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Wilenchik & Bartness

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

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Frank Benton, No. 012055
Hank Lacey, No. 013921

Attorneys for Defendant

**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR MARICOPA COUNTY**

WILMA FREEMAN, personally and as
Personal Representative of the Estate of John
Barrow,

Plaintiff,

v.

THE CHURCH OF SCIENTOLOGY; John and
Jane Does A-D; Corporations 1-9; Partnerships
I-X,

Defendants.

No. CV 97-00750

**DEFENDANT'S MOTION TO
DISMISS, OR IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT AND FOR
SANCTIONS**

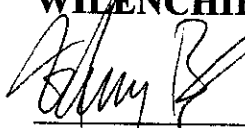
**(Assigned to the Honorable
B. Michael Dann)**

(Oral Argument Requested)

Pursuant to Ariz. R. Civ. P. 12(b)(6), Defendant hereby moves the Court for an order dismissing Plaintiff's Complaint, or in the alternative granting Summary Judgment, on grounds that the Complaint fails to state a claim upon which relief can be granted and because the plaintiff's action against Defendant is barred by an arbitration clause, the First Amendment to the United States Constitution and the analogous freedom of religion clauses in the Arizona Constitution, and the expiration of the statutory limitations period. Defendant also requests that the court sanction Plaintiff and Plaintiff's counsel for filing a frivolous Complaint in violation of Ariz. R. Civ. P. 11. The reasons for this Motion are stated in the attached Memorandum of Points and Authorities.

1 RESPECTFULLY SUBMITTED this 6th day of March, 1997.

2 **WILENCHIK & BARTNESS, P.C.**

3 
4 _____
5 Frank Benton
6 Hank Lacey
7 2828 North Central Avenue
8 Thirteenth Floor
9 Phoenix, Arizona 85004
10 (602) 274-2828

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **Introduction**

13 Plaintiff's Complaint is fatally infected with numerous flaws that require dismissal or,
14 alternatively, summary judgment. To the extent it alleges any claim at all, her claim for breach of
15 contract is barred by an arbitration clause enforceable under Arizona law. Plaintiff's claim that the
16 Church failed to live up to its duty of good faith and fair dealing also does not state facts sufficient
17 to constitute a cause of action and in any event is barred by the relevant Statute of Limitations.
18 Moreover, the "damages" that Plaintiff alleges resulted from the Church's "breach" of its duty of
19 good faith and fair dealing cannot in fact be proven to be caused by any behavior of the Church.
20 Plaintiff's claims that the Church negligently inflicted emotional distress on Mr. Barrow and
21 Plaintiff also cannot stand. Mr. Barrow's claim, if he had any at all, did not survive his death and
22 Plaintiff's claim is fatally flawed because she does not allege that she has suffered any physical
23 manifestation of injury related to the alleged emotional trauma.

24 The most serious defect in Plaintiff's Complaint, however, is the affront to religious
25 freedom, and the Constitutional guarantees of that right, that it embodies. Numerous courts all
26 over the United States have confirmed that the Church of Scientology is a religion protected by the
27 Free Expression clause of the First Amendment to the United States Constitution. The First
28 Amendment, and the religious freedom clause in the Arizona Constitution, therefore forbid this
29 court from deciding whether the spiritual services the Church provided Mr. Barrow were
30 beneficial, risky, dangerous, or otherwise false or fraudulent and preclude any order requiring the
31 Church to refund Mr. Barrow's voluntary contributions.

32 These problems indicate that Plaintiff's Complaint is obviously defective on its face. No
33 lawyer could reasonably believe that the law or the facts alleged by Plaintiff could support a

Wilenchik & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

Wilenchik & Barness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 verdict in Plaintiff's favor. Accordingly, the Complaint violates Ariz. R. Civ. P. 11 and the Court
2 should impose sanctions on Plaintiff and her counsel.

3 **Argument**

4 **I. Plaintiff's Breach of Contract Claim Must Be Dismissed**

5 A. Plaintiff's claim for breach of contract is barred by an arbitration clause.

6 Plaintiff's contract with the Church included an arbitration clause. The clause provides:

7 I agree that any claim, dispute or controversy I may have with the Church
8 arising out of or relating to any Scientology or Dianetics services or
9 activities shall first be submitted in writing to the International Justice Chief
10 ("IJC"), who shall decide the matter in accordance with the religious
11 doctrines of the Church including Scientology justice procedures. I
12 understand that in the event I am unhappy with the decision of the IJC that I
13 may have recourse to other ecclesiastical justice procedures described in the
14 policy of the Church. *In no event shall such claim or controversy be*
15 *submitted to a court for judicial determination as the parties understand*
16 *such matters are religious in nature.*

17 (emphasis in original).

