UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:22-cv-21306-JEM/Becerra

BAYPORT FINANCIAL
SERVICE (USA) INC. and
BAYPORT COLOMBIA, S.A.,

Plaintiffs,

v.

BAYBOSTON MANAGERS, LLC, *et al.*,

Defendants.
_____/

REPORT AND RECOMMENDATION ON
DEFENDANT VALOPI LLC'S MOTION TO COMPEL MANDATORY ARBITRATION

THIS CAUSE came before the Court on Defendant, Valopi, LLC's ("Valopi"), Motion to Compel Mandatory Arbitration (the "Motion").[1] ECF No. [159]. Plaintiffs, Bayport Financial Services (USA) Inc. ("Bayport USA") and Bayport Colombia, S.A. ("Bayport Colombia, and, together with Bayport USA, the "Plaintiffs"), filed a response in opposition to the Motion (the "Response"), ECF No. [188], and Valopi filed a reply (the "Reply"), ECF No. [212]. On January 10, 2024, the Parties appeared before the undersigned for oral argument on the Motion. ECF No. [265]. Upon due consideration of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby **RECOMMENDED** that the Motion be **GRANTED**.

[1] The Motion was referred to the undersigned by the Honorable Jose E. Martinez, United States District Court Judge. ECF No. [241].

I. BACKGROUND

This case is premised upon Plaintiffs' allegations that Defendants, BayBoston Managers LLC, CFG Partners L.P, CFG Partners Colombia S.A.S. d/b/a Dando, and Caribbean Financial Group Inc. (collectively, the "Corporate Defendants"), "pilfer[ed] Plaintiffs' valuable trade secrets and their top executives for business operations, and use[d] them to expand [their] operations into new turf: Colombia, Mexico, and Latin America." ECF No. [138] at ¶ 3. Plaintiffs allege that in furtherance of this scheme, the Corporate Defendants "co-opted two of Bayport USA's most trusted and valued executives: Defendant Pablo Montesano . . . and Defendant Lucia Lopina . . . ." (Mr. Montesano and Ms. Lopina shall collectively be referred to herein as the "Individual Defendants"). *Id.* at ¶ 4.

According to Plaintiffs, Ms. Lopina first "joined Bayport [in 2016] as a contractor in the role of Product and Operations Director of Bayport's Colombia and Mexico markets." *Id.* at ¶ 74. Plaintiffs allege that she did this through Valopi, an entity she owns and manages. *Id.* at ¶ 75; ECF No. [188] at 1. On January 1, 2017, Bayport Colombia entered into a consulting agreement with Valopi, which Ms. Lopina signed as Valopi's "Legal Representative" (the "Valopi-Bayport Agreement"). ECF Nos. [138] at ¶ 77; [159-1] at 5. Then, sometime in 2020, Ms. Lopina was hired as an official employee of Bayport USA and entered into an employment agreement in connection therewith in her individual capacity. ECF No. [138] at ¶¶ 86-87, 92-94.

Plaintiffs did not name Valopi as a defendant in their original Complaint or their First Amended Complaint. ECF Nos. [1], [41]. In her Answer and Affirmative Defenses to the First Amended Complaint, Ms. Lopina contended that "[t]o the extent that . . . [her] alleged misconduct occurred during the term, and within the scope, of the . . . [Valopi-Bayport] agreement[] . . . , then (a) [that] . . . agreement[] govern[s], and (b) Ms. Lopina is not liable in her individual capacity for

any such conduct." ECF No. [112] at 23. "To find . . . [her] individually liable for any such conduct," Ms. Lopina said, "would be tantamount to improper piercing of Valopi['s] . . . corporate veil." *Id.* Ms. Lopina maintained the legal distinction between herself and Valopi in her interrogatory responses and at the deposition of Valopi, then a non-party, for whom she testified as corporate representative. *See* ECF No. [188] at 2.

On July 11, 2023, over a year after this case was initiated, Plaintiffs filed their Second Amended Complaint, which, in relevant part, added Valopi as a Defendant. ECF No. [138] at 1. In the Second Amended Complaint, the counts previously alleged against Ms. Lopina remained, although one was added: Tortious Interference with Plaintiff's Advantageous Business Relationships with Customers and Prospective Customers, asserted against all Defendants. *See generally id*. Only one count was directed at Valopi – Breach of Contract pursuant to the Valopi-Bayport Agreement. *Id.* at 82-84.

