

UNITED STATES 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.

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

Defendants.

**PLAINTIFFS' MOTION TO VACATE ARBITRATION AWARDS
AND INCORPORATED MEMORANDUM OF LAW**

The Plaintiffs, LUIS A. GARCIA SAZ and MARIA DEL ROCIO BURGOS GARCIA, under 9 U.S.C. § 10(a) (2012), file this Motion to Vacate the Arbitration Awards and Incorporated Memorandum of Law. The Arbitration Awards are dated October 23, 2017, and signed by the arbitration panel on October 24, 2017 (Ex. 1 Arbitration Findings Form & Ex. 2 Arbitration Decision Form).

1. The Plaintiffs have a statutory right to move to vacate an arbitration award when: (1) the award was “procured by corruption, fraud, or undue means;” (2) the arbitrators acted with “evident partiality or corruption”; or (3) the arbitrators engaged in “misconduct in . . . refusing to hear evidence pertinent and material to the controversy” or “any other misbehavior by which the rights of any party have been prejudiced.” 9 U.S.C. § 10(a). The

Plaintiffs move to vacate based upon sections 10(a)(2) and 10(a)(3). While the ability of courts to review ecclesiastical arbitrations is limited, the Defendants (the “Church”)¹ agreed that the Plaintiffs have the right to file a motion to vacate on the grounds authorized by section 10(a) (DE196:87 Tr. 2/19/15).

2. Under section 10(a)(3), this Court should vacate the arbitration award because the arbitration panel engaged in misconduct by refusing to hear any evidence critical of the Church (Ex. 3 Garcia Aff. at 4-5, 9-10, 13-15, 17).

3. In conjunction with the motion to compel arbitration, the Church presented the testimony of the International Justice Chief (“IJC”) Mike Ellis, who told this Court that the Plaintiffs would have a full opportunity to “present evidence” and “originate whatever [they] wanted . . . to present [their] side of the story” (DE188-3:176-78 Dep. Mike Ellis). When this Court later denied the Plaintiffs’ motion for miscellaneous relief, it relied upon this testimony that the Plaintiffs would have the opportunity to present their evidence: “For example, [IJC] Ellis has testified that . . . [the Plaintiffs] would be able to ‘originate whatever [they] wanted to’ in order to present their side of story” (DE265:3, n.4 Order 10/16/17).

4. Directly contrary to this representation, the IJC and arbitration panel refused to allow the Plaintiffs to present any witnesses or evidence at all because the IJC deemed the Plaintiffs’ evidence to be “entheta” (Ex. 3 Garcia Aff. at 4-5, 9-10, 13-15, 17). “Entheta” is a Scientology term meaning critical of the Church (*Id.* at 4).

¹ The Defendants are the CHURCH OF SCIENTOLOGY FLAG SERVICE ORGANIZATION, INC. and the CHURCH OF SCIENTOLOGY FLAG SHIP SERVICE ORGANIZATION, INC. This motion refers to the Defendants collectively as “the Church.” All emphasis is supplied unless otherwise indicated. This motion refers to documents filed in this Court by docket entry number (DE[docket entry number]:[page number]).

5. The Plaintiffs alleged claims against the Church for fraud, breach of contract, and violations of the Deceptive and Unfair Trade Practices Act (DE114 Am. Compl. 5/12/14). The Plaintiffs alleged that the Church extracted funds from them by soliciting contributions for purposes that were never fulfilled and failing to repay deposits for services that were never rendered (*Id.* at 1-4, 7-29). The Plaintiffs could not prove these claims without submitting evidence critical of the Church (Ex. 3 Garcia Aff. at 4-10, 13-15, 17).

6. Before this Court compelled arbitration, the Church also told this Court that whether the Plaintiffs requested a refund by filling out a form with the Claims Verification Board (CVB) would not be dispositive of the issues in this suit (DE196:88-89 Tr. 2/19/15). The Church stated the claims verification board process does not apply to persons, like the Plaintiffs, who have been declared by the Church to be suppressive persons (*Id.* at 89; DE188-3:147-48, 151 Dep. Mike Ellis).

7. At arbitration, the IJC reversed course and stated that the **only** issues for arbitration were whether the Plaintiffs followed the correct procedure to request return of funds from the Church by filling out a CVB form (Ex. 3 Garcia Aff. at 11, 13-14). The IJC and arbitrators refused to consider the Plaintiffs' fraud claims and the issues raised in the lawsuit (*Id.*). The only questions the arbitrators asked the Plaintiffs involved whether they had filled out a CVB form (*Id.* at 12-18).

8. The issues presented in the Plaintiffs' lawsuit are much broader than whether they filled out a CVB form (DE114 Am. Compl. 5/12/14; Ex. 3 Garcia Aff. at 4-10, 13-15, 17).

