UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LUIS A. GARCIA SAZ and Wife,
MARIA DEL ROCIO BURGOS
GARCIA,

Plaintiffs,

CASE NO: 8:13-CV-220-T27 TBM

vs.

CHRUCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, INC., and
CHURCH OF SCIENTOLOGY FLAG
SHIP SERVICE ORGANIZATION, INC.,

Defendants.
_______________________________/

PLAINTIFFS' MOTION FOR NEW TRIAL/RECONSIDERATION

COMES NOW the Plaintiffs, LUIS A. GARCIA SAZ and MARIA DEL ROCIO BURGOS GARCIA, by and through their undersigned attorneys, and moves this Court for an Order rehearing or reconsidering its Order of March 13, 2015, [DE 189] and as grounds, therefore, would show:

BACKGROUND

There are four principle arguments as to why this Court should reconsider its March 13th Order compelling arbitration, each of which is sufficient to require a different result. First, despite the Courts assertion to the contrary, the Plaintiffs never agreed that the Church of Scientology is a religious institution and thus is entitled to First Amendment protection. Second, the Defendants led this Court to believe that this matter would be decided on secular neutral provisions of law and the Defendants are judicially estopped from then taking a contrary legal

position at the evidentiary hearing. Third, the Ecclesiastical Doctrine does not prohibit this court from determining the substantive unconscionability of Defendants' arbitration process. Finally, the Court misconstrued Florida law regarding need for specific arbitration rules and procedures. All totaled, the Court should reconsider and reverse the March 13th Order.

ARGUMENT

A. THE CHURCH OF SCIENTOLOGY IS NOT A RELIGIOUS ORGANIZATION AND THE PLAINTIFFS NEVER STIPULATED TO SUCH FACT

The Court's Order states on Page 6:

> "As an initial matter, the parties agree that the Church of Scientology is a religious organization and that the dispute between the parties as to whether Plaintiffs' claims are subject to arbitration reaches First Amendment implications."

[D.E. 189 at p.6]

That is simply incorrect. Plaintiffs have never agreed that the Church of Scientology is a religious organization. To the contrary, in Plaintiffs' Amended Complaint in Paragraph 7, Page 3, states:

> "Under the leadership of David Miscavige, the Church of Scientology has strayed from its founding principles and morphed into a secular enterprise whose primary purpose is taking people's money."

[D.E. 114 at p.7].

On Page 4, Paragraph 12, the Amended Complaint states:

> "This case is not an attack on the religious tenets of the Church of Scientology, although arguments abound the Church no longer functions as a duly-qualified, tax-exempt, religious organization."

[D.E. 114 at p. 12].

Plaintiffs were not on notice that the issue of whether Scientology is a religion and thus entitled to First Amendment protection was a determining issue on the Motion to Compel

Arbitration [DE 8]. In fact, to the contrary, Defendants at Page 14 of their Motion specifically state that they are not asking the Court to rule on First Amendment questions by their Motion.

> "While defendants at this time have not moved to dismiss the Complaint on First Amendment grounds precisely because they have moved to compel arbitration, it is highly relevant that plaintiffs' claims ultimately <u>cannot</u> be properly placed before a civil court."

[D.E. 8 at p. 14](emphasis added). Plaintiffs address the legal estoppel effect of changing such positions in subsection B, *infra.*

In Plaintiffs' Response and Memorandum of Law in opposition to Defendants' Joint Motion to Compel Arbitration and Stay Proceedings at Page 2, the Plaintiffs' re-enforce the understanding of the parties that the issue of whether Defendants are a religion and entitled to First Amendment protection was not at issue when they state

> "Defendants, MC&S is also curious in that expansive of argument is presented that each of Defendants and collectively all of them are immune to civil suit as religious bodies. Their motion, however, anamolously states that they *are not* seeking a ruling on that issue at this time. Instead they suggest that, along with many traditional churches, they prescribe and allow for arbitration of "non-ecclesiastical" as opposed to doctrinal or religious disputes."

