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2 DISTRICT COURT
3 DENVER COUNTY, COLORADO
4 1437 Bannock
5 Denver, Colorado 80204
6 -----

7 Plaintiffs/Appellants:
8 ANANDA MARGA, INC, ET AL,

9 v.

10 Defendants/Appellees:
11 ACHARYA VIMALANANDA AVADHUTA, ET AL.

12 ----- *FOR COURT USE ONLY*
13 CASE NO. 10CV1867
14 For the Plaintiff: COURTROOM 259
15 STEPHEN ERWIN, ESQ.

16 For the Defendant:
17 TIMOTHY ORBITTS, ESQ.

18 -----
19 DIGITAL RECORDING TRANSCRIPT (MAY 16, 2011)
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21 The matter came on for RULING before the HONORABLE
22 MICHAEL MARTINEZ, Judge of the District Court, and the
23 following proceedings were had.

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25 PARTIES WERE PERSONALLY PRESENT

26 *** THE FOLLOWING IS ONLY AN EXCERPT OF THE PROCEEDINGS ***

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MORNING SESSION, MAY 16, 2011

(Whereupon the following proceedings were had:)

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(Proceedings were had and entered of record, but were not transcribed herein per request of counsel.)

* * * * *

THE COURT: Good morning. We are on the record 10CV1867, Ananda Marga, Inc, versus Acharya Vimalananda Avadhuta, et al. The parties and counsel are present.

The matter comes on today, continuation and completion of trial in this matter. The case is postured at the point I would say the midpoint motions, although realistically I have heard, as I understand it, from the representations of counsel and given the broadened scope of inquiry that was provided, I have heard the bulk of the evidence I'm going to hear in this case, depending on the ruling that the Court is about to enter.

All parties involved seek similar relief, albeit from obviously opposite ends of the spectrum. All parties seek injunctive relief under Rule 57 of the Colorado Rules of Civil Procedure -- excuse me, injunctive relief under Rule 65 of the Colorado Rules of Civil Procedure and declarative relief under Rule 57.

The Court has jurisdiction over the parties, plaintiffs have voluntarily submitted themselves to the

1 jurisdiction of the Court as have the defendants,
2 counter-plaintiffs who have initiated a counter claim in
3 this action.

4 The Court has jurisdiction and authority in this
5 matter under Rule 57 to enter a determination and
6 declaration of rights. Rule 57(a) provides that the
7 District Court shall have the power to declare rights,
8 status, and other legal relations, whether or not further
9 relief is or could be claimed.

10 Rule 65 clearly provides the Court's authority and
11 jurisdiction in this matter, and so it is under the guise of
12 those rules that the Court has heard and considered the
13 evidence to this point and now have been asked to consider
14 the defendant's motion for judgment of dismissal on the
15 plaintiff's claims pursuant to Rule 41(b) of the Colorado
16 Rules of Civil Procedure.

17 And likewise, defendant has requested the Court
18 reevaluate or reconsider its prior determination on the
19 motions for summary judgment such that given the state of
20 the evidence in the record, defendant's position is that the
21 record now reflects and supports their claim for summary
22 judgment and the relief that they have requested.

23 So let me start, obviously, with the standard of
24 review under Rule 57, as I noted, the matter that is
25 properly before the Court. Also the standard and burden of

1 proof under Rule 65 is applicable and the plaintiffs will be
2 held to their burden of proof.

3 I'll note that initially that pursuant to Rule
4 41(b), dismissal of the action may be had by the defendant
5 for failure of a plaintiff or prosecutor to comply with
6 these rules or any order of court. The defendant may move
7 for the dismissal of an action or any claim against him.

8 Further, after the plaintiff in an action tried by
9 the Court without a jury has completed the presentation of
10 his evidence, the defendant, without waiving, his right to
11 offer evidence in the event the motion is not granted, may
12 move for a dismissal on the ground that upon the facts and
13 the law the plaintiff has shown no right to relief.

14 The Court, as trier of the facts, may then
15 determine them and render judgment against the plaintiff or
16 may decline to render judgment until the close of all of the
17 evidence. If the Court renders judgment on the merits
18 against the plaintiff, the Court shall make findings
19 provided in Rule 52(a).

20 And finally, unless the Court in its order for
21 dismissal otherwise specifies a dismissal under this section
22 (b), other than a dismissal for the failure to prosecute for
23 lack of jurisdiction operates as an adjudication upon the
24 merits.

25 In ruling upon a motion to dismiss for failure to

1 prove a prima facie case, the proper test is whether the
2 plaintiff has produced some evidence, which when taken most
3 favorably to him, proved a claim upon which relief could be
4 granted. That is Brown versus Central City Opera House
5 Association, 36 Colorado App 334, 542 P.2d 86, a 1975
6 Colorado Court of Appeals case.

7 Given that the parties have submitted themselves
8 to the Court's jurisdiction under Rule 57, a declaratory
9 judgment can only be taken to be a determination as to the
10 rights of the parties before the Court. That is Farmers
11 Elevator Company versus First National Bank, 176 Colorado
12 Reporter 168, 489 P.2d 318, a 1971 Colorado Supreme Court
13 case.

14 The Court finds that the parties are properly
15 within the parameters of Rule 57, they are properly subject
16 to the provisions of the rule, and they are properly before
17 the Court to request the declaratory relief that they have
18 brought.

19 Rule 65 provides for injunctive relief and
20 expressly provides a specific standard that the opposing
21 party must meet to obtain the relief that they request. As
22 noted, both parties seek declaratory and injunctive relief
23 in this matter.

24 In considering their respective positions, the
25 Court is called upon to consider the six prong test well

1 established in the law, Rathke versus MacFarlane, 648 P.2d
2 648, 1982 Colorado Supreme Court case, easiest case site to
3 remember, 648, 648. That case remains the Seminal case on
4 point for injunctive relief and sets forth a six-part
5 standard that the prespective moving party must meet.

6 First, the moving party must demonstrate to the
7 Court and the Court must find that the moving party has
8 established a reasonable probability of success on the
9 merits. A danger of real, immediate, and irreparable
10 injury, which may be prevented only by injunctive relief;
11 that there is no plain, speedy, and adequate remedy et law;
12 that the granting of a preliminary injunction will not
13 disserve the public's interest; that the balance of equities
14 favors the injunction; and that the injunction will preserve
15 the status quo pending a trial on the merits.

16 We are here for the trial on the merits regarding
17 the injunctive relief, those factors remain appropriate
18 factors for the Court to consider in evaluating the state of
19 the evidence and, in particular, the substance of the
20 defendant's Rule 41(b) motion.

21 The Court further has jurisdiction, albeit
22 limited, in terms of the nature of the issues in dispute in
23 this case as governed by the first amendment limitations
24 that have been well established in Colorado law, Bishop and
25 Diocese of Colorado versus Mote, found at 716 P.2d 85, 1986

1 Colorado Supreme Court case; Levitt versus Calvary Temple of
2 Denver, 33 P.3d 1227, Colorado Court of Appeals 2001; and
3 the Seminal case that has been referenced throughout the
4 pleadings and throughout the presentation of this trial,
5 Serbian Eastern Orthodox Diocese for the United States of
6 America and Canada versus Milivojewicz, 426 US 696, 1976 US
7 Supreme Court case.