9. The Plaintiffs tried to submit over 900 pages of evidence supporting their claims, but the IJC redacted all information critical of the Church (Ex. 3 Garcia Aff. at 5, 7-10). The IJC presented the arbitration panel with only 70 of the pages the Plaintiffs submitted (Ex. 3 Garcia Aff. at 9). The IJC heavily redacted the few pages that the IJC allowed the Plaintiffs to give the arbitrators (*Id.* at 9-11). As an example, the Plaintiffs asked the IJC to present to the arbitration panel an accounting summary of the Orange County Ideal Org (*Id.* & Attached Ex. F Unredacted accounting summary proffered by the Plaintiffs). The IJC redacted all but a few lines of the accounting summary before giving it to the arbitrators (Ex. 3 Garcia Aff. at 9-11 & Attached Ex. G Accounting summary as redacted by IJC before presenting it to arbitrators). The redacted accounting summary no longer contained any information related to the Plaintiffs' fraud claims. (*Id.* & Compare Ex. F Unredacted summary *with* Ex. G Redacted summary). The IJC refused to allow the Plaintiffs to present letters from former Church members with similar requests for the Church to return donations, statements published on the Church's website, the Church's promotional materials, and copies of Church policies that demonstrated the Church's fraud (*Id.* & Ex. H Church flyer the IJC excluded from evidence).

10. This Court should also vacate the arbitration award because the panel engaged in misconduct by allowing the IJC to have ex parte contact with the arbitration panel and present evidence outside the Plaintiffs' presence.

11. The arbitration panel engaged in further misconduct in refusing to allow the Plaintiffs' counsel to attend the arbitration, but allowing the Church to have counsel present (Ex. 3 Garcia Aff. at 6-7, 10 & Attached Ex. B Screen Shot showing wireless network "Gary

Soter's iPhone" 10/23/17). This contradicted the Church's representations to this Court that the Plaintiffs' counsel had the right to attend the arbitration (DE188-4:194-95 Dep. Mike Ellis).

12. The arbitration panel also engaged in misconduct by failing to provide written findings sufficient for this Court to review the arbitration awards (Ex. 1 Arbitration Findings Form & Ex. 2 Arbitration Decision Form). This Court asked counsel for the Church, "Will there be a record of the proceeding if I'm asked to review it"? (DE196:87 Tr. 2/19/15). The Church's counsel repeatedly assured this Court that the arbitration panel would create a written report sufficient for this Court to rule on a motion to vacate (DE196:88-89 Tr. 2/19/15; DE255:9 Tr. 8/15/17). Directly contrary to the Defendants' repeated representations to this Court, the only written documents the arbitration panel provided were checklists prepared on October 23, 2017, the day before the arbitration began and signed on the day the arbitration actually took place, October 24, 2017 (Ex. 1 Arbitration Findings Form & Ex. 2 Arbitration Decision Form). Nothing in the checklists gives this Court any explanation of what evidence the panel considered or how the findings were determined (*Id.*).

13. In addition, under 9 U.S.C. § 10(a)(2), this Court should vacate the arbitration award because "there was evident partiality or corruption in the arbitrators, or either of them." Again, the Defendants represented to this Court that the IJC would instruct the arbitration panel to "treat everyone impartially regardless of who they are" (DE188-2:80, Dep. Mike Ellis; *see id.* at 81; DE188-3:161, 177; DE188-4:222).

14. This Court relied on this evidence when it rejected the Plaintiffs' argument that because the Church had declared them to be "Suppressive Persons," it would be

impossible for them to receive a fair and neutral arbitration from a panel of arbitrators comprised of Scientologists in “good standing” (DE189:19-20 Order Compelling Arbitration 3/13/15; Ex. 4 Church Order Garcia Suppressive Persons Declare 11/20/10). This Court found that IJC “Mike Ellis testified that this would not be the case, essentially because the arbitrators would be instructed to be fair and neutral.” (*Id.*).

15. That did not happen. Instead, outside the Plaintiffs’ presence, IJC Mike Ellis “hatted” the arbitration panel (Ex. 3 Garcia Aff. at 4-6, 12). “Hatting” is a Scientology term for “training” them (Ex. 3 Garcia Aff. at 4). Contrary to the IJC’s representations to this Court, this “hatting” did not merely consist of instructing the arbitrators to be fair and neutral. Outside the presence of the Plaintiffs, the IJC gave the arbitration panel several documents to review, including church policies, the complaint, and the 10-page report from the Claims Verification Board (CVB report) (*Id.* at 4-9 & Attached Ex. E CVB report). This report was tantamount to a directed verdict for the Church (*Id.* at 8-9, 15 & Attached Ex. E CVB report). The Plaintiffs had never seen the CVB report before and had no opportunity to respond to it (*Id.* at 8-9, 15). The arbitration panel gave the IJC unfettered access and the right to present evidence outside the Plaintiffs’ presence. This disparate treatment demonstrated the evident partiality of the arbitration panel.

16. Members of the arbitration panel also made numerous statements demonstrating their evident partiality. The Chairman of the arbitration panel, Peter Sokoloff, told the Plaintiffs that once they were declared “Suppressive Persons,” they ceased to have any rights as Scientologists (Ex. 3 Garcia Aff. at 16). He told the Plaintiffs their payments to the church were charitable donations and, therefore, non-refundable (*Id.*).

17. These payments, and the Church's fraudulent statements to induce the payments, formed the basis for the Plaintiffs' lawsuit (DE114 Am. Compl. 5/12/14). The statements of Chairman Sokoloff demonstrated that the arbitration panel had already decided the dispute in favor of the Defendants, before even meeting the Plaintiffs (Ex. 3 Garcia Aff. at 12-13). The evident partiality of the arbitration panel requires this Court to vacate the arbitration awards.

