigated substantive issues, would provide defendants with ample time to pursue removal without providing them with an unfair strategic advantage. This interpretation also serves the interests of judicial economy and comity . . . .

1. The Settlement Agreement does not clearly and unequivocally waive Mrs. Ullrich's removal right.

The Ullrich Descendants contend that Mrs. Ullrich contractually waived the right to removal in the Settlement Agreement. See Docs. 10 at 21–22; 19 at 4–5. The Settlement Agreement's scope of release states:

> Representations by Clarisse Ullrich
>
> [Mrs.] Ullrich made certain statements under oath on March 26, 2019 which are set forth in the transcript attached hereto as Exhibit 1. If it is found that [Mrs.] Ullrich made false statements, [the State Court] retains jurisdiction to determine the effect of such false statements on this Release. Florida law would apply.

Doc. 1-1 at 219; see also Docs. 1-1 at 161; 10 at 21–22. To determine whether this forum-selection provision waives Mrs. Ullrich's removal right, the Court refers to persuasive Fifth Circuit case law establishing that:

> There are three ways in which a party may clearly and unequivocally waive its removal rights [under § 205]: "[1] by explicitly stating that it is doing so, [2] by allowing the other party the right to choose venue, or [3] by establishing an exclusive venue within the contract."

Ensco, 579 F.3d at 443–44 (quoting New Orleans, 376 F.3d at 504); see also Siemens, 2015 WL 6966150 at *8 n.5 (embracing the "clear and unequivocal" standard).

The Ullrich Descendants have not shown that, under the three New Orleans bases for waiver, Mrs. Ullrich has unequivocally waived her removal

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Id.

right. The Settlement Agreement does not expressly reference "waiver" or "removal," see Southwestern Elec. Power Co. v. Certain Underwriters at Lloyd's of London Subscribing to Policy No. BL0700847, No. 12-2065, 2012 WL 5866599, at *3 (W.D. La. Nov. 19, 2012) ("Because the email does not explicitly state that defendants are waiving their removal rights, the purported waiver fails under the first New Orleans waiver method."); and the Settlement Agreement does not reflect an agreement by Mrs. Ullrich to submit to the venue of the Ullrich Descendants' choosing, cf. Garwell Ltd. Partnership v. Great Am. Ins. Co. of New York, No. 3:14-cv-1107-B, 2014 WL 5393571, at *4 (N.D. Tex. Oct. 22, 2014) ("[The defendant] did not waive its right by allowing [the plaintiff] to choose venue, as nowhere in the [settlement agreement] clause does [the defendant] agree to submit . . . to the jurisdiction of a court of [the plaintiff's] choosing.").

Lastly, the Settlement Agreement does not require that all disputes between Mrs. Ullrich and the Ullrich Descendants be brought in the State Court. See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC, 953 F.3d 660, 673–74 (10th Cir. 2020) (reasoning that, although a settlement agreement's forum selection clause specified that a state court had "'continuing jurisdiction' to enforce a portion of the [settlement agreement], it neither require[d] that 'all' actions be brought there, nor places any restriction on the parties' ability to bring suit elsewhere."). The language in the agreement providing that the State Court "retains jurisdiction" only reflects that the State Court is one, but not the only,

forum in which the parties could bring litigation. Compare Star Sys. Int'l Ltd. v. Neology, Inc., No. 4:18-CV-00574, 2018 WL 6424703, at *6 (E.D. Tex. Dec. 5, 2018) ("Neither [the settlement agreement] [n]or the Consent Judgment provide that the [state court] retains exclusive jurisdiction. Instead, both state that the [state court] 'retains jurisdiction.'"), with Argyll Equities LLC v. Paolino, 211 F. App'x 317, 318 (5th Cir. 2006) (affirming dismissal of suit where the settlement agreement stated, "Borrower hereby consents to the exclusive jurisdiction of the courts sitting in Kendall County, Texas . . . .").

2. Mrs. Ullrich's conduct in the State Court proceeding did not waive her removal right.

The Ullrich Descendants raise a conduct-based waiver argument. However, the Ullrich Descendants fail to acknowledge the distinct removal requirements under the applicable statues, § 205 and § 302, see Doc. 10 at 22–24 (citing cases pertaining to removal under 28 U.S.C. § 1446). Because the State Court did not resolve any substantive issues raised in the Verified Petition and the parties did not commence trial before the State Court, their conduct-based based waiver argument is unavailing [13] Compare Infuturia, 631 F.3d at 1139 ("[T]he "action removed" was [the plaintiff's] amended complaint in . . . state court asserting state law claims . . . . Since [the] claims . . . had not yet been

[13] The Court notes that the arbitration waiver analysis is distinct; arbitration waiver is an arbitrability issue.

adjudicated by the . . . state court, the action was timely removed under § 205.") and New Avex, Inc. v. Socata Aircraft, Inc., No. 02 Civ. 6519 DLC, 2002 WL 1998193, at *4 (S.D.N.Y. Aug. 29, 2002) (denying motion to remand and concluding "no substantive issues in the instant case were resolved by the [state court]"), with D&D Automation, Inc. v. MB Sistemas S. Coop., No. 12-CV-6366 CJS, 2012 WL 3201881, at *1–*2 (W.D.N.Y. Aug. 2, 2012) (remanding case where the state court's ruling before removal "was a complete adjudication of the claims").

E. Applicability of the Probate Exception

The Ullrich Descendants appear to argue that the federal probate exception is applicable. See Doc. 10 at 16, 19–20. The probate exception is a judicially created limitation on the jurisdiction of federal courts. See Marshall v. Marshall, 547 U.S. 293, 299–300 (2006). The probate exception "is limited in scope, applying only to cases the resolution of which would require a federal court to (1) probate or annul a will, (2) administer an estate, or (3) 'dispose of property that is in the custody of a state probate court.' The exception does not 'bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.'" Stuart v. Hatcher, 757 F. App'x 807, 809 (11th Cir. 2018) (quoting Marshall, 547 U.S. at 311–12); see also Fisher v. PNC Bank, N.A., 2F. 4th 1352, at *1356 (11th Cir. 2021). Furthermore, the Eleventh Circuit has narrowly construed the probate exception; its case law provides that the probate

exception applies to federal diversity jurisdiction, but not federal question jurisdiction. See Goerg v. Parungao, 844 F.2d 1562, 1565 (11th Cir. 1988); Glickstein v. Sun Bank/Miami, N.A., 922 F.2d 666, 672 n.13 (11th Cir. 1991) ("not[ing] that the probate exception is an exception to diversity jurisdiction and has no application to the federal RICO claims"); see also In re Estate of Hughes, No. 8:09-CV-1149-T-77TBM, 2010 WL 1718118, at *2 (M.D. Fla. Feb. 4, 2010) ("The 'probate exception' relates only to matters premised on diversity jurisdiction."); Sec. & Exch. Comm'n v. Morgan, No. 07-22204-CIV-GOLD/TURNOFF (LEAD CASE), 2008 WL 11333818, at *2 (S.D. Fla. Feb. 12, 2008) ("[T]his case is before the Court pursuant to . . . the Securities Act of 1933 . . . and . . . the Securities Exchange Act of 1934 . . . . As such, the so[-]called Probate Exception to this Court's jurisdiction does not apply.").[14]

This Court does not have diversity jurisdiction over the Verified Petition claims; it has removal jurisdiction under federal statutes implementing the Panama Convention. See Doc. 1. In exercising removal jurisdiction, the Court's role is limited to determining whether Stephen Ullrich must adjudicate his

[14] The federal appellate courts are divided on whether the probate exception may apply in a case invoking federal-question jurisdiction. See, e.g., Jones v. Brennan, 465 F.3d 304, 306–07 (7th Cir. 2006) (finding the probate exception applies to both federal question and diversity jurisdiction cases); see also In re Boisseau, No. 5:16-CV-0549 (LEK/ATB), 2017 WL 395124, at *2 (N.D.N.Y. Jan. 30, 2017) (discussing the circuit split); Alpert v. Taylor, No. 8:09-CV-1026-T-27TBM, 2009 WL 10670882, at *2 n.8 (M.D. Fla. Sept. 22, 2009).

