DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
Plaintiffs: **Ananda Marga, Inc.**, a Colorado Nonprofit Corporation; et al.; Defendants: **Acharya Vimalananda Avadhuta**, an individual; et al.; **And** **Intervenor: Ananda Marga Pracaraka Samgha-Ranchi**	**▲ COURT USE ONLY ▲**
Attorneys for Plaintiffs: Charles T. Mitchell, #27850 Christopher C. Noecker, #39462 Sander Ingebretsen & Wake, PC 1660 17th Street, Suite 450 Denver, CO 80111 Phone Number: 303-285-5300; FAX 303-285-5301 Email: cmitchell@siwlegal.com cnoecker@siwlegal.com Stephen Erwin, #32643 The Highlander Law Firm 885 Arapahoe Avenue, Boulder, Colorado 80302 Phone Number: 720-255-4354; FAX Number: 303-449-6126 Email: highlanderlaw@gmail.com	Case Number: 2010CV1867 Div: 259
PLAINTIFFS' OBJECTION TO THE REASONABLENESS AND NECESSITY OF THE FEES REQUESTED BY DEFENDANT	

Plaintiffs, Ananda Marga Inc,, *et al.*, by and through their undersigned counsel, pursuant to this Court's Order dated April 25, 2012, submits the following objection to the reasonableness

and necessity of the fees requested by Defendants. In support of this Objection, Plaintiffs' state as follows:

ARGUMENT

Defendants request for more than $422,000 in attorneys' fees against individual, volunteer board members and nonprofit religious organizations for this single issue, non-monetary declaratory action is unreasonable and must be reduced, particularly in light of:

- The unnecessary retention of two separate local firms for Defendants and Intervenor even though Defendants and Intervenor shared singular lead counsel representation without conflict;
- The inefficiencies associated with three different law firms and nineteen different timekeepers' work on behalf of Defendants and Intervenor;
- The inadequacy of supporting fee records, which do not allow for evaluation of reasonableness of services performed.

I. APPLICABLE STANDARDS AND BURDEN.

Over Plaintiffs objection, this court determined that an award of reasonable fees is appropriate in this case.[1] Even if they are entitled to an award of fees, Defendants and Intervenor fail to meet their burden of proving that their demand for $422,086.65 in fees is reasonable and that all such fees were necessarily incurred. *See Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 383, 388 (Colo. 1994); *see also Atmel Corp. v. Vitesse Semiconductor Corp.*, 160 P.3d 347, 350 (Colo. App. 2007) (affirming reduction in requested fees because party was not entitled to fees for particular aspects of lawsuit and certain efforts were not reasonably necessary).

[1] Plaintiffs reserve the right to appeal the Court's award of attorneys' fees and do not waive any arguments on appeal by virtue of this objection.

The determination of the reasonable amount of fees awardable to Defendants and Intervenor must be based on a lodestar analysis. *See Spensieri v. Farmers Alliance Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990). To calculate the lodestar amount, a court determines a reasonable hourly rate multiplied by the reasonable number of attorney hours. *Id.* After calculating the lodestar amount, a court possesses the additional discretion to adjust the amount by any one of several factors not already incorporated into the lodestar calculation. *Id.* at 271. Such factors include "the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, . . . awards in similar cases," the existence and nature of a fee agreement, "the degree of success achieved," and "those factors set forth in the Colorado Rules of Professional Conduct 1.5." *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143, 147 (Colo. App. 1996) (citations omitted); *see also Mau v. E.P.H. Corp*., 638 P.2d 777, 779 (Colo. 1982) (citing C.R.C.P. DR 2-106(B), the predecessor of Colo. R. Prof. Conduct 1.5).

As the parties seeking to recover fees, Defendants and Intervenor bear the burden of proving every step of the lodestar calculation. *See Am. Water Dev*., 874 P.2d at 383; *Dahl v. Young*, 862 P.2d 969, 973 (Colo. App. 1993). As explained below, Defendants and Intervenor have failed to do so. Their fee request is excessive and, therefore, must be reduced to a reasonable sum.

A. Defendants And Intervenor Fail To Establish The Reasonableness And Necessity For Retaining Two Separate Local Firms For Defendants And Intervenor Even Though They Shared Single Lead Counsel Representation Without Conflict.

Throughout the litigation, Defendants have been represented by the Virginia law firm of Gammon & Grange, P.C. Gammon & Grange acted as primary lead counsel for Defendants.

See Defendants' and Intervenor's Motion for Attorneys' Fees ("Motion") at ¶ 15. Because the Virginia-based lawyers at Gammon & Grange were not admitted in Colorado and did not practice here, Defendants retained the representation of the Colorado firm of Burns, Wall and Mueller, P.C. ("BWM") to act as local counsel for Defendants. *Id.* at ¶ 15. Six months after BWM entered its appearance, Intervenor moved to intervene in the case. Since intervening in the case, Gammon & Grange has acted as lead counsel for both Defendants and Intervenor. *Id.* at ¶ 15. Based on the joint representation of Defendants' and Intervenor, there is no conflict of interest between Defendants and Intervenor such that separate representation is necessary or warranted. Despite the absence of any conflict requiring separate representation, Defendants and Intervenor elected to hire separate local counsel for Intervenors. The retention of Pendleton, Friedburg, Wilson & Hennessey, P.C. was entirely unnecessary and avoidable because the defense group already had a lead law firm and local counsel versed in the issues. The decision to hire a third firm as an additional local counsel resulted in unnecessary and duplicative billings. The presence of third, local law firm throughout the litigation and at trial was excessive and redundant, resulting in unnecessary fees that are not recoverable by Defendants and Intervenor.