18. The Plaintiffs opposed the Church's motion to compel arbitration on the grounds of procedural and substantive unconscionability (DE30 Pls. Resp. Opposing Arbitration 4/22/13; DE170 Pls. Trial Brief 2/16/15; DE191 Pls. Mot. for Reconsideration 4/9/15). The Plaintiffs argued, vigorously, that as persons declared "Suppressive" by the Church, they could never receive a fair hearing before an arbitration panel composed of Scientologists in "good standing" (DE30; DE170; DE191; Ex. 4 Garcia Declare Order). The events during the arbitration proved the Plaintiffs correct on the unconscionability of the arbitration procedure. This Court should grant the Plaintiffs' motion to vacate the arbitration awards and order trial on the merits of the claims in Plaintiffs' lawsuit.

MEMORANDUM OF LAW

A. The arbitration awards should be vacated because of the arbitrators' misconduct in refusing to hear material evidence critical of Scientology and allowing the IJC to present evidence outside the Plaintiffs' presence.

This Court should vacate an arbitration award "where the arbitrators were guilty of **misconduct . . . in refusing to hear evidence pertinent and material to the controversy;** or of any other **misbehavior** by which the **rights of any party** have been **prejudiced.**" 9 U.S.C. § 10(a)(3). The arbitrators' evidentiary rulings "must give the parties a fundamentally

fair hearing.” *Rosenweig v. Morgan Stanley & Co.*, 494 F.3d 1328, 1333 (11th Cir. 2007) (citing *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997)). This Court should vacate the arbitration award when the “arbitrator’s refusal to hear pertinent and material evidence prejudices the rights of the parties.” *Id.* (quoting *Hoteles Condado Beach, La Concha & Conv. Ctr. v. Union De Tronquistas Local 901*, 763 F.2d 34, 40 (1st Cir. 1985)).

Every representation the Defendants made to the Court about how the arbitration would be conducted has proven to be false. This Court relied on these representations. The orders directing arbitration and ruling on the Plaintiffs’ multiple motions were fatally infected by those misrepresentations. The awards should be vacated.

This Court took great pains to prohibit both parties from contacting the arbitrators before the start of the arbitration. At the April 7, 2017, hearing, this Court warned that it would not countenance anyone attempting to influence the arbitrators before the arbitration (DE235:11-14 Tr. 4/7/17). This Court ordered the parties “**not [to] contact**, attempt to contact, or respond to any contact by **any individual** listed by Defendants or **selected to serve as an arbitrator by the Court.**” (DE238:3 Order 4/10/17).

Despite this warning, on October 23, 2017, before the arbitration began, the Defendants spent an entire day with the arbitrators without the Plaintiffs (Ex. 3 Garcia Aff. at 4-6, 8-9, 12). This directly violated this Court’s order directing the parties “**not [to] contact**, attempt to contact, or respond to any contact by **any individual** listed by Defendants or **selected to serve as an arbitrator by the Court.**” (DE238:3 Order 4/10/17). No Court

should countenance this behavior, which makes a mockery of fair arbitration procedure and allows the IJC to dictate a decision to the arbitrators.

The IJC told the Plaintiffs that he had to “hat” the arbitration panel, a scientology term for “training” the arbitration panel, outside the Plaintiffs’ presence (Ex. 3 Garcia Aff. at 4-6, 12). During the “hatting,” the IJC gave the arbitration panel numerous documents to review, including the report from the Claims Verification Board (CVB report) (*Id.* at 4-9 & Attached Ex. E CVB report). The CVB report was dated that day—October 23, 2017—and the Plaintiffs had never seen it before (*Id.*). The CVB report stated that the IJC had “referred” the Plaintiffs’ request for arbitration to the CVB “for response” (Ex. 3 Garcia Aff., Attached Ex. E CVB report at 1).

The CVB report read like an expert opinion of someone who had conducted an extensive investigation into the Plaintiffs (Ex. 1 Garcia Aff. at 8-9 & Attached Ex. E CVB report). The CVB, in no uncertain terms, told the arbitration panel how to rule for the Church: “There is no written evidence supporting the Garcias’ claims that their donations for building campaigns were made as a result of false promises” (Ex. 1 Garcia Aff., Attached Ex. E at 7; *see id.* at 9). “Policy is clear that if it is not written it is not true” and “that the Church is not responsible for statements made by individual staff” (*Id.* at 7 & 9). “Luis Garcia seeks a refund for services he elected not to participate in” and “admitted he was well aware of the Church’s policy on Return of Donations and his responsibility pursuant to the enrollment forms he signed multiple times” (*Id.* at 10). According to the CVB:

The Garcias failed to follow the steps of dispute resolution set forth in the Enrollment Forms and failed to follow the full procedures of the Claims Verification Board with respect to their claims for refund or repayment of donations for services,

and therefore do not qualify for a refund. Building donations and membership donations are not refundable.

(Id.).

The IJC also gave the arbitration panel two reports from Mr. Garcia's confidential "Priest/penitent Ethics file" (Ex. 3 Garcia Aff. at 8-9). These confidential reports were completely irrelevant to the arbitration and the IJC intended only to intimidate and harass the Plaintiffs *(Id.)*.

