

COLORADO COURT OF APPEALS  
101 West Colfax Ave., Suite 800  
Denver, CO 80202

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Appeal from Denver County District Court  
The Honorable Michael A. Martinez  
Case No. 2010CV1867

**Plaintiffs-Appellants:** ANANDA MARGA, INC., a Colorado Nonprofit Corporation; FERNANDO KUMAR (aka Ac. / Acarya Tiirthananda Avt./Avadhuta), an individual; DONALD W. NELSON (aka Ac. Vedaprajinananda Avt.), an individual; RUBENS C. TEIXEIRA (aka Ac. Rainjitananda Avadhuta), an individual; PRABHA THAKUR (aka Avtk. Ananda Vibha Ac.), an individual; JODY WRIGHT (aka Ac. Devanistha), an individual; WILLIAM C. DORF (aka Valmiki), an individual; L. MICHAEL HEMMELGARN (aka Vinaya), an individual; WAYLAND SECREST (aka Vishvadeva), an individual; ANANDA MARGA OF DENVER, INC., a Colorado Nonprofit Corporation; ANANDA MARGA PRACARAKA SAMGHA, INC., a Colorado Nonprofit Corporation; ANANDA MARGA WOMEN’S WELFARE, INC., a Kansas Nonprofit Corporation; ANANDA MARGA YOGA SOCIETY, INC., an Illinois Nonprofit Corporation; ANANDA DHIIRA SIERRA FOOTHILL, INC., a California Nonprofit Corporation; ANANDA MARGA OF ALBANY, INC., a New York Nonprofit Corporation; ANANDA MARGA OF EUGENE, INC., an Oregon Nonprofit Corporation; NEW DAY ANANDA MARGA SCHOOL OF PORTLAND, INC., an Oregon Nonprofit Corporation; PROGRESSIVE SCHOOLS, INC., a Florida Nonprofit Corporation; ANANDA MARGA OF MINNEAPOLIS, INC., a Minnesota Nonprofit Corporation; ANANDA MARGA OF NORTH CAROLINA, INC., a North Carolina Nonprofit Corporation; ANANDA MARGA OF NEW YORK CITY, INC., a New York Nonprofit Corporation; ANANDA MARGA OF PHILADELPHIA, INC., a Pennsylvania Nonprofit Corporation; ANANDA MARGA OF VERMONT, INC., a Vermont Nonprofit Corporation.

v.

**Defendants-Appellees:** ACHARYA VIMALANANDA AVADHUTA, an individual; CLARK E. FORDEN, an individual; DIPENDRA KUMAR SINGH (aka Acarya

□ COURT USE ONLY □

<p>Dharmapremananda Avadhuta), an individual; DIRK DULL (aka Acarya Divyalokeshananda Avadhuta), an individual; SHYAM SUNDAR KAUSHESH, an individual; PIYUSH BHATNAGAR, an individual.</p> <p>and</p> <p><b>Intervenor-Appellee:</b> ANANDA MARGA PRACARAKA SAMGHA-RANCHI.</p>	
<p>Attorneys for Plaintiffs-Appellants:</p> <p>Charles T. Mitchell, #27850  Christopher C. Noecker, #39462  Sander Ingebretsen &amp; Wake, PC  1660 17<sup>th</sup> Street, Suite 450  Denver, CO 80111  Phone Number: 303-285-5300  FAX 303-285-5301  Email: <a href="mailto:cmitchell@siwlegal.com">cmitchell@siwlegal.com</a>  <a href="mailto:cnoecker@siwlegal.com">cnoecker@siwlegal.com</a></p>	<p>Case Number:</p>
<p><b>JOINT NOTICE OF APPEAL</b></p>	

Pursuant to Colorado Appellate Rules 3 and 4, Plaintiffs-Appellants, Ananda Marga, Inc., et al., by and through counsel, submit this Notice of Appeal from the District Court, County of Denver, State of Colorado.

**I. NATURE OF THE CASE**

**A. Nature of the Controversy.**

In this case, the trial court entered judgment in favor of Defendants-Appellees and Intervenor-Appellee by applying an improper legal standard under

Colorado law and then compounded the error through its incorrect evaluation of the objective corporate documents that govern the resolution of this dispute.

