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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

LUIS A. GARCIA SAZ, and	:	
wife, MARIA DEL ROCIO	:	
BURGOS GARCIA,	:	
	:	
Plaintiffs,	:	CIVIL 8:13-cv-220-JDW
	:	NO.:
	:	
vs.	:	DATE: Sept. 4, 2014
	:	
	:	TIME: 2:30 p.m.
CHURCH OF SCIENTOLOGY	:	
RELIGIOUS TRUST; et al,	:	PAGES: 1 - 46
	:	
Defendant.	:	
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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE JAMES D. WHITTEMORE  
UNITED STATES DISTRICT JUDGE

Court Reporter: Lynann Nicely, RPR, RMR, CRR  
Official Court Reporter  
801 N. Florida Avenue  
Suite 13B  
Tampa, Florida 33602

Proceedings recorded and transcribed by computer-aided  
stenography.

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A P P E A R A N C E S

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Clearwater, Florida 33757

1           COURTROOM SECURITY OFFICER: All rise. This  
2 Honorable Court is in session, The Honorable James  
3 D. Whittemore presiding.

4           Be seated, please.

5                           **P R O C E E D I N G S**

6           THE COURT: Good afternoon, we're here for  
7 argument on the renewed motion to compel arbitration  
8 filed by the defendants. Let's get the appearances.  
9 First for the plaintiffs.

10          MR. BABBITT: Theodore Babbitt.

11          THE COURT: For the defense?

12          MR. POPE: Wallace Pope and Bob Potter, Your  
13 Honor.

14          THE COURT: Good afternoon, Mr. Pope, your  
15 motion, go right ahead.

16          MR. POPE: Thank you. May it please the  
17 court. We are now down to two defendants in this  
18 matter. I'll refer to them as Flag and Ship. The  
19 allegations are that everything was done by these  
20 two defendants, that the fundraising arms have been  
21 dropped as parties.

22                 Our reliance for the motion to compel  
23 arbitration is now solely on the agreement signed  
24 with Flag. Ms. Garcia first signed in 2002 and  
25 Mr. Garcia signed in 2004 and 2007, I believe.

1 These are agreements for religious services and were  
2 signed in Clearwater, Florida.

3 Ship is a third-party beneficiary of the Flag  
4 agreements and Mr. Garcia also signed a separate  
5 agreement with Ship. The Ship agreement was signed  
6 on board the ship. I think it was in Aruba at the  
7 time. And I'd like to bring the attention of the  
8 Court to *Lindo vs. NCL Bahamas Ltd.*, 652 F.3d 1257,  
9 Eleventh Circuit case, 2011, holding that a treaty  
10 the United States entered into known as the  
11 New York Convention regarding the arbitration of  
12 maritime matters preempts the entire defense of  
13 unconscionability.

14 I would like to bring the Court's attention to  
15 two provisions in the enrollment agreements,  
16 particularly the enrollment agreements with Flag.  
17 First, paragraph 5(c)(IV), "Should I at any time  
18 ever request a refund, repayment of donations," it  
19 will happen only if I have "followed the exact  
20 procedures of the Claims Verification Board and this  
21 contract."

22 And then paragraph 6(d), "Should any dispute,  
23 claim, or controversy arise between me and the  
24 church and any other Scientology church, any other  
25 organization which espouses, presents, propagates or

1 practices the Scientology religion, or any person  
2 employed by any such entity, which cannot be  
3 resolved informally by direct communication, I will  
4 pursue resolution of that dispute, claim or  
5 controversy solely and exclusively through  
6 Scientology's internal ethics, justice and binding  
7 religious arbitration procedures."

8 This is, Your Honor, the broadest type of  
9 agreement. It doesn't say "arising out of this  
10 agreement;" it says "should any dispute arise,"  
11 period.

12 *Montero vs. Carnival Corp*, 523 F. Appx. 623,  
13 Eleventh Circuit, 2013, holds, "Any means any."

14 And these broad dispute resolution provisions  
15 apply to any donations made before they were signed.  
16 For that I cite *Zink vs. Merrill Lynch*, 13 F.3d.  
17 330, Tenth Circuit, 1993, broad arbitration  
18 provisions cover disputes even if the dealings  
19 giving rise occurred before execution of the  
20 agreements.

21 Here the dispute with the Garcias arose at its  
22 earliest in 2009 and in their complaint they allege  
23 they demanded repayment in 2012. I call the Court's  
24 attention to *B.G. Balmer vs. U.S. Fidelity*, 1998 WL  
25 764669, Eastern Division of Pennsylvania, 1998,

1 relying on Zink, and I quote, "When an arbitration  
2 clause speaks in terms of relationships and not  
3 timing, a dispute arising from a relationship  
4 between the parties is subject to arbitration even  
5 if the dispute arose before the agreement was  
6 signed."

7 Let me focus for a moment, Your Honor, on  
8 the --

9 THE COURT: Mr. Polk, just a second.

10 (Discussion off the record.)

11 MR. POLK: I was just getting ready to focus  
12 on the issue of the interstate nature of the  
13 transaction. The plaintiffs are California  
14 citizens, contracting with a corporation in Florida  
15 for the rendering of personal services in Florida.  
16 They made payment by check or credit card from  
17 California to Florida or by check and credit card  
18 while they were here in Clearwater.

19 They traveled to Florida to receive the  
20 religious services in Florida. And Flag itself has  
21 engaged in interstate and foreign activity or  
22 commerce by virtue of providing these religious  
23 services to church members throughout the nation and  
24 the world. And I'm advised that at any one time  
25 there are -- at any week there are 6,000 people at

1 the facilities in Clearwater receiving religious  
2 services and each week some go and some come --

3 THE COURT: What's the relevance of that on  
4 this question?

5 MR. POPE: Interstate commerce, Your Honor,  
6 the fact that Flag itself is involved in rendering  
7 services to people all over the nation and the  
8 world. That's the sole purpose of my quoting it.