The IJC is not just another Scientologist. As shown from the record, the IJC enforces the dictates of the Church and, on his word alone, any one of the arbitrators could be "declared Suppressive," thereby losing his or her ability to speak to his or her spouse, losing his or her livelihood, and losing all Scientologist friends (DE188-1:17-18; DE188-3:138-41, 157, 159-60, 193; DE188-4:184-85, 199, Dep. Mike Ellis). How could any Court believe that it is appropriate for the IJC to spend the entire day telling the arbitrators how to proceed with arbitration in the absence of the Plaintiffs? While the Court permitted the IJC to instruct the arbitrators on the arbitration process, the Court could not have possibly intended that this instruction permitted the admission of evidence outside the Plaintiffs' presence for an entire day before arbitration began. Based on what the IJC represented, the Court reasonably expected the IJC would, in the presence of the plaintiffs, tell the arbitrators to be fair, explain the procedure, and then step aside for the arbitrators to take over (DE188-2:80-81; DE188-3:161, 177; DE184-4:222, Dep. Mike Ellis). Instead, the IJC completely controlled the arbitrators and their decision.

The Defendants also told this Court that the Plaintiffs would be given a chance to present their case (DE255:13 Tr. 8/15/17; DE188-3:176-78 Dep. Mike Ellis; DE196:88, 102

Tr. 2/19/15). In the Order denying the Plaintiffs' motion for miscellaneous relief, this Court repeated the Defendants' representations that the Plaintiffs would be given an opportunity to present their case (DE265:3, n.4 Order 10/16/17) ("For example, [IJC] Ellis has testified that . . . [the Plaintiffs] would be able to 'originate whatever [they] wanted to' in order to present their side of story . . ."). Yet, the arbitrators refused to allow the Plaintiffs to call any witnesses (Ex. 3 Garcia Aff. at 3, 17). In fact, no one besides the Plaintiffs themselves was even allowed on the premises (*Id.* at 2-3, 10, 17; Ex. 5 E-mails from the Church's counsel regarding attendance of the Plaintiffs' counsel at arbitration). Mr. Garcia has a medical condition that makes reading extremely difficult (Ex. 3 Garcia Aff. at 2-3 & Attached Ex. A, letter from Mr. Garcia's doctor). The Church refused to allow Mr. Garcia's assistant, who helps him read documents, attend (*Id.* at 2-3).

In their Amended Complaint, the Plaintiffs allege the Defendants used high-pressure, illegal sales tactics to fraudulently solicit large contributions from the Plaintiffs (DE114 Am. Compl. 5/12/14). The Plaintiffs brought several claims, including fraud, violations of the Deceptive and Unfair Trade Practices Act, and breach of contract (*Id.*). During the arbitration, the Defendants took the position that the arbitrators were not allowed to hear anything about fraud because it was considered "entheta" (Ex. 3 Garcia Aff. at 4-5, 9-10, 13-15, 17). That is a word that means Scientologists cannot hear anything critical of the Church, even if factual and true (*Id.* at 4).

Mr. Garcia gave the IJC over 900 pages of documents to present to the arbitration panel (Ex. 3 Garcia Aff. at 5, 7-10). The IJC redacted all information he felt was "entheta," critical of the Church, and gave the arbitration panel only 70 of the pages the Plaintiffs

requested (*Id.* at 9). He rejected the rest as “irrelevant and/or ‘entheta.’” (*Id.*). Most of the documents the IJC allowed constituted copies of commendations the Plaintiffs received for their contributions (*Id.*). Other pages were highly redacted (*Id.* at 9-11 & *Compare* Attached Ex. F unredacted accounting summary of the Orange County Ideal Org. proffered by the Plaintiffs *with* Ex. G the version of this document the IJC redacted and presented to the arbitration panel).

When Mr. Garcia finally got a chance to speak to the arbitration panel, and mentioned his claims of fraud, the IJC cut him off and shouted, “WHAT YOU ARE SAYING IS ‘ENTHETA.’” (Ex. 3 Garcia Aff. at 13). The IJC even refused to allow Mr. Garcia to show the arbitration panel a Church flyer as evidence of false statements made in promotional material (*Id.* & Attached Ex. H Church flyer). When Mr. Garcia protested that his claims involve fraud, the IJC said they were “**not here to discuss any lawsuit or any claims** in it, but to find out whether or not [the Plaintiffs] followed proper church procedure and policy in requesting a refund.” (*Id.* at 13). The Chairman of the arbitration panel admonished the Plaintiffs, “**we don’t want to hear anything about fraud** because it has **nothing to do with the purpose of this arbitration**” (*Id.* at 14).

No reasonable person could find that the Plaintiffs had an adequate remedy for their fraud claim when they were precluded from ever mentioning it at arbitration. No Court would hold that an arbitration where the Plaintiffs’ claims could not even be mentioned is an adequate substitute for a civil action. Such a holding would completely immunize the Church against any civil wrong that criticizes the Church. For example, if the Church’s truck ran over someone in the parking lot, the Church could exclude all evidence of the accident as

critical of the Church. The proceeding here was a sham that does not deserve to be called arbitration. This was a star chamber proceeding, completely controlled from start to end by the Church, with no ability for the Plaintiffs to present their case.

The Church told the Court at the hearing on February 19, 2015, that it was not relying upon the CVB form because it did not apply to this case:

THE COURT: But they haven't filed this voucher thing yet.

