

TUCHMAN & ASSOCIATES

AVIV L. TUCHMAN, ESQ. (SB#133321)
MICHAEL C. DICECCA, ESQ. (SB#259367)
6080 West Pico Boulevard
Los Angeles, CA 90035
Tel.: (323) 653-7100
Fax: (323) 653-7400

Attorneys for Defendants Nithyananda
Foundation; Life Bliss Foundation; Gopal
Reddy Sheelum; Siva Vallabhaneni; Ragini
Vallabhaneni; and International Governing
Body Commission of Nithyananda
Dhyanapectam and Nithyananda Mission

LEWIS BRISBOIS BISGAARD & SMITH LLP

JEFFREY S. RANEN, ESQ. (SB#224285)
MEGHAN E. McCORD, ESQ. (SB#242281)
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
Tel: (213) 250-1800
Fax: (213) 250-7900

Attorneys for Defendants Nithyananda Foundation;
Life Bliss Foundation; Gopal Reddy Sheelum; Siva
Vallabhaneni; and Ragini Vallabhaneni

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

APR 08 2013

KAUFMAN DOLOWICH VOLUCK & GONZO LLP

FRANCES O'MEARA, ESQ. (SB#140600)
SANJAY BANSAL, ESQ. (SB#251563)
11755 Wilshire Boulevard, Suite 2400
Los Angeles, California 90025
Tel: (310) 775-6511
Fax: (310) 375-9720

Attorneys for Defendants Nithyananda Foundation; Life Bliss Foundation; Gopal Reddy Sheelum;
Siva Vallabhaneni; and Ragini Vallabhaneni

BY Sugey Quintero
SUGEY QUINTERO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF SAN BERNARDINO

VINAY BHARADWAJ,

Plaintiff,

v.

SRI SWAMI NITHYANANDA, an
individual, and agent and employee of
Nithyananda Foundation, Life Bliss
Foundation, International Governing Body
Commission Of Nithyananda Dhyanapectam
And Nithyananda Mission, Dhyanapecta
Charitable Trust, and Dhyanapectam Hindu
Temple & Cultural Center, et al.

Defendants.

) CASE NO.: CIVRS1013793

)
) Assigned For All Purposes To:
) Hon. Judge Keith D. Davis, Department R12

) **[PROPOSED] ORDER GRANTING**
) **MOTION FOR ATTORNEY'S FEES**

)
) Date : April 4, 2013
) Time : 8:30 a.m.
) Department: R12

1 Defendants' Motion for Attorney's Fees filed by Defendant NITHYANANDA
2 FOUNDATION and LIFE BLISS FOUNDATION (collectively, "Defendants") against Plaintiff
3 VINAY BHARADWAJ came for hearing in Department R12 of this Court on April 4, 2013.
4 Attorneys Aviv L. Tuchman and Amelia Sanchez-Moran appeared on behalf of Defendants.
5 Attorneys Mark Alvarado and Michael Scott Kendall appeared telephonically on behalf of
6 Plaintiff. Mr. Alvarado is not licensed to practice law in the state of California. No substitutions of
7 attorneys have been filed by Plaintiff. The Motion was unopposed.

8 Having read the motion, points and authorities and declarations filed by the parties, and
9 having heard argument of counsel, the Court finds that:

- 10 1. On August 10, 2009, Plaintiff Vinay Bharadwaj and Gopal Reddy Sheelum, on behalf
11 of Defendants, entered into a valid, enforceable mutual release agreement, which was
12 even notarized (the "Release Agreement"). The Release Agreement contained a release
13 provision at page 2, paragraph 3, which released any and all claims Plaintiff had as
14 against Defendants. The Release Agreement also contained an attorney's fee provision
15 at page 6, paragraph 12, which provided, in relevant part: "If any party to this
16 Agreement employs attorneys to enforce any rights arising out of or in relation to this
17 Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees."
- 18 2. In November 2010, criminal charges were filed against Mr. Bharadwaj in the State of
19 Washington for three felony counts of child molestation in the second degree.
- 20 3. On January 3, 2011, Mr. Bharadwaj filed his initial verified Complaint alleging both
21 contract and tort claims. Plaintiff's verified Complaint named 13 different defendants,
22 including Nithyananda Foundation and Life Bliss Foundation, and was 23 pages and
23 contained more than 112 allegations. Among other things, the Complaint requested that
24 \$1,000,000 be held in trust for Plaintiff, and sought "an order that all contracts entered
25 into between Plaintiff and Defendants be rescinded."
- 26 4. On June 8, 2011, Plaintiff filed the First Amended Complaint (FAC), which consisted
27 of 65 pages and more than 189 paragraphs of verified allegations, including for the first
28 time allegations of sexual abuse. The FAC named ten different defendants, both entities

1 and individuals. Among other claims, Plaintiff added a cause of action for declaratory
2 relief that the Release Agreement was "null, void, and is of no legal force and effect."
3 The FAC attached the notarized Release Agreement as "Exhibit B."