8 The parties are before the Court for resolution of
9 a dispute that is unique, at least in this Court's
10 experience, to the -- in the nature of the dispute and the
11 parties involved, and I'm appreciative of the change in
12 scenery, if you will, that the parties have presented by
13 bringing this case forward. It is certainly not the typical
14 matter that the Court is called upon to evaluate and
15 consider.

16 And I'll note that specifically that the parties
17 presented a very challenging issue for the Court's
18 evaluation and consideration. The state of the evidence
19 that I have heard to this point has been to some degree in
20 conflict. It has always been respectfully presented,
21 particularly by the witnesses that I have heard from, and it
22 presents an interesting -- interesting dispute, to say the
23 least.

24 The Court -- I have heard and considered the
25 following testimony, from the witnesses under oath, Rubens

1 Teixeira, I think is the pronunciation, T-e-i-x-e-i-r-a,
2 also referred to and known as Acharya Rainjitananda
3 Avadhuta, I believe I said that correctly.

4 I also heard from that Nagaraja Rao, R-a-o, Acarya
5 Yatiishvarananda Avadhuta, Acarya Haratmananda Avadhuta,
6 Tiirthananda Avadhuta, also known as Fernando Kumar, L.
7 Michael Hemmelgarn, and Joni, J-o-n-i Zweig, Z-w-e-i-g.

8 The parties have submitted for the Court's
9 consideration a wealth of documentary evidence supporting --
10 purportedly supporting their respective claims. Much to my
11 chagrin, the parties chose to number their exhibits all in
12 numbers, which I think presented some challenges and
13 hopefully that you all gained the prospective of how
14 challenging that can be to keep track of it as you go
15 through the trial.

16 But none the less in my understanding and my
17 review of the exhibits, many of the plaintiff's exhibits
18 were duplicated by the defense exhibits and vice versa, they
19 were just numbered differently.

20 That being said, the Court reviewed and considered
21 all of the exhibits presented during the course of the trial
22 and been admitted for my consideration to this point, as is
23 proper under Rule 41(b), it is proper for me to consider it
24 and evaluate the weight of the exhibits that have been
25 introduced, the credibility of the witnesses that have

1 testified to this point.

2 Without exclusion I have reviewed and considered
3 and find most helpful the following exhibits: Plaintiff's
4 Exhibit 4, Plaintiff's Exhibit 106 through 112, Plaintiff's
5 Exhibit 101, Plaintiff's Exhibit 15 -- this is also in no
6 particular order -- Plaintiff's Exhibit 98, Plaintiff's
7 Exhibit 83, Plaintiff's Exhibit 113, Plaintiff's Exhibits 43
8 through 47, Plaintiff's Exhibit 121.

9 Defense Exhibits 1 through 68, Defense Exhibit 83,
10 Defense Exhibit 86, Defense Exhibit 93, Defense Exhibit 94,
11 Defense Exhibit 249, Defense Exhibit 197, Defense Exhibit
12 149, Defense Exhibit 192, Defense Exhibit 1, Defense Exhibit
13 105, Defense Exhibit 203, Defense Exhibit 323, Defense
14 Exhibit 333, Defense Exhibit 334, Defense Exhibits 156
15 through 162, Defense Exhibit 102, Defense Exhibit 129,
16 Defense Exhibit 130, Defense Exhibits 72 and 73, Defense
17 Exhibits 175 through 176, Defense Exhibit 155, Defense
18 Exhibits 73 through 86, Defense Exhibits 33 through 37,
19 Defense Exhibit 327, Defense Exhibit 392, Defense Exhibits
20 348 and 349, Defense Exhibit 326, Defense Exhibit 293,
21 Defense Exhibit 121, Defense Exhibit 285, Defense Exhibit
22 310, Defense Exhibit 397, Defense Exhibit 247, Defense
23 Exhibit 178, Defense Exhibit 347.

24 There were also a number of exhibits the Court
25 took judicial notice of most particularly those exhibits

1 relating to the ongoing and varying stages of legal
2 proceedings in India regarding many of these same parties
3 and certainly most of the same issues.

4 So without exclusion I have evaluated all of the
5 exhibits that have been presented and also the exhibits that
6 I specifically referenced in the extent that they provide
7 the Court persuasive and helpful guidance in evaluating this
8 dispute and considering the defendant's motion at this time.

9 There are certain factors, despite what counsel
10 told me before they started the trial, there were certain
11 factors that I find undisputed in the record and in the
12 evidence in this case. Not the least of which are the
13 foundation, the origin, the promulgation of Ananda Marga,
14 how it came to be, how it came to be perpetuated, and how it
15 came to its present state here in the United States, in
16 North America and also in India, and other relevant places
17 around the world.

18 Ananda Marga, which later became known as Ananda
19 Marga Pracaraka Samgha, was founded by the Reverend P.R.
20 Sarkar, who has been throughout referred to as Reverend
21 Baba, beginning in 1955 at which time Reverend Baba
22 registered the religious society of Ananda Marga Pracaraka
23 Samgha, AMPS for short, in Bihar, India, and later when
24 legal structure became available in India, recorded it under
25 the Societies Act of West Bengal, India in 1964. Its stated

1 purpose was to propagate Ananda Marga.

2 The evidence undisputed that I have heard in the
3 record is that Ananda Marga means the path of bliss, and
4 that Reverend Baba's teachings, aspirations, and goals were
5 to promulgate a society that would perpetuate and propagate
6 the path of bliss.

7 Virtually every witness that I have heard and
8 considered has agreed to varying degrees and extent as to
9 those facts, the nature of Ananda Marga, the historical
10 beginnings of Ananda Marga.

11 Ananda Marga has a recognized creed in the form of
12 worship. From every evidence that I have heard, Reverend
13 Baba was very thorough, very detailed in his vision, and was
14 also very prolific in his writings, that is probably an
15 understatement. Nonetheless, there were certain writings,
16 doctrines, codes, and practices of Ananda Marga that stand
17 out and have been corroborated by the testimony in the
18 record as well as the exhibits.

19 Ananda Marga, the path of bliss, Caryacarya parts
20 one, two, and three, Ananda Sutram, and Ananda Marga
21 elementary philosophy. Reverend Baba, on the evidence
22 before me, has established that he was quite a visionary in
23 his desire, in his goal to promote, to establish the path of
24 bliss and to promote the path of bliss for all adherents,
25 open to everyone, to whomever may wish to avail themselves

1 of it. In so doing, the record is undisputed and clear that
2 he created a structure for Ananda Marga going forward.

3 Significant, impressive in its detail, in its
4 hierarchy, in its doctrine, and discipline. Those are the
5 most -- at least it stood out most to me what clearly
6 established in the Caryacarya parts one, two, and three, I
7 seem to recall I think it was Plaintiff's Exhibit 15, I
8 might be off with the number, that had the largest excerpts
9 from that.