MR. POPE: Bill of particulars?

THE COURT: No, voucher. Remember the witness yesterday told us that before you can get an arbitration, you have to submit this voucher thing. And if you don't do that --

MR. POPE: No, Your Honor, **that actually doesn't apply to persons who are declared.** You mean the, what do you call it, **claims verification board [CVB]. That process does not apply to people who are declared.**

THE COURT: So we can bypass that.

MR. POPE: You bypass that. You go straight to the international justice chief. And first they pick an arbitrator, the church picks one, the two of them pick a third, and those people get together and form the process that is compatible with arbitration under the Committee of Evidence, interviewing -- it's an informal process, but it does result in a final report.

(DE196:88-89 Tr. 2/19/15).

As it turns out, nothing could be further from the truth. At the beginning of the arbitration, the IJC told the Plaintiffs that the only issue to be arbitrated was whether they followed the right procedure for requesting a refund from the Church (Ex. 3 Garcia Aff. at 11, 13-14). The only questions the arbitrators asked Mr. Garcia pertained to why he did not fill out the CVB form (Ex. 3 Garcia Aff. at 12-18). The so-called findings of the arbitrators

refer only to the Plaintiffs' failure to fill out the CVB form (Ex. 1 Arbitration Findings Form; Ex. 2 Arbitration Decision Form).

The Plaintiffs could not have filled out the CVB form because they had been declared suppressive persons (DE188-3:147-48, 151, Dep. Mike Ellis; Ex. 4 Garcia Declare Order). The form has to be filled out on church property and once declared, the Plaintiffs were not permitted to go on Church property (DE188-3:147-48, 151; Ex. 4 Garcia Declare Order at 3). This "Catch 22" makes it impossible for anyone declared suppressive to follow the CVB procedure (*Id.*; Ex. 3 Garcia Aff. at 16 & Attached Ex. D Letter from Cara Golashesky, Flag Land Base Justice Chief, denying Janet Akpobome's request for return of donations 9/17/13). Thus, no refunds, ever.

The Defendants misled this Court. The Court specifically asked whether there was any sense to order arbitration if the Defendants were going to take the position that the failure to fill out that form was dispositive (DE196:88-89 Tr. 2/19/15). The Defendants responded that this Court should order arbitration because the form was inapplicable (*Id.*). Yet, that was the only matter the arbitrators considered (Ex. 3 Garcia Aff. at 11, 12-18). This was a fraud on the Court and should not be countenanced by confirming the arbitration awards.

The arbitrators' evidentiary rulings excluded all evidence critical of the Church and relevant to the Plaintiffs' claims for fraud, deceptive and unfair trade practices, and breach of contract. This deprived the Plaintiffs of a fundamentally fair hearing. *See, e.g., Rosenweig v. Morgan Stanley & Co.*, 494 F.3d 1328, 1333 (11th Cir. 2007); *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997); *Hoteles Condado Beach, La Concha & Conv. Ctr. v. Union De Tronquistas Local 901*, 763 F.2d 34, 40 (1st Cir. 1985). The decisions in *Tempo*

Shain and *Hoteles*, which the Eleventh Circuit cited in *Rosenweig*, demonstrate that the arbitrators' misconduct in excluding evidence requires this Court to vacate the arbitration award.

In *Tempo Shain Corp.*, the arbitration panel refused to continue the proceedings to allow the testimony of a witness temporarily unavailable due to his wife's illness. 120 F.3d at 17-18. The decision reasoned, "although not required to hear all the evidence proffered by a party, an arbitrator 'must give each of the parties to the dispute an adequate opportunity to present its evidence and argument.'" *Id.* at 20 (quoting *Hoteles*, 763 F.2d at 39). There was no reasonable basis for the panel's conclusion that the testimony would be cumulative because the unavailable witness handled the contract negotiations. No other witness could testify to support the fraudulent inducement claims. *Id.*

The same is true here. The misconduct of the arbitration panel in excluding all evidence critical of the Church left the Plaintiffs unable to present any evidence material and relevant to their claims for fraud, deceptive and unfair trade practices and breach of contract. The arbitrators' misconduct prejudiced the Plaintiffs and requires this Court to vacate the arbitration awards.

B. The arbitration awards should be vacated because of the arbitrators' misconduct refusing the Plaintiffs' request to have counsel present, while allowing the Defendants' counsel to be present.

This Court may vacate an arbitration award "where the arbitrators were guilty of **misconduct** . . . or of any other **misbehavior** by which the **rights of any party** have been **prejudiced**." 9 U.S.C. § 10(a)(3). At his deposition, the IJC Mike Ellis testified that while the Plaintiffs' counsel would not be permitted to take an active part in the proceedings, he

would be able to be present to advise the Plaintiffs (DE188-4:194-95 Dep. of Mike Ellis). In this Court's Order denying the Plaintiffs' motion for miscellaneous relief, this Court relied on this testimony: "For example, Ellis has testified that an attorney may be present, but may not 'represent' the Plaintiffs" (DE 265 Order 10/16/17 at 3 n.3).

Shortly before the arbitration, the Church reversed its position, stating:

The arbitration will be conducted in accordance with Church ecclesiastical justice procedures and **those procedures do not contemplate participation by an attorney.**

The arbitrators will be instructed by the International Justice Chief on the application of Scientology principles to arbitrate this dispute in a neutral and fair manner.