9 THE COURT: Am I correct that -- did I  
10 understand that the services are provided in  
11 Clearwater and as I understood the record, these  
12 agreements are signed by the Garcias immediately  
13 preceding the administering of these services?

14 MR. POPE: They are -- yes, sir, that is my  
15 understanding that they were --

16 THE COURT: Okay. You said early on that one  
17 of the agreements that I think you said Mr. Garcia  
18 signed was on the ship.

19 MR. POPE: That was an agreement with Ship.  
20 Ship is a separate entity. It is a corporation.  
21 Its base, its headquarters, its address is basically  
22 in Florida, but it travels the ocean. But it is a  
23 separate enrollment agreement with a separate  
24 entity. But it is, we contend, a third-party  
25 beneficiary of the Flag agreements by the terms that

1 are within the Flag agreements.

2 THE COURT: And when you say signed on the  
3 ship, physically, geographically, where is that?

4 MR. POPE: I believe that the ship was in  
5 Aruba at the time it was signed. But one of the  
6 cases that I have cited to you or will cite deals  
7 with what is called the New York Convention, which  
8 is a treaty to which the United States is a  
9 signatory and there is an Eleventh Circuit case that  
10 I will cite or have cited that basically holds that  
11 unconscionability is not a defense when you're  
12 operating under that treaty.

13 So with regard to the Ship services, which  
14 were religious services received on board the ship,  
15 Ship is protected because it has an agreement  
16 directly with Mr. Garcia and because it is a  
17 third-party beneficiary of the agreements that both  
18 Mr. and Mrs. Garcia signed.

19 The purpose of the interstate commerce  
20 discourse is to show the Court that the Federal  
21 Arbitration Act applies to all matters which I think  
22 in the words of the Act "involve" interstate  
23 commerce. That means, according to the cases, all  
24 matters that affect commerce. And the Eleventh  
25 Circuit case in *Jenkins vs. First American Cash*



1        *Advance of Georgia*, 400 F. 3d 868, Eleventh Circuit  
2        2005, holds these three things: One, the Federal  
3        Arbitration Act defines interstate commerce as  
4        broadly as possible; number two, the Federal  
5        Arbitration Act was intended to reverse courts'  
6        hostility to arbitration; and number three, claims  
7        of adhesion and unconscionability are for the  
8        arbitrator if they are directed to the contract as a  
9        whole.

10                Now, having said that, the Federal Arbitration  
11        Act says that you still have an opportunity to apply  
12        certain state law principles. So the question gets  
13        to be "what state law applies." And the Supreme  
14        Court's holding in *Klaxon vs. Stentor Electric*,  
15        which was a seminal holding back in 1941, the year I  
16        was born, the district court -- and here's the  
17        holding, "The district court sitting in diversity  
18        must apply the conflict of law rules of the forum  
19        state, Florida. On questions of contract law,  
20        Florida follows the rule of *lex loci contractus*,  
21        which is the law of the place where the contract was  
22        executed or the place of performance in the case of  
23        services."

24                In this case the performance for the Flag  
25        contracts was to be in Clearwater and they were

1       executed in Clearwater. So Florida law is the  
2       substantive law that applies to this matter.

3               And I would call your attention, Your Honor,  
4       to the fact that you have written about this very  
5       principle in your orders in both the Peerless  
6       Insurance case, which is 2007 WL 2916383, and the  
7       Gallina case, G-A-L-L-I-N-A, 2008 WL 4491539 in  
8       which you cited *Klaxon vs. Stentor* for that very  
9       proposition.

10              Now, for these contracts with Flag, Florida  
11       law applies, as does the Federal Arbitration Act.  
12       California law does not apply. We do not seek  
13       enforcement under the agreements signed in  
14       California. They are in the record only to show  
15       that before the Garcias signed the Flag agreements,  
16       they had a long history of signing religious  
17       enrollment agreements in California and they were  
18       executed with California entities that are not  
19       parties to this litigation. The Garcias had ample  
20       opportunity to know and understand these agreements.  
21       They signed numerous of them.

22              Now, let me turn my attention to the  
23       plaintiff's attack on the enrollment agreements.  
24       They have filed affidavits, all of which render the  
25       legal opinion that the church's internal justice

1 system is unfair and they ask the Court to step in  
2 and rule that the agreements are unconscionable.  
3 They claim they are in what they call a Catch 22  
4 situation because having been declared "suppressive  
5 persons" they are essentially ex-communicated from  
6 the organization and shunned to the extent that they  
7 can have no contact with anyone in the church.

8 But Mr. Garcia attaches to his declaration,  
9 his amended declaration, as Exhibit 1, a document  
10 entitled Suppressive Person Declare, which in the  
11 Scientology religion is basically the declaration of  
12 excommunication or shunning. And the very last  
13 sentence in that document says their only  
14 Scientology terminal -- which means contact -- their  
15 only Scientology contact is the International  
16 Justice Chief via the Continental Justice Chief.  
17 The International Justice Chief is based in  
18 California. The Continental Justice Chief is here  
19 in Clearwater. They can contact that person for  
20 arranging whatever procedure they want to follow  
21 within the church's internal justice system and I  
22 will get to that in a minute.

23 These enrollment agreements set up a  
24 multilayer system of internal dispute resolution.  
25 First they talk about informal communication, let's

1 see if we can work this out. Next there is the  
2 thing called the Claims Verification Board which  
3 processes these claims for refunds and I'm advised  
4 in the last three or four years they have approved  
5 at least seven refunds by people who have gone  
6 through this system.

7 If that doesn't work, there is a thing called  
8 a Committee of Evidence, or, alternatively, a formal  
9 arbitration, both are set up through the  
10 International Justice Chief of the organization.

11 The difference is that in a formal  
12 arbitration, the claimant gets to pick an  
13 arbitrator, whereas a Committee of Evidence involves  
14 the International Chief Justice picking a chair of  
15 the committee, who selects the members which can be  
16 up to as many as seven to consider whatever the  
17 particular matter is.