II. THE INSTANT MOTION.

In the Motion, filed on the same day as the Joint Motion to Dismiss the Second Amended Complaint filed by all Defendants,[2] Valopi moves to compel mandatory arbitration of all counts asserted against it in the Second Amended Complaint "pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") as codified in Federal Arbitration Act ("FAA")," 9 U.S.C. § 201 *et seq.*[3] ECF No. [159] at 1. Specifically, Valopi argues that the Valopi-Bayport Agreement, upon which Plaintiffs' claims are based, "contains an

[2] ECF No. [160].

[3] Valopi says that the number of claims alleged against it in the Second Amended Complaint is "unclear," and that the Parties "attempted to meet and confer on this issue, but Plaintiffs' counsel took the position that they needed to wait and see Valopi and the other defendants' motions." ECF No. [159] at 1 n.1.

arbitration clause that meets all of the criteria to compel international arbitration," in this case, in the Center for Arbitration and Conciliation of the Chamber of Commerce of Bogota." *Id.* at 2. The clause at issue states:

> FIFTEENTH. – DISPUTE RESOLUTION: In the event of differences, discrepancies or conflicts between the parties with regard to the conclusion, interpretation, performance, modification, termination or liquidation of the Agreement, the parties will attempt to solve them directly, quickly, and amicably. If an agreement is not reached, the parties will submit to the decision of one (1) arbitrator appointed by the Center for Arbitration and Conciliation of the Chamber of Commerce of Bogota, in accordance with its regulations.

(the "Arbitration Clause"). ECF No. [159-1] at 4.

Plaintiffs do not dispute that the Arbitration Clause covers the claims asserted against Valopi. Instead, Plaintiffs argue that Valopi and Ms. Lopina are alter egos of each other. *See* ECF No. [188] at 8, 11. As such, Plaintiffs claim Valopi waived its right to enforce the Arbitration Clause "based on the litigation conduct of its sole manager, registered agent, and authorized member, [Ms.] Lopina." *Id.* at 1. Plaintiffs argue that "Valopi ha[d] been on notice of the potential arbitrability of certain of Plaintiffs' claims against [Ms.] Lopina since . . . the First Amended Complaint," yet Ms. Lopina "engaged in dispositive motion practice, filed an answer that invoked the [Valopi-Bayport] Agreement without mentioning its [A]rbitration [C]lause, served extensive discovery requests, and noticed multiple discovery hearings." *Id.* at 2. In Plaintiffs' view, Ms. Lopina is trying to "have it both ways" by arguing she cannot be held personally liable for actions allegedly taken as Valopi's agent while claiming her defense of this action does not waive Valopi's arbitration rights under the Valopi-Bayport Agreement. *Id.* at 3, 13.

In Reply, Valopi argues that it "promptly moved to compel arbitration" upon being added to this case, and thus, it "has *not* sat on its arbitral rights." ECF No. [212] at 1-2 (emphasis in original). Valopi contends that "Plaintiff's response seeks a *sub silentio* piercing of the corporate

veil, arguing, essentially, that for waiver purposes the Court should treat Valopi as a party who has *always* been a defendant." *Id.* at 2 (emphasis in original). However, Plaintiffs did not name Valopi as a defendant until the Second Amended Complaint, even though they knew of Valopi's significance from the very beginning, having drafted the Valopi-Bayport Agreement. *Id.* at 1-2. Moreover, Valopi says that contrary to Plaintiffs' treatment of Ms. Lopina and Valopi as each other's "alter ego[s]," Ms. Lopina's "defense of this case in her individual capacity . . . establish[es] . . . that she has rigorously maintained the corporate separateness between her and Valopi." *Id.* at 2; *See* ECF No. [188] at 8, 11. Therefore, Valopi argues, Ms. Lopina's defense of the claims against her, in her individual capacity, cannot be used to impute waiver to Valopi, a separate entity previously "a stranger to this case." ECF No. [212] at 1.