Verified Petition claims in the State Court or before an arbitrator and whether to the Ullrich Descendant's Verified Petition claims should be stayed pending arbitration; removal jurisdiction under §§ 205 and 302 does not provide the Court competence to adjudicate the substantive claims alleged in the Verified Petition. See QPro Inc. v. RTD Quality Servs. USA, Inc., 761 F. Supp. 2d 492, 504 (S.D. Tex. 2011) ("Although removal of state law claims may be initially proper under § 205 as claims that 'relate to' an arbitration agreement, once they are determined not to be arbitrable, remand to state court is appropriate.") (citing Beiser v. Weyler, 284 F.3d 665, 674 (5th Cir. 2002)). Accordingly, the probate exception is not applicable.

F. Issues Falling Outside the Scope of the Removal Inquiry

The Ullrich Descendants argue in their motion to remand that the Settlement Agreement supersedes the arbitration provisions in the Bylaws, see Doc. 10 at 18–21, and, in her response to the motion to remand, Mrs. Ullrich argues that she did not waive the right to arbitrate and that issues of arbitrability are delegated to the arbitrator, see Doc. 16 at 6–8, 13. However, these arguments are not relevant to the Panama Convention removal analysis and thus will not be considered at this stage. See OJSC Ukrnafta v. Carpatsky Petroleum Corp., 957 F.3d 487, 495 (5th Cir. 2020) ("[T]he jurisdictional inquiry does not require us to decide whether an arbitration agreement will end up governing the lawsuit . . . . Removal to federal court may thus be proper even

when it turns out there is no arbitration agreement."); Ytech, 359 F.Supp.3d at 1262 ("[I]ssues of validity, enforceability, and contractual interpretation [of an arbitration agreement] are not part of the Court's jurisdictional calculus. Indeed, '[n]othing in [the New York Convention] expresses an intent of Congress for the courts to engage in a uniquely rigorous inquiry upon removal of cases on the basis of the Convention.'") (quoting Outokumpu, 902 F.3d at 1325).

The Ullrich Descendants' motion to remand is due to be denied. Therefore, the Court will consider Mrs. Ullrich's motion to compel arbitration.

III. MRS. ULLRICH'S MOTION TO COMPEL ARBITRATION

Mrs. Ullrich moves the Court to compel Stephen Ullrich to arbitrate in Colombia. See Doc. 6 ¶ 9 ("stay this action until all of the Petitioners finish arbitrating their shareholder disputes in Colombia"). At the hearing, Mrs. Ullrich clarified that she does not seek to arbitrate all of Stephen Ullrich's Verified Petition claims; she only seeks to have an arbitrator determine whether Stephen Ullrich owns Tecnoviv shares, an issue Stephen Ullrich raises in Count I of the Verified Petition.[15]

[15] At the hearing, Mrs. Ullrich also clarified that she does not seek to compel Peter David Ullrich and Monica Ullrich to arbitrate their Verified Petition claims. The Ullrich Descendants had an adequate opportunity to respond and have provided detailed arguments in opposition.[15] See Doc. 14 at 11–12, 14–16, 18, 20.

If the four jurisdictional prerequisites of the Panama Convention are met[16] and an affirmative defense is not applicable, the Court will order arbitration. See 9 U.S.C. § 303 ("A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for . . . ."). Cf. Northrop & Johnson Yachts-Ships, Inc. v. Royal Van Lent Shipyard, B.V., No. 20-13442, 2021 WL 1157833, at *3 (11th Cir. Mar. 26, 2021) ("[I]n the absence of an affirmative defense, a district court must compel arbitration under the [New York] Convention if [the] four jurisdictional requirements are met.") (quoting Alberts v. Royal Caribbean Cruises, Ltd., 834 F.3d 1202, 1204 (11th Cir. 2016)). Contrary to Mrs. Ullrich's assertions, see Docs. 16 ¶ 31; 20 at 3, defenses to the enforcement of arbitration agreements are applicable when parties seek to compel arbitration under the Panama Convention, see, e.g., Freaner v. Valle, 966 F. Supp. 2d 1068, 1085 (S.D. Cal.

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[16] Again, the defendant must establish that an agreement falls under the Panama Convention by showing:

> (1) that there is an agreement in writing, that is, an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams; (2) that the agreement provides for arbitration in the territory of a signatory of the Convention; (3) that the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) that a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relationship with one or more foreign states.

Outokumpu, 902 F.3d at 1324 (citing Bautista, 396 F.3d at 1295–96 nn. 7 & 9).

2013) ("Although the Panama Convention does not explicitly identify waiver as a ground for non-enforcement of an arbitration agreement, the availability of the defense of waiver is believed to be implied."); see also Restatement (Third) U.S. Law of Int'l Comm. Arb. § 2.19 TD No 4 cmt. a (2015) ("the defense of waiver may be raised also under the Panama Convention").

Because "[a] motion to compel arbitration is treated as a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction . . . [,] the Court may consider matters outside the four corners of the Complaint." Med X Change, Inc. v. Enciris Techs SAS, No. 8:20-cv-1223-T-33AAS, 2020 WL 6287682, at *2 (M.D. Fla. Oct. 27, 2020) (quoting Babcock v. Neutron Holdings, Inc., 454 F. Supp. 3d 1222, 1228 (S.D. Fla. 2020)).

A. The Tecnoviv Bylaws and the Panama Convention's Jurisdictional Requirements

The jurisdictional inquiry at this stage "is necessarily more rigorous" than the analysis on the motion to remand because the Court must now scrutinize the text of the arbitration agreements invoked by Mrs. Ullrich. See Outokumpu, 902 F.3d at 1325. The Court first examines whether Mrs. Ullrich has sufficiently shown that there is an agreement in writing "signed" by the parties. See B & B Jewelry, Inc. v. Pandora Jewelry LLC, 247 F. Supp. 3d 1283, 1286 (S.D. Fla. 2017) ("The removing party 'has the burden of proving . . . the existence of an agreement in writing within the meaning of the Convention to arbitrate the

dispute at issue.'") (quoting Azevedo v. Carnival Corp., No. 08-20518-CIV, 2008 WL 2261195, at *5 (S.D. Fla. May 30, 2008)) (alteration in original)).

In her motion, Mrs. Ullrich does not expressly state which of the Bylaws she is invoking to compel arbitration against Stephen Ullrich. Nonetheless, Mrs. Ullrich indicated at the hearing that the Tecnoviv Bylaws,[17] governed by Colombian substantive law, see Doc. 16-4, are most relevant. Mrs. Ullrich is seeking to arbitrate Verified Petition claims pertaining to Stephen Ullrich's ownership of Tecnoviv shares, and Stephen Ullrich was a Tecnoviv shareholder while the Tecnoviv Bylaws were in force. See Doc. 27 at 7.

Based on the parties' filings, the arbitration clause in the Tecnoviv Bylaws is a valid written, signed agreement. The parties' Colombian law experts agree that, under Colombian law, the Tecnoviv Bylaws "are contracts between the shareholders of the compan[y]." Docs. 14-1 ¶ 12; 23-1 at 2; see also Bazemore v. Jefferson Cap. Sys., LLC, 827 F.3d 1325, 1329 (11th Cir. 2016) ("[S]tate law generally governs whether an enforceable contract or agreement to arbitrate exists.") (quoting Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1368 (11th Cir. 2005)). In addition, the Ullrich Descendants and Mrs. Ullrich do not dispute

[17] Although Mrs. Ullrich did not file a certified English translation of the original Spanish-language version of the 2010 Tecnoviv Bylaws with her notice of removal, see Doc. 14 at 12 n.7, Mrs. Ullrich submitted a certified English translation of the bylaws in a later filing, Doc. 16-1. The Ullrich Descendants do not argue that these translated documents are inaccurate.

the validity of the Tecnoviv Bylaws, that the Tecnoviv Bylaws contain an arbitration provision, or that the Tecnoviv Bylaws are written documents.