[DE 30 at p. 2]

While Defendants' Bench Memorandum [DE 166] regarding the validity of the arbitration provision and its inclusion of procedures affecting arbitration, relies heavily on First Amendment principles, Plaintiffs never agreed that they were entitled to those principles and, in fact, the Plaintiffs' Bench Memorandum [DE 170] specifically refers the Court again to the Motion which specifically states they are not seeking First Amendment privileges. On Page 6, of Plaintiffs' Bench Memorandum Plaintiffs' state:

> "Defendants spend much of their memorandum discussing first amendment privileges yet their motion to compel arbitration states that they are not seeking a ruling on First Amendment issues at this time. Whether the Complaint states a proper cause of action for return of funds solicited by false and misleading

> practices and whether the First Amendment protections apply are irrelevant distractions on this motion as neither are currently before the Court."

[DE 170 at p. 6]*Id.*

Indeed, the Court's Order Setting Evidentiary Hearing does not refer to the First Amendment issues and instead states on Page 1 that the hearing is

> "limited to the issues of the defense of unconscionability and the existence of arbitration procedures of the Church of Scientology International applicable to the Plaintiffs."

[DE 137 at p. 1]*Id.*

Plaintiffs have never in their pleadings conceded that Scientology is a religion entitled to First Amendment protection. There was no evidence presented at the hearing by the Defendants establishing even a prima facie case that Scientology is a religion.

It was not until the Court made a statement after the conclusion of all of the evidence that the Plaintiffs were called upon to comment on the issue of whether Scientology was a religion entitled to first amendment protection.

> "That said, this Court is constrained not to delve into the fairness of that process based on the First Amendment. It's simply of no moment to the judiciary and I have no authority to delve into the beliefs, the doctrines, the tenets of this organization that calls itself a Church. (Page 72).

Id.

In response, Plaintiffs' counsel stated beginning on Page 97 of the Transcript:

> ". . . the point is, Judge, we are not asking you to look into the Church of Scientology and decide whether their doctrines are right or wrong. You cannot do that. That First Amendment prohibits that if they're a religion. That issue has never been decided, by the way, in this case, they have the burden of showing that.

Id. (emphasis added).

The Court in its March 13th Order concludes that the Defendants qualify as a religion even though no evidence of that has ever been presented to this Court and Plaintiffs have, most certainly, not conceded that point. Research on that subject reveals no case in which the issue of whether Scientology is a religion was contested and decided by a Court that is binding on this Court or has any precedential value. To the contrary, Plaintiffs, if given an opportunity, could show that the Church of Scientology is a business under the cover of religion. Plaintiffs contend that Scientology is a self-proclaimed religion without underlying theories of man's nature or his place in the universe which characterizes recognized religions. We can show that the Church of Scientology operates in a commercial manner and has had an explicit financial motive and structure from its very outset. In fact, one of the Church's goals, articulated in the Church's governing policy of finance is to "MAKE MONEY . . . MAKE MONEY . . . MAKE MORE MONEY. . . MAKE OTHER PEOPLE PRODUCE AS TO MAKE MONEY . . . DEMAND MONEY BE MADE."

Plaintiffs can produce evidence that Scientology possesses an elaborate corporate structure which is primarily a money making racket aimed less at promoting spiritual values than at squeezing individual Scientologists for as much money as they can pay. There is ample evidence that despite its claimed "religious" teachings and use of quasi-religious vocabulary, Scientology does not really have anything that could be called a theology. Critics suspect that clerical terms like spiritual, God, and Church mainly serve the purpose of tax evasion.

Until 1993, the U.S. Internal Revenue Service, like almost all European countries, had denied Scientology tax exempt status as a charitable organization because it was dubious about the fact that a small religious enterprise could make more than $100 million per year and that 90% of this money came from fees, not from donations. Where the money goes was also

controversial. When the founder of Scientology, L. Ron Hubbard, was alive, he was reported to have received 10% of all of the fees collected by Scientology centers and to have deposited as much as $500 million in Swiss bank accounts.

Indeed, Defendants concede in their Motion to Compel Arbitration at Page 8 that in the seminal case of *Hernandez v Commissioner*, 490 U.S. 682, U.S. 680 (1989), the Supreme Court has held that donations in contemplation of receiving Scientology religious services, the very thing which caused the Garcias to sign the Enrollment Agreements that contained the arbitration clause, were not tax deductible. While in 1993, the IRS inexplicably reversed its position which it had held for decades that Scientology parishioners were not permitted to claim as tax deductions gifts or donations for the payments in question, a decision by an administrative service like the IRS is not binding on this Court or any Court. *See e.g., Church of Spiritual Tech. v. United States, 26 Cl. Ct. 713, 714 (1992) aff'd,* 991 F.2d 812 (Fed. Cir. 1993) (Where Scientology related entity appealed the decision of the Commissioner that it was operated exclusively for exempt purposes. The IRS found that it was operated for the benefit of the private interests of the founder of the religion of Scientology, L. Ron Hubbard, up until his death, and that subsequently it was operated for the substantial non-exempt purpose of aiding other Scientology organizations in their marketing of Scientology services and publications).