III. ANALYSIS

"In deciding a motion to compel arbitration under the Convention . . . , a court conducts 'a very limited inquiry.'" *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005) (quoting *Francisco v. STOLT ACHIEVEMENT MT*, 293 F.3d 270, 273 (5th Cir. 2002), *cert denied*, 537 U.S. 1030 (2002) (additional citations omitted)). Indeed, "[a] district court must order arbitration unless (1) the four jurisdictional prerequisites are not met . . . or (2) one of the Convention's affirmative defenses applies." *Id.* at 1294-95 (citing *Std. Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 449 (3d Cir. 2003), *DiMercurio v. Sphere Drake Ins.' PLC*, 202 F.3d 71, 79 (1st Cir. 2000), and *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 n.3 (11th Cir. 2004)) (footnote omitted). These four preliminary questions include whether:

> (1) there is an agreement in writing within the meaning of the Convention; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or . . . the commercial relationship has some reasonable relation with one or more foreign states."

Id. at 1294 n.7 (citing *Std. Bent Glass Corp.*, 333 F.3d at 449). The Convention "generally establishes a strong presumption in favor of arbitration of international commercial disputes." *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998), *overruled on other grounds by Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 880 (11th Cir. 2023) (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638-40 (1985)). "At the arbitration-enforcement stage, Article II(3) of the Convention recognizes only these affirmative defenses to [the otherwise] mandatory recognition [of agreements to arbitrate]:" that the agreement is "'*null and void*, *inoperative or incapable of being performed*.'" *Lindo v. NCL (Bahamas) Ltd.*, 652 F.3d 1257, 1276 (11th Cir. 2011) (quoting the Convention, art. II(3)) (emphasis in original). The party opposing arbitration bears the burden of proving that an affirmative defense applies. *See, e.g.*, *Fernandes v. Holland American Line*, 810 F. Supp. 2d 1334, 1336 (S.D. Fla. 2011) (citing *Czarina*, 358 F.3d at 1292 n.3, and *Four Seasons Hotels and Resorts B.V. v. Consorcio Barr*, 613 F. Supp. 2d 1362, 1367 (S.D. Fla. 2009)); *see also Bautista*, 396 F.3d at 1301-03 (turning to the party opposing arbitration to articulate its affirmative defenses).

Here, Plaintiffs do not dispute any of the four factors. *See generally* ECF No. [188]. Indeed, Plaintiffs' claims against Valopi fall squarely within the scope of the Arbitration Clause in the Valopi-Bayport Agreement, which applies to "conflicts between the parties with regard to the . . . performance . . . of the [Valopi-Bayport] Agreement." ECF No. [159-1] at 4. Count XV of the Second Amended Complaint contains a breach of contract claim based on this very agreement. ECF No. [138] at 82-84. Moreover, Plaintiffs themselves stated that all claims against Ms. Lopina, which include the claims asserted against all Defendants, "[f]all [w]ithin the [Valopi-

Bayport] Agreement." ECF No. [188] at 6. Thus, to the extent those claims are directed at Valopi, there appears to be no dispute that they are encompassed by the Arbitration Clause.

Instead, Plaintiffs' opposition to the Motion rests upon one core argument: that Ms. Lopina and Valopi are mere alter egos of each other, and Ms. Lopina waived Valopi's rights to arbitration when she proceeded to defend against the instant action in her personal capacity. *See id.* at 8, 11. Specifically, Plaintiffs claim that as "managing member and authorized agent of Valopi," Ms. Lopina "was fully in control of Valopi's actions, and all of Valopi's conduct was her own." ECF No. [138] at ¶ 121. Neither the record before the Court nor the law supports Plaintiffs' position.

As an initial matter, Plaintiffs are arguing, in their alter ego analysis, that the Court should pierce the corporate veil and treat these two parties indistinctly, such that Ms. Lopina's actions can be considered to determine if Valopi waived its right to arbitrate. Although Plaintiffs did not set forth the applicable legal standard, under Florida law, three factors must be proven to pierce the corporate veil:

> (1) the shareholder dominated and controlled the corporation to such an extent that the corporation's independent existence, was in fact non-existent and the shareholders were in fact alter egos of the corporation;
>
> (2) the corporate form must have been used fraudulently or for an improper purpose; and
>
> (3) the fraudulent or improper use of the corporate form caused injury to the claimant.