18 Now, the procedures for the Committee of  
19 Evidence and for the arbitration panel are the same  
20 and are spelled out in a policy letter dated  
21 September 7, 1963. This information is also  
22 contained in the book, *Introduction to Scientology*  
23 *Ethics*. I think we have a copy of that somewhere  
24 here.

25 But what I'd like to do, if I could, Your

1 Honor, we filed a five-page memo some while back,  
2 over a year, about the procedures and basically it  
3 was a summary of this policy letter and I would like  
4 to offer up the policy letter if I may.

5 THE COURT: It's not in the record at this  
6 point, is it?

7 MR. POPE: Well, a summary of it is. It is  
8 in --

9 THE COURT: Well, that's your summary, but the  
10 document itself is not in evidence.

11 MR. POPE: The document itself is not in the  
12 record.

13 THE COURT: Well, I can't consider it unless  
14 it's authenticated by some person with knowledge. I  
15 don't doubt that it exists, but the substance of it,  
16 for purposes of this motion, I wouldn't have any  
17 basis to find that it's reliable or authentic.

18 MR. POPE: Well, Your Honor, there is a person  
19 here available who could authentic it.

20 THE COURT: This isn't an evidentiary hearing.

21 MR. POPE: All right. Well, at any rate, it  
22 is clear and we have given a summary of this to the  
23 Court and it is clear that this particular document  
24 that is summarized, and we did refer I believe to  
25 the book. This is a copy of the book, Your Honor,

1 that is available widely, Amazon and book stores.  
2 It makes it clear that these are procedures that  
3 apply to all Scientology internal justice  
4 procedures.

5 Now, let me get to the claim of  
6 unconscionability. The Garcias claim that the  
7 enrollment agreements are unconscionable because  
8 they are contracts of adhesion and they had no  
9 bargaining power, and they claim this under  
10 California law which we argue doesn't apply.

11 THE COURT: Is there any significant  
12 difference between California and Florida law?

13 MR. POPE: Yes, sir. California law is very  
14 hostile to arbitration. Florida law and the Federal  
15 Arbitration Act are very liberal in promoting  
16 arbitration.

17 THE COURT: Well, that's an interesting  
18 characterization, but I want to know what the  
19 significant distinctions are between the two.  
20 "Liberal" and "favorable" are a bit too general.

21 MR. POPE: What the plaintiffs argue in their  
22 memo is that the principles that they cite of  
23 California law mean that this is an unconscionable  
24 agreement and we say under Florida law it cannot be  
25 considered unconscionable and there is another

1 reason for that as well. And I have outlined that  
2 actually -- I think the parties' positions are  
3 outlined in their respective legal memoranda as  
4 between what California law applies and what Florida  
5 law says on that point.

6 Now, under Florida law there is a heavy  
7 burden; first, to show unconscionability. First you  
8 have to show procedural unconscionability, and only  
9 if that is established does one move to the question  
10 of substantive unconscionability.

11 Let's look at the lack of bargaining power  
12 issue and the ability to know and understand the  
13 contract terms and the contract of adhesion issues.  
14 I would like for the Court to assume for a moment  
15 that I have had a sudden religious conversion and I  
16 have decided to embrace Catholicism and I want to  
17 explain to the Court what I do not do if I do this.  
18 I don't go to the parish house and dicker with the  
19 priest and the bishop and anybody in the chain of  
20 command about the terms of the religion. What are  
21 the terms of the deal? I don't take the Nicene  
22 creed and tell them which parts I accept and which  
23 parts I don't.

24 THE COURT: Well, that's an ecclesiastical  
25 matter. We're talking about a contract. You have

1 to acknowledge that rules of contract apply in  
2 determining unconscionability. You have an  
3 arbitration clause in an agreement that the Garcias  
4 were required to sign before they could participate  
5 in these services. So applying contract principles,  
6 not ecclesiastical theories or philosophies, let's  
7 focus on that.

8 MR. POPE: But Your Honor, I am because there  
9 is a First Amendment component to this and the point  
10 is that when you embrace a particular religious  
11 philosophy, it really is an adhesive process. You  
12 don't bargain about the basic principles of it; you  
13 either accept them or you don't. And they're saying  
14 well, this is a terrible contract of adhesion. All  
15 religious arrangements are contracts of adhesion.

16 THE COURT: I don't follow that. I understand  
17 what you're saying, but we're talking about a  
18 contractual provision which under Florida law must  
19 be construed by applying contract principles,  
20 specifically the sliding scale in determining  
21 whether it's unconscionable or not. It has nothing  
22 to do with the religious tenets that may stand  
23 behind the beliefs of the parties.

24 MR. POPE: Well, Your Honor, the contract  
25 provision itself sets forth basic religious tenets.



1 So generally if I'm going to become a Catholic  
2 convert, I'm probably not going to sign a contract,  
3 but I would have to embrace the doctrine. Here the  
4 principles --

5 THE COURT: Well, why couldn't the Garcias  
6 just have participated in the services without  
7 having to sign a written agreement?

8 MR. POPE: Because that's the way they  
9 operate. In fact, they did this for years, Your  
10 Honor. In fact, let me quote from paragraph 3 of  
11 their amended complaint. It says of the plaintiffs,  
12 "They concluded that the church had lost its  
13 spiritual, moral and financial compass under the  
14 leadership of David Miscavage." They are  
15 complaining that the church is not being run the way  
16 they want it to be run. That is their complaint.  
17 And in paragraph 7 they say, "The Church of  
18 Scientology has strayed from its founding principles  
19 and morphed into a secular enterprise whose primary  
20 purpose is taking people's money."

21 And Your Honor, I don't think that you can  
22 divorce the religious services agreement from the  
23 First Amendment. There are First Amendment  
24 overtones to this that I don't think the Court can  
25 overlook. That's why I'm saying that when you

1 embrace a religion, you embrace it as it exists.  
2 You don't come in there and pick and choose and  
3 bargain about what it's going to be.