(Ex. 5 at 2, E-mail to the Plaintiffs' counsel from Bob Potter, sent on behalf of F. Wallace Pope, 10/10/17). A week later, defense counsel reiterated that the Plaintiffs' counsel could not participate in the arbitration:

As we have stated repeatedly and as the court has just reiterated, the arbitration is an "ecclesiastical arbitration" and the conduct and procedures of the arbitration are within the control and discretion of the IJC in "accordance with Church ecclesiastical procedures [and] principles." **It is not a matter to be negotiated with between the civil lawyers, who have no role to play at the arbitration.** If Mr. Garcia has a question about the arbitration, he should address it to the IJC at that time.

(Ex. 5 at 4, E-mail to Plaintiffs' counsel from Bob Potter, sent on behalf of F. Wallace Pope, 10/18/17). The Plaintiffs' counsel did not attend the arbitration because he was not allowed (Ex. 3 Garcia Aff. at 10).

Attorney Gary Soter, who represented the IJC during his deposition, was present in the building to advise the Church and the IJC during the arbitration. The Defendants did not

reveal this, but Mr. Garcia, in an attempt to use his phone, found Mr. Gary Soter's iPhone in the building broadcasting as a potential "hot spot" (Ex. 3 Garcia Aff. at 6-7, 10 & Attached Ex. B Screen Shot). When the IJC was confronted with this fact, he admitted that Mr. Soter was there to advise the Church (*Id.* at 10). It was fundamentally unfair to permit the Defendants to have their lawyer present to advise them, but to deny the Plaintiffs a similar right to counsel (*Id.*; Ex. 5 at 2-4, E-mails from the Church's counsel to the Plaintiffs' counsel 10/10/17 & 10/18/17). The IJC refused to allow Mr. Garcia even the presence of an assistant to help him read (Ex. 3 Garcia Aff. at 2-3). Mr. Garcia needs assistance reading due to a medical condition (*Id.* at 3 & Attached Ex. A letter from Mr. Garcia's doctor). This arbitration was a sham. The Church's misconduct prejudiced the Plaintiffs, requiring this Court to vacate the arbitration awards.

C. The arbitration awards should be vacated because the arbitration panel engaged in misconduct by failing to provide written findings.

On February 19, 2015, this Court specifically asked the Defendants what would be provided in the way of findings that this Court could review (DE196:87-89). This Court asked, "Will there be a record of the proceeding if I'm asked to review it" by either party? (DE196:87 Tr. 2/19/15). This Court asked for assurance there would "be some memorialization of whatever the arbitrators decide" and that the Court would "**get something in writing signed by these three arbitrators saying here are the facts, here's our conclusions, and we agree or disagree with the Garcias.**" (*Id.* at 88). Defense counsel assured this Court that "a **report is written up** with a binding decision" (*Id.*). According to defense counsel, "There is a report that comes out of the process." (*Id.*) "[I]t does result in a

final report and decision.” (*Id.* at 89). As late as August 2017, defense counsel assured the Court, “they wind up producing a report.” (DE255:9 Tr. 8/15/17).

Thus, the Court was under the impression there would be formal findings and conclusions for this Court to review and decide whether there was misconduct or inherent prejudice of the arbitrators. In fact, no such findings were rendered. To the contrary, the only documents are checklists prepared on October 23, 2017, the day before the arbitration began, and signed the day the arbitration ended, on October 24, 2017 (Ex. 1 Arbitration Findings Form; Ex. 2 Arbitration Decision Form). While the arbitration was set for October 23, nothing happened that day except for the Defendants’ *ex parte* communications with the arbitrators, which violated this Court’s April 10, 2017, order (Ex. 3 Garcia Aff. at 2-10; DE238:3 Order 4/10/17).

Nothing in the checklists tells the Court anything about the testimony received or how the “findings” were determined. The Plaintiffs have no idea what the Defendants discussed with the arbitrators other than what was revealed in the conversation with the IJC, set forth in Mr. Garcia’s affidavit (Ex. 3 Garcia Aff. at 2-10).

Defense counsel, in response to the Court at the February 19, 2015, hearing, agreed this Court has the right to review the arbitration proceedings when determining whether to vacate the arbitration award (DE196:87-89 Tr. 2/19/15). He agreed that this Court could review a report recapping the facts, evidence and the arbitrators’ conclusions:

THE COURT: Let me ask you a hypothetical. If I agree with you and compel arbitration and it happens, although it’s never happened in the history of this organization, and then one of you is unhappy with the result, where do you turn?

MR. POPE: I believe that **you would have the right of any court that compels arbitration to do a review limited to those areas that courts are limited to and that is partiality, unfairness and partiality and corruption** and that sort of stuff.

THE COURT: Mr. Babbitt is happy to hear that is [sic]. There [sic] going to be a record of it?

MR. POPE: Your Honor, there is the complicating factor of the First Amendment in this. And you've already said where you can't go on the fairness issue.

THE COURT: Well, I've said that, but **if something happens in arbitration and it becomes apparent that one of the arbitrators has been bought off, paid off, I think there might be appropriate judicial scrutiny of that.**

MR. POPE: I would have to agree, I believe.