Molinos Valle Del Cibao, C. por A v. Lama, 633 F.3d 1330, 1349 (11th Cir. 2011) (citing *Gasparini v. Pordomingo*, 972 So. 2d 1053, 1055 (Fla. 3d DCA 2008), and 8A Fla. Jur. 2d Business Relationships § 13 (2008) (emphasis omitted)). Here, Plaintiffs only argue that Ms. Lopina is Valopi's "sole manager, registered agent, and authorized member." ECF No. [188] at 1. That argument alone is not sufficient. "The mere fact that one or two individuals own and

control the stock structure of a corporation does not lead inevitably to the conclusion that the corporate entity is a fraud or that it is necessarily the alter ego of its stockholders to the extent that" the corporate fiction should be disregarded. *Advertects, Inc. v. Sawyer Indus.*, 84 So. 2d 21, 23-24 (Fla. 1955). In its Reply, Valopi established that it owns one property, which is not used by Ms. Lopina as her personal residence, that this property generates income for Valopi, and that it maintains its own bank accounts, has its own accountant, files taxes, and generally observes other corporate formalities, all of which demonstrates Valopi's corporate separateness. *See* ECF No. [212] at 2 n.2. Plaintiffs do not rebut this evidence, nor have they requested an evidentiary hearing.

Moreover, although Plaintiffs now contend that Ms. Lopina is an alter ego of Valopi, that is not the position they have taken in the litigation to date. Ms. Lopina has consistently maintained the corporate separateness between herself and Valopi in this suit. *See* ECF No. [188] at 2. She distinguished between herself and Valopi in her interrogatory responses and in her testimony as Valopi's corporate representative before it was added to this case. *Id*. Plaintiffs deposed her in her own capacity, as well as in her capacity as corporate representative of Valopi. Plaintiffs did not challenge her insistence on acting separate and apart from Valopi and proceeded to treat Ms. Lopina and Valopi as distinct parties.

Absent any basis to pierce the corporate veil, Plaintiffs' argument that an individual can waive the rights of a corporate entity it controls finds no support in the caselaw. Plaintiffs cite no case in this Circuit or elsewhere that supports this position, nor has the Court's independent research identified such a case. Plaintiffs primarily rely on case law holding that a party's *own* conduct can waive its right to enforce an arbitration clause. *See GEMB Lending, Inc. v. RV Sales of Broward, Inc.*, No. 09–61670–CIV, 2010 WL 1949548, at *1-3 (S.D. Fla. May 14, 2010) (finding that parties waived their right to arbitrate based on *their own conduct* in the case, including

their failure to raise the arbitration right despite several opportunities to do so); *Warrington v. Rocky Patel Premium Cigars, Inc.*, No. 22-12575, 2023 WL 1818920, at *2 (11th Cir. Feb. 8. 2023) (finding waiver where a defendant "initially filed suit in state court to enforce his rights under [an] agreement, then . . . attempted to force [the plaintiff's] federal action [under that agreement] down to the state court to be joined with his action there—all before seeking to compel arbitration"); *Morgan v. Sundance, Inc.*, 596 U.S. 411, 414-15 (2022) (finding waiver where a defendant "initially defended itself against [a] suit as if no arbitration agreement existed," and only sought to compel arbitration "nearly eight months after the suit's filing"); *Gaudreau v. My Pillow, Inc.*, No. 6:21-cv-1899-CEM-DAB, 2022 WL 3098950, at *8 (M.D. Fla. July 1, 2022) (finding that a defendant "acted inconsistently with its purported right to arbitrate," and consequently waived that right, by removing the case to federal court, answering complaints "without mentioning its purported right to arbitrate," and only moving to compel arbitration "after actively participating in . . . litigation for eight months"); *Mitchell-Hilton v. Celebrity Cruises, Inc.*, No. 09-23546-CIV-GOLD/MCALILEY, 2010 WL 11504312, at *3 (S.D. Fla. Mar. 26, 2010) (finding waiver by a defendant that "litigated for approximately eight months before moving to compel arbitration"); *Mims v. Glob. Credit and Collection Corp.*, 803 F. Supp. 2d 1349, 1353-54 (S.D. Fla. 2011) (finding waiver where a defendant participated in the case for eight months "without ever attempting to invoke a right to arbitration"); *Soriano v. Experian Info. Sol., Inc.*, No. 2:22-cv-197-SPC-KCD, 2022 WL 6734860, at *3-4 (M.D. Fla. Oct. 11, 2022) (finding waiver where, "[f]or nearly six months, [the defendant] invoked the [judicial] process and litigated [the] case with no indication it was contemplating arbitration"). The Court takes no issue with that well-settled case law. Nevertheless, that law is inapplicable here where Plaintiffs are asking the Court to find that Ms. Lopina's actions waived arbitral rights held by Valopi, a separate and distinct party.