10 Now, the evidence has also established, again
11 undisputed, that Reverend Baba, as I noted, was very
12 detailed but even while during a period of time while he was
13 incarcerated, he managed to continue to administer and
14 control Ananda Marga.

15 It seems to me that the credible evidence before
16 the Court supporting that determination and his ability to
17 do so was the result of the structure and the discipline
18 that he had in place to promote this philosophy and this
19 religion.

20 The Supreme Court of India has determined that
21 AMPS is a denomination of Hinduism and the evidence has
22 shown that there is an ecclesiastical hierarchical
23 structure.

24 It is further undisputed that in order to further
25 propagate Ananda Marga, Reverend Baba directed within the

1 structure of Ananda Marga, his disciples, if you will, to
2 come to varying areas of the world. He divided the world
3 into nine sectors, each of those sectors having meaning and
4 purpose presumptively known only to him, the sectors don't
5 have a geographical denomination that frankly makes any
6 sense to me, but it doesn't have to make sense to me.
7 Nonetheless, it is clear, and everyone that has testified in
8 this case corroborated this fundamental structure, nine
9 sectors.

10 The core of the dispute here involves one of those
11 sectors and that is the sector referred to as the New York
12 Sector, which I have come to understand includes I believe
13 the entirety of North America including Alaska and Hawaii,
14 the Caribbean, Central America and perhaps South America --
15 no, Central America. Nonetheless, it is substantial and
16 significant and it definitely incorporates the entire
17 contiguous continental United States.

18 Ananda Marga in North America and the United
19 States has its origin dating back to 1969, again, at the
20 instance of Reverend Baba. I heard from Mr. Rao, who was
21 one of the first Margiis or disciples of Reverend Baba to
22 come to North America.

23 In 1970, the New York Sector of AMPS was
24 incorporated in Illinois, I believe that was in 1969.
25 Ananda Marga began in Illinois, was incorporated there,

1 again at the behest of Reverend Baba and with the approval
2 of Reverend Baba. The sectorial office was nominally in
3 Illinois, but the sector was headquartered in New York.

4 Subsequent to that initiation, again with the
5 approval and authority of Reverend Baba, Ananda Marga
6 Pracaraka Samgha was incorporated in the State of Kansas as
7 the Ananda Marga Yoga Society, the immediate predecessor to
8 the plaintiff Ananda Marga, Inc, and in place of the Ananda
9 Marga entity that had been initiated in Illinois.

10 Reverend Baba reviewed and directed and approved
11 the initiation of Ananda Marga Yoga Society of Kansas. The
12 record before me supports a finding that Reverend Baba
13 likewise approved a transfer of the Ananda Marga entity from
14 the Ananda Marga Yoga Society of Kansas, Inc, to the Ananda
15 Marga incorporated entity, incorporated by the laws of the
16 State of Colorado here in Denver, Colorado in, I believe, in
17 1974.

18 If you'll excuse me for just one moment. Okay.
19 Returning to the record, 10CV1867, and I believe I had in my
20 comments just noted that with the approval and at the
21 direction of Reverend Baba, Ananda Marga, Inc, was created
22 and incorporated pursuant to the Colorado nonprofit statutes
23 in 1974 here in Denver.

24 That is an important point in time in this case
25 because plaintiff, Ananda Marga, Inc, and the individual

1 plaintiffs in this case have presented considerable evidence
2 as to going forward with the point of Ananda Marga, Inc, was
3 how it was initiated; the degree and extent to which it was
4 autonomous and independent, although affiliated in a
5 coordinated, cooperative fashion with AMPS.

6 I'll address that further momentarily, but I think
7 it is important to note and confirm that as I was finding
8 earlier that Reverend Baba established Ananda Marga with
9 great attention to detail and structure, the credible and
10 persuasive evidence, and obviously, in many larger respects
11 undisputed evidence from either party from the witnesses I
12 heard is that AMPS was a hierarchical religious
13 denomination. A guru based religious denomination.

14 When Reverend Baba was physically present and had
15 not yet passed away, he was the embodiment of Ananda Marga.
16 What he had in creating Ananda Marga established sufficient
17 foundation to permit it to prosper and grow going forward.
18 I heard many statements throughout the week from the
19 witnesses regarding the nature of the testimony -- or excuse
20 me, the nature of the experience and how it started out slow
21 and was growing small and the -- just began to grow
22 tremendously particularly in the New York Sector.

23 All of the witnesses agreed in terms of the nature
24 of the structure, I think the term pyramidal hierarchy was
25 referenced multiple times with the highest level of

1 religious minister in AMPS being a Purodha. And
2 specifically the Purodha Pramukha being the spiritual head
3 of Ananda Marga and AMPS.

4 During the time that he was physically present,
5 Reverend Baba served that role; and when he passed away,
6 Acarya Shradhdhananda Avadhuta was chosen to serve as the
7 Purodha Pramukha, the spiritual leader of AMPS, a position
8 that he remained in until his death in 2008.

9 The Purodha Pramukha position is one that is held
10 for life, that has likewise been corroborated by the
11 testimony. Unless the Purodha Pramukha resigns or as noted
12 dies. Purodha Pramukha is also the president of the Ananda
13 Marga Pracaraka Samgha unless they choose not to exercise
14 that authority; but in which case they would approve and
15 appoint a president.

16 Purodha Pramukha also appoints and oversees the
17 office of the general secretary and selects the members of
18 the central executive committee.

19 Additionally, going down the structure, the
20 pyramidal structure, from the Purodha Pramukha is the
21 Purodha board, or the central Purodha board, that is
22 comprised of Purodhas and only Purodhas. They are an
23 ecclesiastical body that chooses the Purodha Pramukha from
24 among its membership. The decisions of the Purodha
25 Pramukha, particularly as demonstrated during the lifetime

1 of Reverend Baba, are unassailable, they are indisputable,
2 and remain.

3 I don't remember the specific witness, but I think
4 only one witness indicated that at one point there was a
5 change in posting subsequent to the initial posting that was
6 entered.

7 Reverend Baba provided for the initiation of
8 global basic training centers that were used to train AMPS
9 ministers for their service around the world. Mr. Teixeira,
10 Rainjitananda testified to some extent about that entity,
11 the importance of it. Upon completing that type of
12 training, the goal of the participants is to become an
13 Acarya, or a minister, in the AMPS.

14 There are Acaryas who are married and have a
15 family, and they are a unique term, full-timers, who, as the
16 word enunciates or demonstrate, whole-timers, they spend
17 their whole time in service to Ananda Marga and its
18 missions.

19 Those Ananda Marga full-timers receive assignments
20 from the central office of the Ananda Marga Pracaraka
21 Samgha. Above the Acaryas or Avadhutas, Acaryas take an
22 oath to abide by the organizational system in the conduct
23 rules, and theres some great debate whether those are vows
24 or oaths, but there was not a debate that they were conduct
25 rules and that the parties agreed to abide by them.