The billing records submitted in support of this motion reflect the billing entries of three separate law firms and nineteen timekeepers. *See* Motion at Ex. B. Because there was no legitimate reason to retain an additional law firm to look over the shoulders of Gammon & Grange and BWM (and their combined legal staff of sisteen timekeepers), the fees charged by the Pendleton firm should not be recoverable. The firm joined the litigation after six months, resulting in unnecessary costs as attorneys concentrated on getting everyone up to speed. Moreover, the unjustified excess of an additional, duplicative local firm was particularly

apparent during trial, when the Pendleton firm billed more than $20,000 to sit through trial even though the defense table was already represented by the lead counsel's firm and the original local counsel of BWM. *Id.* Plaintiffs are not questioning the Court's ruling requiring an attorney from the Pendleton firm to be present at trial. Plaintiffs understand that once in the case, an attorney of record for each firm must be present. However, Plaintiffs should not be responsible for the fees of a second, completely unnecessary and redundant local firm that never should have joined the case in the first instance, when no conflict existed to justify the need for an additional firm. The billings by the Pendleton firm were unnecessary and preventable, and therefore are not recoverable from Plaintiffs. Any award should be reduced by $31,959.10, for the unnecessary fees charged by the Pendleton firm.

B. Defendants Fail To Establish The Reasonableness Of The Rates For The Nineteen Timekeepers.

Defendants and Intervenors fail to carry the burden of proving the reasonableness of the hourly rates at which it seeks to recover fees for its nineteen timekeepers. While they disclose the billing rates for the timekeepers, Defendants and Intervenor fail to provide any affidavits, resumes, educational or other experience as justification for such rates. The failure to provide resumes makes it impossible to assess whether each timekeeper's hourly rate is reasonable. The only support provided is the self-serving statement from Defendants' counsel asserting that the fees are "reasonable." *See* Motion at ¶ 16. Without more, some or all of the timekeepers' rates may be unreasonable. For this reason, at the very least, the Court should adjust the lodestar amount downward by a third to account for Defendants' and Intervenor's failure to meet their burden of proving the reasonableness of such rates.

In addition, Defendants and Intervenor should not recover the full amount of the fees for which they failed to provide sufficient documentation to permit an analysis of whether the time spent was reasonable. Although "[c]ounsel is not required 'to record in great detail how each minute of his time was expended[,] . . . at least counsel should identify the general subject matter of his time expenditures.'" *Am. Water Dev.*, 874 P.2d at 383 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983)). "Block billing," by which multiple tasks are lumped into a single time entry, obscures a lodestar analysis because the documentation fails to delineate how much time was spent on any particular task. *See Silver v. Primero Reorganized Sch. Dist. No. 2*, No. 06-cv-02088-MSK-BNB, 2008 WL 280847, at *2 (D. Colo. Jan. 30, 2008) ("[a] court may decline to award fees for hours claimed . . . where the documentation offered in support of the fee application is inadequate" (citing *Hensley*, 461 U.S. at 434)); *Crow v. Penrose-St. Francis Healthcare System*, 262 P.3d 991, 1000 (Colo. App. 2011)(recognizing that "block billing" can constitute a justifiable challenge to the reasonableness of fees). None of the entries submitted by the three firms break down each particular task by an amount of time for the work done. They simply lump together the total time spent by each timekeeper for the days' events. *See* Motion at Ex. B. Particular examples of block billing include eight hours for "Preparation of witnesses" and 10.2 hours for "Conference with client; work on statement of facts and conclusions of law; meet with local counsel." *Id* at p.80. Defendants' and Intervenor's request for recovery of every hour of fees billed should be discounted by at least a third because under the loadstar analysis, the documentation for such fees is inadequate to establish the reasonableness of the hours expended.

C. Additional Factors Weigh In Favor Of Reducing The Amount of Fees Awarded.

Under *Tallitsch*, the Court may adjust the amount of fees by any one of several factors not already incorporated into the loadstar calculation, including the amount in controversy, the complexity of the case, and other equities. *See Tallitsch*, 926 P.2d at 147. This case involved a single issue, declaratory action with no monetary damages. Moreover, at nearly a half a million dollars, the fees demanded are extremely high for the number of claims and time spent on discovery and trial. Finally, the majority of the Plaintiffs were individual volunteers of a nonprofit religious organization, with little or no resources left and no access to the organization or members they served in good faith for many years. Defendants have already been awarded the AMI organization, and its substantial property assets and financial resources. While this Court has determined that an award of fees is appropriate, the requested award of almost half a million dollars is excessive and only serves to destroy the financial lives of the individuals members.

CONCLUSION

For the foregoing reasons, Plaintiffs object to the reasonableness and necessity of the fees in the amount of $422,086.65 requested by Defendants, and respectfully request that at a minimum, the fees be reduced to $259,824.94. This amount represents an initial reduction of the requested fees by $31,959.10 for the unnecessary fees charged by the Pendleton firm, and a further reduction of the net amount of $390,127.55 by one third as a result of Defendants failure to adequately support the reasonableness of the fees and other mitigating factors set forth above, and any other reduction the Court deems appropriate under the circumstances.

Dated: May 9, 2012.

Respectfully submitted,

Original signature on file

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2012, a true and correct copy of the above **PLAINTIFFS' OBJECTION TO THE REASONABLENESS AND NECESSITY OF THE FEES REQUESTED BY DEFENDANT** was served via LexisNexis File and Serve pursuant to C.R.C.P. 121 §§1-26, addressed to the following:

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By: s/Halana Hiatt