Plaintiffs also cite *Gaudreau*, describing it as a case where "the court found waiver when the defendants sought to compel arbitration of claims against itself and its individual agents and employees in a second amended complaint after the company had 'actively participat[ed] in this litigation for eight months.'" ECF No. [188] at 9 (alterations in original) (quoting *Gaudreau*, 2022 WL 3098950, at *8). Contrary to Plaintiffs' characterization, the court in *Gaudreau* only found waiver on the part of My Pillow, Inc., the party that removed the case to federal court and answered "not one, but two complaints filed . . . against it without mentioning its purported right to arbitrate." *Gaudreau*, 2022 WL 3098950, at *8. The court did not consider or find that the actions of MyPillow waived the right to arbitrate of the other two defendants in the case, Frank Speech, LLC ("FrankSpeech") and Michael James Lindell ("Lindell").

On the contrary, with respect to FrankSpeech and Lindell, the court found that the arbitration clause did *not* apply for three reasons: (1) the clause's plain language did not extend to these defendants; (2) FrankSpeech and Lindell failed to "prove an agency relationship entitl[ing] them to avail themselves of [the] arbitration agreement"; and (3) FrankSpeech and Lindell "indicate[d] that they intend[ed] to [later] dispute the agency relationship . . . , or at least reserve their ability to do so . . . ." *Id.* at *3. In short, the question before the *Gaudreau* court was whether these defendants could avail themselves of an arbitration clause, to which they were not signatories, based on an agency theory. That is not the issue here, as Ms. Lopina is not attempting to enforce the Arbitration Clause with respect to Plaintiffs' claims against her individually. Simply stated, *Gaudreau* does not dictate the result that Plaintiffs seek.

The other line of cases Plaintiffs rely upon is also readily distinguishable. The first is *Doctor's Assocs., Inc. v. Distajo*, 66 F.3d 438 (2d Cir. 1995) ("*Distajo*"), where Doctor's Associates, Inc. ("DAI") and various franchisees (the "Franchisees") entered into franchise

agreements, each of which contained an arbitration clause. *Id.* at 442. "DAI require[d] each [F]ranchisee to sublease its premises from one of several real-estate leasing companies that are wholly owned by DAI" (the "Leasing Companies"), and which had "no assets or net income." *Id.* at 442-43. Each sublease provided that a breach of the franchise agreements constituted a breach of the sublease. *Id.* When problems arose between DAI and the Franchisees, "DAI directed its leasing companies to invoke the cross-default provisions of the subleases, and to institute eviction proceedings in state court against" the Franchisees. *Id.* at 443. In response, the Franchisees filed state court actions against DAI, the Leasing Companies, and "several of DAI's officers and agents." *Id.* Upon being named in these suits, DAI filed petitions to compel arbitration in the United States District Court for the District of Connecticut, which petitions were ultimately granted. *Id.* at 443-44. On appeal, the Second Circuit remanded and instructed the district court to resolve "whether the leasing companies were mere alter egos of DAI," whether "DAI was responsible for the eviction proceedings," and "whether prosecution of those eviction actions constituted litigation of substantial issues going to the merits." *Id.* at 456-57 (citation and quotations omitted).

As a preliminary matter, the instant case differs from *Distajo* in that neither Ms. Lopina nor Valopi sued Plaintiffs under the Valopi-Bayport Agreement or otherwise acted affirmatively to subvert the Arbitration Clause by submitting claims within the scope of the Valopi-Bayport Agreement to a court for resolution. More importantly, however, the *Distajo* case simply underscores the need for a showing justifying application of the alter ego doctrine before the actions of an affiliated entity can be attributed to a third party to establish waiver of arbitral rights. *See Distajo*, 66 F.3d at 456-57. As mentioned, Plaintiffs have failed to make this showing here.