The case of *Church of Scientology v. Commissioner*, 823 F. 2d 1310, (9th Cir. 1987), affirmed the decision of the tax court of the United States, Tax Court No: 3352-78. That case arose because the IRS Commissioner revoked the Church's tax exempt status in 1967. At 1311, the Court explains that:

> "The letter of revocation stated that the Church was 'engaged in a business for profit,' and was 'operated in manner whereby a portion of [its] earnings inure[d] to the benefit of a private individual,' and was 'serving a private, rather than a public interest.'

Id.

The tax court in its opinion upheld the determination of the Commissioner at 1311. The Circuit Court explained the ruling of the tax court.

> It held that the Church did not qualify for exemption from taxation under §§ 501(a) & 501(c)(3) because: (1) the Church was operated for a substantial commercial purpose; (2) its earnings inured to the benefit of L. Ron Hubbard, his family, and OTC, a private non-charitable corporation controlled by key Scientology officials; and (3) it violated well defined standards of public policy by conspiring to prevent the IRS from assessing and collecting taxes owed by the Church.

Id.

The Court held at 1313 that:

> "One of the policy directives of the Church was to "MAKE MONEY". The Church frequently engaged in aggressive promotion of its products and services. This promotion included market surveys and advertisements. In addition, the Church trained staff members in salesmanship techniques.

Id.

The Court, in essence, found that the Church of Scientology was a money making operation for L. Ron Hubbard and that much of what he wrote was designed to make money. At Page 1313 – 1314, the Court held:

> "The Church made royalty payments to L. Ron Hubbard for sales of his books, tapes and E-meters. The royalties amounted to ten percent of the retail price. The Church, for example, made $104,618.27 in royalty payments to Hubbard in 1972. Additionally, Church policy required that all work pertaining to Scientology and Dianetics be copyrighted to L. Ron Hubbard. As the result of this policy, a number of publications copyrighted by L. Ron Hubbard were actually written by others. For example, Ruth Mitchell wrote the book *Know Your People* and Peter Gillum wrote the book *How to be Successful*. Additionally, a series of books called the OEC series contained policy letters, some written by L. Ron Hubbard and others written by paid employees of the Church. L. Ron Hubbard received royalty payments on the sale of these publications.
>
> During the 1960's, Scientology organizations around the world were required to pay directly to L. Ron Hubbard, ten percent of their income. These payments were

> termed "debt repayments" because they were designed to compensate Hubbard for his work in originating the Scientology religion. The Tax Court concluded that during 1971 – 1972 the Church continued to make debt repayments to Hubbard.
>
> In 1968, L. Ron Hubbard, Mary Sue Hubbard, and Leon Steinberg incorporated a Panamanian corporation called Operation Transport Corp., Ltd. (OTC). OTC was a for-profit corporation. Shortly after the corporation's formation, Hubbard, Mary Sue Hubbard and Steinberg resigned and were replaced by three Flag employees. During the years in question, the new directors performed only one function. In the summer of 1972, they approved L. Ron Hubbard's decision to transfer approximately two million dollars from an OTC bank account in Switzerland to the *Apollo*. The money was stored in a locked file cabinet to which Mary Sue Hubbard had the only set of keys.
>
> Between 1971 and 1972, the Church made payments in excess of three and a half million dollars to OTC. During these years, the Church also made payments totaling nearly $175,000 to The Central Defense and Dissemination Fund. According to the Church, these payments were placed in the United States Church of Scientology Trust of which L. Ron Hubbard was the sole trustee. The trust funds were deposited in several Swiss bank accounts. L. Ron Hubbard and Mary Sue Hubbard were signatories of the accounts and L. Ron Hubbard kept the trust checkbooks. . . .
>
> The Church strenuously argues that the trial court failed to recognize it as a bona fide religion. This argument goes to whether the Church meets the organizational test. Neither the Commissioner, nor the Tax Court, nor this court questions that the Church of Scientology of California was organized for a bona fide religious purpose. The only question before the court, is whether the Church met the second requirement for tax exempt status, the operational test.