THE COURT: **Will there be a record of this proceeding** if I'm asked to review it by you on behalf of your client or Mr. Babbitt on behalf of his? What am I going to review?

MR. POPE: Well, as I understand the process, it is less formal than would be required under the Florida Arbitration Code. There are -- **the witnesses are interviewed, the facts are gathered from them over a period of time, documents are looked at.** In this case he's got a claim for fraud. **He comes in, he puts out, he brings whatever witnesses, he testifies himself or gets interviewed** on the subject, **and a report is written up** with a binding decision and that's what would come back to you as the court compelling the arbitration.

THE COURT: So you do contemplate that there would be some memorialization of whatever the arbitrators decide?

....

Am I going to get something in writing signed by these three arbitrators saying here are the facts, here's our conclusions, and we agree or disagree with the Garcias?

MR. POPE: **That was the import of what Mr. Ellis said. There is a report that comes out of the process.**

(DE196:86-88 Tr. 2/19/15). Mr. Pope reiterated, “[I]t **does result in a final report.**” (*Id.* at 89). None of this happened.

The Defendants assured this Court that the CVB form “doesn’t apply to persons who are declared” and would not be dispositive of the arbitration (DE196:88-89 Tr. 2/19/15; DE188-3:147-48, 151 Dep. Mike Ellis). Instead, the CVB provided the arbitrators with a 10-page report that can only be described as highly prejudicial to the Plaintiffs’ case (Ex. 3 Garcia Aff. at 8-9, 15 & Attached Ex. E CVB report). The CVB told the arbitration panel how to rule for the Church: “There is no written evidence supporting the Garcias’ claims that their donations for building campaigns were made as a result of false promises” (Ex. 3 Garcia Aff., Attached Ex. E CVB report at 7; *see id.* at 9). According to the CVB, “Policy is clear that if it is not written it is not true” (*Id.* at 7 & 9). The CVB concluded the Plaintiffs “failed to follow the steps of dispute resolution set forth in the Enrollment Forms and failed to follow the full procedures of the Claims Verification Board [CVB] with respect to their claims for refund or repayment of donations for services, and therefore do not qualify for a refund” (*Id.* at 10). Further, “Building donations and membership donations are not refundable.” (*Id.*).

This Court rejected the Plaintiffs’ request for a court reporter (DE265 Order 10/16/17). The Plaintiffs believe the Court’s decision was influenced, in part, by the Defendants’ representation that the arbitrators would prepare formal findings for this Court to review (*Id.*; DE255:9 Tr. 8/15/17; DE196-86 Tr. 2/19/15). At the August 15, 2017 hearing, the Defendants reiterated that the arbitrators “wind up producing a report” (D255:9 Tr. 8/15/17). The Defendants’ false representations fatally infected the Court’s decision not to

allow a court reporter. As a result, there is no record of the arbitration proceedings. This misconduct, coupled with the lack of findings, warrants this Court vacating the arbitration awards.

D. The arbitration awards must be vacated due to evident partiality of the arbitrators.

This Court may vacate an arbitration award “where there was evident partiality or corruption in the arbitrators.” 9 U.S.C. § 10(a)(2). “This rule is meant to be applied stringently” because courts are “even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts and are not subject to appellate review.” *Univ. Commons-Urbana, Ltd. v. Universal Constructors, Inc.*, 304 F.3d 1331, 1338 (11th Cir. 2002) (quoting *Commonwealth Coatings Corp. v. Cont’l Cas. Co.*, 393 U.S. 145, 149 (1968)).

Evident partiality is shown if “either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists.” *Id.* at 1339. In other words, “‘evident partiality’ within the meaning of 9 U.S.C. § 10 will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration.” *Morelite Constr. Corp. v. New York City Dist. Council Carpenters Benefit Funds*, 748 F.2d 79, 84 (2d Cir. 1984); *see Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d 1197, 1200-02 (11th Cir. 1982) (affirming an order vacating an arbitration award where the arbitrator failed to disclose a substantial dispute with a party that resulted in a bar grievance against the arbitrator). These questions are fact-intensive and require an evidentiary hearing upon a showing of a “mere appearance of bias or partiality.” *Univ. Commons-Urbana*, 304 F.3d at 1340-41 & 1345. Based on Luis

Garcia's affidavit and the evidence cited in this motion, this Court should, at a minimum, order an evidentiary hearing on the Plaintiffs' motion to vacate.

The Court at the hearing on February 19, 2015, observed that if "one of the arbitrators has been bought off, paid off," then any Court would review the findings (DE196:87 Tr. 2/19/15). While we cannot say that the arbitrators were bought off for money, they were certainly bought off by the Church's undue influence. The arbitrators' evident partiality here requires this Court to vacate the arbitration award.

The partiality began at the outset of the arbitration when IJC Mike Ellis told the Plaintiffs that he was "hatting" the arbitration panel, a Scientology term for "training" them outside the Plaintiffs' presence (Ex. 3 Garcia Aff. at 4-5, 12). Outside the Plaintiffs' presence, the IJC gave the arbitration panel numerous documents to review, including church policies, the complaint, and the 10-page report from the Claims Verification Board (CVB) (*Id.* & Attached Ex. E CVB report). Before the arbitration, the Defendants had assured this Court that the CVB form would not be dispositive of the arbitration (DE196:88-89 Tr. 2/19/15; DE188-3:147-48, 151). The CVB report read like an expert opinion of someone who had conducted an extensive investigation into the Plaintiffs and they could not respond (Ex. 3 Garcia Aff. at 8-9, 15 & Attached Ex. E CVB report).