The parties dispute whether the Tecnoviv Bylaws are "signed" by the parties, but Mrs. Ullrich ultimately prevails on this issue. On August 17, 2010, three representatives—one acting on behalf of Stephen Ullrich, one acting on behalf of the Decedent, and one acting on behalf of Flores Esmeralda—signed the Tecnoviv Bylaws, assenting to the arbitration clause in the Tecnoviv Bylaws. See Docs. 16-4 at 3, 34 (showing that amendments to the Tecnoviv Bylaws in 2010 were submitted for consideration and "APPROVED BY UNANIMITY"); 27 at 7 ("[Mrs. Ullrich] produced . . . four . . . bylaws which were signed in 2009 and 2010 by the Ullrich Descendants for the Colombian Companies"). Therefore, the arbitration clause in the Tecnoviv Bylaws is a valid signed, written agreement. See Outokumpu, 902 F.3d at 1326 n.1 (affirming that "an arbitration agreement is 'signed by the parties' when signed by a party's privy") (citing Bautista, 396 F.3d at 1293). Mrs. Ullrich need not have signed the arbitration clause or the Tecnoviv Bylaws because non-signatories may compel arbitration under the Panama Convention. See Qisda Corp. v. Jutai 611 Equipamentos Electronicos, Ltda., No. 08-21568-CIV-UNGARO, 2008 WL 11332049, at *2 n.4, *3 (S.D. Fla. Oct. 20, 2008) (permitting non-signatories to compel arbitration under the Panama Convention). Cf. GE Energy, 140 S. Ct. at 1648–49 (indicating that all parties to a case need not be signatories to the arbitration clause being invoked

to compel arbitration under the New York Convention); Psara Energy, Ltd. v. Space Shipping, Ltd., 427 F. Supp. 3d 858, 862 (E.D. Tex. 2019) ("Despite the [New York] Convention requiring a written agreement, it does not require the writing to be signed by all parties to a dispute if they are otherwise bound to it under customary principles of contract law.").

The second jurisdictional prerequisite deserves closer scrutiny. The Tecnoviv arbitration clause states:

> SECTION 90. ARBITRATION CLAUSE. The challenge of the determinations adopted by the General Shareholders' Meeting shall be submitted in first instance or through the alternative mechanisms for the resolution of conflicts, such as settlement or mediation. Notwithstanding the foregoing, any dispute that cannot be resolved on good terms by the shareholders shall be submitted to the decision of an arbitration court, formed by one arbitrator, who shall be appointed by agreement between the parties, or, in absence thereof, by the Center for Arbitration and Settlement of the Chamber of Commerce of Eastern Antioquia, upon request of any of the parties. The designated arbitrator shall be a licensed attorney, shall decide by law, shall be subject to the fees established by the Center for Arbitration and Settlement of the Chamber of Commerce of Eastern Antioquia, and shall follow Colombian laws and the regulations of the aforementioned center.

Doc. 16-4 at 29–31.[18] At the hearing, the Ullrich Descendants argued that this clause does not specify where arbitration must be held, and the Court agrees that a seat of arbitration or place of arbitration is not specified in this clause or in any other section of the Tecnoviv Bylaws. Compare Lobo v. Celebrity Cruises, Inc.,

[18] The document cited uses the company name "Primacide LTDA" rather than "Tecnoviv." See Doc. 16-4; see also supra at 3 n.1.

426 F. Supp. 2d 1296, 1307 (S.D. Fla. 2016) (agreement stating that the "the place of arbitration shall be either the country of the seafarer's citizenship or Miami, Florida.") (internal quotation marks omitted).

Although the Tecnoviv arbitration clause identifies a Colombia-based arbitration center, the Center for Arbitration and Settlement of the Chamber of Commerce of Eastern Antioquia, the location of a regional arbitration center does not per se dictate where an arbitration will take place or where an arbitration will be seated.[19] See, e.g., Swiss Arb. Ctr., Swiss Rules of International Arbitration, art. 1(5) (specifying that where an arbitration is administer by the Swiss Arbitration Centre, "the seat of arbitration may be in Switzerland or elsewhere"); Arbitration Institute of the Stockholm Chamber of Commerce, Model Clause (indicating that an arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce may be seated or take place

[19] Typically, arbitration centers do not resolve disputes themselves or act as arbitrators; instead, they arbitration centers play administrative roles and aid in the resolution of disputes by arbitrators. See, e.g., International Chamber of Commerce (ICC), Arbitration Rules, art. 10 (2021) ("The [International Court of Arbitration . . . of the ICC based in Paris, France] does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC . . . ."); Swiss Rules of International Arbitration, Introduction 4 (2021) ("Arbitrations under the Swiss Rules are administered by the Arbitration Court . . . of the Swiss Arbitration Centre . . . ."); id, art. 1(4) ("By submitting their dispute to arbitration under these Rules, the parties confer on the Court, to the fullest extent permitted under the law applicable to the arbitration, all powers required for the purpose of supervising the arbitration proceedings") (emphasis added). The arbitration proceedings need not be seated where the selected arbitration center is located.

outside of Sweden); Singapore International Arbitration Centre, Rules, R. 21 (2016) (indicating that an arbitration administered by the Singapore International Arbitration Centre may be seated outside of Singapore). Additionally, in this instance, Mrs. Ullrich, who bear the burden of proof, has not submitted any documents or testimony supporting that the Center for Arbitration and Settlement of the Chamber of Commerce of Eastern Antioquia may only administer arbitrations that take place in Colombia.

Because "arbitration is a matter of contract and of consent," JPay, Inc. v. Kobel, 904 F.3d 923, 944 (11th Cir. 2018), the Tecnoviv Bylaws silence as to the place of arbitration indicate that the parties to the bylaws did not agree on a place of arbitration.[20] This conclusion is supported by the fact that the bylaws of Tecnoviv's peer companies Flores de Tenjo and Flores were adopted around the same time as the Tecnoviv bylaws and explicitly designate a seat of arbitration.

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[20] Legal scholar Filip de Ly has explained:

> When parties do not determine the arbitration place, they immediately lose a very important planning tool and consequently may be faced with unpredictabilities at any stage in the arbitration proceedings. Any properly drafted arbitration clause should therefore consider explicitly including the place of arbitration. The practical importance of designating the arbitration place is confirmed by model arbitration clauses suggested by arbitration centers . . . .

Filip De Ly, The Place of Arbitration in the Conflict of Laws of International Commercial Arbitration: An Exercise in Arbitration Planning, 12 NORTHWESTERN J. INT'L L. & BUS. 48, 56 (1991).

See Ullrich v. Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 17, 52 (S.D. Fla. 2020) ("The seat of the arbitration shall be in the city of Rionegro, [Colombia]"). Thus, the Tecnoviv Bylaws do not fall under the Panama Convention. The Panama Convention only covers agreements "that provide[] for arbitration in the territory of a signatory of the Convention."[21] See Lobo, 426 F. Supp. 2d at 1307 ("[A]rbitration must be held in a territory of a signatory of the Convention."); see, e.g., Aqua-Chem, 2018 WL 4870603 at *2 n.2 (reasoning that "because the [arbitration] agreement requires arbitration in [The Netherlands, a non-signatory of the Panama Convention], . . . jurisdiction under Chapter 3 is inapplicable"). Cf. Mullen Tech, Inc. v. Qiantu Motor (Suzhou) LTD, No. 3:19-CV-1979 W (AHG), 2020 WL 3573371, at *3 (S.D. Cal. Jul. 1, 2020) ("find[ing] the parties entered into an arbitration agreement that falls under the [New York] Convention" where the agreement stated "The seat of arbitration shall be Singapore").[22]

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[21] Nonetheless, the third and fourth jurisdictional prerequisites are met for the reasons provided in the Court's ruling on the Corrected Motion for Remand. See supra at 15–16.

[22] In a Panama Convention case, the Western District of Wisconsin has compelled parties to arbitrate at place sited within the court's jurisdictional territory, where the parties' agreement did not specify a location of arbitration. See Felland v. Clifton, No. 10-cv-664-slc, 2013 WL 3778967, at *1 (W.D. Wisc. 2013) ("The [arbitration] agreement . . . is silent with respect to the location of the arbitration. Therefore, pursuant to 9 U.S.C. §§ 4, 206 and 208, I am ordering the arbitration to take place in the Western District of Wisconsin."). However, following such an approach in this case would be inconsistent with the text of the

B. Even assuming that the Panama Convention's jurisdictional prerequisites were met, the Tecnoviv Bylaws do not require the arbitration of Stephen Ullrich's claims.

1. This Court may determine the arbitrability of Stephen Ullrich's Verified Petition claims because the Tecnoviv arbitration clause does not "clearly and unmistakably" delegate such arbitrability issues to the arbitrator.

Under Supreme Court precedent as delineated in Henry Schein, Inc. v. Archer & White Sales, Inc.:

> [B]efore referring a dispute to an arbitrator, [a district] court determines whether a valid arbitration agreement exist. But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, [the district] court may not decide the arbitrability issue.