Plaintiff-Appellant Ananda Marga, Inc. (“AM Inc.”) is a religious and spiritual corporation that promotes the teachings of Shrii P. R. Sarkar through meditation, yoga, and social service. AM Inc. is a Colorado nonprofit corporation, organized and operated under the provisions of the Colorado Nonprofit Corporation Act, governed by its Articles of Incorporation and Bylaws, and controlled by its Board of Directors and the Sectorial Secretary, who acts as the primary officer of the Corporation. AM Inc., its individual Board members, and certain of its affiliate organizations brought this declaratory action to resolve a dispute that arose over the validity of an amendment to AM Inc.’s Bylaws that was authorized by resolution at a special meeting of its Board of Directors on January 28, 2006. Specifically, the amendment modified the Bylaws to require ratification of any Sectorial Secretary appointment by a two-thirds vote of the AM Inc. Board of Directors.

The Sectorial Secretary is “posted” by the General Secretary of Ananda Marga Pracaraka Samgha-Central (“AMPS Central”), the international parent organization located in India. Defendants-Appellees disputed the validity of the amendment and its effect on a subsequent Sectorial Secretary appointment made

by the purported General Secretary of one of three Indian factions competing for control of AMPS Central in India – a dispute that remains unresolved in India’s judicial system. Plaintiffs-Appellants sought declaratory and injunctive relief from the trial court to determine the validity of the amendment pursuant to the governing corporate documents, and its legal impact upon AM Inc.’s Sectorial Secretary, its Board of Directors, and the Corporation’s and affiliate organizations’ ownership rights and legal status with regard to their real and personal property. In addition, Plaintiffs-Appellants asserted claims for violations of the Colorado Nonprofit Corporation Act in connection with Defendants’ actions to wrongfully possess Plaintiffs’ real and personal property. Defendants-Appellees, including Intervenor Ananda Marga Pracaraka Samgha-Ranchi (“AMPS-Ranchi”)(one of the three factions from the ongoing India litigation competing for control of AMPS Central), brought similar counterclaims for declaratory and injunctive relief.

Prior to trial, the parties filed cross motions for summary judgment, both of which were denied. The case then proceeded to trial. After the presentation of Plaintiffs’ case, Defendants and Intervenor made oral motions for involuntary dismissal of Plaintiffs’ claims pursuant to C.R.C.P. 41(b), and for reconsideration of their C.R.C.P. Rule 56 motion for summary judgment. On May 16, 2011, the trial court made an oral ruling granting Defendants’ and Intervenor’s motion for

involuntary dismissal under C.R.C.P. 41(b), and their Rule 56 motion for summary judgment. Pursuant to C.R.C.P. Rules 57 and 65, the trial court enjoined Plaintiffs-Appellants from exercising authority and control over AM Inc., its assets and property, and the assets and property of its' affiliate entities. On May 27, 2011, the trial court's rulings were reduced to a written Order of Judgment and entered into the register of actions pursuant to C.R.C.P. 58.

**B. The Orders Appealed and Basis for Appellate Jurisdiction.**

Plaintiffs-Appellants appeal from the trial court's: (1) Order of Judgment entered by the trial court on May 27, 2011; (2) Findings of Fact, Conclusions of Law and Order issued orally during open court proceeding on May 16, 2011; and (3) any and all other rulings, judgments, decrees, orders, or opinions of the trial court that are pertinent or ancillary to the foregoing that were adverse to Plaintiffs-Appellants. Plaintiffs-Appellants reserve the right to appeal from any other orders, judgments, decrees, rulings or opinions.

This Court has jurisdiction over this appeal under Colorado Revised Statutes section 13-4-102(1) and Colorado Appellate Rule 1(a)(1), because the May 27, 2011 Order of Judgment disposed of the last remaining issue in this case and thus constituted a final and appealable judgment. This appeal is timely filed pursuant to C.A.R 4(a). *See also Quiat v. Ellithorpe*, 917 P.2d 300 (Colo. App. 1995)(holding

that *nunc pro tunc* orders do not reduce the time allowed for the taking of an appeal under C.A.R. 4); *Joslin Dry Goods Co. v. Villa Italia, Ltd.*, 539 P.2d 137 (Colo. App. 1975)(same).