4 THE COURT: Does that mean that the rules of  
5 conscionability or unconscionability simply are  
6 preempted because this happens to be a religious  
7 institution?

8 MR. POPE: Not necessarily.

9 THE COURT: That's more or less what you're  
10 saying, that all bets are off because this is  
11 religious.

12 MR. POPE: Well, I am saying that their  
13 argument that it's unconscionable because they  
14 didn't have any bargaining power and they --

15 THE COURT: That didn't have to do with faith  
16 or services. It had to do with the contract they  
17 were required to sign.

18 MR. POPE: And the contract is an expression  
19 of a whole bunch of the beliefs of the organization.

20 THE COURT: So that's my point. You're  
21 suggesting that because this has to do with a  
22 religious organization, that religion preempts any  
23 principles of --

24 MR. POPE: I'm saying that you can't be  
25 declared unconscionable on the basis of a theory

1 that it's a contract of adhesion. Because  
2 inherent -- the relationship between a religion and  
3 the people who practice it is inherently a  
4 relationship of adhesion. There is no bargaining.

5 THE COURT: What authority do you have for  
6 that?

7 MR. POPE: Your Honor, history, common sense.

8 THE COURT: I've got to have something more  
9 than that. Do you have a case? Do you have a case  
10 that's authoritative that says that? I don't think  
11 you do.

12 MR. POPE: Well, no, I don't. But if you  
13 think about it, I mean, if you think about it --

14 THE COURT: That's why it's called an adhesive  
15 contract because you can't think about it. You sign  
16 it or else. That's the plaintiff's argument. He  
17 didn't have any choice in the matter. We want to  
18 participate in the religious services but before we  
19 can, even though we've paid for them, we've got to  
20 sign this document.

21 MR. POPE: His choice in the matter -- Your  
22 Honor, this wasn't the first document they signed.  
23 They signed a whole series of these documents over  
24 28 years. This wasn't anything new. This was the  
25 way this was handled with these folks. They knew

1 what they were doing.

2 The problem is they disagree with how the  
3 organization is being run now. That's what their  
4 complaint says. So -- and all I'm saying is that  
5 every religion involves an adhesive relationship and  
6 when it comes to a religious relationship, I don't  
7 see how you can say that this is a contract of  
8 adhesion because they're all that way. And what was  
9 their choice? Their choice was another religion.  
10 If they don't like this one, try another one, there  
11 are plenty of them out there.

12 And they had many opportunities to know and  
13 understand the terms of the religious enrollment  
14 agreements because they executed many of them over  
15 the years.

16 Now, let me talk about for a second the claim  
17 of partiality and unfairness. The cases cited on  
18 pages 23 and 24 of our motion to compel arbitration  
19 hold that agreements providing for the application  
20 of Christian Biblical principles and policies do not  
21 render arbitrators inherently biased. In the case  
22 of *BDO Seidman vs. Bee*, 970 So. 2d 869, Fourth  
23 District, 2007, holds that an agreement providing  
24 that an ousted partner in an accounting firm was to  
25 arbitrate before a panel of regular BDO partners who

1 were from the very firm that ousted him, that was  
2 not unconscionable.

3 Closer to home, the case of *Johnson Polk vs.*  
4 *Forier*, 67 So. 2d. 315, Second District, 2011, holds  
5 it is not void as against public policy for an  
6 agreement with a law firm to provide for arbitration  
7 of malpractice claims before a panel of lawyers from  
8 the Hillsborough County Bar Association and the  
9 Clearwater Bar Association. The trial court had  
10 found that the agreement was neither procedurally  
11 nor substantively unconscionable, but found that it  
12 was void against public policy. The Second District  
13 reversed and found that it was fully enforceable.

14 In the Pinellas Circuit Court there was a  
15 case, *Shippers vs. Flag*, and in an order entered  
16 March 7, 2012 the Florida State Court upheld the  
17 religious enrollment agreement against the claim of  
18 unconscionability. Shippers appealed it, but before  
19 briefing in the Second District they dismissed the  
20 appeal and the underlying suit. I would like, if I  
21 may, to give the Court a copy of that order from the  
22 sister court.

23 THE COURT: It's a Circuit Court of Pinellas  
24 County?

25 MR. POPE: Yes, sir.

1 THE COURT: I'll certainly consider it. It's  
2 obviously not authority.

3 MR. POPE: I understand it's not authority.

4 THE COURT: If you'll share it with opposing  
5 counsel, please. In that case was the entire  
6 agreement being challenged or in arbitration clause?

7 MR. POPE: As I recall, the whole agreement  
8 was being challenged, Your Honor. And I will say  
9 this. At the time of that case, the Shippers case,  
10 there was a separate case by the Garcias pending  
11 against the church in the Pinellas County Circuit  
12 Court. After that order was entered, the Garcias  
13 changed counsel, dismissed that case, and filed this  
14 case.

15 Now, let me say that the cases hold that there  
16 is no authority under the Federal Arbitration Act  
17 for a court to allow a challenge to the fairness of  
18 the arbitration process or the partiality of the  
19 arbitrators before the issuance of the arbitral  
20 award. Gulf Guaranty Life vs. Connecticut General  
21 Life, 304 F.3d 476, Fifth Circuit, 2002.

22 So the challenge to fairness is premature.  
23 Those courts hold that you don't get into the  
24 fairness question until after an arbitral award.

25 And let me go back to the internal justice

1 procedures, a summary of which -- we filed a  
2 five-page summary of which about a year ago pursuant  
3 to your order.

4 There is -- let me give you this background.  
5 The founder of the Scientology religion was L. Ron  
6 Hubbard. He was a United States naval officer for a  
7 number of years. There is a remarkable similarity  
8 between the procedures outlined in what we filed and  
9 the procedures that are set forth in that book,  
10 which are the same, and the policy letter he wrote  
11 to the Uniform Code of Military Justice. And let me  
12 explain how that works.