18 This arbitration clause is enforceable under Arizona law. A.R.S. § 12-1501 ("[a] written
19 agreement to submit any existing controversy to arbitration or a provision in a written contract to
20 submit to arbitration any controversy thereafter arising between the parties is valid, enforceable
21 and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any
22 contract."). Our courts accordingly liberally construe arbitration clauses and resolve doubts about
23 whether matters are subject to arbitration in favor of arbitration. *U.S. Insulation, Inc. v. Hilro*, 146
24 Ariz. 250, 258, 705 P2d 490, 498 (App. 1985).

25 To successfully avoid arbitration, Plaintiff must allege and prove that there "exists grounds
26 in law or in equity for the revocation" of the arbitration clause. *Id.* at 254, 705 P2d at 494.
27 Plaintiff can avoid the arbitration requirement only if she alleges and proves that the arbitration
clause - not the contract itself - is void for lack of mutual consent, consideration, or capacity, or
that it is voidable for fraud, duress, lack of capacity, mistake, or violation of a public purpose. *Id.*
(citing, among other cases, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 105 SCt
3346 (1985)). See also *New Pueblo Contractors, Inc. v. State*, 144 Ariz. 113, 123, 696 P2d 203,
213 (App. 1984) (arbitration clause to be enforced absent fraud, bad faith, or mistake), *vacated on*

1 other grounds, 144 Ariz. 95, 696 P2d 185 (1985). Plaintiff has made no such allegation here.¹
2 Accordingly, the court should compel arbitration of Plaintiff's dispute with the Church as required
3 by Mr. Barrow's contract and dismiss this action. See A.R.S. § 12-1502(A).²

4 B. The First Amendment bars adjudication of Plaintiff's breach of contract claim.

5 Plaintiff asks this court to find, in effect, that the Church of Scientology's doctrines are
6 false and fraudulent and that the Church's voluntary and peaceful religious practices are dangerous
7 or have bad effects. The court cannot entertain Plaintiff's request. The First Amendment to the
8 United States Constitution forbids judicial inquiry into such questions, as well as into the question
9 whether the Church provided adequate or useful spiritual services pursuant to Mr. Barrow's
10 contract.³

11 1. The Church of Scientology is a religion protected by the First Amendment.

12 There can be no doubt that Scientology is a religion protected by the free expression clause
13 of the First Amendment.⁴ Moreover, the court, not a jury, must decide whether Scientology is a
14 religion, and it is appropriate that the court take judicial notice of its status as such. Even if the
15 court does not take judicial notice of Scientology's status as a religion, the Church's beliefs and
16 practices uncontrovertibly establish that it is entitled to the protection of the free exercise clause.

17 [A]. The court should take judicial notice of Scientology's status as a
18 religion.

19 During the past twenty-five to thirty years, numerous courts have recognized that
20 Scientology is a religion. Indeed, the question can fairly be called settled. Courts may reasonably
21

22
23 ¹ Arizona law also allows a party to a contract to avoid enforcement of an arbitration clause if one or both of the
24 parties effectively repudiate it. *U.S. Insulation*, 146 Ariz. at 254, 705 P2d at 494 (citing *Bolo Corp. v. Homes & Son*
25 *Const. Co.*, 105 Ariz. 343, 464 P2d 788 (1970). Plaintiff has not alleged that the Church has waived its right to enforce
26 the arbitration clause in Mr. Barrow's contract.

27 ² To the extent Plaintiff seeks relief for breach of contract on her *own behalf*, as opposed to her capacity as the
personal representative of John Barrow's estate, she lacks standing to do so in any event. See *Citibank (Arizona) v.*
Miller & Schroeder Financial, Inc., 168 Ariz. 178, 812 P2d 996 (App. 1990) (party has standing to bring action only
if she possesses interest in outcome of litigation).

³ All of Defendant's constitutional arguments should be construed as incorporating Arizona's constitutional guarantee
of freedom of religion and establishment clause. Ariz. Const., Art. 2, § 12 and Art. 20, para. First.

⁴ The First Amendment prohibits laws "respecting an establishment of religion, or prohibiting the free exercise
thereof."