**C. Whether the Order Resolved All Issues Pending Before the Trial Court.**

The Order of Judgment issued on May 27, 2011, has resolved all pending issues before the trial court, with the exception of the following pending motions: (1) Defendants' and Intervenor's Motion for Attorneys' Fees; (2) Defendants' and Intervenor's Bill of Costs; and (3) Plaintiffs' Joint Motion to Stay Execution of Taxation of Costs, Final Judgment, and Injunction Pending Disposition on Appeal. Plaintiffs' Joint Motion seeks, *inter alia*, a stay of enforcement of the Order of Judgment under C.R.C.P. 62. It does not seek post-trial relief under C.R.C.P. 59(a).

**D. Was the Judgment Made Final Pursuant to C.R.C.P. 54(b).**

No.

**E. Date of Final Entry of Judgment and Service.**

The Final Entry of Judgment was entered on May 27, 2011, and was served on counsel of record electronically.

**F. Extensions Granted to File Motions For Post-Trial Relief.**

None.

**G. Post-Trial Relief.**

On June 9, 2011, Plaintiffs-Appellants filed Plaintiffs' Joint Motion to Stay Execution of Taxation of Costs, Final Judgment, and Injunction Pending Disposition on Appeal, which Defendants and Intervenor have opposed. Plaintiffs' Joint Motion seeks, *inter alia*, a stay of enforcement of the Order of Judgment under C.R.C.P. 62. It does not seek post-trial relief under C.R.C.P. 59(a). On June 13, 2011, Defendants and Intervenor filed their joint Motion for Attorneys' Fees and Bill of Costs, which Plaintiffs-Appellants have opposed. The trial court has not yet ruled on the parties' post-trial motions.

**H. Post-Trial Relief.**

The trial court has not yet ruled on the parties' post-trial motions.

**I. Extensions to File Notices of Appeal**

No extensions of the time to file notices of appeal have been sought or granted.

**II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL**

Plaintiffs-Appellants provide the following advisory listing of issues to be raised on appeal:

1. Whether the trial court erred in dismissing Plaintiffs'-Appellants' claims pursuant to C.R.C.P. 41(b).

2. Whether the trial court erred in granting summary judgment in favor of Defendants and Intervenor pursuant to C.R.C.P. 56.

3. Whether the trial court erred in its reliance upon and application of the “polity” approach in resolving the issues presented by the parties, as set forth in *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevic*, 426 U.S. 696 (1976) (*Serbian Eastern Orthodox*), including but not limited to, its findings that Ananda Marga is a hierarchical organization and not congregational, identifying the highest decision making body within the organization, identifying the rules that govern this decision making body, and identifying a ruling by that body to which the court was required to defer.

4. Whether the trial court erred in its failure to apply the “neutral principals” approach to resolving the issues presented by the parties, as set forth in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970) (per curiam)(*Sharpsburg*) and adopted by the Colorado Supreme Court in *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 96 (Colo. 1986)(en banc)(*Mote*).

5. Whether the trial court erred in resolving disputes over corporate compliance, Board amendments, and corporate property by inquiring into and resolving disputed issues of religious doctrine and practice.

6. Whether the trial court erred in deferring to the authority of one religious faction over the others in violation of the First Amendment of the U.S. Constitution.

7. Whether the trial court erred in resolving a disputed issue of religious doctrine in violation of the First Amendment by recognizing AMPS-Ranchi as the controlling body of a hierarchical church organization.

8. Whether the trial court erred in deferring to the determinations of AMPS Ranchi concerning the appointment of the Sectorial Secretary and Board of Directors of AM Inc.

9. Whether the trial court erred in taking judicial notice of an isolated 2007 ruling from the India court regarding the interim status quo of the religious organization.

10. Whether the trial court erred in making a determination as to which faction in India was the highest decision making authority regarding AM Inc.

11. Whether the trial court improperly deferred to one faction over another by erroneously finding that Ac. Dhruvananda Avadhuta was the General Secretary of AMPS Central and entitled to function as the Purodha Pramukha in resolving the dispute over the validity of the amendment and appointment of the Sectorial Secretary.