13 Under the UCMJ if a member of the military is  
14 charged, a military officer is put in charge. That  
15 officer selects a group of other officers to serve  
16 as the hearing panel. A military officer is the  
17 prosecutor. The defendant has an opportunity to  
18 either hire private counsel or have a military  
19 officer. So it's a completely within the system  
20 system of justice, and the Scientology internal  
21 system of justice is modeled to a large extent on  
22 that.

23 I would point out that there is a Supreme  
24 Court case called *Solorio vs. U.S.*, 483 U.S. 535,  
25 which basically -- it's a 1987 case, and it

1 overruled an earlier case called O'Callahan which  
2 had held that nonservice-related matters would be  
3 tried in a civilian court. Solorio abolished that  
4 and nonservice matters now can be tried in a  
5 military court. And there has been -- this brings  
6 to mind, there has been quite a bit of discussion  
7 lately about the problem of sexual aggression in the  
8 military and one of the efforts has been to take  
9 that out of the UCMJ system and back into some other  
10 system unconnected with the military. But in large  
11 measure the Scientology internal justice procedures  
12 and system are based on -- are derived in large  
13 measure from the UCMJ.

14 I wanted to point out a couple of other cases,  
15 miscellaneous cases. One is *AT&T Mobility vs.*  
16 *Concepcion*, 131 Supreme Court 1740. The Supreme  
17 Court preempted California case law that was hostile  
18 to arbitration in the class action realm and said  
19 that these -- you could force people into  
20 arbitration in matters that otherwise would be  
21 handled by class suits.

22 In *Hosanna-Tabor*, U.S. Supreme Court 2012, a  
23 Lutheran teacher was considered a schoolteacher.  
24 There were two kinds, a lay teacher and a "called"  
25 teacher. If you were a "called" teacher, you were



1 considered a minister in the Missouri synod of the  
2 Lutheran church, if you taught even though a lot of  
3 what you did was secular teaching. The Lutheran  
4 church had an internal policy of internal dispute  
5 resolution. There is no indication that there was a  
6 specific agreement by which the teacher agreed to  
7 internal dispute resolution; it was just church  
8 policy. She threatened to sue and she was fired.  
9 And the Supreme Court basically said that the EEOC  
10 could not get involved in it because it was a  
11 decision to fire a person that the church considered  
12 a minister even though the minister duties were  
13 rather limited.

14 Let me also point out the Serbian Eastern  
15 Orthodox Diocese case, 1976, state court held that a  
16 church improperly removed a bishop in internal  
17 proceedings that were arbitrary. The Court held,  
18 "There is no arbitrariness exception to the First  
19 Amendment. The civil courts are bound to accept the  
20 decisions of the highest judicatories of a religious  
21 organization or hierarchical policy on matters of  
22 discipline, faith, internal organization or  
23 ecclesiastical rule, custom or law."

24 So Your Honor, for all of those reasons, we  
25 would respectfully ask the Court grant our motion to

1           compel arbitration.

2           THE COURT: That last case you cited, I  
3           listened to your list of matters that are to be  
4           resolved within the church; I did not hear contract  
5           disputes or fraud. Do not those claims divorce  
6           themselves, for lack of a better word, from the  
7           ecclesiastical tenets of Scientology?

8           MR. POPE: The claim is that there was fraud  
9           in the soliciting of money to build what amounts to  
10          the Scientology cathedral and there was a huge delay  
11          in the matter and that the reason there was a delay  
12          was that they were reconfiguring that building for  
13          religious purposes. It's all wrapped up together.

14          To me the First Amendment cases are rather  
15          strict in preventing involvement in the government  
16          including the court system in these sorts of  
17          internal matters.

18          THE COURT: All right. Thank you, Mr. Pope.  
19          Mr. Babbitt?

20          MR. BABBITT: Theodore Babbitt. May it please  
21          the Court. I would like to first talk about a few  
22          things that the Court had questions about.

23          There is no difference between California and  
24          Florida law on the issues that we're here today,  
25          notwithstanding counsel's conclusion that California

1 is more liberal. The law is essentially the same  
2 and the issue for the Court to decide is  
3 conscionability and whether or not both procedurally  
4 and substantively this contract is unconscionable.

5 It's not a First Amendment issue, as the Court  
6 has pointed out. This is a secular issue. No one  
7 has even suggested that even the Church of  
8 Scientology believes that fraud is a proper vehicle  
9 for obtaining donations. This is purely a secular  
10 issue.

11 There were many things that were brought up in  
12 argument that are not in the record. Certainly the  
13 UCMJ is not. But that's a good example of a  
14 complete procedure for resolving disputes that one  
15 signs into when one joins the military. Here, in  
16 fact, there is no procedure, as I will point out  
17 from the defendant's own brief.

18 The seminal question before this court is  
19 whether or not Scientology has effectively usurped  
20 this court's Article III jurisdiction to hear not  
21 only the claim of Luis and Rocio Garcia, but in fact  
22 every claimant that could ever bring a claim against  
23 Scientology because make no mistake, this Court's  
24 decision on this issue will have far reaching  
25 consequences.

1           A decision enforcing arbitration would not  
2           only effectively end this dispute, it would grant  
3           immunity to Scientology on every possible dispute --  
4           contractual, personal injury -- if the defendant's  
5           briefs are upheld and that is on the basis of an  
6           agreement that is not worthy of the name  
7           arbitration.

8           Our position is that this agreement is both  
9           procedurally and substantively unconscionable. It  
10          is procedurally unconscionable because not only is  
11          it a contract of adhesion -- which it clearly is; as  
12          the Court pointed out, it is brought forth only  
13          after payment for services and as a condition for  
14          providing those services -- but there in fact is no  
15          procedure mentioned within the contract other than  
16          the naming of arbitrators. There is no reference to  
17          the AAA arbitration rules or the ICC or any other  
18          rules, nor are any attached. Because we know they  
19          don't exist.

20          On the question of substantive  
21          unconscionability, the question is can three  
22          Scientologists in good standing possibly provide a  
23          fair and impartial set of arbitrators, and the  
24          answer to that is no.