Id.

The issue in this case, much as the issue raised by the Plaintiffs in the Garcia case, is not that the Church originated as a religious body but rather whether it had morphed into a secular body. At 1315, the Circuit Court makes it clear that it did not decide the question of whether the Church was operating for a commercial purpose. At 1315, it stated:

> We conclude that the Church failed to establish that "no part of the net earnings . . . inures to the benefit of any private shareholder or individual . . . ." *26 U.S.C. § 501(c)(3).* Because we may affirm the tax Court on this ground, we do not reach the questions of whether the Church operated for a substantial commercial purpose or whether it violated public policy."

Id.

Just as Plaintiffs have alleged in Paragraph 73 and 74 that the money that they thought they were giving for humanitarian projects, in fact, was diverted into the hands of David Miscaviage, so too the Ninth Circuit in this case held money was diverted to L. Ron Hubbard.

> Unlike the typical Saturday or Sunday when parishioners donate their money to the Church, here the Church transferred millions of dollars to bank accounts controlled by a private individual who had no official responsibility for managing Church assets. (At Page 1313.)

Id.

This case, like virtually every case that assumes Scientology is a religion, does so because the parties opposing the Church did not contest that question. That is not the case in the Garcia claim.

Defendants cite to *Church of Scientology Flag Service v. City of Clearwater*, 2 F. 2d 3 1514 (11th Cir. 1993) for the proposition that Scientology is, in fact, a religion. A close examination, however, shows that that finding was based upon the clear abdication of the City of Clearwater on this issue. At Page 1519, the Court states:

> "Scientology, a world-wide organization, maintains one of the largest centers of its activities in Clearwater. The history, organization, doctrine and practices of Scientology have been thoroughly recounted in numerous judicial decisions. (citing cases).
>
> We need not reiterate this background because the district court found that no genuine factual issues existed to dispute Scientology's claim of being a bond fide religion. *See* 756 F. Supp. at 1502-04. The district court granted partial summary judgment to Scientology on that issue. *Id. at 1532; accord* Founding Church of Scientology, 409 F.2d at 1160; Christofferson, 644 P.2d at 600-01. As the City has neither appealed from that order nor argued that Scientology is not entitled to protection under the religion clauses of the *First Amendment*, we must assume that the district court was correct. In addition, without deciding the question ourselves, we note that research has not uncovered any holdings that Scientology is not a religion for First Amendment purposes. *But Cf.* Church of Scientology v. Commissioner, 823 F.2d at 1316-18 (upholding Tax Court determination that

> Church of Scientology was not entitled to religious tax exemption under 26 U.S.C. § 501(c)(3) for certain years because its revenues inured to the benefit of individuals and non-religious entities).

Id.

In the District Court, at 1519, the Defendant, Clearwater, alleged commercial and criminal acts on the part of Scientology but did not contest its religious standing.

> Although Clearwater alleged that Scientologists commit the acts set out above, it states: "For purposes of the summary judgment motions, Defendants shall not assert that the beliefs of Scientology are not religious in character." (At Page 1511).
>
> *Id.*

Church of Scientology Flag Servs. Org. v. City of Clearwater, 756 F. Supp. 1498 (U.S. Dist. Ct. Fla. 1991).

None of the evidence relied upon by the District Court in that case was presented to this Court and, more importantly, in that case, there was no contrary evidence offered by the City of Clearwater so summary judgment was entered by the Court. It was this summary judgment which was relied upon by the Eleventh Circuit in drawing the same conclusion concerning Scientology being a religion.

A case relied on by the Defendants is *Founding Church of Scientology v. United States*, 409 F. 2d 1146 (Dist. Columbia 1969). There, too, there was no evidence presented in opposition to the evidence offered by Scientology on the issue of whether it was a religion. At 1162, the Court there held:

> "Since our road to this conclusion has been long and complex, we think it appropriate to summarize what we have and what we have not held. We have held the following:
>
> (1) On the basis of the record before us, the Founding Church of Scientology has made out a prima facie case that it is a *bona fide* religion and, since no

> rebuttal has been offered, it must be regarded as a religion for purposes of this case.
>
> (2) On the record before us, a *prima facie* case exists that auditing is a practice of Scientology, and that accounts of auditing integrated into the general theory of Scientology are religious doctrines. Since no rebuttal has been offered, we must take the point as proven. . .
>
> On the other hand, the following should be noted:
>
> (1) We do not hold that the Founding Church is for all legal purposes a religion. Any *prima facie* case made out for religious status is subject to contradiction by a showing that the beliefs asserted to be religious are not held in good faith by those asserting them, and that forms of religious organization were erected for the sole purpose of cloaking a secular enterprise with the legal protections of religion."