12. Whether the trial court erred in finding that AM Inc. was bound by the AMPS Constitution, the Caryácarya, and the organizational documents of AMPS.

13. Whether the trial court erred in its findings regarding the organizational and corporate structure of the Ananda Marga entities and the procedures for governance as set forth in the controlling and governing corporate documents, including the AM Inc. Articles and Bylaws, the AMPS Constitution and the Caryácarya.

14. Whether the trial court erred in finding that the stay of transfer of Fernando Kumar as Sectorial Secretary of AM Inc. was vacated in accordance with the controlling corporate documents and the standard procedures for the Purodha Board.

15. Whether the trial court erred in finding that the alleged vacating of the stay of transfer of Fernando Kumar as Sectorial Secretary of AM Inc. was an undisputed fact for purposes of its rulings under C.R.C.P. Rules 41(b) and 56.

16. Whether the trial court erred in finding that the stay of transfer validly imposed by the Purodha Board was subsequently and/or retroactively vacated in accordance with the controlling corporate documents and the standard procedures for the Purodha Board.

17. Whether the trial court erred in relying on evidence that was submitted in support of pleadings but never admitted into evidence at trial.

18. Whether the trial court erred in granting Defendants relief differing from that prayed for in the demand for judgment.

19. Whether the trial court erred in giving conclusive effect to findings of a foreign court without any inquiry into the procedure used by that court, where the foreign case involved different parties, and where the finding was not a factual finding but instead a provisional order intended to preserve the *status quo* of AMPS, and where that litigation is ongoing.

20. Whether the trial court erred in disregarding the testimony of the parties as to the meaning of the terms used in AMI Inc.'s corporate documents or otherwise applied incorrect legal standards in interpreting these documents.

21. Whether the trial court erred in concluding the 2006 amendment to AMI Inc.'s Bylaws was "not legally effective."

22. Any issue raised in Plaintiffs'-Appellants' Motions for Summary Judgment, or in Plaintiffs'-Appellants' post-trial motions.

23. The individual and cumulative effect of any additional rulings or orders Plaintiffs'-Appellants' choose to raise on appeal, including but not limited to, all issues preserved by objection at trial, all evidentiary issues, any issue as to

sufficiency of the evidence, any order, ruling or error adverse to Plaintiffs-Appellants made by the trial court, and any other issue Plaintiffs-Appellants choose to raise after further review of the record. Plaintiffs-Appellants reserve the right to appeal any other issues or errors made by the trial court.

### **III. TRANSCRIPT INFORMATION**

Transcripts of the following proceedings will be necessary to resolve the issues raised on appeal: (1) Trial Transcript (May 9 through May 13, 2011); (2) Trial Court's Findings of Fact, Conclusions of Law, and Order (May 16, 2011); and transcripts of any other hearings or conferences. The transcripts for May 9 through 13, 2011, and May 16, 2011, have been ordered and are estimated to be approximately 1,850 pages in length. The court reporters are Tami Ondik of CTS West, and Christine Reeder of High Plains Reporting and Transcription, LLC.

### **IV. PRE-ARGUMENT CONFERENCE**

A pre-argument conference is not requested at this time.

### **V. NAMES OF COUNSEL**

Attorneys for Plaintiffs-Appellants are as follows:

Charles T. Mitchell, #27850  
Christopher C. Noecker, #39462  
Sander, Ingebretsen, & Wake P.C.  
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Attorneys for Defendants-Appellees are as follows:

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Timothy R. Obitts, Esq., #29107  
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1875 Lawrence Street, 10<sup>th</sup> Floor  
Denver Colorado 80202  
303 839-1204

## **VI. APPENDIX OF JUDGMENT OR ORDER BEING APPEALED**

The following are attached as an appendix to this Notice of Appeal:

1. Trial court's Order of Judgment of May 27, 2011, attached hereto as Exhibit A.
2. Trial court's transcript of Findings of Fact, Conclusions of Law, and Order issued orally on May 16, 2011, attached hereto as Exhibit B.

**VII. SERVICE**

A Certificate of Service in compliance with Colorado Appellate Rule 25, showing service of the Notice of Appeal (with exhibits) on the trial court and all of the parties to this appeal is attached hereto.