Wilchick & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 require "new" religions to demonstrate their religious nature, but in light of this long line of
2 unbroken authority there is no doubt that Scientology qualifies. Indeed, the Supreme Court
3 recently described the Church of Scientology in religious terms:
4

5 Scientology was founded in the 1950's by L. Ron Hubbard. It is propagated
6 today by a "mother church" in California and by numerous branch churches
7 around the world. The mother church instructs laity, trains and ordains
8 ministers, and creates new congregations. Branch churches, known as
9 "franchises" or "missions," provide Scientology services at the local level,
10 under the supervision of the mother church.

11 Scientology believe that an immortal spiritual being exists in every
12 person. A person becomes aware of this spiritual dimension through a
13 process known as "auditing." Auditing involves a one-on-one encounter
14 between a participant (known as a "preclear") and a Church official (known
15 as an "auditor"). An electronic device, the E-meter, helps the auditor
16 identify the preclear's areas of spiritual difficulty by measuring skin
17 responses during a question and answer session. Although auditing sessions
18 are conducted one-on-one, the content of each session is not individually
19 tailored. The preclear gains spiritual awareness by progressing through
20 sequential levels of auditing, provided in short blocks of time known as
21 "intensives."

22 The Church also offers members doctrinal courses known as
23 "training." Participants in these sessions study the tenets of Scientology and
24 seek to attain the qualifications necessary to serve as auditors. Training
25 sessions, like auditing sessions, are provided in sequential levels.
26 Scientologists are taught that spiritual gains result from participation in such
27 courses.

28 *Hernandez v. C.I.R.*, 490 US 680, 684-85 (1989) (citations and footnotes omitted).⁵ See also, e.g.,
29 *Church of Scientology of California v. C.I.R.*, 823 F2d 1310, 1313 (9th Cir. 1987),) ("Scientology
30 is an international religion. . . ."), *cert. denied*, 486 US 1015 (1988); *Founding Church of*
31 *Scientology v. United States*, 409 F2d 1146, 1160 (DC Cir.) (Scientology is "entitled to the
32 protection of the free exercise clause"), *cert. denied*, 396 US 963 (1969); *Church of Scientology*
33 *Flag Services Org., Inc. v. City of Clearwater*, 2 F3rd 1514, 1520 (11th Cir. 1993) ("No genuine
34 factual issues existed to Scientology's claim of being a bona fide religion"); *Church of Scientology*
35 *v. Siegelman*, 475 F. Supp. 950, 954 (S.D.N.Y. 1979) ("world-wide religious movement");

⁵ "Auditing is also known as 'processing,' 'counseling,' and 'pastoral counseling.'" *Hernandez*, 490 US at 684 n.2.

1 *Christofferson v. Church of Scientology of Portland*, 644 P2d 577, 601 (Or. App. 1982)
2 (“Scientology is a religion and [its] Mission is a religious organization. . . .”), *cert. denied*, 459 US
3 1206 (1983).

4 Even if the numerous authorities recognizing Scientology as a religion are not enough to
5 convince the court to take judicial notice of that status, the general rule prohibiting adjudication of
6 an organization’s religious nature should be. “The Supreme Court has been especially sensitive to
7 an entanglement which requires the state to distinguish between and thus determine what is
8 religious and what is secular.” *Surinach v. Pesquera de Busqueta*, 604 F2d 73, 78 (1st Cir. 1979)
9 (citing *Lemon v. Kurtzman*, 403 US 602 (1971)). See also *United States v. Ballard*, 322 US 78
10 (1944). This court can easily avoid crossing that line by taking judicial notice that Scientology is a
11 religion.⁶

12 [B]. Scientology’s beliefs and practices are so clearly religious that summary
13 judgment on this question of law is appropriate.

14 Even if the court declines to take judicial notice, it must conclude at this stage of the
15 litigation that Scientology is a religion.⁷ The court must make this decision now, instead of
16 allowing a jury to consider that question, because otherwise the issue of an organization’s
17 Constitutional rights would be subject to conflicting resolution in each case and depend on the
18 predilections and perceptions of jurors. See Weiss, *Privilege, Posture, and Protection: “Religion”*
19 *in the Law*, 73 Yale L.J. 593, 607 (1964) (if “we allow juries to categorize what representations are

20
21 ⁶ A failure to take judicial notice of Scientology’s status as a religion would also amount to preferential treatment of
22 more traditional religions. Courts routinely recognize Christianity and Judaism, as well as newer faiths such as the
23 Christian Scientists, Jehovah’s Witnesses, and Unification Church, as religions protected by the First Amendment.
24 Failure to treat the Church of Scientology similarly would violate the “clearest command of the Establishment Clause .
25 . . . that one religious denomination cannot be artificially preferred over another.” *Larson v. Valente*, 456 US 228, 244
26 (1982).