1 There was even sufficient and credible testimony
2 of instances of discipline by Reverend Baba in the event of
3 noncompliance. What that discipline took and what form it
4 took and the nature and extent of it was maybe in question
5 but it was not in question that it occurred.

6 Avadhutas are even held to a higher standard and
7 stricter conduct rules, including rules of obedience to
8 Reverend Baba's system and its superiors, included within
9 that is the obligation to honor and obey posting orders.

10 All of these ministerial positions are defined and
11 recognized by the Ananda Marga Pracaraka central office from
12 which the general secretary appointed by the Purodha
13 Pramukha operates.

14 I found the evidence regarding the structure of
15 Ananda Marga sufficiently detailed to give me a very clear
16 understanding of the vision of Reverend Baba and the mission
17 of Ananda Marga. As noted, he divided the globe into nine
18 sectors, geographical areas, all of which reported back to
19 Ananda Marga Pracaraka Samgha in the central division. The
20 sectors were then further divided into regions and then they
21 were diocese and I believe provinces -- no, districts, and
22 then villages and local units.

23 Again, the structure to that degree was
24 corroborated by all of the witnesses and was not greatly in
25 question.

1 The AMPS office, also known as AMPS Central was
2 based in Ananda Nagar, India, that was the world
3 headquarters and parent organization of the Ananda Marga
4 mission, including the New York Sector.

5 Amongst the many duties and responsibilities of
6 the Purodha Pramukha was, as I noted, the responsibility for
7 appointment of the general secretary, but also appointment
8 of the various members of the central committee, which was
9 an ecclesiastical governing body made up of Purodhas and
10 elected from the general body of Purodhas.

11 There was further a central executive committee
12 comprised of Purodhas selected expressly by the Purodha
13 Pramukha. And it was this body, the central committee, that
14 was the key policy making entity, or arm if you will, of
15 Ananda Marga, AMPS.

16 The general secretary was, as noted, appointed by
17 the Purodha Pramukha and had the responsibility for general
18 administration of Ananda Marga, of the organization itself,
19 and as such, the general secretary had the responsibility
20 for appointment, assignment of ministers, Acaryas and
21 Avadhutas, full-timers, to fulfill the Ananda Marga mission
22 throughout the world. The general secretary reports
23 directly to the Purodha Pramukha.

24 Reverend Baba established that there would be
25 similar -- and directed that similar organizational

1 structure be created, established, if you will, and followed
2 in each of the organizational levels lacco of Ananda Marga
3 beginning in the sector going to the region, going to the
4 diocese and the villages on down to the units.

5 In the structure that was testified to, AMPS was
6 at the top, AMPS Central came next, and then the sectorial
7 and the regional and the diocese and the villages and the
8 units.

9 What the evidence showed me was that AMPS, AMPS
10 Central, are highly structured and highly regulated system.
11 Each structure was based upon and each level reported up to
12 the next level, on up to the Purodha Pramukha.

13 The general secretary was charged with the
14 responsibility of appointing a secretarial secretary in each
15 of the sectors. That person served as the head of the
16 sectors and was representative of the general secretary in
17 the relevant sector that they were posted. They served at
18 the pleasure of the general secretary, received direction
19 from the general secretary, were required to report to the
20 general secretary, both in writing and in person, traveling
21 at various times back to India, all travel under a tour
22 program had to be approved by the general secretary and AMPS
23 Central.

24 And as noted and most logically in dispute here,
25 the general secretary had the authority to transfer or

1 remove sectorial secretaries from their respective sector
2 and place them in a different sector or in a different
3 placement.

4 Reverend Baba provided for structure to ensure
5 that the mission was being evaluated periodically and
6 progressing, provided for inspections of each sector to
7 ensure that they were complying with the Caryacarya and
8 other rules of conduct and conventions of Ananda Marga. And
9 many times, frankly, it became a little confusing with all
10 of the acronyms from ERAWS to ISMUB to WWW, I think was one,
11 and there was -- everything was an abbreviation of some sort
12 and became a little distracting, and I pity the person
13 transcribing the record. But nonetheless, what all of that
14 credibly showed and persuasively showed is the degree and
15 extent to which Ananda Marga is a structured religious
16 entity. A structured religion with core rules of conduct
17 and discipline, procedural rules for inspection and
18 evaluation, reporting, as I noted each level reporting up to
19 the other levels.

20 Again, the term pyramidal order comes into play
21 and I think that is a apt description in term and I think it
22 was borne out in the evidence credibly before me.

23 So turning to the crux of the dispute at this
24 point, it is the plaintiff's contention that while they were
25 affiliated with AMPS, AMPS Central in India, they were a

1 stand alone entity, lawfully and dutifully incorporated
2 pursuant to the laws of the State of Colorado, not beholden
3 to AMPS Central, not accountable to AMPS Central, and
4 certainly not subordinate to AMPS Central.

5 That was a word and term that brought about great
6 angst and disagreement throughout the course of the
7 testimony from the witnesses. The nature and degree and
8 extent to which this was subordination or has creatively
9 referred to as coordinated cooperation.

10 And prior to the parties initiating this action, I
11 personally had no knowledge of Ananda Marga, Reverend Baba's
12 teachings or philosophies, his wealth of publications, the
13 structure of the religious, the ecclesiastical pyramidal
14 structure, or any of the details that I have since become
15 aware of, which is probably a good thing because it has been
16 an education for me, to say the least, to evaluate the
17 claims and to evaluate the testimony.

18 And what has become clear, despite the claim that
19 plaintiff has established in some fashion this autonomy is
20 that there is nothing in the evidence that has been
21 presented to me in the record that has been evaluated and
22 presented either by testimony in the record sufficient to
23 establish his claim of autonomy. Simply stated, Ananda
24 Marga, Inc. derived from Ananda Marga Yoga Society Kansas,
25 derived from Ananda Marga Illinois, derived from Ananda

1 Marga Reverend Baba.

2 It was never intended by Reverend Baba, at least
3 from the evidence that I have heard, that Ananda Marga would
4 stand alone. To the contrary, and as corroborated by the
5 testimony somewhat begrudgingly, and certainly by the
6 documentation in the exhibits, much of which was presented
7 and produced in the discovery by the plaintiffs, Ananda
8 Marga Pracaraka Samgha Central is the parent organization of
9 Ananda Marga, Inc.

10 I guess one of the things that was troubling was
11 the repeated efforts in testimony to disavow the very words
12 that were printed in IRS 990 documents, INS applications for
13 VISAs, monthly or weekly journals in the Crimson Dawn,
14 interpreting anew, particularly now, where it is beneficial
15 to do so, while I know the document says X, but I really
16 meant Y or I meant Xish.

17 And that may actually be true, the problem is its
18 revisionist, and it is revisionist now when it is beneficial
19 to the proponent to make that revisionist assessment.

20 Typically, the Court is called upon to give to the
21 words it reviews, whether it is in statute, constitution, or
22 even contracts, the plain and ordinary meaning of the
23 phrases and the words that are presented. Just by way of
24 example, when interpreting a contract, the Court's primary
25 obligation is to effectuate the intent of the contracting

1 parties according to the plain language and the meaning of
2 the contract, that is Albright versus McDermond, 14 P.3d
3 318, 322, Colorado Supreme Court from 2000.