Likewise, in *Yates v. Doctor's Assocs., Inc.*, 193 Ill. App. 3d 431 (1990), plaintiffs sued DAI and Subway, Inc., an entity which "had no existence apart from . . . [DAI]," and whose "very reason for being was to do . . . [DAI's] bidding," along with other related persons and entities. *Id.* at 434, 440. DAI removed the case to federal court and sought to compel arbitration. *Id.* at 434-35. While the motion was pending, Subway, Inc. instituted five lawsuits against the plaintiffs based on the same dispute. *Id.* at 434-35, 440. The court deemed this to be DAI's action and found DAI had waived its right to compel arbitration, noting that DAI "did not merely adopt a defensive posture in order to protect its position in litigation initiated by someone else"—rather, it "initiated its own proceedings to place the dispute between the parties before a judicial forum for determination." *Id.* at 440 (citations omitted).

As noted above, in the instant case, Valopi and Ms. Lopina have not initiated their own proceedings against Plaintiffs under the Valopi-Bayport Agreement. Ms. Lopina, to the extent her actions are relevant to the inquiry at hand, did not affirmatively choose to submit the Parties' dispute to this Court—she has only defended against the claims brought by the Plaintiffs. Likewise, upon being named as a defendant in the Second Amended Complaint, Valopi diligently moved to compel arbitration under the Arbitration Clause. *See* ECF No. [159]. Moreover, unlike the *Yates* case, there has been no finding here that Ms. Lopina and Valopi are alter egos of each other such that Ms. Lopina's actions in her individual capacity can be deemed to be Valopi's actions, or vice versa.

Whether a party waived its rights under an arbitration agreement is a fact-specific inquiry. *Warrington*, 2023 WL 1818920, at *2. In the absence of a basis to pierce the corporate veil, "[i]mputing to a party the actions of its codefendants merely on the ground that the entities are jointly owned or controlled or share representation would contravene the fundamental principle of

corporate separateness." *See, e.g.*, *Al Rushaid v. Nat'l Oilwell Varco, Inc.*, 757 F.3d 416, 423 (5th Cir. 2014) (footnote omitted) (declining to find that a party has waived its right to arbitrate based on the actions of its co-defendants, who shared ownership and counsel with the party, without a showing that the party was the alter ego of the co-defendants or there were other grounds to pierce the corporate veil); *Veterans Bros. No. 126, L.L.C. v. 7-Eleven, Inc.*, No. 16-434, 2017 WL 345858, at *5 n.33 (E.D. La. Jan. 24, 2017) (discussing *Al-Rushaid* and noting that the case "does not establish that agency principles alone are sufficient to impute the actions" of one party to a third party for purposes of waiver of arbitral rights). Simply put, Plaintiffs have not presented adequate grounds for this Court to disregard the principles of corporate separateness as it relates to Ms. Lopina and Valopi. On this record, the undersigned declines to impute Ms. Lopina's actions in this case to Valopi for purposes of finding that Valopi has waived its right to enforce the Arbitration Clause.

IV. RECOMMENDATION

Accordingly, the undersigned hereby **RECOMMENDS** that the Motion, ECF No. [159], be **GRANTED**, and that all of Plaintiffs' claims against Valopi be referred to arbitration pursuant to the terms of the Valopi-Bayport Agreement. ECF No. [159-1].

V. OBJECTIONS

A party shall serve and file written objections, if any, to this Report and Recommendation with the United States District Court Judge for the Southern District of Florida, within **FOURTEEN (14) DAYS** of being served with a copy of this Report and Recommendation. Any request for an extension of this deadline must be made within **SEVEN (7)** calendar days from the date of this Report and Recommendation. Failure to timely file objections will bar a de novo determination by the District Judge of anything in this Recommendation and shall constitute a waiver of a party's

"right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions." 11th Cir. R. 3-1 (2016); 28 U.S.C. § 636(b)(1)(C); *see also Harrigan v. Metro-Dade Police Dep't Station #4*, 977 F.3d 1185, 1191–92 (11th Cir. 2020).

DONE AND RECOMMENDED in Chambers at Miami, Florida on January 24, 2024.

JACQUELINE BECERRA
UNITED STATES MAGISTRATE JUDGE