139 S. Ct. 524, 530 (2019) (internal citation omitted). The Tecnoviv arbitration clause is a valid arbitration agreement under Colombian substantive law. See supra at 31–32. The Court proceeds to consider whether the Tecnoviv Bylaws delegate the arbitrability issues to the arbitrator.

"[P]arties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." Henry Schein, 139 S. Ct. at 528. However, "[q]uestions of arbitrability . . . stay with the court unless there is clear and unmistakable evidence that the parties intended to submit such questions to an

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Panama Convention and its implementating statutes.

arbitrator." JPay, 904 F.3d at 930 (internal citation and quotation marks omitted), cert. denied, 139 S. Ct. 1545 (2019); see also First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995) ("Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so."). "Clear and unmistakable evidence of an agreement to arbitrate arbitrability might include . . . a course of conduct demonstrating assent . . . or . . . an express agreement to do so." Mohamed v. Uber Tech., Inc., 848 F.3d 1201, 1208 (9th Cir. 2016) (internal quotation marks omitted); see also Patton v. Johnson, 915 F.3d 827, 835 (1st Cir. 2019) ("[T]he language of the contract is not always the exclusive source of relevant information; the parties' conduct also may herald an agreement to arbitrate the question of arbitrability."). In any case, the "'clear and unmistakable evidence' standard is demanding." Patton, 915 F.3d at 835.

Here, Chapter XIV of the Tecnoviv Bylaws, titled "MISCELLANEOUS PROVISIONS," contains the arbitration clause quoted above. See Doc. 16-4 at 29–31. Mrs. Ullrich concedes that the terms of the arbitration clause does not expressly state that an arbitrator should decide arbitrability issues. See Doc. 6 ¶ 37 ("The Arbitration Agreements . . . do not expressly state who determines issues of arbitrability."). However, Mrs. Ullrich argues that, due to the lack of express language in the clause on who decides arbitrability issues, the Panama Convention mandates that the arbitrator decide the arbitrability issues. See

Docs. 6 at 15; 16 ¶ 13. Mrs. Ullrich argues that the Tecnoviv arbitration clause delegates arbitrability issues to the arbitrator because it is governed by Colombian arbitration law, which she asserts empowers arbitrators to determine their own jurisdiction. See Docs. 6 at 15; 16 ¶ 13.[23] The Ullrich Descendants disagree. See Docs. 14 at 8 n.6 ("Clarisse has failed to present "clear and unmistakable evidence" that the parties intended to have an arbitrator, rather than a court, decide the issue of arbitrability. On the contrary, the Bylaws do not require the arbitrator to decide arbitrability"); 14-1 ¶¶ 12, 17.

With respect to Mrs. Ullrich's first argument, Article 3 of the Panama Convention states, "In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission [('IACAC')]." Under Article 18(1) of the rules of procedure ("IACAC Rules"):

> The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objection with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

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[23] Mrs. Ullrich does not argue that the regulations of the Chamber of Commerce of Eastern Antioquia require that arbitrability issues be delegated to the arbitrator and has not filed a copy of the regulations. Thus, the Court assumes that the regulations do not include a delegation (or kompetenz-kompetenz) provision. See ASHLEY COOK, Kompetenz-Kompetenz: Varying Approaches and a Proposal for a Limited Form of Negative Kompetenz-Kompetenz, PEPPERDINE L. REV. 17, 17 (2014) ("An arbitral tribunal's power to decide its own jurisdiction is its kompetenz-kompetenz . . . .").

22 C.F.R. Part 194, Appendix A (documenting the 2002 amended IACAC rules).

While Mrs. Ullrich is correct that the language of Article 18(1) can provide clear and unmistakable evidence of an agreement to submit arbitrability issues to an arbitrator, see Doc. 6 ¶ 39, Article 18(1) is inapposite. Whether parties have agreed to arbitrate gateway (or arbitrability) issues is a matter of contract, see First Options, 514 U.S. at 943 ("Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter.") (internal citations omitted); Henry Schein, 139 S. Ct. at 529 (An "agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce."), and Article 3 of the Panama Convention does not vitiate the need for parties' consent to arbitrate such issues, see Freaner, 966 F. Supp. 2d at 1087 ("Article 1 of the Panama Convention recognizes that an "agreement" to submit disputes to arbitration is valid. The Convention thus incorporates the fundamental principle that arbitration is a matter of contract and must be a consensual arrangement between the parties."); American Life Ins. Co. v. Parra, 25 F. Supp. 2d 467, 474–75 (D. Del. 1998) ("The [Panama] Convention and IACAC recognize arbitration is a matter of agreement . . . . Article 1 of the Inter–American Convention states that the convention enforces agreements to arbitrate disputes relating to commercial transactions."). Because Mrs. Ullrich

has not presented any evidence or arguments to support that Mrs. Ullrich or Stephen Ullrich assented to the IACAC Rules governing disputes under the Tecnoviv arbitration clause, the IACAC Rules (via Article 3 of the Panama Convention) do not reflect an agreement by any party to this case to arbitrate arbitrability issues.

Mrs. Ullrich's second argument advances that Colombian arbitration law requires arbitrability issues to be decided by an arbitrator. Doc. 6 ¶ 35. Mrs. Ullrich references Article 79 of Law 1563 of 2012, a provision of Colombian arbitration law that states:

> The arbitral tribunal shall be the only authority competent to rule on its jurisdiction, including any objections regarding the non-existence, absolute nullity, relative nullity, invalidity or ineffectiveness of the arbitration agreement, as well as any objections on the scope of the arbitration agreement in respect of the subject matter of the dispute, or any other objection the success of which would prevent the tribunal from ruling on the merits of the dispute.

Doc. 16-7; see also Docs. 6 ¶ 40; 14-1 ¶ 9. The language of Article 79 is similar to the language of arbitration rules that the Eleventh Circuit has found to delegate arbitrability issues to arbitrators. See, e.g., Earth Science Tech, Inc. v. Impact UA, Inc., 809 F. App'x 600, 606 (11th Cir. 2020) ("Article 23 of the UNCITRAL rules provides that '[t]he arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.'"). Nonetheless, for Article 79 to apply under the clear

and unmistakable standard, it must be incorporated into the Tecnoviv Bylaws.

Parties can satisfy the clear and unmistakable standard by showing that arbitration rules or arbitration laws that provide for the arbitrator to decide questions of arbitrability are expressly or explicitly incorporated into the applicable arbitration agreement. See WasteCare Corp. v. Harmony Enterprises, Inc., 822 F. App'x 892, 895–96 (11th Cir. 2020) ("We have held that where the parties expressly incorporate the AAA rules into an arbitration provision, this alone serves as a clear and unmistakable delegation of questions of arbitrability to an arbitrator.") (internal quotation marks omitted) (emphasis added); Terminix Int'l Co., LP, v. Palmer Ranch Ltd. P'ship, 432 F.3d 1327, 1332 (11th Cir. 2005) (citing Contec Corp. v. Remote Sol., Co., Ltd., 398 F.3d 205, 208 (2d Cir. 2005) ("when . . . parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator")) (emphasis added); see also Simply Wireless, Inc. v. T-Mobile US, Inc., 877 F.3d 522, 528 (4th Cir. 2017) ("[T]he explicit incorporation of JAMS Rules serves as 'clear and unmistakable' evidence of the parties' intent to arbitrate arbitrability."), abrogated in part on other grounds by Henry Schein, 139 S. Ct. at 528–29.

Mrs. Ullrich does not point to a specific provision of the Tecnoviv Bylaws to demonstrate that Colombian arbitration law is incorporated into the

arbitration agreement.[24] Instead, Mrs. Ullrich provides an inadequately broad statement that "the Arbitration Agreements . . . require an arbitrator to determine any issue of arbitrability." Doc. 6 ¶ 35. At the hearing, Mrs. Ullrich added that Law 1563 is incorporated via the inclusion of the terms "shall follow Colombian laws" in the Tecnoviv arbitration clause.

In relevant part, the Tecnoviv arbitration clause states that "[t]he designated arbitrator . . . shall follow Colombian laws . . . ." Doc. 16-4 at 31.[25] The bylaws do not expressly include the term "Colombian arbitration law." This is material because the broad term "Colombian laws" does not plainly indicate whether the arbitrator is to follow Colombian substantive law, Colombian procedural law, or Colombian arbitration law.[26] See Alastair Henderson, Lex

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[24] Mrs. Ullrich points to the choice-of-law provision in the most recent Tecnoviv Bylaws, see Doc. 16 at 6–7 ("The current Arbitration Agreements also state that the laws of Colombia apply, which include Law 1563."), but, as discussed above, it is most appropriate to apply the 2010 version of the Tecnoviv Bylaws here. See supra at 7 n.2.