Dated: July 11, 2011.

Respectfully submitted,

*Original signature on file*

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Charles T. Mitchell  
(Colo. Bar No. 27850)  
**SANDER INGEBRETSEN & WAKE,  
P.C.**

ATTORNEYS FOR  
PLAINTIFF-APPELLANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of July, 2011, a true and correct copy of the above and foregoing **JOINT NOTICE OF APPEAL** (with exhibits) was served via LexisNexis File and Serve pursuant to C.R.C.P. 121 §§1-26, on the following:

George W. Mueller, Esq.  
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1875 Lawrence Street, 10<sup>th</sup> Floor  
Denver Colorado 80202

Denver County District Court  
1437 Bannock Street  
Denver, Colorado 80202

*Paula S. Heeren*

\_\_\_\_\_  
*Original signature on file*

# **Exhibit**

**A**

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street, Denver, CO 80202	<b>FILED Document</b> <b>CO Denver County District Court 2nd JD</b> <b>Filing Date: May 27 2011 3:47PM MDT</b> <b>Filing ID: 37850764</b> <b>Review Clerk: Linda Denton</b>  <b>▲ COURT USE ONLY ▲</b>
<b>Plaintiffs:</b> Ananda Marga, Inc., et.al  v.  <b>Defendants:</b> Acharya Vimalananda Avadhuta, et al.,  And  <b>Intervenor:</b> Ananda Marga Pracaraka Samgha.	
<b>ORDER OF JUDGMENT</b>	

THIS MATTER is before me on Defendants’ and Intervenor’s Motion for Entry of Order and Judgment and Request for Immediate Attention, filed May 19, 2011. I have reviewed the motion, the response and all pertinent pleadings and authority and now order as follows:

This case came on for trial to the Court on May 9, 2011. Testimony and evidence was presented through May 13, 2011. Plaintiffs were present and were represented by Stephen T. Erwin, Esq. and Alexander Halpern, Esq. Defendants and Intervenor were also present and they were represented by Timothy Obitts, Esq. (PHV) and Mae Chung, Esq. (PHV). Alan C. Friedberg, Esq. and George W. Mueller, Esq. were present as local counsel for the Defendants and Intervenor.

On May 13, 2011, at the completion of the Plaintiff’s evidence, Defendants’ and Intervenor’s made their oral motion for involuntary dismissal pursuant to C.R.C.P. 41(b)(1) and motion for reconsideration of their Joint Motion for Summary Judgment pursuant to C.R.C.P. 56. A ruling on these motions was deferred and they were taken under advisement. On May 16, 2011, with all parties and counsel present in open court, the Court orally issued its findings of fact, conclusions of law and Order. Counsel for Defendants/Intervenor, Mr. Obitts was ordered to prepare and submit a conforming order in accordance with CRCP Rule 121. Subsequent to the Order entered on May 16, 2011 in open court, a dispute arose between the parties as to the efficacy and timeliness of the Court’s Order.<sup>1</sup> This dispute resulted in the filing of Defendants’ and Intervenor’s Motion for Entry of Order and Judgment and Request for Immediate Attention. After review of the pleadings in this case, together with the motion and response herein, I am satisfied that the parties cannot agree on the contents of the conforming order Mr. Obitts was directed to prepare.

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<sup>1</sup> The extent to which, if at all, Plaintiffs’ authorized or participated in the email blogging which forms, in part, the basis for Movants’ motion is disputed by the Plaintiffs. However, the resolution of that question is unnecessary to the determination of the issues here and is of no consequence to the Court at this time.