25          It is unquestionable and undisputed that these

1 plaintiffs have been declared by Scientology as  
2 suppressive persons and what that means is that  
3 every member of the Scientology organization,  
4 including the three potential arbitrators, must  
5 believe that they are not permitted -- under penalty  
6 of being themselves excommunicated -- to even speak  
7 with the plaintiffs, let alone hear their case and  
8 decide it favorably. How could three Scientologists  
9 who believe that they themselves, their own ability  
10 to continue on in this organization, could possibly  
11 fairly hear the claim of somebody?

12 Now, the defendants have attempted to borrow  
13 the rules of the Committee of Evidence and put them  
14 in response to your order asking them to tell you  
15 what rules of arbitration they have. But in fact  
16 their own statement belies the fact that these are  
17 arbitration rules. What they said was the Church of  
18 Scientology International Justice Chief "has ruled  
19 that the procedures and rules governing the  
20 Committee of Evidence apply in arbitration  
21 procedures."

22 Now, when did that happen, where did it  
23 happen, is there any evidence that it in fact  
24 happened, did it happen before this agreement was  
25 entered into, before any of these agreements, or was

1 this something that happened after the briefs were  
2 written? There is no evidence whatsoever if, when,  
3 or where that happened. And in fact, we know it did  
4 not happen because we know in the very same page of  
5 the very same brief that cites that exact quote I  
6 just read, it is said that those rules are designed  
7 solely for refunds, refunds that we do not seek  
8 here. This is a case of fraud. That is what we are  
9 claiming. It has nothing to do with refunds for  
10 services.

11 In fact, we know based upon the declarations  
12 that have been made and have not been disputed by  
13 Scientology, that there has never ever in the  
14 history of this organization ever been an  
15 arbitration. It's never even been started. Why  
16 not? Because it would be a waste of time to go  
17 before three people who have to have the beliefs  
18 that they are not even permitted to believe anything  
19 you say, they are not permitted to even speak to you  
20 even if they are related to you. How could three  
21 people like that possibly give a fair hearing?

22 This agreement was never even contemplated for  
23 this kind of question that we're here before. It  
24 was an enrollment agreement for religious services  
25 and it doesn't say anything about fraud or anything

1 about donations and we are not seeking refunds for  
2 services provided. We are seeking, as a small part  
3 of the claim, refunds for services that weren't  
4 provided, which have nothing to do with the  
5 enrollment agreement.

6 If the arbitration clause were in fact applied  
7 as the defendants say that it should be to every  
8 type of case, it would apply to contract, personal  
9 injury -- it wouldn't matter what it was. It  
10 wouldn't matter how heinous the conduct. It  
11 wouldn't matter whether it was intentional or not.  
12 An agreement that would be interpreted in that way  
13 would be unreasonable, overreaching, and in fact  
14 unconscionable.

15 There is no mention, no mention whatever, in  
16 this agreement of the chief justice or the justice  
17 chief saying anything about these rules being  
18 applied. Those rules are not mentioned in the  
19 contract because there are no arbitration rules.

20 How could an arbitrator who himself is at risk  
21 possibly hear this case? It would be like a person  
22 suing their doctor for medical malpractice having an  
23 arbitration procedure composed of the doctor and two  
24 of his partners. And these arbitrators have to  
25 believe, in order to be in good standing as required

1 by the contract, that people like the plaintiffs,  
2 suppressive people, have relinquished all of their  
3 rights, are not entitled to any ethics proceedings,  
4 are insane, are to be deprived of their property and  
5 injured by any means without any repercussions, and  
6 are likened to Napoleon and Hitler. How could an  
7 arbitrator who believes that possibly listen to  
8 someone and hope to find something factually fairly?

9 As was stated by the Supreme Court in *Hines*  
10 *vs. Anchor Motor Freight*, 424 U.S. 554, Congress has  
11 put its blessing in a private dispute settlement --  
12 on private dispute settlement arrangements, but it  
13 was anticipated, we are sure, that the contractual  
14 machinery would operate within some minimum levels  
15 of integrity.

16 That's what's missing here, Your Honor. There  
17 are no -- they could have easily put into the  
18 contract this -- there would be a procedure where  
19 people would choose three arbitrators from the  
20 American Arbitration Association. But no, they have  
21 to be people who believe these things about the  
22 person they are about to hear.

23 The arbitration agreement is in fact illusory.  
24 It is, as one court said, unless we close our eyes  
25 to the realities, the agreement here becomes not a



1 contract to arbitrate but an engagement to  
2 capitulate. It is a sham system, unworthy of the  
3 name arbitration.

4 Whether you apply California or Florida law,  
5 both states say that you have to put within your  
6 contract some reference to the rules that apply.  
7 And here we have no reference. In fact, under  
8 California law you have to actually attach those  
9 rules. But the purpose of that, the purpose of  
10 having a reference to rules is so that a person will  
11 make a knowing waiver. So the Garcias, faced with  
12 this contract, how could they look up the rules?  
13 They didn't exist. The church could go make up the  
14 rules as they go.

15 Imagine an arbitration proceeding in which  
16 you're before three arbitrators who say okay, put in  
17 your evidence. Oh, I'm sorry, you're not going to  
18 have that evidence, we now have a rule that says  
19 this, we're going to create a rule that says that.  
20 That's not anything less than procedurally  
21 unconscionable.

22 There is no evidence that the Church of  
23 Scientology condones fraud. There is no evidence  
24 whatsoever --

25 THE COURT: Let me stop you. I don't want to

1 blur the lines between procedural and substantive  
2 unconscionability. You just used the word  
3 procedural in describing the internal aspect of a  
4 hypothetical arbitration. Let's separate the two.  
5 Take me through your contention that the process  
6 contemplated by the enrollment agreements was  
7 procedurally unconscionable.

8 MR. BABBITT: It basically is, Your Honor;  
9 first that it's a contract of adhesion, and second,  
10 that there are no rules. That's really all that we  
11 have with respect to procedural unconscionability.