27 ⁷ Whether Scientology is a religion is a question of law, not a question of fact for the jury’s determination. See *Malnak*
v. Yogi, 440 F. Supp. 1284, 1326-27 & n.30 (D.N.J. 1977), *aff’d*, 592 F2d 197 (3rd Cir. 1979); *United States v.*
Silberman, 464 F. Supp. 866, 871 (M.D. Fla. 1979). This rule should not come as a surprise: the Supreme Court has
repeatedly emphasized that courts must first independently examine a factual record before determining whether or
not the First Amendment’s protection of the freedom of speech applies in a particular case. The Court’s admonition in
this regard is designed to prevent judgments that constitute forbidden intrusions on free expression. See, e.g., *Bose*
Corp. v. Consumers Union of United States, Inc., 466 US 485 (1984) (whether a libel defendant acted with “actual
malice” is question of law); *Connick v. Myers*, 461 US 138, 148 n.7 (1983) (“inquiry into protected status of speech is
one of law, not fact”). The *Malnak v. Yogi* case recognized that this rationale applies equally to the question whether
an organization’s beliefs constitute a religion. 440 F. Supp. at 1326 n.30.

Wilenski & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

Wilenchik & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 really not part of the religion, but were claimed to be facts, then we give license to prosecutions
2 against religious freedom”).

3
4 Scientology fits well within the modern definition of a “religion.” The protection of the
5 First Amendment’s religion clauses are not limited to “belief in some particular kind of religious
6 concept” or to “those religions based on a belief in the existence of God as against those religions
7 founded on different beliefs.” *Torcaso v. Watkins*, 367 US 488, 494-95 (1961). Instead, the
8 Supreme Court has mandated an objective, functional definition of “religion.” The keystone of
9 that definition is objective: “namely, does the claimed belief occupy the same place in the life of
10 [its possessor] as an orthodox belief in God holds in the life” of a traditional believer. *United States*
11 *v. Seeger*, 380 US 163, 184 (1965). *See also Welsh v. United States*, 398 US 333, 339 (1970)
12 (fundamental question is whether beliefs play “the role of a religion and function as a religion in
13 the [believer’s] life”).⁸ The federal courts of appeals have refined this mandate into a three-part
14 test: (i) whether the ideas or beliefs address issues of fundamental or ultimate concern; (ii) whether
15 the ideas are combined into a “comprehensive belief-system;” and (iii) whether there are any
16 formal, external, or surface signs which may be analogized to more commonly accepted religions.
17 *Malnak*, 592 F2d at 207-09 (Adams, J., concurring). *See also Africa v. Pennsylvania*, 662 F2d
18 1025, 1032-36 (3rd Cir. 1981) (adopting Judge Adams’ analysis), *cert. denied*, 456 US 908 (1982);
19 *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F2d 430, 438-41 (2d Cir.
20 1981) (applying similar functional approach to determine religious status of Hare Krishna
21 movement); *Brown v. Dade Christian Schools, Inc.*, 556 F2d 310 (5th Cir. 1977), *cert. denied*, 434
22 US 1063 (1978).

23
24 Under that test there is no question that Scientology is a religion. A Scientologist
25 recognizes the writings and recorded lectures of the Church’s founder, L. Ron Hubbard, as the
26 scripture of the religion. As such, these writings and lectures provide a Scientologist fundamental
27

⁸ Thus the test does not turn on whether an individual or organization claims its beliefs are religious in nature. For example, in *Walsh*, the defendant denied that his conscientious objection to war was based on religious beliefs, but the Supreme Court held that denial of c.o. status on that basis would “place[] undue emphasis on the registrant’s interpretation of his own beliefs.” Furthermore, the Court remarked that, because individuals are generally unaware “of the broad scope of the word ‘religious,’ . . . a registrant’s statement that his beliefs are nonreligious is a highly unreliable guide.” 398 US at 341. *See also Malnak v. Yogi*, 440 F. Supp. at 1318 (holding that Transcendental Meditation is religious, despite assertion of organization, its leadership, and its adherents that TM is a secular practice; court noted that it would not accept a subjective characterization that beliefs or practices are not religious because to do so would inject “a variable into the first amendment test which would preclude a fair and uniform standard”).