Another case relied on by the Defendants for the proposition that Scientology is a religion is *Christofferson v. Church of Scientology*, 57 Ore. App. 203, 644 P. 2d 577, (Court of Appeals, Oregon 1982). In that case, like the others, the Plaintiff chose not to challenge whether Scientology was a religion or to offer any proof in opposition to the prima facie case made by the Defendant. At Page 239, the Court concludes:

> The Mission claims that Scientology is a religion and that statements regarding its beliefs and practices are protected. Plaintiff does not contend that Scientology is not a religion, but instead concentrates on the particular representations at issue. She contends that those representations are not religious statements, no matter what the status of Scientology, and that the statements are therefore not protected by the First Amendment.
>
> *Id.*

Plaintiffs in this case have not been able to find any case in which a Court was presented with competing evidence on the issue of whether Scientology was a religion, and decided that issue. Clearly, the burden to establish itself as a religion falls upon Scientology and they have chosen to present no evidence of that at the hearing held before this Court. *Church of Scientology Flag Serv., supra*, at 1540. As a consequence, Plaintiffs were not required to present

any countervailing evidence. Defendants have, in fact, waived any constitutional protection under the First Amendment.

There is no question but that had Defendants presented such testimony, Plaintiffs could have responded with evidence and argument in opposition. In *Founding Church of Scientology v. United States, supra*, at 1159, the Court concluded that such an analysis was entirely appropriate.

> The Government might have chosen to contest the claim that the Founding Church was in fact a religion. Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status. It might be possible to show that a self-proclaimed religion was merely a commercial enterprise, without the underlying theories of man's nature or his place in the Universe which characterize recognized religions. Though litigation of the question whether a given group or set of beliefs is or is not religious is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred. When tax exemptions are granted to churches, litigation concerning what is or is not a church will follow. When exemption from military service is granted to those who object on religious grounds, there is similar litigation. When otherwise proscribed substances are permitted to be used for purposes of worship, worship must be defined. The law has provided doctrines and definitions, unsatisfactory as they may be, to deal with such disputes. Since the Government chose not to contest appellants' claim to religious status, and since in our view appellants have made a *prima facie* case for such status, we conclude that for purposes of review of the judgment before us they are entitled to the protection of the *free exercise clause.*
>
> *Id.*

Scientology should have been required to make a prima facie showing that it is a religion and if it had, surely if Plaintiffs could show that what started as a religion had been subverted to an entirely secular entity whose only purpose was to enrich and engrandise its principles, it would not be entitled to protection under the first amendment for any purpose.

B. JUDICIAL ESTOPPEL PROHIBITS DEFENDANTS FROM ASSERTING FIRST AMENDMENT PRIVILEGE AT THE EVIDENTIARY HEARING WHEN THEY PREVIOSULY CLAIMED THE MATTER SHOULD BE DECIDED UNDER NEUTRAL SECULAR LAW.

Under the doctrine of judicial estoppel, Defendants are prohibited by notions of fairness from inducing the Plaintiffs and Court into thinking the Defendants were going to defend on secular grounds and then on the eve of the evidentiary hearing springing their seminal defense of First Amendment privilege. *See, Burne v. Pemco Aeroplex, Inc,* 291 F.3d 1282, (11th Cir. 2002) where the Court explained judicial estoppel as follows:

> Recently, the Supreme Court observed that, "the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle;" nevertheless, the Court went on to enumerate several factors that inform a court's decision concerning whether to apply the doctrine in a particular case. *New Hampshire,* 532 U.S. at 750-51, 121 S.Ct. at 1815 (internal citations omitted). Courts typically consider: (1) whether the present position is "clearly inconsistent" with the earlier position; (2) whether the party succeeded in persuading a tribunal to accept the earlier position, so that judicial acceptance of the inconsistent position in a later proceeding creates the perception that either court was misled; and (3) whether the party advancing the inconsistent position would derive an unfair advantage on the opposing party. Id. This list is by no means exhaustive, however, because the Court went on to explain that "[i]n enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts." *Id.*

Aeroplex, 291 F.3d at 1285. Those factors are present here[1].