12 The question of whether a fair hearing could  
13 be heard within the hearing itself of course posits  
14 that there have to be rules in order for you to have  
15 any kind of a substantively fair hearing. So  
16 without any rules, you get first to the question of  
17 procedural unconscionability and you have to indeed  
18 find first that it is procedurally unconscionable  
19 before you get to the question of substantive  
20 unconscionability. But there have to be rules.  
21 Under California law, under Florida law, in fact I  
22 believe under any state law, there have to be rules  
23 that precede the entrance into the contract. You  
24 can't simply say, okay, our chief justice has now  
25 ruled that these other rules that weren't mentioned

1 in the contract apply to this. That's what the  
2 procedural aspect of it is.

3 When you get into the substantive argument is  
4 simply this: Three Scientologists in good standing  
5 could not possibly be fair arbitrators in this case.  
6 The definition of an unfair arbitrator is someone  
7 who has a personal interest in the outcome. And  
8 unquestionably these three arbitrators would have a  
9 personal interest in the outcome because if they  
10 were to dare to even listen to the evidence, they  
11 become, by the tenets of this organization,  
12 "declared persons."

13 The parties should not be compelled to use an  
14 arbitration procedure that exists only in the mind  
15 of Scientology, Your Honor. We contend that this  
16 agreement is unconscionable both substantively and  
17 procedurally because it is.

18 THE COURT: What is your response to  
19 Mr. Pope's argument that these agreements could not  
20 be contracts of adhesion because they are  
21 essentially religious or ecclesiastical, for lack of  
22 a better word, components of Scientology?

23 MR. BABBITT: Because this is not a claim that  
24 reaches the religious tenets of Scientology. They  
25 themselves in their briefs said they haven't even

1 filed a motion to dismiss on that basis.

2 We're not arguing about the tenets of  
3 Scientology. This is a fraud claim. It's a secular  
4 claim. That's why. It has nothing to do with the  
5 religious tenets of Scientology.

6 THE COURT: So as I understand this record --  
7 and this is a question for both of you, when  
8 Mr. Pope gets back up -- am I correct to understand  
9 that with respect to the particular enrollment  
10 agreements that the defendants rely on, the Garcias  
11 would pay for whatever services they desired to  
12 participate in and then at the time of these  
13 services in Clearwater before they could  
14 participate, they were required to sign these  
15 enrollment agreements? Is that the sequence of  
16 events?

17 MR. BABBITT: That's correct, Your Honor.  
18 That's stated in the declarations; it hasn't been  
19 disputed.

20 THE COURT: And if they declined to sign them,  
21 they were not permitted to participate?

22 MR. BABBITT: That's correct, Your Honor.

23 THE COURT: And then you would be in a refund  
24 situation, I presume, as opposed to a claim of fraud  
25 or breach of contract?

1 MR. BABBITT: I'm sorry, I missed that.

2 THE COURT: In that situation we would be  
3 talking about a refund claim as opposed to fraud or  
4 breach of contract.

5 MR. BABBITT: Hypothetically if that had  
6 happened, I suppose we would, although I don't know  
7 that that's even been an issue here.

8 There is a refund claim here for services that  
9 were deposited but never provided, but in those  
10 cases there was no agreement signed because they  
11 never got to the point of signing it.

12 THE COURT: I understand. And then your  
13 position is because they were required to sign this  
14 literally as they were walking in the door to  
15 participate in whatever service it was, they didn't  
16 have an adequate opportunity to appreciate the  
17 arbitration clause and in fact could not have  
18 because the rules of whatever the arbitration  
19 procedure was were not referenced in the agreement.

20 MR. BABBITT: Not only not referenced, but not  
21 existing. But really it wasn't a situation that  
22 they didn't have a chance to because they were  
23 rushed into it, that's not really our claim. Our  
24 claim is the question of unconscionability doesn't  
25 rise or fall on that issue.

1           If the agreement is unconscionable, the fact  
2           that they didn't have time to go see a lawyer --  
3           which by the way was the question in the Shipper  
4           case that we're not raising, in the Shipper case the  
5           entire question of unconscionability takes up all of  
6           a half of a page, one paragraph, and the claim there  
7           was they didn't have a chance to talk to a lawyer  
8           and therefore it was unconscionable. That's not the  
9           question here.

10           The question here is if you have a contract  
11           and it is a contract of adhesion, you have to look  
12           more closely at it. That's all the adhesion  
13           question really relates to. You can look more  
14           closely at it and find that it's perfectly correct.  
15           For example, one of the cases that they relied upon  
16           was an issue where there was a complete procedural  
17           question, it was a contract adhesion but there was a  
18           complete procedural system that mimicked the  
19           American Arbitration Association and the Court found  
20           that was sufficient; the fact that it was a Lutheran  
21           organization didn't matter.

22           But here it's completely divorced from that  
23           because we have a contract that, yes, was an  
24           adhesive contract, and yes, they didn't have time to  
25           do much about it, or choice, but I can hardly make

1 the claim that that's the basis of our argument  
2 because they did it many times over many years.

3 The question is this contract that is  
4 adhesive, you must look at it and say okay, is it  
5 procedurally unconscionable. And if it has no  
6 rules, which in fact it doesn't, how can you cross  
7 this river? I mean, what is the bridge that gets  
8 you through arbitration? There is no procedure.  
9 The church can simply make things up as they go.  
10 And that by definition is an unconscionable  
11 contract.

12 THE COURT: All right. Thank you,  
13 Mr. Babbitt. Mr. Pope, your response?

14 MR. POPE: Your Honor, on the question of  
15 rules, the first thing I would like to do is  
16 represent to the Court that the rules that we filed  
17 in here, which are rules that apply both to the  
18 Committees of Evidence and to the arbitration  
19 procedures, that is my stipulation, those are the  
20 rules that apply.