[25] In 2010, when the Tecnoviv Bylaws were adopted Article 79 of Law 1563 did not exist. Law 1563 was enacted in 2012.

[26] Colombian arbitration law encompasses more than procedural matters and does not merely regulate the conduct of arbitrators. For instance, arbitration law encompasses and regulates non-procedural matters, such as national court intervention in support of arbitration and the grounds on which awards may be challenged and set aside.

Alastair Henderson, a legal scholar and the head of the international arbitration practice of a major international law firm, explains:

> [A]lthough "procedural law" is often used as a convenient shorthand term for the non-substantive law applicable to arbitration, it would be wrong to depict those laws as only

Arbitri, Procedural Law and the Seat of Arbitration, 26 SING. ACAD. L. J. 886, 887 (2014) ("It has been noted that there is a clear distinction between substantive and procedural laws of arbitration."). Commonly, in international commercial arbitration, the arbitration law of one jurisdiction will apply despite the substantive law of a different jurisdiction being applicable. See Alexander J. Belohlavek, The Law Applicable to the Arbitration Agreement and the Arbitrability of a Dispute, 3 Y.B. INT'L ARB. 27, 30 (2013) ("There is usually no uniform law which would universally determine any and all issues relating to procedure, its commencement, conduct, course and termination, nor the effects of the decisions rendered in the course of such proceedings . . . ."); see, e.g., Cerner Middle East Ltd. v. iCapital, LLC, 939 F.3d 1016, 1020 (9th Cir. 2019) (analyzing agreement "require[ing] the parties to submit any disputes to binding arbitration under the rules of the International Chamber of Commerce . . . , specif[ying] that the seat of arbitration shall be in Paris, France, and . . . contain[ing] a choice of law clause that stated that it 'shall be governed by, construed, interpreted and enforced in accordance with the laws of . . . Missouri[.]'"). Furthermore, it is significantly more common for arbitration agreements to specify the applicable

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> concerned with procedural matters . . . . The law applicable to arbitration certainly includes procedural law but it also regulates non-procedural matters . . . .

Henderson at 887.

substantive law than it is for agreements to specify the applicable arbitration law. See HENDERSON at 891 ("Typically, . . . the parties do not make a direct choice of the law applicable to their arbitration. Rather, they make a conscious choice of seat and the applicable lex arbitri flows from that."). The applicable arbitration law is often discerned based on parties' designated seat of arbitration, see id. at 890 (indicating that, under the modern approach, "the selection of a particular place (seat) of arbitration ordinarily results in the arbitration being conducted in accordance with that jurisdiction's legal framework . . . ."); see Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274, 291 (5th Cir. 2004) ("Under the New York Convention, an agreement specifying the place of the arbitration creates a presumption that the procedural law of that place applies to the arbitration."); Georgetown Home Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's, London, No. 20-102-JWD-SDJ, 2021 WL 359735, at *5 (M.D. La. Feb. 2, 2021) ("The Arbitration Agreement dictates that '[t]he seat of the Arbitration shall be in New York and the Arbitration Tribunal shall apply the law of New York as the proper law of this insurance [agreement].'"). See pp. 33–36, supra.

Moreover, because the Tecnoviv arbitration clause's statement that the arbitrator shall follow Colombian laws is narrowly directed at the arbitrator (e.g., it can be interpreted to only police arbitrator conduct), the clause does not clearly instruct this Court to cede its competence to resolve arbitrability issues to an

arbitrator based on those laws. An intent to incorporate Law 1563 of Colombian arbitration law such that an arbitrator, rather than this Court, would be required to determine arbitrability issues would have been more clearly reflected through the use of terms, such as "arbitrations shall be governed by Colombian arbitration law" or "arbitrations shall be conducted in accordance with Colombian arbitration law." It can be considered standard practice in international commercial arbitration for parties to use such terms in their arbitration agreements when they intend for courts to compel arbitration in accordance with a particular body of arbitration law.

For example, the identical arbitration clauses in the bylaws of Tecnoviv's peer companies Flores de Tenjo and Flores Esmeralda state, "Any dispute or disagreement relating to this contract and its execution shall be submitted to the decision of arbitrators in accordance with Decree 2279 of 1989, Act 446 of 1998, Decree 1818 of 1998, and other complementary provisions." Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 17, 52 (emphasis added); infra at 59 n.39. Unlike the narrow statement in the Tecnoviv arbitration clause that the arbitrator shall follow Colombian laws, the terms of these clauses explicitly prescribe that disputes relating to the Flores de Tenjo and Flores Esmeralda Bylaws "shall be submitted to the decision of arbitrators in accordance with" specific Colombian arbitration laws that mandate that an arbitrator must decide arbitrability issues. See NICOLÁS LOZADA PIMIENTO, The Colombian Arbitration Statute:

Towards an Export-Quality Service for Colombia, Revusta IUSTA 65, 68 (2019) ("Decree 1818 contained generally recognized arbitration principles, such as . . . kompetenz-kompetenz . . . ."); see also Doc. 16-7 (Article 79 of Law 1563).

Similarly, the arbitration agreement disputed before the Southern District of Florida in Cheruvoth v. SeaDream Yacht Club, Inc. states:

> This Agreement is governed by Norwegian law, except for Norwegian choice of law principles. All disputes arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Norwegian Arbitration Act 14 May 2004 no. 25 . . . . The seat of the arbitral proceedings shall be in Oslo, Norway . . . .

No. 1:19-cv-24416-GAYLES/OTAZO-REYES, 2020 WL 6263013, at *1 (S.D. Fla. Oct. 22, 2020) (emphasis added). In contrast to the Tecnoviv arbitration clause, the Cheruvoth arbitration clause makes exceedingly clear what a district court should do when faced with a motion to compel arbitration; it unambiguously prescribes that "[a]ll disputes arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Norwegian Arbitration Act," which empowers arbitrators to ascertain the scope of their jurisdiction. 2020 WL 6263013 at *1. See also, e.g., Smart Sys. Tech., Inc. v. Domotique Secant, Inc. No. CIV 01-0325 MCA/LFG, 2002 WL 35649865, at *1, *4 (D.N.M. Jul. 3, 2020) (analyzing agreement providing, "In the event that any dispute . . . arises between the Parties . . . , Parties shall refer the matter to arbitration to be

governed in accordance with the Model Law on International Commercial Arbitration as adopted by UNCITRAL on June 21, 1985.").

Due to the Tecnoviv arbitration clause's lack of specificity, it is also distinguishable from the arbitration agreements that the Eleventh Circuit has determined clearly and unmistakably delegate arbitrability issues to the arbitration via the incorporation of arbitral rules. See, e.g., Terminix Int'l Co., LP, v. Palmer Ranch Ltd. P'ship, 432 F.3d 1327, 1332 (11th Cir. 2005) ("[T]he parties have agreed . . . that arbitration shall be conducted in accordance with the Commercial Arbitration Rules then in force of the American Arbitration Association . . . .") (internal quotation marks omitted); In re Checking Acct. Overdraft Litig., No. 19-14097, 2021 WL 1292305, at *4 (11th Cir. Apr. 7, 2021) ("The . . . Agreement explicitly incorporates commercial AAA Rules: 'Each arbitration, including the selection of the arbitrator shall be administered . . . according to the Commercial Arbitration Rules and the Supplemental Procedures for Consumer Related Disputes.'"); Earth Science Tech, 809 F. App'x at 606 ("The arbitration clause states, 'Both parties submit to exclusive International Arbitration through JAMS International using UNCITRAL rules . . . .'"); WasteCare, 822 F. App'x at 894 (agreement stating that claims "shall be settled by arbitration in accordance with the then current commercial rules of arbitration of the American Arbitration Association."). Thus, Law 1563 of Colombian arbitration law is not expressly incorporated into the Tecnoviv

Bylaws, and Mrs. Ullrich has failed to show that the Tecnoviv Bylaws clearly and unmistakably delegate arbitrability issues to the arbitrator.[27]

The "'clear and unmistakable evidence' standard is demanding" Patton, 915 F.3d at 835; see also Opalinski v. Robert Half Int'l, Inc., 761 F.3d 326, 335 (3d Cir. 2014) ("The burden . . . is onerous, as it requires express contractual language unambiguously delegating the question of arbitrability to the arbitrator."). "Were the courts to cede to arbitrators resolution of the arbitrability of the dispute (absent the clear and unmistakable agreement of the parties to that effect), this would incur an unacceptable risk that parties might be compelled to surrender their right to court adjudication, without their having consented." Metropolitan Life Ins. Co. v Bucsek, 919 F.3d 184, 190 (2d Cir. 2019) (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 945 (1995)).