4 Contracts should be interpreted to harmonize and
5 if possible give effect to all of its provisions. The
6 overriding rules of contract interpretation require a Court
7 to apply the plain meaning of the words used subject to
8 interpretation from the context and circumstances of the
9 transaction, it is New Design Construction Company, Inc,
10 versus Hamon Contractors, 215 P.3d 1172, 1181, Colorado
11 Court of Appeals from 2008.

12 And so I guess the testimony that I heard was in
13 many respects directed towards creating an ambiguity of some
14 sort which does not exist. The language was plain, the
15 language was clear, and at least for purposes -- it is
16 informative here, obviously we are not talking about
17 specifically a contract, but it is informative analysis to
18 the extent that whether a contract is ambiguous is a
19 question of law and determinable by the Court and Colorado
20 law has found that a contract is ambiguous when it is
21 reasonably susceptible of more than one meaning, Ad Two,
22 Inc, versus the City and County of Denver, 9 P.3d 373, 376,
23 Colorado Supreme Court case from 2000.

24 And the mere fact that the parties differ on their
25 interpretations of an instrument does not of itself create

1 an ambiguity. That is Fibreglas Fabricators, Inc versus
2 Kylberg, K-y-l-b-e-r-g, 799 p.2d 371, 374, Colorado Supreme
3 Court from 1990.

4 So there was no credible persuasive evidence in
5 the record from any of the witnesses or the exhibits that
6 these words that were used in the documents that were used
7 were ambiguous, whether at the time that they were presented
8 and even today that they were intended to be ambiguous. And
9 giving those words and phrases the plain and ordinary
10 meaning of the words compels a conclusion that AMPS Central
11 is the parent organization of AMI Ananda Marga, Inc. Ananda
12 Marga, Inc's own filings demonstrated that fact.

13 Ananda Marga, Inc, was created to be and is the
14 legal embodiment of the New York Sector of the AMPS. The
15 New York Sector of the AMPS obligation and responsibility
16 was the work of the AMPS Central in the New York Sector.
17 Mr. Hemmelgarn confirmed that and Exhibit D-156, the 990
18 filings, the IRS and INS filings corroborate that, Ananda
19 Marga, Inc, was charged with the responsibility to
20 promulgate, propagate the Ananda Marga mission in the New
21 York Sector. It was the highest organization within the New
22 York Sector; they promoted Ananda Marga in the New York
23 sector; they did fundraising for Ananda Marga in the New
24 York Sector; and continues to serve as the highest Ananda
25 Marga branch of the Ananda Marga mission in North America.

1 And in that role, Ananda Marga, Inc, has taken
2 upon itself to obtain additional subsidiaries, some of which
3 are plaintiffs in this action, Ananda Marga Vermont comes to
4 mind. Subsidiaries, affiliates, who report up to Ananda
5 Marga, Inc. The testimony of Mr. Hemmelgarn in particular
6 as an accountant of 37 something years, long involved in the
7 Ananda Marga mission, Ananda Marga Incorporated, Ananda
8 Marga in the New York Sector, with virtually every answer
9 when challenged would qualify. Well I did that because the
10 IRS told me to. I did that because it -- you know, we were
11 trying to make sure that we were putting the elephant -- it
12 was like the elephant in the bottle, we were trying to make
13 sure that we had it to comport with the forms.

14 It was almost as if Mr. Hemmelgarn was trying to
15 persuade the Court that the language was used as in effect a
16 boilerplate approach, and it is the Court's finding and
17 consideration from the credible evidence before me, the
18 language the parties that Ananda Marga, Inc, used in all of
19 the exhibits is not and cannot be construed as boilerplate.

20 As I have noted and Colorado law certainly has
21 held, words have meaning and absent any ambiguity they are
22 given their ordinary and plain meaning. Constrained or
23 creative construction is unwarranted and unauthorized based
24 on the facts and circumstances in this case and I will not
25 entertain such a constrained and unwarranted interpretation

1 here.

2 As the highest branch of the Ananda Marga mission,
3 AMPS Central in North America, Ananda Marga, Inc, stet
4 organized and operated exclusively for the religious
5 purposes of promulgating the religious purposes of Ananda
6 Marga. As such, it is governed by the principles and the
7 structure of Ananda Marga and AMPS Central, including
8 Caryacarya.

9 The initial bylaws of Ananda Marga, Inc, were
10 approved in 1974 by AMPS Central and were done so consistent
11 with the hierarchical and ecclesiastical structure and
12 pyramidal structure of AMPS. It was only later in
13 subsequent amendments, certainly beginning in 1982, that AMI
14 attempted to chip away some of that structure, at least to
15 the extent that it was a subordinate corporation by amending
16 the bylaws to rein in the authority of the general secretary
17 and the general secretary's powers.

18 But even in that amendment did not attempt nor
19 endeavor to remove the general secretary's authority and
20 responsibility to appoint and remove the sectorial secretary
21 for the New York Sector who filled the important role of
22 president and also CEO or corporate secretary, the president
23 and CEO of the Ananda Marga, Inc.

24 It remained the authority of the general secretary
25 to make the appointment, to make removals, to repost that

1 individual consistent with the Ananda Marga doctrine and
2 structure and guidelines.

3 The 1974 bylaws of Ananda Marga, Inc, corroborate
4 and confirm that AMPS Central was the parent organization.
5 In fact, they incorporated and adopted various programs in
6 their bylaws that were given them by Reverend Baba through
7 AMPS Central. Multiple documents and pleadings I think one
8 witness at one point testified at least 40, maybe it was
9 Mr. Hemmelgarn, 40 instances of documents or pleadings,
10 significant pleadings, filed with the government of the
11 United States corroborating or publications including in
12 their Crimson Dawn newsletter corroborating that AMPS was
13 the global parent organization of Ananda Marga, Inc. The
14 minutes of the organization of AMI reflect that Ananda
15 Marga, Inc, is the legal embodiment of the New York Sector
16 of AMPS New York Sector.

17 I don't find that even if in this day and age of
18 cut and copying and cut and pasting on computers that the
19 recitation of specific and detailed language, particularly
20 on the IRS forms or the 990 forms, was intended for any
21 purpose other than what it was offered, which was to
22 persuade the government initially that 501(3)(c) status was
23 appropriate and subsequently that tax exempt status was
24 appropriate.

25 Those representations, all of those

1 representations, were confirmed to be made under oath, with
2 the intention and understanding that the relevant authority
3 rely upon that information in making important decisions.

4 Certainly, an entity such as this, Ananda Marga,
5 Ananda Marga, Inc, would not blindly make such
6 representations. Repeated representations to the then
7 referred to agency of the immigration and naturalization
8 service, now since referred to as Immigration and Customs
9 Enforcement; that Ananda Marga, Inc, and AMPS New York
10 Sector are one the same; that AMPS Central was the parent
11 organization and has a distinct hierarchy.