1 means for achieving an understanding of his existence, increased ability, increased spiritual
2 freedom, and immortality. At bottom, Scientologists believe that man is an immortal spirit with a
3 continuity of existence beyond the lifetime of a single body. Although an individual has a mind
4 and a body, these do not comprise the being himself. The being is spiritual. Scientologists use the
5 term "thetan" to denominate this spiritual being.

6 Scientologists believe that the dynamic principle of existence is to survive and that man's
7 life and activities may be subdivided into eight parts called the Eight Dynamics. Each dynamic is
8 an urge or motivation toward survival in a particular aspect of life. The eight dynamics
9 correspond to urges to existence as or of the following areas of life: (1) self; (2) sex and the family
10 unit, including the rearing of children; (3) one's group[s]; (4) all mankind; (5) all living things; (6)
11 the physical universe; (7) the spiritual universe; and (8) infinity or the Supreme Being. The Eight
12 Dynamics therefore span the breadth of man's concerns, from the most immediate and tangible
13 areas of life to those which are often considered to be intangible spiritual matters of ultimate
14 concern.

15 One of the fundamental principles of Scientology theology is that every thetan has
16 "engrams" stored in his "reactive mind," which works on a totally stimulus-response, non-
17 volitional, non-analytical basis. Engrams are mental image pictures, recordings of a time of
18 physical pain and unconsciousness, which interfere with a thetan's physical, mental, and spiritual
19 abilities. Engrams may cut across any one dynamic or any combination of dynamics and thereby
20 reduce the individual's ability to survive in the affected area or areas of life.

21 The principal religious practice in Scientology is "auditing," which consists of gradient
22 structured religious counseling addressed to the thetan. The purpose of auditing is to unburden the
23 thetan of engrams and other forms of difficulty and spiritual travail, which in turn will increase the
24 individual's abilities, spiritual awareness, and understanding of life. In this way, the individual
25 comes to achieve certainty of himself as a spiritual being, to realize the truth of his own
26 immortality, and to gain freedom from the unwanted barriers and burdens preventing him from
27 fully utilizing his natural abilities. Thus, the individual is restored to his ability to gain happiness
and to successfully manage his life. To aid in accomplishing this, Scientology auditors use during
auditing a religious artifact called an E-meter. The E-meter is an aid to the auditor in two-way
communication, locating areas of spiritual travail and indicating areas of spiritual well-being.

Wilenshik & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTEENTH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 Auditing addresses the individual on the first dynamic (self) and increases awareness and
2 abilities on each of the Eight Dynamics. As a thetan becomes more and more aware and more
3 able, he is capable of finding and achieving solutions to life's problems and dilemmas that are
4 more pro-survival. Scientologists believe that when enough people are audited to the state of
5 "Clear" (a level wherein a thetan can, at cause, be knowingly and willingly in power over mental
6 matter, energy, space, and time and is freed - or "cleared" - from the bonds of his reactive mind,
7 which have inhibited and diminished his ability to survive), the Scientology goal of "a civilization
8 without insanity, without criminals, and without war, where the able can prosper and honest beings
9 can have rights, and where man is free to rise to greater heights," will be achieved. Therefore,
10 Scientologists adhere to a goal of "clearing the planet," which will be accomplished when all
11 people have attained the state of "Clear."

12 Scientologists believe that serious obstacles to this ultimate goal exist. They include
13 widespread lack of education, illiteracy, and drug use. Scientologists therefore engage in ongoing
14 organized efforts to combat these evils through programs to expand literacy, teach effective
15 methods of study, and handle drug abuse by totally freeing people from drug use and dependency.
16 The Scientology religion also has its own ethics and justice systems, which are set forth in its
17 scriptures. These include moral and ethical codes, specific religious practices, and a body of
18 ecclesiastical law. The purpose of ethics in Scientology is to make it possible for auditing and
19 training to occur, which in turn helps the Church achieve its goal of a "Clear" civilization.
20 Individuals, as well as the Church and its missions, must follow ethical guidelines. Violation of
21 these guidelines may result in church discipline as a condition of continued membership in good
22 standing.