Because Mrs. Ullrich has failed to provide clear and unmistakable evidence that she or Stephen Ullrich agreed to arbitrate arbitrability issues, the Court will decide the arbitrability of Stephen Ullrich's Verified Petition claims.

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[27] Even if the Court assumed that Law 1563 is incorporated into the Tecnoviv Bylaws, it is not clear that Article 79 would be applicable. Law 1563 states, "The provisions of this [Third Section International Arbitration], except for articles 70, 71, 88, 89, 90 and 111 to 116 shall apply only if the place of arbitration is located in the territory of Colombia," Doc. 16-7 at 16, and the Tecnoviv Bylaws do not specify Colombia as the place of arbitration or seat of arbitration.

2. Mrs. Ullrich may enforce the Tecnoviv arbitration clause because, when she became a Tecnoviv shareholder, she assumed the rights and duties associated with her Tecnoviv shares.

The Ullrich Descendants argue that Mrs. Ullrich can't enforce the Tecnoviv arbitration clause because she is a non-signatory. The "issue of whether a non-signatory to an agreement can use an arbitration clause in that agreement to force a signatory to arbitrate a dispute between them is controlled by state law." Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc., 845 F.3d 1351, 1354 (11th Cir. 2017); see also GE Energy, 140 S. Ct. at 1648 (recognizing that arbitration agreements falling under the New York Convention may be enforced by non-signatories). Cf. Al-Qarqani v. Arab AM. Oil Co., No. 4:18-CV-1807, 2020 WL 6748031, at *6 (S.D. Tex. Nov. 17, 2020) (reasoning that "cases discussing whether nonsignatories can be compelled to arbitrate under the FAA are relevant for this case governed by the New York Convention."). Colombian substantive law is applicable here. See Doc. 16-4 at 31.

Mrs. Ullrich's Colombian law expert represents that, under Colombian law, "an arbitration clause can . . . be assumed in respect of those persons . . . who become shareholders after the incorporation [of] the company or following the adoption of an amendment to the bylaws that introduces such clause." Doc. 23-1 ¶ 2. The expert further explains that "[t]he assignment of an agreement containing an arbitration clause, also entails the assignment of the arbitration clause. Id. ¶ 2. In other words, a "successive shareholder is not required to agree

to an arbitration clause that his/her . . . assignor had accepted as of the execution of the agreement." Id. ¶ 2. Cf. CardioNet, Inc. v. Cigna Health Corp., 751 F.3d 165, 178 (3d Cir. 2014) ("It is a basic principle of assignment law that an assignee's rights derive from the assignor. That is, an assignee of a contract occupies the same legal position under a contract as did the original contracting party [;]. . . she can acquire through the assignment no more and no fewer rights than the assignor had . . . .") (emphasis in original) (internal quotation marks omitted). This means, for example, "that the heirs to a deceased partner, when accepting the allocation of the shares via succession, also assume the contractual position of the deceased in the company, and therefore are bound by the arbitration clause that the former had accepted as of the incorporation of the company."[28] Id. ¶ 2. The Ullrich Descendants' Colombian law expert does not rebut this statement of law. See Doc. 28 at 3 (recognizing that a party may "sign or assent to and[sic] arbitration agreement") (emphasis added).

Here, after they both had signed the Tecnoviv Bylaws and assented to the bylaws' arbitration clause on August 17, 2010, the Decedent and Stephen Ullrich transferred at least some of their Tecnoviv shares to Mrs. Ullrich. See Docs. 1-1 at 77–83; 16-4 at 1, 3, 33–34. Under Colombian law, these share transfers effectively made Mrs. Ullrich a party to the Tecnoviv Bylaws and the arbitration

[28] Mrs. Ullrich's Colombian law expert cites Colombian court cases to support his analysis of Colombian law. Doc. 23-1.

clause contained within; she assumed the rights and duties associated with the Tecnoviv shares upon becoming a shareholder.[29]

The Ullrich Descendants advance that Mrs. Ullrich "in her capacity as Personal Representative of the Estate is not a signatory to the Bylaws, and therefore, cannot be compelled to arbitration in this capacity." Doc. 14 at 3, 10. This argument fails because, in the Verified Petition case, the Ullrich Descendants allege claims against Mrs. Ullrich in her in individual capacity, and Mrs. Ullrich is a Tecnoviv shareholder in her individual capacity. Thus, Mrs. Ullrich may invoke the Tecnoviv arbitration clause against signatories to the Tecnoviv Bylaws, such as Stephen Ullrich.

3. Stephen Ullrich's claims are not arbitrable.[30]

The Tecnoviv arbitration clause applies to a narrowly defined set of disputes. It requires Tecnoviv shareholders to arbitrate "any" claims "challeng[ing] . . . the determinations adopted by the General Shareholders' Meeting." Doc. 16-4 at 30. The General Shareholders' Meeting is tasked with, for

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[29] As a point of comparison, "[T]he Supreme Court has recognized six circumstances that allow non-signatories to invoke an arbitration agreement[:] . . . assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver, and estoppel." Psara Energy, 427 F. Supp. 3d at 862 (citing Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 631 (2009)) (emphasis added).

[30] The Court "emphasize[s] that [its] sole responsibility is to determine whether this dispute is governed by [the] arbitration clause, not to determine the merits of the dispute." Pennzoil Exploration & Production Co. v. Ramco Energy Ltd., 139 F.3d 1061, 1067 (5th Cir. 1998).

example, approving share transfers, issuing company shares, "determining the accounting rules that the company must follow," "[a]ppointing the General Manager," "approving the budget of the company," and "assessing and approving the amendment to the bylaws." Doc. 16-4 at 7, 18, 23; see also id. at 14 ("The direction and management of the corporation shall be exercised by the General Shareholders' Meeting"). The Tecnoviv arbitration clause is not applicable to "[a]ny [other] differences arising among the shareholders or between the shareholders and [Tecnoviv] or its managers, in the performance of the articles of incorporation or unilateral act . . . ." Doc. 16-4 at 29.[31]

Stephen Ullrich's request for a declaration that he owns seven hundred Tecnoviv shares in Count I of the Verified Petition does not constitute a challenge to a General Shareholders' Meeting determination requiring resolution via arbitration. See Doc. 5 at 16. Chapter III and Chapter IV of the Tecnoviv Bylaws convey that courts may exercise jurisdiction over claims between Tecnoviv

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[31] The Tecnoviv arbitration clause must be read together with Section 89 of the Tecnoviv Bylaws titled "RESOLUTION OF CONFLICTS," which states:

> Any differences arising among the shareholders or between the shareholders and the corporation or its managers, in the performance of the articles of incorporation or unilateral act, except for the challenge of decisions of the General Shareholders' Meeting, the resolution of which shall be carried out as per [the arbitration clause] of these bylaws, shall be resolved by the Superintendency of Incorporation, through oral summary proceedings.

Doc. 16-4 at 29 (emphasis added).

shareholders concerning their ownership interests in Tecnoviv. Section 18 of Chapter III is titled "ATTACHMENT AND SHARES UNDER LITIGATION" and states, "The shares the ownership of which is under litigation may not be transferred without permission of the Judge in charge of the relevant legal proceeding." Doc. 16-4 at 9. Section 25 of Chapter IV is titled "TRANSFER OF SHARES BY INHERITANCE OR COURT ORDER" and recognizes that courts may award and force the sale of shares. Doc. 16-4 at 10; see also id. at 11 ("The company does not assume any liability either regarding the validity of the transfers made by inheritance or bequest and the changes of ownership caused by a court order, in which cases it shall only address the decision entailed by the transfer or change or to verify either of them") (emphasis added). Thus, per the terms of the Tecnoviv Bylaws, Tecnoviv's narrow arbitration clause does not require arbitration in this instance, and the State Court may adjudicate Stephen Ullrich's claim to ownership of Tecnoviv shares in Count I of the Verified Petition.[32]

IV. STAYING THE VERIFIED PETITION PROCEEDING

In her Motion to Stay Action and to Compel Arbitration, Mrs. Ullrich moves the Court to stay the Verified Petition action "until all of the Petitioners

[32] The Ullrich Descendants also assert that the arbitration clause is superseded by the Settlement Agreement. The Court need not reach that issue here because Stephen Ullrich's Verified Petition claims are not arbitrable.

finish arbitrating their shareholder disputes in Colombia." See Doc. 6 ¶¶ 9, 32. The Court separately addresses whether Stephen Ullrich's Verified Petition claims are due to be stayed and whether Monica Ullrich and Peter David Ullrich's Verified Petition claims are due to be stayed.