12 All of the information contained in the additional
13 information that was paragraph 12 of one of the attachments
14 to 990 with great detail and painstaking effort and detail
15 to lay out the specifics of the structure of Ananda Marga,
16 the nature of Ananda Marga Pracaraka Samgha as the parent
17 organization, as the central authority. The extent to which
18 Ananda Marga Central and only AMPS Central is responsible
19 for the training of these individuals of the ministers and
20 the missionaries who then had the opportunity to be assigned
21 to various sectors, including the New York Sector.

22 There is no credible persuasive evidence in the
23 record from any of the witnesses that testified or any of
24 the exhibits that I reviewed and received into evidence to
25 confirm the plaintiff's position that they were a stand

1 alone autonomous entity. It simply was not the case.

2 They may have wanted it to be the case, they may
3 have desired it to be the case, they may have even believed
4 it to be the case, but it was not the case. Not at least
5 born out by the evidence before me, the persuasive exhibits
6 and the credible testimony I have received.

7 Well, what does that mean? Clearly, I am aware
8 from the evidence and the testimony that the circumstance,
9 present status of Ananda Marga, is in some degree of
10 disarray in India, there is litigation pending between the
11 various factions -- Calcutta and Ranchi, and depending on
12 what testimony I have heard, there are one, two, or even
13 three people holding themselves out as general secretaries,
14 but that is not a debate that I need to get into, that is
15 not a resolution that I can offer, that is the beyond the
16 scope of my authority to review this case and it is beyond
17 the scope, obviously, of my authority to intervene.

18 What is within the scope of my authority is to
19 resolve the questions presented here pursuant to Rule 57 and
20 Rule 65. And the reason these prior findings are important
21 is because we are here primarily because in October of 2005,
22 the then general secretary Dhruvananda endeavored to
23 transfer the then sectorial secretary from the New York
24 Sector, Acarya Tiirthananda Avadhuta, also known as Fernando
25 Kumar. And what is not in dispute, it is not, it is not in

1 dispute, I found no evidence to the contrary, was that on
2 the date and time of that transfer and change in posting
3 Dhruvananda was the stand alone general secretary with the
4 unquestioned authority pursuant to Ananda Marga structure
5 and authority and code and doctrine to do what he did, which
6 is to transfer Tiirthananda, unquestionably.

7 The evidence was, well, a certain group of
8 Margiis, which later came known as the core group, they
9 appealed to the Purodha group and obtained a stay. Well,
10 that's fine, I think they did obtain a stay, but that stay
11 was later vacated. Again, undisputed.

12 In January of 2006, also important, because it was
13 prior to the amendments that Ananda Marga, Inc, passed to
14 their bylaws to try to strengthen their position as a stand
15 alone entity.

16 The evidence before me has shown that at the time
17 of the quoted transfer of posting October 30, 2005,
18 Dhruvananda was the unquestioned general secretary. Well,
19 there had been some disarray beginning in the time of the
20 passing of Reverend Baba, his successor, Purodha Pramukha,
21 was still alive at the time all of these things were
22 occurring.

23 Dhruvananda was appropriately in the position of
24 general secretary, he had all of the authority,
25 responsibilities of the general secretary and within that

1 authority and his responsibilities made the decision to
2 transfer Acarya Tiirthananda Avadhuta pursuant to Ananda
3 Marga custom, code, structure, Avadhuta -- Acarya --
4 Avadhuta Tiirthananda was obligated to honor that posting.
5 The evidence today has been that he hasn't.

6 Failure to honor the posting and the decision of
7 the then unquestioned general secretary is not one that was
8 properly within the authority of Ananda Marga, Inc, its
9 board of directors, or Acarya Tiirthananda.

10 Pursuant to code, Ananda Marga policy and
11 procedure and structure, the transfer of posting took effect
12 on the date it was made. Best example of that was when in
13 2003 when Tiirthananda was transferred to the New York
14 Sector, his predecessor left, I believe there was some
15 meeting in Frankfurt as they went through the process, but
16 his predecessor left his posting and took his other posting
17 and until the arrival of Tiirthananda, the ERAWS secretary
18 was in control pursuant to procedure and guidelines.

19 So Tiirthananda did not have the authority to
20 ignore the transfer. The general secretary of AMPS Central,
21 Tiirthanand posted Sarra Dutta, D-u-t-t-a, as the new
22 sectorial secretary of the New York Sector, replacing
23 Tiirthananda on October 30, 2005, and reassigning
24 Tiirthananda, secretarial secretary in Australia, I believe.
25 Tiirthananda was aware of the transfer of posting and

1 interestingly according to Mr. Hemmelgarn, he did not share
2 that with the board of directors or anyone else at Ananda
3 Marga, Inc. Rather the evidence shows he then began to work
4 together with other members of the board and other Margiis
5 to restructure Ananda Marga, Inc, in the hope that it would
6 stand alone, and understandingly concerned about the strife
7 and discord in India and unsure and uncertain and in an
8 attempt to protect the entity that I'm sure they come to
9 know and love and work hard to support.

10 But motivation is not really a matter that I have
11 to resolve today, it is not properly before me, the only
12 question is whether and to what extent the actions of the
13 plaintiffs were proper. In this case the evidence bears out
14 that they were not.

15 Since the general secretary transferred
16 Tiirthananda on October 30, 2005, he ceased being sectorial
17 secretary of the New York Sector of AMPS on that date and
18 time, and all positions and responsibilities that came with
19 that role; therefore, any actions that they took thereafter,
20 unauthorized by the general secretary, and unratified or
21 approved by the general secretary cannot stand.

22 Upon becoming aware that Tiirthananda was ignoring
23 or not following his posting, the general secretary
24 attempted to obtain his cooperation, and because the
25 original designee as the replacement for Tiirthananda had

1 become needed elsewhere, the general secretary posted
2 Acharya Vimalananda Avadhuta as the sectorial secretary of
3 the New York Sector on February 28, 2006. That order was
4 approved by the Purodha Pramukha and notice was given.

5 As noted in February '06, the Ananda Marga, Inc,
6 with its board of directors and officers, including
7 Tiirthananda, attempted, endeavor to change their bylaws to
8 strengthen their resolve and position as a stand alone
9 entity. However, as I noted, based on the evidence in the
10 record at the time that the purported amendments of these
11 bylaws, Tiirthananda was no longer the sectorial secretary
12 according to Dhruvananda, AMPS Central, the amendments are
13 contrary to the ecclesiastical and hierarchical governing
14 structure of AMPS.

15 The appropriately appointed general secretary
16 Vimalananda did not approve the 2006 amendments, and while
17 certain evidence in the record supports efforts, I believe
18 it was through Ms. Zweig, efforts to go to India and try to
19 resolve the rifts, if you will, those efforts do not rise to
20 the level of participation in the tribunals or the structure
21 that Reverend Baba had established for purposes of resolving
22 these types of matters and the plaintiffs have not
23 participated in that.