23 Thus, Scientology embodies a comprehensive system of religious beliefs and practices,
24 administered to a community of believers by an ordained clergy. The Church's beliefs and
25 practices, particularly its central religious practice of auditing, are addressed to the soul, and they
26 aim to bring the soul to spiritual enlightenment. Scientology is also a missionary organization.
27 The Church has as its ultimate aim the salvation of all humanity. Accordingly, Scientology plays
"the role of a religion and function[s] as a religion" in the life of a Scientologist in the same
manner that more traditional religions play in the lives of their adherents. *Welsh v. United States*,
398 US 333, 339 (1970).

1 2. *The First Amendment bars adjudication of Plaintiff's breach of contract, breach*
2 *of the duty of good faith and fair dealing, and negligent infliction of emotional*
3 *distress claims.*

4 [A]. Breach of Contract Claim

5 Plaintiff claims that the spiritual services received by Mr. Barrow were at a minimum not
6 beneficial and possibly harmful. But the contract Mr. Barrow signed indicates that his religious
7 commitment and desire to advance the Scientology religion motivated him to enter into the
8 agreement with the Church. For example, paragraph one on the Enrollment Agreement (attached
9 to the Statement of Facts as Exhibit "A") states:

10 I am fully aware that Scientology is the name of a religion, and that any and
11 all gains and benefits claimed by the Church are spiritual and religious in
12 nature, and that the terms "Scientology" and "Dianetics" are used by the
13 affiliated and authorized organizations of the Church of Scientology to
14 identify and distinguish their services and products.

15 The First Amendment absolutely forbids civil courts from inquiring into whether the
16 spiritual services received by Mr. Barrow in return were sufficiently beneficial. That sort of
17 inquiry would immediately cause the court to question the validity, credibility, and truth or falsity
18 of the Church's religious beliefs or practices.⁹ See, e.g., *Stansfield v. Starkey*, No. CA 002-012
19 (Superior Court, Los Angeles County, CA) (minute entry, Sept. 24, 1987) (dismissing as non-
20 justiciable a complaint that would have required the court to determine "whether it was an
21 advantage or a detriment to a plaintiff to be a member of . . . [Scientology] over a considerable
22 period of time") *aff'd*, 220 Cal.App.3d 59, 269 Cal. Rptr. 337 (1990).¹⁰

23 Plaintiff's claim for restitution (refund of monies paid) is similarly flawed. This claim is
24 derivative to the breach of contract claim, and therefore the court lacks jurisdiction to hear it for the
25 same reason. In any event, a former member of a religious organization who made a gift or
26
27

⁹ The risk that judicial inquiry into the value of the benefits received or not received by Plaintiff under its agreement with the Church may result in discriminatory treatment of Scientology is not the only reason why courts are barred from scrutinizing such agreements. "It is not only the conclusions that may be reached . . . which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB v. Catholic Bishop of Chicago*, 440 US 490, 502 (1979).

¹⁰ Plaintiff's breach of contract claim is also constitutionally flawed because it cannot be decided by application of neutral principles of law. See *Jones v. Wolf*, 443 US 595, 602 (1979). The court would have to interpret ecclesiastical law, including those principles touching on whether Plaintiff's decedent received services that were sufficiently "spiritual" or "beneficial." Thus, the court lacks jurisdiction to hear the claim. *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F2d 1354, 1359 (DC Cir. 1990).

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COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
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PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 contribution on the basis of beliefs that he (or his surviving relative) no longer hold cannot
2 challenge the validity of his decision to contribute without also challenging the validity of his
3 decision to adopt his former religious beliefs. See *Founding Church of Scientology v. United*
4 *States*, 409 F2d 1146, 1156 n.32 (DC Cir.) (“[U]nder *Ballard* it seems unlikely that a disgruntled
5 former adherent could sue a church for fraud or deceit because it had collected money from him on
6 the basis of allegedly ‘false’ doctrines concerning salvation, heaven, and hell - or for that matter on
7 the basis of doctrines, such as those of Christian Scientists, concerning the cause and cure of
8 disease”), *cert. denied*, 396 US 963 (1969); *Anderson v. Worldwide Church*, 661 F. Supp. 1400,
9 1401 (D. Minn. 1987); *In re Estate of Supple*, 247 Cal.App.2d 410, 414-15, 55 Cal. Rptr. 542, 545
(1966), *cert. denied*, 389 US 820 (1967). As Professor Tribe has explained:

10 Once it is conceded that first amendment values are unacceptably
11 compromised when civil courts undertake to settle religious issues, it
12 becomes clear that allowing a legal determination about property or some
13 other secular matter to turn on a court’s answer to a religious question
14 represents a path fraught with peril: the path is one along which unsatisfied
15 former believers could drag the civil courts into the theological thicket by
16 the simple expedient of suing for a refund of their prior donations to a
17 religious organization. . . . It is not hard to imagine what would occur if each
18 potential dissenter were told: contributing to a religious organization - your
19 own or indeed that of a group you reject - will give you a judicial platform
20 from which to air your religious differences with others and potentially win
21 a favorable verdict; all you need do in order to overcome the normal bar to
22 civil adjudication of ecclesiastical matters is sue for a refund!. . . [S]uch an
23 invitation [would amount to] open season on churches and their followers.

24 Laurence Tribe, *American Constitutional Law* 1235 (2d ed. 1988).

25 [B]. Breach of Duty of Good Faith and Fair Dealing and Negligent Infliction
26 of Emotional Distress

27 Plaintiff’s claims for breach of the duty of good faith and fair dealing and negligent
infliction of emotional distress is also barred by the First Amendment. Mrs. Freeman asks the
court to impose damages on the Church because she disagrees with the teachings of the Church
and assumes - without alleging any facts that might support a conclusion that such harms were
caused by Church practices - that her husband, and consequently herself, was injured by them.
Aside from the question whether Plaintiff is entitled to recover for alleged emotional harms
suffered by her late husband, and even assuming the Church somehow caused Mr. Barrow to suffer

Wilanchik & Bartness
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
2828 N. CENTRAL AVENUE
THIRTIETH FLOOR
PHOENIX, ARIZONA 85004
TELEPHONE (602) 274-2828

1 some injury,¹¹ the freedom of religion clause prohibits recovery on such a claim under these
2 circumstances. "Offense to someone's sensibilities resulting from religious conduct is simply not
3 actionable in tort. Without society's tolerance of offenses to sensibility, the protection of religious
4 differences mandated by the [F]irst [A]mendment would be meaningless." *Paul v. Watchtower*
5 *Bible & Tract Society of New York, Inc.*, 819 F2d 875, 883 (9th Cir.), *cert. denied*, 484 US 926
6 (1987).

7 Courts have applied this principle often in cases where disgruntled former believers have
8 sought tort damages against religious organizations. Thus, for example, in *Paul* the plaintiff
9 alleged that the church's practice of shunning former believers caused her emotional distress. The
10 Ninth Circuit held that her claim was barred by the First Amendment. Similarly, in *Van Schaick*
11 *v. Church of Scientology of California*, 535 F. Supp. 1125, 1139 (D. Mass. 1982), the court held
12 that the freedom of religion clause prevented it from deciding whether plaintiff's emotional distress
13 claim arising from an alleged Church effort to sever plaintiff's emotional ties to her family was
14 valid. In *Meroni v. Holy Spirit Ass'n*, 119 AD2d 200, 506 NYS2d 174 (1986), the court also relied
15 on the First Amendment in rejecting an emotional distress claim based on an allegation that the
16 plaintiff's son was "brainwashed" by a church.

17 This court should do likewise here. Mrs. Freeman does not specify how the Church
18 supposedly "breached" its contract with her late husband or explain how any such alleged act
19 caused her to suffer emotional harm; nor does she describe the emotional harm she suffered. Even
20 if her claim states a claim notwithstanding those flaws in her pleading, these cases stand for the
21 proposition that courts do not allow believers, or their families, to seek civil remedies when they
22 find themselves dissatisfied with Church practices and teaching.

23 **II. The Limitations Period Applicable to Plaintiffs' Tort Claims Has Expired**

24 Even if the court declines to hold that the First Amendment bars adjudication of Plaintiff's
25 tort claims, dismissal of those claims is appropriate because the relevant limitations period has
26 expired. Plaintiff's decedent, John Barrow, died on February 2, 1993. Accordingly, any claim that
27 Defendant breached a duty of good faith and fair dealing owed to *him* had to accrue no later than

¹¹ The Church obviously does not concede that any of its teachings or practices caused harm to Mr. Barrow. Indeed, Plaintiff offers no supporting facts to support her allegations that Mr. Barrow's health problems, violent temper tantrums, decision to divorce his wife, psychological condition, inadequate job performance, or failure of the MMPI test were caused by the Church.