A. Stay as to Stephen Ullrich's Verified Petition Claims

The Court cannot stay Stephen Ullrich's Verified Petition claim against Mrs. Ullrich pertaining to his ownership of Tecnoviv shares because it does not have jurisdiction over any of Stephen Ullrich's Verified Petition claims. Even if the Court were to assume it has jurisdiction, because Stephen Ullrich's Count I Verified Petition claim is not arbitrable, there is no reason to stay the remaining Verified Petition claims of Stephen Ullrich. See Klay v. All Defendants, 389 F.3d 1191, 1204 (11th Cir. 2004) (explaining that "it is well established that a district court may . . . refuse to stay nonarbitrable proceedings"). Thus, Stephen Ullrich's claims are due to be remanded to the State Court. See QPro Inc., 761 F. Supp. at 504 ("Although removal of state law claims may be initially proper under § 205 as claims that 'relate to' an arbitration agreement, once they are determined not to be arbitrable, remand to state court is appropriate.") (citing Beiser, 284 F.3d at 674).

B. Stay as to Monica Ullrich and Peter David Ullrich's Verified Petition Claims

The Court first determines whether the Flores de Tenjo and Flores Esmeralda Bylaws satisfy the Panama Convention's jurisdiction requisites, and then proceeds to determine whether a stay of Monica Ullrich and Peter David Ullrich's Verified Petition Claims is merited.

1. The Flores de Tenjo and Flores Esmeralda arbitration agreements satisfy the Panama Convention jurisdictional prerequisites.

The arbitration clauses contained in the Flores de Tenjo Bylaws and the Flores Esmeralda Bylaws are identical. The arbitration clauses state:

> Any dispute or disagreement relating to this contract and its execution and settlement shall be submitted to the decision of arbitrators in accordance with Decree 2279 of 1989, Act 446 of 1998, Decree 1818 of 1998, and other complementary provisions, in accordance with the following rules: (a) The decisions of the tribunal shall be in accordance with the law; (b) The tribunal shall be composed of three arbitrators, unless the matter to be adjudicated involves a minor sum in which case there shall be only one arbitrator; (c) The internal organization of the tribunal shall be subject to the rules laid down for institutional arbitration; d) The seat of the arbitration shall be in the city of Rionegro, [Colombia,] at the arbitration center of the Eastern Antioquia Chamber of Commerce; [and] e) The duration of the arbitration shall be six (6) months from the first hearing in the proceedings.

Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 17, 52; see also Docs. 16-1; 16-2.[33]

[33] The Ullrich Descendants do not contest the accuracy of the translated text. The Ullrich Descendants used an identical translation in a proceeding before the Southern District of Florida. See Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2.

As for the first jurisdictional prerequisite, the clauses are in writing and signed. In 2009, the Decedent and representatives acting on behalf of Peter David Ullrich and Stephen Ullrich[34] signed the Flores Esmeralda Bylaws.[35] See Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 13, 18. Additionally, the Ullrich Descendants represent that the Decedent and Monica Ullrich signed the Flores de Tenjo Bylaws. See Doc. 28 ¶ 2 ("I have reviewed eight (8) separate documents, which can be described as follows: (a) four (4) company bylaws which were signed in 2009 and 2010 by the Ullrich Descendants for the Colombian Companies"); ¶ 6 ("the [Bylaws] of Flores de Tenjo were signed solely by [the Decedent] and Maria Eugenia Suarez, and later by Monica Ullrich."); see also Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 47, 52 (showing that the Flores de Tenjo Bylaws were adopted "unanimously" in 2010 by the Decedent and Maria Eugenia Suarez Barco).

The second jurisdictional prerequisite is met because the Flores de Tenjo Bylaws and Flores Esmeralda Bylaws expressly provide for arbitration in Colombia. The third and fourth jurisdictional prerequisites are satisfied for the

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[34] It is the Court's understanding that Stephen Ullrich is making no claim to ownership of shares of Flores Esmerelda.

[35] The minutes of Flores Esmeralda's August 28, 2009 Extraordinary Shareholders' Meeting states that the Flores Esmeralda Bylaws "were read, presented to the shareholders' general meeting for consideration and adopted unanimously." Ullrich, No. 1:20-cv-23505-BB, Doc. 1-2 at 18. An agent of Peter David Ullrich attended on his behalf. Id. at 13.

reasons provided in the Court's ruling on the Corrected Motion for Remand. See supra at 15–16. Accordingly, the Court has jurisdiction under the Panama Convention to rule on whether Monica Ullrich and Peter David Ullrich's Verified Petition claims should be stayed.

> 2. Monica Ullrich's Verified Petition claims are due to be stayed pending the resolution of the Colombian arbitration against Flores de Tenjo and Peter David Ullrich's Verified Petition claims are due to be stayed pending the resolution of the Colombian arbitration against Flores Esmeralda.

Mrs. Ullrich urges the Court to stay Monica Ullrich and Peter Ullrich's Verified Petition claims on two grounds. First, she argues that a stay is mandatory under Section 3 of the FAA, which provides that:

> a district court shall stay a pending suit "upon being satisfied that the issue involved in such suit or proceeding is referable[sic] to arbitration" under a valid arbitration agreement. For arbitrable issues, the language of Section 3 indicates that the stay is mandatory.

Klay, 389 F.3d at 1203–04 (internal citation omitted); see Doc. 6 at 14–16. Second (an alternatively), she argues that a discretionary stay is merited. See Doc. 6 at 19; Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr S.A., 377 F.3d 1164, 1172 n.7 (11th Cir. 2004) (indicating that courts may grant discretionary stays where the New York Convention is applicable); see also Petrik v. Reliant Pharma., No. 8:07-cv-1462-T-24 TBM, 2007 WL 3283170, at *3 (M.D. Fla. Nov. 5, 2007) ("[T]he Court has discretion to stay claims not covered by [Section 3 of] the FAA.").

Assuming that Mrs. Ullrich, as a non-signatory, can enforce the Flores de Tenjo and Flores Esmeralda arbitration clauses[36] and that the clauses clearly and unmistakably delegate arbitrability issues to arbitrators,[37] the Court would

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[36] In cases where arbitrability issues were delegated to an arbitrator, courts have still decided whether non-signatories may enforce an arbitration agreement. See, e.g., ROI Props. Inc. v. Burford Cap. Ltd., No. CV-18-03300-PHX-DJH, 2019 WL 1359254, at *5 (D. Az. Jan. 14, 2019) (finding "that the determination of arbitrability has been committed to the arbitrator" and determining whether the non-signatory could enforce the arbitration agreement); see also Belnap v. Iasis Healthcare, 844 F.3d 1272, 1293 (10th Cir. 2017); Bitstamp Ltd. v. Ripple Labs, Inc., No. 15-cv-01503-WHO, 2015 WL 4692418, at *5–*6 (N.D. Cal. Aug. 6, 2015).

Mrs. Ullrich may enforce the Flores de Tenjo and the Flores Esmeralda arbitration clauses because, when she became a shareholder of the companies, she assumed the rights and duties associated with the companies' shares. See Docs. 5 at 4–6 (indicating that after the arbitration clause had been added to the Flores de Tenjo Bylaws, Monica Ullrich transferred at least some of her Flores de Tenjo shares to Mrs. Ullrich; and explaining that after they had signed the Flores Esmeralda Bylaws, Peter David Ullrich and Stephen Ullrich transferred at least some of their Flores Esmeralda shares to Mrs. Ullrich); 1-1 at 73 ("I[, Stephen Ullrich,] signed a document . . . transferring my interest in . . . Flores Esmeralda . . . .").