21 But apart from that, let's just assume there  
22 weren't any rules. I would like to call your  
23 attention to *Premier Real Estate Holdings LLC vs.*  
24 *Butch*, 24 So. 3d. 708, Fourth District, 2009, in  
25 which the claim was made there are no rules. The

1 Court said similarly, the failure to designate the  
2 rules under which the arbitration would be governed  
3 did not invalidate the arbitration clause in the  
4 instant case. The contract states that it will be  
5 considered under Florida law and the Florida  
6 Arbitration Code, which does not require an  
7 arbitration clause to set forth the rules governing  
8 the arbitration, fills in the gaps or missing  
9 procedures.

10 THE COURT: There was a reference to the  
11 Florida Arbitration Code though?

12 MR. POPE: Well, no -- well, let's see.

13 THE COURT: That was a question, not argument.

14 MR. POPE: I don't believe the court just said  
15 as a matter of law that's what the arbitration code  
16 does. But Your Honor --

17 THE COURT: Well, then are you willing to  
18 agree that the Florida Arbitration Code applies to  
19 this arbitration process?

20 MR. POPE: You know, there is a First  
21 Amendment issue here, really, as to can the Court  
22 force the Florida Arbitration Code on to a religious  
23 organization. I don't know the answer to that. But  
24 this case does suggest that the absence of rules in  
25 the arbitration agreement is not fatal. And what



1 I'm saying is that we do have rules and we have  
2 filed them with you and these are the rules that are  
3 to be followed.

4 Let me say something else about this business  
5 about they paid their money and then they had an  
6 agreement stuck in their nose and had to sign it.  
7 This is something that went on with them for  
8 28 years. They did this for --

9 THE COURT: Well, Mr. Babbitt just  
10 acknowledged that he's not in a position to contend  
11 that they were rushed or forced to sign something  
12 because of that very point. So I'm moving on. I  
13 thought that was a component of the plaintiff's  
14 position, but apparently not.

15 MR. POPE: Let me just look over my notes here  
16 for one second.

17 THE COURT: Was this, from your perspective,  
18 this arbitration clause, one-sided or one-way?

19 MR. POPE: Your Honor, it seems to me that on  
20 its face it's fair. On its face it's fair.

21 THE COURT: That's not what I asked.

22 MR. POPE: Well, let me put it this way. It  
23 is no more one-sided than the arbitration clause  
24 that required people to select lawyers from the  
25 Hillsborough County and Clearwater Bar Association

1 to judge a malpractice claim against my firm, and  
2 it's no more one-sided than the BDO Seidman case in  
3 which an ousted CPA had to be judged by three of his  
4 former partners, and it's no more one-sided than the  
5 Uniform Code of Military Justice which picks a bunch  
6 of military people to judge a military defendant.

7 THE COURT: Well, perhaps I'm not making  
8 myself clear. My question is was Scientology bound  
9 to arbitrate any dispute with their member?

10 MR. POPE: No, because they have multiple  
11 layers of dispute resolution.

12 THE COURT: So it's essentially one-sided.  
13 The member, or ex-member in this case, from your  
14 perspective is required to arbitrate, but  
15 Scientology is not under any reciprocal obligation.

16 MR. POPE: It is if the person goes through  
17 the process that we have outlined here with the  
18 Claims Verification Board and if they want to try a  
19 Committee of Evidence. And if they reach an  
20 impasse, they have the right to demand arbitration,  
21 notify the International Chief Justice, and yes,  
22 we're obliged to arbitrate. We are obliged, if they  
23 invoke it. It is their right to --

24 THE COURT: Let me give you a hypothetical  
25 then. If the Garcias embezzled money from the

1 church and the church sought to pursue them in  
2 civil -- in circuit court, was the church required  
3 to arbitrate that contention, that claim?

4 MR. POPE: The church, I don't believe, could,  
5 but it could opt to arbitrate and resort to an  
6 internal resolution of the matter if it so chose.

7 THE COURT: Well, using the particular  
8 paragraph 6 in the enrollment agreement that we  
9 really have to focus on, as I read it it's  
10 essentially a one-way arbitration clause. There is  
11 no reciprocal responsibility on the part of  
12 Scientology to arbitrate any dispute.

13 MR. POPE: There is if they invoke the right  
14 to arbitration. Scientology can't just say you  
15 don't get to arbitrate, I'm not going to do it. If  
16 they get in touch with the chief justice and say I  
17 invoke the arbitration procedure, the Scientologists  
18 have to go through with it. They don't have the  
19 right to say no, we're not going to do it.

20 In fact, D indicates that everybody is bound  
21 by the discipline, faith, internal organization and  
22 ecclesiastical rule, custom and law of the  
23 Scientology religion.

24 THE COURT: And does that mean that  
25 arbitration is part of the discipline, faith,

1 internal organization, custom and law of the  
2 Scientology religion?

3 MR. POPE: I'm sorry, I didn't understand the  
4 question.

5 THE COURT: Does that mean that arbitration is  
6 part of that?

7 MR. POPE: The arbitration procedure is part  
8 of the rules, custom and law of the Scientology  
9 religion. It's the final step, if all else fails,  
10 if the person has exhausted all internal avenues and  
11 all else fails, the person has the right to compel  
12 arbitration. And we have the right to compel  
13 arbitration. And unless the Court has something  
14 further, Your Honor, I'm finished.

15 THE COURT: Thank you very much. Thank you,  
16 gentlemen, I appreciate your efforts. I'm not going  
17 to promise a ruling any time soon. I have a trial  
18 starting Monday that's supposed to be at least two  
19 weeks and a criminal trial scheduled immediately on  
20 its heels, so bear with me. There is some  
21 interesting and comprehensive arguments have been  
22 presented.

23 I assume, Mr. Babbitt, that since there was no  
24 response to the renewed motion to compel  
25 arbitration, you're relying on the response -- your

1 response to the original motion.

2 MR. BABBITT: That's right, Your Honor.

3 THE COURT: That's what we presumed. Thank  
4 you, we'll be in recess.

5 (The proceedings adjourned at 3:33 p.m.)

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