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1, the day on which Mr. Barrow died.¹² But Arizona's general tort statute of limitations is two years.
2 See ARS § 12-242. Therefore Mrs. Freeman's claims that the Church breached its duty of good
3 faith and fair dealing and negligently caused her and Mr. Barrow emotional distress are barred, as
4 Plaintiff did not file her Complaint until January 14, 1997. The Court must therefore dismiss
5 Counts II and III of the Complaint on these grounds alone.

6 **III. Plaintiff's Negligent Infliction of Emotional Distress Claim Fails to State a Claim**
7 **Because Mrs. Freeman Does Not Allege That She Suffered a Physical Manifestation of**
8 **such Distress**

9 Arizona law clearly provides that a "bystander" alleging negligent infliction of emotional
10 distress caused by a third party's behavior toward a loved one does not state a claim where she fails
11 to allege that the emotional distress manifested itself in some physical way. *Keck v. Jackson*, 122
12 Ariz. 114, 593 P2d 668 (1979); *Quinn v. Turner*, 155 Ariz. 225, 745 P2d 972 (App. 1987). See also
13 *Restatement (Second) of Torts* § 313(2) & comment d. Plaintiff's Complaint contains no allegation
14 that she suffered any physical indication of the emotional distress she allegedly suffered. In fact,
15 Plaintiff does not even allege that she actually witnessed any act that allegedly caused Mr. Barrow
16 emotional harm. Accordingly, Count III must be dismissed on this ground regardless of whether
17 the court agrees that the First Amendment bars adjudication of that claim.¹³

18 **IV. Plaintiff and her Counsel Should Be Sanctioned for Filing this Complaint**

19 Rule 11 of the Arizona Rules of Civil Procedure provides that, by signing a pleading, an
20 attorney certifies that, among other things, the pleading is "well-grounded in fact and is warranted
21 by existing law or good faith argument for the extension, modification, or reversal of existing law."
22 This Complaint cannot be considered to be warranted by existing law. Every court that has
23 addressed the question has held that the First Amendment bars the claims Plaintiff alleges here.
24 Moreover, Arizona law clearly demonstrates that the limitations period on Plaintiff's tort claims
25 has expired and that Count III does not meet the basic requirements for stating a claim of that

26 ¹² Of course Mrs. Barrow, as an individual, does not have standing to pursue a claim that Defendant breached a
27 contractual duty owed her late husband.

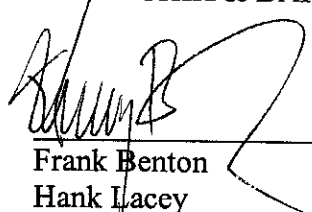
¹³ To the extent Plaintiff alleges that the Church engaged in conduct that caused her to lose the consortium of her late
husband, that claim must also be dismissed for the same reason. As explained in *Barnes v. Outlaw*, No. 2CA-CV 96-

1 nature. Defendant's counsel was able to locate the correct statute of limitations and pleading
2 requirements for a negligent infliction of emotional distress claim in less than five minutes. The
3 Complaint is not supported by a sound basis in law or fact and therefore sanctions are appropriate
4 and mandatory. See *Boone v. Superior Court*, 145 Ariz. 235, 700 P2d 1335 (1985); *Wells Fargo*
5 *Credit Corp. v. Smith*, 166 Ariz. 489, 803 P2d 900 (App. 1990). The court should accordingly
6 require, at the very least, that Plaintiff and Mr. Butler pay Defendant's attorney fees.
7

8 **V. Conclusion**

9 For all of these reasons Plaintiff's Complaint must be dismissed, or in the alternative
10 Defendant must be granted summary judgment on all counts. Sanctions for a violation of Ariz. R.
11 Civ. P. 11 should also be imposed.

12 RESPECTFULLY SUBMITTED this 6th day of March, 1997.

13
14 WILENCHIK & BARTNESS, P.C.
15 
16 _____
17 Frank Benton
18 Hank Lacey
19 2828 North Central Avenue, 13th Floor
20 Phoenix, Arizona 85004
21 (602) 274-2828

22 ORIGINAL filed this 6th
23 day of March, 1997, with:
24 Clerk of the Court
25 Maricopa County Superior Court
26 101/201 W. Jefferson
27 Phoenix, Arizona 85003-2205

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PHOENIX, ARIZONA 85004
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0045, 1996 WL 493133 (Ariz. App., Aug. 29, 1996), Arizona law does not permit a wife to recover for loss of consortium on the basis of her spouse's emotional distress. *Id.* at *6.