C. THE ECCLSESIASTICAL DOCTRINE DOES NOT PROHIBIT THIS COURT FROM DETERMINING THE SUBSTANTIVE UNCONSCIONABILITY OF DEFENDANTS' ARBITRATION PROCESS.

Even if it were proven that Scientology were a religion, an examination to the arbitration procedures to determine whether they had set up impossible obstacles to a fair determination of the facts would be appropriate. As the Court held in its Order:

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[1] It used to be that for judicial estoppel to apply, the movant needed to demonstrate that his opponent made the prior inconsistent statement under oath. However, the United States Supreme Court relaxed this standard in its opinion in New Hampshire v. Maine, 532 U.S. 742, 749, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001). Courts have applied this doctrine to stipulations, such as her, where one party leads misleads another party on its legal position only to change at the last minute. *See, In re Air Safety Int'l, L.C.,* 336 B.R. 843, 862 (S.D. Fla. 2005)

> Here, the central question on Defendants' motion to compel arbitration is whether the parties have an enforceable agreement to arbitrate. Neutral principles of Florida law can be applied in determining the enforceability of the arbitration clauses without consideration of Scientology doctrine. It follows that the First Amendment does not prevent the court from resolving the instant motion according to "objective, well-established, neutral principles of law." *See Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005). Indeed, neither party contends that the Court cannot make this determination. Even where, as here, church documents must be examined, the "neutral principles" approach avoids the constitutional prohibition against entanglement in questions of religious doctrine, polity, and practice, since the neutral principle of law approach relies on objective, well-established concepts of law that are familiar to lawyers and judges. *Jones,* 443 U.S. at 603.

[D.E. 189 at p. 8].

So long as this Court utilizes neutral principles of law to examine the obstacles to a fair arbitration, the First Amendment is not implicated. The subject of this arbitration was not religious principles and religious principles would not impact the findings for or against the Garcias. There would be no evidence at the arbitration concerning what religious principles applied or how they might impact an outcome. Nevertheless, the evidence was overwhelming that three Scientologists in good standing could not fairly decide this case for the Garcias. The sole witness for the defense on this subject was Mr. Ellis whose testimony was simply not credible. All witnesses, including Mr. Ellis, conceded that no Scientologist could even speak to, let alone, find for the Plaintiffs and that the Plaintiffs were considered an enemy of the Church. Mr. Ellis' testimony that these beliefs could simply be suspended was nothing less than incredible. The Court's position that the First Amendment precluded an examination of whether the arbitration procedure could possibly be fair flies in the face of the myriad cases that hold that if an arbitration procedure is unconscionable, the Court must refuse to enforce it. Plaintiffs are entitled to a consideration as to whether the evidence supported its contention that the arbitration procedure chosen by the Defendants was substantively unconscionable.

Further, this is important because the Court claims it is prohibited by First Amendment principles from "analyzing and interpreting" [Order at p.19] as to whether the Plaintiffs can achieve substantive due process in a Scientologist arbitration because the Plaintiffs have been declared prior to such arbitration "suppressives" who the Defendants admit in their Church writings have no rights. The fact that Plaintiffs have been declared "suppressives" was not disputed and indeed admitted by Defendants. Thus, since the Court is not being asked to make the doctrinal determination as to whether the Plaintiffs indeed are "suppressives", the Court is misconstruing the application of neutral principals.

Here the Court would be prohibited by *Kerdoff* and *Meshel* from having a trial to determine whether indeed Plaintiffs were properly categorized as "suppressive" under Church doctrine. That would be akin to having an after the fact court review of a Catholic excommunication trial. But here, that determination has already been made and the Court is merely being asked to analyze the effect of the previously determined doctrinal decision. The *Meshel* Court makes clear that once the doctrinal determination has been made by the religious entity, the Court does not impinge First Amendment principles in applying that decision to the law.[2]

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[2] The *Meshel* Court was clear that once the doctrinal decision was complete, the Court was free to determine its effect under the law:

> The First Amendment, however, does not absolutely bar civil courts from reviewing the actions of religious organizations. *Bible Way Church, supra*, 680 A.2d at 427. As we have recognized, "the church is not above the law," United Methodist Church v. White, 571 A.2d 790, 795 (D.C.1990), and there are occasions on which civil courts may address the activities of religious organizations without violating the First Amendment. *Bible Way Church, supra*, 680 A.2d at 427. Specifically, civil courts may resolve disputes involving religious organizations as long as the courts employ "neutral principles of law" and their decisions are not premised upon their "consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (*citing Maryland & Va. Churches v.*

Stated differently, the Defendants' Church teaching classifies Plaintiffs "suppressives" *ab initio* and before they step into the arbitration. As a result of such doctrine the Defendants have clearly made a party admission that this is the way that. Plaintiffs only ask that the Court take the Defendants be taken at their word that they will treat Plaintiffs as their doctrine requires. Any other

D. THE COURT MISCONSTRUED FLORIDA LAW REGARDING NEED FOR SPECIFIC ARBITRATION RULES AND PROCEDURES

In its March 13th Order the Court found that the sole rules claimed to be applicable to arbitration by the Defendants were simply inapplicable. Defendants' contention at the direct instruction of the Court to present evidence of what rules applied to arbitration limited itself to the Rules of the Committee of Evidence. Defendants did not take the position that the internal rules within the enrollment agreement were sufficient. Indeed, they could not. Apart from choosing the arbitrators, the conduct of the arbitration hearing would be completely devoid of structure. Will evidence be permitted? What rules of evidence apply? If there is an objection, how will it be handled? It is frankly impossible for the parties to conduct arbitration without rules and as the Court found:

> Generally, in Florida, "[p]rovisions in a contract providing for arbitration must be definite enough so that the parties *At least have some idea* as to what particular matters are to be submitted to arbitration and set forth some procedures By which arbitration is to be effected." *Malone & Hyde, Inc. v. RTC Transp., Inc.*, 515 So. 2d 365, 366 (Fla. 4th DCA 1987) (emphasis added) (citing *G & N Construction Co. v Kirpatovsky*, 181 So. 2d 664 (Fla. 3d DCA 1966)); *See also Spicer v. Tenet Florida Physician Services, LLC*, 49 So. 3d 163, 165-66 (Fla. 4th DCA 2014); *Creative Tile Mktg., Inc. v. SICIS Int'l, S.r.L.*, 922 F. Supp. 1534, 1539 (S.D. Fla. 1996).

Sharpsburg Church, 396 U.S. 367, 368, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring)).

Meshel v. Ohev Sholom Talmud Torah, 869 A.2d 343, 354 (D.C. 2005)

[D.E. 189 at p. 14]. Indeed, the first three cases the Court cites above held that in each case the particular procedures of arbitration were not set forth sufficiently to require arbitration and actually weigh in Plaintiffs' favor. *See*, *Malone*, 515 So. 2d 365, 366 ("The language contained in the stipulation for dismissal of the personal injury action does not contain any terms or conditions for arbitration . . . The record before us does not contain sufficient evidence as to the terms of the alleged arbitration agreement for us to hold that the parties entered into a binding contract for arbitration. Therefore we hold that the trial court erred when it entered its order compelling arbitration."); *Kirpatovsky*, 181 So. 2d 664, 667 ("the order compelling arbitration is reversed and the cause remanded for appropriate judicial consideration in accordance herewith.); *Spicer*, 149 So. 3d 163, 168 ("We conclude that the employment agreement, standing alone, did not contain a legally sufficient arbitration agreement because it failed to set forth some procedures by which arbitration was to be effected"). Since there are no procedures as required the Plaintiffs respectfully submit that arbitration agreement is unenforceable.

CONCLUSION

The arbitration procedure of the Defendants was both procedurally and substantively unconscionable and the Court failed to consider evidence of this unconscionability. Plaintiffs are respectfully entitled to a rehearing for that purpose.

In addition, since this Court's conclusion regarding the unconscionability or lack thereof of the arbitration agreement was bottomed on its inability to review the tenets of the Church which made arbitration a foregone conclusion because of First Amendment protections, Plaintiffs are entitled to a reconsideration of this finding in light of the Court's erroneous assumption that Plaintiffs had conceded the issue that Scientology was a religion.

DATED: This 9th day of April, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that, on April 9, 2015, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel or pro se parties identified below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filings.

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