- 4 5. On September 30, 2011, Plaintiff filed his Second Amended Complaint (SAC). With
5 the exception of the civil conspiracy cause of action, the SAC mirrored the allegations
6 and causes of action of the FAC, including as relating to the Release Agreement which
7 was still attached as "Exhibit B."
- 8 6. On February 14, 2012, Defendants filed an Answer to Verified Second Amended
9 Complaint and asserted as their Tenth Affirmative Defense that Plaintiff's complaint,
10 and each cause of action therein, was barred by the written release in the Release
11 Agreement. Defendants also prayed for their attorney's fees.
- 12 7. On August 14, 2012, Mr. Bharadwaj was convicted of three Felony Counts of Child
13 Molestation in the Second Degree and one Gross Misdemeanor Count of
14 Communication with a Minor for Immoral Purposes. He was immediately taken into
15 custody. On September 21, 2012, he was sentenced to 57 months imprisonment at the
16 Washington Corrections Center and is currently serving his sentence.
- 17 8. On September 11, 2012, Defendants filed a Motion for Terminating Sanctions
18 following nearly a year-and-a-half of discovery abuse by Plaintiff, including frivolous
19 attempts to stay the action pending the outcome of his criminal case which predated the
20 filing of this action, failing to respond to discovery or otherwise providing evasive
21 responses, asserting frivolous objections to discovery including the Fifth and Sixth
22 Amendment privileges, forcing Defendants to file numerous motions to compel,
23 refusing to submit to deposition, and willfully disobeying this Court's discovery orders.
- 24 9. On November 26, 2012, this Court granted Defendants' Motion for Terminating
25 Sanctions and ordered the entire case to be dismissed with prejudice. The notice of
26 entry of order was served on Plaintiff on December 10, 2012. This Motion for
27 Attorney's Fees was timely filed and served on February 8, 2013.

- 1 10. Defendants are the prevailing party in this matter as having successfully defended the
2 action and obtained a simple, unqualified dismissal with prejudice of the entire action.
- 3 11. As the prevailing party, Defendants are entitled to their reasonable attorney's fees
4 pursuant to the attorney's fee provision of the Release Agreement under Civil Code §
5 1717. This was an action "on a contract" within the meaning of Civil Code § 1717. The
6 declaratory relief cause of action sought to invalidate the Release Agreement and
7 therefore was clearly a claim "on a contract." Moreover, the tort causes of action were
8 also "on a contract" as those claims were subject to the release provision of the Release
9 Agreement and Defendants sought to enforce the release as against those claims by
10 asserting the contract as an affirmative defense to all of the claims.
- 11 12. The amount of attorney's fees requested by Defendants is full, fair, and reasonable:
- 12 a. Hourly Rates: No evidence has been presented challenging the moving party's
13 hourly rates, and therefore they are presumed reasonable. Nonetheless, the Court finds
14 that the hourly rates claimed and actually billed by Defendants' counsel are reasonable
15 based upon their individual and collective experience.
- 16 b. Hours Billed: The total numbers of hours claimed is thoroughly documented by
17 detailed contemporaneous time records and is reasonable. The Court has thoroughly
18 reviewed all Defendants' counsel's billings, which were submitted as part of the
19 Motion, and finds that the number of hours spent on this matter is reasonable and
20 commensurate with the nature of the claims and Plaintiff's conduct over the course of
21 this litigation, which necessitated the filing of a number of motions, hearings,
22 appearances, and briefings in this matter.
- 23 13. This Motion was timely filed and served on February 8, 2013 with an initial hearing
24 date of March 21, 2013. Plaintiff was served with the Motion by mail sent to the
25 Washington Corrections Center, the last address on file with this Court as provided by
26 his former attorney Ford Greene. To date, Plaintiff has not filed any notice of change of
27 address. Pursuant to CCP § 1005(b), Defendant's Motion was to have been served by
28 Saturday, February 16, 2013, which was 16 court days plus 10 calendar days for

1 mailing (plus an additional calendar day since the original date fell on a Sunday).
2 Accordingly, service was proper and timely, and Plaintiff was given well-beyond the
3 minimum statutory notice required for the hearing date. Moreover, on February 27,
4 2013, the Court continued the hearing date for the Motion to March 25, 2013, giving
5 Plaintiff even more time to respond and file an opposition. However, no opposition was
6 filed or served by Plaintiff.

7 14. The Motion came for hearing on March 25, 2013. At that hearing, Mr. Bharadwaj
8 appeared by telephone and represented to this Court that he did not receive the Motion
9 until March 9, 2013 because he moved from the Washington Corrections Center to the
10 Stafford Creek Corrections Center. However, on March 22, 2013, Defendants filed a
11 Declaration of Mark Dragoo, the mailroom employee at the Stafford Creek Corrections
12 Center who actually processed the Motion and had it delivered to Mr. Bharadwaj. Mr.
13 Dragoo verified that the Motion was processed on February 15, 2013 and delivered to
14 Mr. Bharadwaj on February 16, 2013. The Court denied Plaintiff's oral request to
15 continue the Motion but, on the Court's own motion, nonetheless continued the hearing
16 to April 4, 2013. Despite the continuance, Plaintiff still failed to file an opposition.

17 15. Based thereon, Plaintiff was timely served and given sufficient notice of this Motion.
18 He has had more than enough time to respond and file an opposition, but failed to do
19 so. Moreover, no reasonable explanation or excuse justifying Plaintiff's delay and
20 failure to file an opposition to the Motion has been provided.

21 **THEREFORE, IT IS SO ORDERED THAT the Motion for Attorney's Fees is GRANTED,**
22 **and Defendants Nithyananda Foundation and Life Bliss Foundation are awarded their reasonable**
23 **attorney's fees as costs against Plaintiff Vinay Bharadwaj in the total amount of \$390,491.50.**

24
25 Date: 4/8/13

26 
27 Hon. Judge Keith D. Davis
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THE DOCUMENT TO WHICH THIS CERTIFICATION IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST CHRISTINA M. VOLKERS

Clerk of the Superior Court of the State of California,
in and for the County of San Bernardino.

By  Deputy

DATE OCT 07 2014