24 As the years went by and Tiirthananda, Mr. Kumar,
25 continued to fail to recognize the duly appointed general

1 secretary, the general secretary of the AMPS -- the general
2 secretary directed the sectorial secretary Vimalananda to
3 order a reconstitution of the board of directors of Ananda
4 Marga, Inc, which was accomplished with the approval of AMPS
5 Central.

6 The Court takes judicial notice of the rulings
7 from the India courts which corroborate that at least until
8 resolution of those cases pending, those courts have
9 determined that Dhruvananda is the general secretary of AMPS
10 Central and should function as the Purodha Pramukha until
11 resolution of those cases.

12 Excuse me for one moment. So those will be the
13 Court's factual findings based on the credible and
14 persuasive evidence and exhibits that I've received, the
15 testimony in the record.

16 As I referenced earlier, there were a number of
17 cases that I evaluated and considered in terms of the
18 limitations of my authority, and obviously the case that
19 remains a The Seminal case in this matter is the Serbian
20 Orthodox matter, and this case, as I reviewed that matter,
21 is remarkably similar in terms of the facts of that case,
22 the facts as I have found them to be in this case, the
23 structure of the religious organizations involved, and the
24 subsequent limitations on the Court's authority to act in
25 this matter.

1 The Serbian Orthodox case I find is not only
2 instructive, but it is also factually and legally on all
3 fours to the facts in this case and the law that I must
4 apply. And so it compels a similar resolution to the
5 dispute. And there was another Colorado case that I looked
6 at that was similar, Moses versus Diocese of Colorado, 863
7 P.2d 310 at 320, a 1993 Colorado Supreme Court case. For
8 the proposition that the Court must not become embroiled in
9 disputes involving a religious organization if the Court
10 would be required to interpret or weigh church doctrine. So
11 I have been careful not to -- and counsel frankly have been
12 careful to guide me as we went through the evidentiary
13 presentation at varying points when either or both of them
14 believed that the presentation was inviting the Court's
15 interpretation of religious doctrine. And so I don't find
16 that anything in the evidence that I did hear and certainly
17 the evidence in the exhibits and testimony that I considered
18 crosses that boundary.

19 So having found or made the factual findings that
20 I have, I would make the following conclusions of law. As
21 noted, this case is about a dispute regarding ecclesiastical
22 governance of a religious organization similar to the
23 Serbian Orthodox case, but failure of a subordinate and
24 nominated officer to comply with the orders of the highest
25 religious authorities in the denomination reassigning him to

1 a different ecclesiastical position.

2 The case is not about real property, although at
3 varying times when the Court's decisions in these matters
4 inherently have the effect of resolving property disputes,
5 that standing alone is not a reason for the Court to act or
6 take a different position.

7 As noted as a secular Court, I'm obligated to
8 defer to and enforce the decisions of the religious
9 denomination's highest ecclesiastical authorities in matters
10 concerning the governance of the religious denomination.
11 That is Serbian Orthodox Diocese versus Milivgeovich, 426 US
12 696, the case I have already cited.

13 Simply put, US Supreme Court and Colorado cases
14 interpreting that decision or those decisions have routinely
15 held that it is for an individual religious denomination to
16 determine their structure, who resides in what positions,
17 who controls the organizations and its affiliated entities,
18 not for the courts.

19 Under Serbian Orthodox, the Court is called upon
20 to defer to the religious denomination's officials in
21 matters regarding the authoritative interpretation of the
22 denomination's scriptures, their structural guidelines and
23 procedures.

24 The evidence before me is abundantly clear and
25 uncontroverted that AMPS is a hierarchical religious

1 denomination. AMPS Central is a central authority for AMPS.
2 Ananda Marga, Inc, is a part of the AMPS denomination, it
3 has been testified to the constitution of the AMPS
4 incorporates the Caryacarya, AMPS is governed by the
5 Caryacarya, the AMPS procedural rules, other writings, and
6 scriptures promulgated by Reverend Baba.

7 Ananda Marga, Inc, is an affiliate of and
8 subordinate to the AMPS Central headquartered in Ananda
9 Nagar, India. AMPS Central is the parent organization of
10 Ananda Marga, Inc, and all US organizations subordinate to
11 Ananda Marga, Inc. Ananda Marga, Inc, and the New York
12 Sector of AMPS are one and the same. Ananda Marga, Inc, is
13 governed by the Caryacarya, AMPS procedural rules, and other
14 holy scriptures.

15 You know, repeatedly I heard testimony qualifying
16 the obligations and the rules, we do the best we can, time,
17 place, and person, but even that interpretation connotes the
18 same conclusion, which is Ananda Marga, Inc, is governed by
19 the Caryacarya, the AMPS procedural rules, and other
20 scriptures of the AMPS.

21 It is the intervener AMPS who has the rightful
22 opportunity to appoint the sectorial secretary and board of
23 directors of Ananda Marga, Inc. Fernando Kumar ceased to be
24 the sectorial secretary of AMPS for the New York Sector on
25 October 30, 2005, when he was transferred and his posting

1 was changed. Any and all offices or positions he held as a
2 result of that position he no longer held as a result of the
3 transfer.

4 The purported 2006 amendments to the AMI bylaws
5 were not effectual legally, they weren't enacted in a
6 accordance with the bylaws, and given Mr. Kumar's absence
7 from the role of sectorial secretary, as I noted previously,
8 the replacement had not passed upon or approved those
9 amendments.

10 Accordingly, any actions taken by Tiirthananda,
11 also known as Kumar, as purported sectorial secretary of New
12 York Sector of Ananda Marga Pracaraka Samgha beginning
13 October 30, 2005, and going forward are of no legal
14 consequence or effect.

15 Pursuant to the appointment of the general
16 secretary, Acharya Vimalananda Avadhuta is the rightfully
17 appointed sectorial secretary. As the rightfully appointed
18 sectorial secretary, it was within his authority to remove
19 and reconstitute the board of directors of Ananda Marga,
20 Inc, which he did; and in so doing, removed the individuals
21 identified as plaintiffs in this case and counterclaim
22 defendants from their role as board members for AMI.

23 That includes Tiirthananda, that includes Donald
24 W. Nelson, that includes Rainjitananda or Mr. Teixeira, that
25 includes Prabha Thakur, that includes Jody Wright, that

1 include William Dorf, that includes Michael Hemmelgarn, and
2 Wayland Secrest.

3 Counterclaim plaintiffs Acharya Vimalananda
4 Avadhuta, Clark Forden, Dipendra Kumar Singh, Dirk Duill,
5 Shyam Sundar Kaushesh, and Piyush Bhatnagar are the
6 rightfully appointed board of directors of Ananda Marga,
7 Inc.

8 Counterclaim defendants that I just named have no
9 authority to direct, supervise or act on behalf of Ananda
10 Marga, Inc, and lacked such authority since October 30,
11 2005. Any actions taken by the counterclaim defendants in
12 the name of the board of directors of Ananda Marga, Inc,
13 from October 30, 2005, as I noted, have had no legal effect.

14 2006 purported amendments to the Ananda Marga
15 bylaws have no legal effect and the counterclaim plaintiffs
16 will have the right to exercise authority and control over
17 the assets, real property, and personal property of Ananda
18 Marga, Inc.