The IJC also gave the arbitration panel two reports from Mr. Garcia's confidential "Priest/penitent Ethics file" (Ex. 3 Garcia Aff. at 8-9). These reports were completely irrelevant to the arbitration and intended only to intimidate and harass the Plaintiffs (*Id.*).

The fact that the IJC had unfettered ex parte contact with the arbitration panel, to "hat" or train them and provide numerous documents, demonstrates the evident partiality of

the arbitrators. As discussed above, Plaintiffs had no opportunity to present evidence or their case to the arbitration panel (Ex. 3 Garcia Aff. at 4-5, 9-10, 13-15 & 17). The Chairman of the arbitration panel, Peter Sokoloff, told the Plaintiffs that, once they were declared Suppressive Persons, they ceased to have any rights as a Scientologist (Ex. 3 Garcia Aff. at 16). He told the Plaintiffs their payments to the Church were charitable donations and, therefore, non-refundable (*Id.*).

At the end of the arbitration, Mr. Garcia protested that the IJC and arbitrators refused to allow the Plaintiffs to present any evidence, witnesses, or their own experiences because the arbitrators did not want to hear about “alleged fraud.” (Ex. 3 Garcia Aff. at 17). Mr. Garcia explained in his affidavit:

Chairman Sokoloff then exploded in a long platitude that lasted almost five minutes. He kept talking on and on without the slightest interruption by Mr. Ellis. Here are some things Mr. Sokoloff said:

“I am the wrong guy to talk to about that. You don’t know anything about me. **I am a big proponent of the Ideal Org program** and when you showed us that **flyer I know what it says is true. I know the numbers! I know the Truth!** We are making a better planet! For some stroke of luck the judge chose me out of a list of 500 people. And I know what is happening here: **there are a lot of SPs [Suppressive Persons] out there trying to destroy our church** and one of those SPs has fed you all these lies. **One of your compadres, Ned McCrink, sent me a bunch of sh*t. I checked it out and it was sh*t! It was sh*t!** [I distinctly recall he said that word three times. I had no idea what he was referring to, and “Compadres” means friend in Spanish]. So don’t you go telling me that I don’t know what is going on because I do know! You have been sold a bill of goods! **What you should do is recant and atone, come back to the church and support it like before!”**

(Ex. 3 Garcia Aff. at 17-18). Chairman Sokoloff’s statements demonstrate his evident

partiality.

In their Amended Complaint, the Plaintiffs allege the Defendants used high-pressure, illegal sales tactics to fraudulently solicit large contributions from the Plaintiffs (DE114). The Plaintiffs brought several claims, including fraud, violations of the Deceptive and Unfair Trade Practices Act, and breach of contract (*Id.*). Before the arbitration began, Chairman Sokoloff stated he was “**a big supporter of the Ideal Org program**” (Ex. 3 Garcia Aff. at 12). Chairman Sokoloff’s statements demonstrate his evident partiality.

The Defendants were not satisfied that they had three arbitrators who were inherently prejudiced and at risk of their own immortal souls, livelihoods, friends and family by deciding this case (DE188-4:199 Dep. Mike Ellis). They needed to completely humiliate the Plaintiffs and prevent them from having any semblance of a fair hearing. The statements the arbitrators themselves made during the proceeding show the arbitrators had no ability to be fair and impartial and were unquestionably prejudiced against the Plaintiffs before the arbitration ever started. The Defendants’ conduct eliminated any semblance of a fair arbitration. The Defendants made sure that even devout Scientologists, who were inherently incapable of giving the Plaintiffs a fair hearing, were made even more prejudiced against the Plaintiffs. The arbitration was a mockery that no judge should countenance. This Court should vacate the arbitration award.

E. This Court should order a trial on the merits because the arbitration was procedurally and substantively unconscionable.

This Court should order a trial on the Plaintiffs’ claims instead of ordering arbitration before a new panel. Plaintiffs opposed the Church’s motion to compel arbitration as both procedurally and substantively unconscionable (DE30 Pls. Resp. Opposing Arbitration;

DE170 Pls. Trial Brief; DE191 Pls. Mot. for Reconsideration). The Plaintiffs argued that an arbitration before three Scientologists in “good standing” could never be a fair proceeding because the Church had declared the Plaintiffs to be “Suppressive” persons (Ex. 4 Garcia Declare Order; DE30; DE170; DE191).

The events during the arbitration proved the Plaintiffs correct. The arbitration was both procedurally and substantively unconscionable. For the reasons discussed in this motion and the Plaintiffs’ motions opposing arbitration, the arbitration was unconscionable and fundamentally flawed. This Court should grant the Plaintiffs’ motion to vacate the arbitration awards and order a trial on the merits of the claims in the Plaintiffs’ lawsuit.

Theodore Babbitt, counsel for the Plaintiffs, certifies that he has conferred with the Church’s counsel, F. Wallace Pope, and counsel for the parties cannot agree on the resolution of this Motion to Vacate the Arbitration Award.

DATED: This 19th day of January, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that, on January 19, 2018, 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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