[37] Colombian arbitration law governing international arbitration, including Law 1563, is expressly incorporated into the Flores de Tenjo and Flores de Esmeralda Bylaws via the explicit reference in their arbitration clauses to "Decree 1818 of 1998[] and other complementary provisions [of Colombian arbitration law]." See Ullrich, No. 1:10-cv-23505-BB, Doc. 1-2 ¶ 32 (Monica Ullrich and Peter David Ullrich expressing that "[t]hese arbitration agreements are now subject to Law 1563 of 2012 . . . ."); EDUARDO ZULETO, INTERNATIONAL BAR ASSOCIATION ("IBA") ARBITRATION COMMITTEE'S ARBITRATION GUIDE: COLOMBIA 2 (Mar. 2012) (explaining that Decree 2279 and Law 446 governed domestic arbitration and "Decree 1818/98 . . . compile[d] the provisions applicable to both domestic and international arbitration."). The express language of Law 1563 provides that, 'The arbitral tribunal shall be the only authority competent to rule on its jurisdiction." Doc. 16-7 (Article 79). Thus, under the Flores de Tenjo Bylaws and Flores Esmeralda Bylaws, arbitrability issues shall be decided by

have to defer ruling on whether all of Monica Ullrich and Peter David Ullrich's Verified Petition claims must be stayed under § 3 (per Mrs. Ullrich's first argument) until arbitrators determined the arbitrability of each of their claims. See ROI Props. Inc. v. Burford Cap. Ltd, No. CV-18-03300-PHX-DJH, 2019 WL 1359254, at *7 (D. Az. Jan. 14, 2019) ("[T]he arbitrator will decide which of Plaintiff's claims are subject to arbitration and, if the arbitrator decides that not all of Plaintiff's claims are subject to arbitration, then this litigation can proceed in this Court on those non-arbitrable claims."). To date, the arbitrator in the arbitration commenced by Monica Ullrich against Flores de Tenjo has only determined that declaratory judgment actions concerning Monica Ullrich's ownership of Flores de Tenjo shares are arbitrable. See Doc. 32-1.

However, it not necessary to take the § 3 route. Mrs. Ullrich has sufficiently shown through her second argument that a discretionary stay is merited. See Petrik v. Reliant Pharma., No. 8:07-cv-1462-T-24 TBM, 2007 WL 3283170, at *3 (M.D. Fla. Nov. 5, 2007) ("The Court need not determine whether [the parties] are entitled to a mandatory stay of this case under § 3 of the FAA, because the Court has discretion to stay claims not covered by the FAA."). The

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the arbitrator. See WasteCare, 822 F. App'x at 895–96 (quoting Henry Schein, 139 S. Ct. at 529) ("'[W]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract . . . even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.'").

Colombian Arbitrations will (1) determine the number of Flores de Tenjo shares Monica Ullrich owns and whether she was wrongfully excluded from Flores de Tenjo shareholder meetings; and (2) determine the number of Flores Esmeralda shares Peter David Ullrich owns and whether he was wrongfully excluded from Flores Esmeralda shareholder meetings. See Docs. 16-1 at 8–9; 16-2 at 8–9. The arbitrator's ruling on these issues will be outcome determinative as to most, if not all, of the Verified Petition claims pertaining to Monica Ullrich and Peter David Ullrich's ownership interests in the Colombian Companies. For example, Monica Ullrich and Peter David Ullrich's constructive trust, conversion, and accounting claims in the Verified Petition would fail if the arbitrator determines they do not own any shares. As such, the issues in the Colombian Arbitrations and the issues in the Verified Petition claims are closely related and necessarily intertwined which bodes in favor of staying Monica Ullrich and Peter David Ullrich's Verified Petition claims. See Petrik, 2007 WL 3283170 at *3 ("when deciding whether to grant a stay of proceedings of a nonarbitrable claim, the court must determine 'whether the outcome of the nonarbitrable claims will depend upon the arbitrator's decision.'") (quoting Klay, 389 F.3d at 1204); see also Louis Berger Group, Inc. v. State Bank of India, 802 F. Supp. 2d 482, 489 (S.D.N.Y. 2011) ("In some cases, of course, it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration.") (internal quotation marks omitted).

In addition, staying Monica Ullrich and Peter David Ullrich's Verified Petition claims will promote judicial economy by eliminating any duplicative effort by the State Court to determine the number of shares Monica Ullrich owns in Flores de Tenjo and the number of shares Peter David Ullrich owns in Flores Esmeralda. A stay will also avoid any inconsistency that would arise if the arbitrator and the State Court were to reach different conclusions on the matter. See Louis Berger, 802 F. Supp. 2d at 490 ("Stays are particularly appropriate where they promote judicial economy, avoidance of confusion and possible inconsistent results.") (internal quotation marks omitted).

V. CONCLUSION

In the absence of agreement by the parties on a consolidated forum to resolve all disputes, the Court believes this to be the required result. That the result here is different for Stephen Ullrich's claims than the claims of Monica and Peter Ullrich is explained by the different arbitration agreements that pertain to their claims. If the parties conduct the Colombian Arbitrations in good faith, permitting arbitrators to resolve the claims in a timely manner, Monica Ullrich and Peter David Ullrich, who commenced the arbitrations in the first place, are unlikely to suffer any prejudice as a result of a temporary stay.[38]

[38] The Ullrich Descendants' primary argument in opposition to Mrs. Ullrich's motion is that the Settlement Agreement's forum selection clause supersedes the arbitration clauses in the Bylaws. However, the Court may not determine whether the Settlement Agreement superseded the Flores de Tenjo

Accordingly, it is hereby

ORDERED:

1. Paragraph three of Clarisse's Declaration (Doc. 1-2) and the Spanish language documents attached to the declaration (Docs. 1-3 through 1-10) are **STRICKEN**.

2. Petitioners Peter David Ullrich, Monica Ullrich, and Stephen Ullrich's Corrected Motion for Remand (Doc. 10) is **DENIED**.

3. Petitioners Peter David Ullrich, Monica Ullrich, and Stephen Ullrich's request for attorney's fees (Doc. 10 at 24–25) is **DENIED**.

4. Respondent Clarisse Ullrich's Motion to Stay and to Compel Arbitration (Doc. 6) is **DENIED** as to Stephen Ullrich's Verified

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and Flores Esmeralda arbitration clauses because it is an arbitrability issue that the Flores de Tenjo and Flores Esmeralda arbitration clauses clearly and unmistakably delegate to an arbitrator. See Mckenzie v. Branna, 496 F. Supp. 3d 518, 535 (D. Me. 2020) ("Given the 2008 Agreement's direct and broad delegation language, the Court concludes that it demonstrates a clear and unmistakable intent to have an arbitrator decide whether the Mediation Term Sheet is enforceable and whether the 2008 Agreement has been superseded and remains valid."); Mobile Real Estate, LLC v. NewPoint Media Grp., LLC, 460 F. Supp. 3d 457, n.10 (S.D.N.Y.) ("[w]hether the forum-selection clause in the [Second Services] Agreement supersedes the arbitration clause in the [First Services] [A]greement presents a question of arbitrability[]") (internal quotation marks omitted); Moss v. Brock Servs., No. 2:19-cv-00084-JAW, 2019 WL 3806375, at *7 (D. Me. 2019) ("Given the Arbitration Agreement's direct and broad delegation language, the Court concludes that it demonstrates a clear and unmistakable intent to have an arbitrator decide whether the Arbitration Agreement has been superseded and remains valid."); see also Doc. 16-7 (Law 1563, art. 79).

Petition claims and **GRANTED** as to Monica Ullrich and Peter David Ullrich's Verified Petition claims.

a. Petitioner Stephen Ullrich's Verified Petition claims against Respondent Clarisse Ullrich are **REMANDED** to the Circuit Court of the Fourth Judicial Circuit in Nassau County, Florida (the "State Court").

b. Petitioners Monica Ullrich and Peter David Ullrich's Verified Petition claims against Monica Ullrich are **TEMPORARILY STAYED** pending resolution of their respective Colombian Arbitrations. The parties shall file notices of rulings on merits or jurisdictional issues in the Colombian Arbitration along with proposals on how to proceed.

5. In the meantime, the Clerk will administratively close the file.

DONE AND ORDERED in Jacksonville, Florida this 3rd day of September, 2021.

Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge

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Copies:
Counsel of record