19 I make those findings pursuant to CRCP Rule 57 and
20 the request for declaratory relief. Having made those
21 findings, the Court will turn to the request for injunctive
22 relief and find that the plaintiffs have failed to meet
23 their burden under Rule 65 to establish the criteria for
24 injunctive relief.

25 Further, the record reflects and the Court finds

1 that the plaintiffs have failed to meet their burden to
2 establish the claims and the declaratory relief that they
3 seek under Rule 57. Passing upon the evidence and the
4 credibility of the witnesses and giving all due weight and
5 consideration and applying the standards set forth under
6 Rule 41 of the Colorado Rules of Civil Procedure, the Court
7 grants the defendant's motion for involuntary dismissal
8 under 41(b) of the plaintiff's claims.

9 Under Rule 65, the Court enjoins as follows:
10 Fernando Kumar, also known as Tiirthananda, is enjoined from
11 holding himself out as the sectorial secretary of the New
12 York Sector of AMPS. Mr. Kumar is enjoined from exercising
13 authority and control or attempting to exercise authority
14 and control over Ananda Marga, Inc, its assets, its
15 property, its members, and subordinate affiliates, the
16 assets and property of its subordinate affiliates, and its
17 board of directors.

18 Mr. Kumar is ordered to surrender possession and
19 control of AMI, Inc, its assets and property, its members
20 and subordinate, affiliates, the assets and property of its
21 board of directors and subordinate affiliates to the counter
22 plaintiff Acharya Vimalananda Avadhuta.

23 The counterclaim defendants, Mr. Kumar,
24 Mr. Nelson, Mr. Teixeira, Prabha Thakur, Jody Wright,
25 William Dorf, Mr. Hemmelgarn, Mr. Secrest, are now enjoined

1 from individually holding themselves out as the officers
2 and/or directors of Ananda Marga, Inc.

3 Counterclaim defendants, Mr. Kumar, and all of
4 those that I've just named, are also enjoined from
5 collectively holding themselves out as the board of
6 directors of Ananda Marga, Inc.

7 Mr. Kumar, and all of those that I've just
8 identified, are enjoined from exercising authority and
9 control or attempting to exercise authority and control over
10 Ananda Marga, Inc, its assets and property, its members and
11 subordinate affiliates, the assets and property of its
12 subordinates and affiliates.

13 Counterclaim defendants Mr. Kumar, and all of the
14 individuals that I've just named, are ordered to surrender
15 authority and control of Ananda Marga, Inc, its assets and
16 property, its members and subordinate affiliates, the assets
17 and property of its subordinate affiliates to the
18 counterclaim plaintiffs.

19 Counterclaim defendants, Mr. Kumar, and all of
20 those that I have identified as counterclaim defendants, are
21 ordered to give an accounting of their use of all assets and
22 real and personal property of Ananda Marga, Inc, dating back
23 to October 30, 2005.

24 The Court also has been asked to reconsider the
25 ruling on motion for summary judgment submitted by the

1 defendants in light of the findings that I have made, the
2 legal conclusions that I have made, and the state of the
3 record, I think it is appropriate that I do so. Without
4 replicating or duplicating the findings that I've already
5 made, I think the state of the record clearly corroborates
6 the positions articulated by the defense in their motion for
7 summary judgment and the Court will reconsider finding that
8 there are no a genuine issues of material fact on the issues
9 identified in the defendant's motion for summary judgment
10 and that motion is now -- the prior order denying it is
11 vacated and that motion is now granted.

12 Specifically as to the plaintiff's third and
13 fourth claims for relief, the Court notes that C.R.S.
14 7-122-104 articulating the provisions for unauthorized
15 assumption of corporate powers specifically provides that it
16 is a statute imposing liability for assuming to act as a
17 corporation without authority to do so and applies only to
18 those persons who act as a corporation without making any
19 bonafide effort to achieve corporate status by complying
20 with statutory requirements for a corporation, Simms versus
21 Ottenhoff, 879 P.2d 436, Colorado Court of Appeals case from
22 1994. Clearly that statute and the claim based upon it is
23 inapplicable and doesn't apply.

24 As to the fourth claim for relief, the Court finds
25 no legal and now no factual basis to support it, so summary

1 judgment is entered as a matter of law on those two claims.

2 So to recap and to be clear, the Court has granted
3 the Rule 41 motion to dismiss, all of the plaintiff's claims
4 after consideration of the evidence and the record, all
5 exhibits and all testimony that I have heard, I find that
6 plaintiff has failed to demonstrate any entitlement to the
7 relief they requested.

8 Further, based upon reconsideration and review,
9 the Court has granted anew the motion -- the defense motion
10 for summary judgment in all respects finding no genuine
11 issues of material fact exist as to the claims articulated
12 in that motion and I have made a specific record as to the
13 motion and its request to dismiss the third and fourth claims
14 for relief.

15 That will be the Court's finding. That will be
16 the Court's ruling.

17 Mr. Obitts, I'll ask you to prepare a conforming
18 order and I'll ask you to do it within 15 days; is that
19 enough time?

20 MR. OBITTS: Yes, Your Honor.

21 THE COURT: All right.

22 MR. OBITTS: One more thing, I respectfully
23 request that you include in the order that any bond for
24 appeal be taken from the personal assets of the counter
25 defendants and not from any corporate assets. Even though

1 you enjoined them from using the corporate assets.

2 THE COURT: Well, Mr. Erwin, what is your position
3 on that? As to the extent they are individual plaintiffs
4 and they wish to promote an appeal, they would have to
5 individually post their respective supersedeas bond.

6 To the extent that AMI, Inc, is a plaintiff, then
7 they may be entitled to use corporate assets. So I can't
8 bar them.

9 MR. OBITTS: Okay. Thank you, Your Honor.

10 THE COURT: I can bar the individuals, but I can't
11 bar the corporation.

12 MR. OBITTS: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. OBITTS: Your Honor --

15 THE COURT: Yes.

16 MR. OBITTS: How -- maybe you're the wrong person
17 to ask, maybe it's your clerk, but how long does it take to
18 receive a transcript of these proceedings, specifically
19 today?

20 THE COURT: Well, you can ask for one on an
21 expedited basis, I don't know how expedited they can do it
22 based on the backlog, maybe I need to give you a little more
23 time. Why don't I say 20 days.

24 MR. OBITTS: Thank you, Your Honor.

25 THE COURT: If there is nothing further, I

1 appreciate your time and your professionalism and I wish
2 everyone involved great peace and harmony, if you can find
3 it.

4 Court is adjourned.

5 (End of proceedings.)

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CERTIFICATION

10 I, Christine Reeder, working under the capacity of
11 High Plains Reporting & Transcription, hereby certify that
12 the foregoing is a correct transcript from the electronic
13 sound recording of the proceedings in the above entitled
14 matter.

15

Dated this 1st day of June, 2011.

16

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Christine Reeder
High Plains Reporting &
Transcription, LLC

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