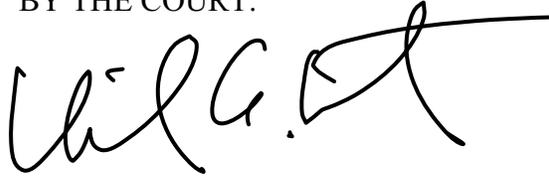
Therefore, the Defendants' and Intervenor's Motion for Entry of Order and Judgment is now GRANTED with the following amendments. Judgment is hereby entered, pursuant to CRCP 58, in favor of Defendants and Intervenor on all of Plaintiffs' claims *nunc pro tunc* May 16, 2011. Judgment is hereby entered, pursuant to CRCP 58, and in favor of Defendants and Intervenor on their counterclaims, *nunc pro tunc* May 16, 2011. Further, Defendants' and Intervenor's motion for reconsideration of their Joint Motion for Summary Judgment pursuant to C.R.C.P. 56 is also GRANTED, *nunc pro tunc* May 16, 2011. In entering this Order of Judgment, I have adopted and expressly incorporate by reference, as though fully set forth herein, the findings of fact and conclusions of law that were stated in open court on May 16, 2011. The parties are directed to obtain a transcript of that record and the transcript, together with this Order, will serve as the written order of judgment.

The effective date of entry of this judgment shall not be delayed for the taxing of costs, and said effective date is May 16, 2011.

The clerk shall enter this judgment on the register of actions pursuant to C.R.C.P. 79(a).

SO ORDERED.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael A. Martinez", with a long horizontal stroke extending to the right.

---

MICHAEL A. MARTINEZ  
District Court Judge

# **Exhibit**

# **B**

1 -----  
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)  
20 -----

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

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

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AFTERNOON SESSION, MAY 15, 2011

(Whereupon the following proceedings were had:)

\* \* \* \* \*

(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 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 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, all be it from obvious ends of the spectrum. All parties seek injunctive relief under Rule 57 of the Colorado -- 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 jurisdiction of the Court as have the defendants,

1 counter-plaintiffs who have initiated a counter claim in  
2 this action.

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

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

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

22           So let me start, obviously, with the standard of  
23 review under Rule 57, as I noted, the matter that is  
24 properly before the Court. Also the standard and burden of  
25 proof under Rule 65 is applicable and the plaintiffs will be

1 held to their burden of proof.

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

7 Further, after the plaintiff in an action tried by  
8 the Court without a jury has completed the presentation of  
9 his evidence, the defendant, without waiving his right to  
10 offer evidence in the event that the motion is not granted,  
11 may move for a dismissal on the ground that upon the facts  
12 and the law the plaintiff has shown now right to relief.

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

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

23 In ruling upon a motion to dismiss for failure to  
24 prove a prima facie case, the proper test is whether the  
25 plaintiff has produced some evidence, when taken most

1 favorably to him, proved a claim upon which relief could be  
2 granted. That is Brown versus Central City Opera House  
3 Association, 36 Colorado App 334, 542 P.2d 86, a 1975  
4 Colorado Court of Appeals case.

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

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

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

22           In considering their respective positions, the  
23 Court is called upon to consider the six prong test while  
24 established in the law, Rafky versus Mcfarland, 648 P.2d  
25 648, 1982 Colorado Supreme Court case, easiest case site to

1 remember, 648, 648. That case remains the Seminole case on  
2 point for injunctive relief and sets forth a six-part  
3 standard that the prospective moving party must meet.

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

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

19           The Court further has jurisdiction, all be it  
20 limited, in terms of the nature of the issues in dispute in  
21 this case as governed by the first amendment limitations  
22 that have been well established in Colorado law, Bishop and  
23 Diocese in Colorado versus Mote, found at 716 P.2d 85, 1986  
24 Colorado Supreme Court case; Levitt versus Calvary Temple of  
25 Denver, 33 P.3d 1227, Colorado Court of Appeals 2001; and

1 the Seminole case that has been referenced throughout the  
2 pleadings and throughout the presentation of this trial,  
3 Serbian Eastern Orthodox Diocese for the United States of  
4 America and Canada versus Amelio Jevitz (phonetic) 426 US  
5 696, 1976 US Supreme Court case.

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

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

22           The Court -- I have heard and considered the  
23 following testimony, from the witnesses under oath, Rubens  
24 Teixeira, I think is the pronunciation, T-e-i-x-e-i-r-a,  
25 also referred to and known as Acharya Rainjitananda

1 Avadhuta, I believe I said that correctly.

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

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

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

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

25 Without exclusion I have reviewed and considered

1 and find most helpful the following exhibits: Plaintiff's  
2 Exhibit 4, Plaintiff's Exhibit 106 through 112, Plaintiff's  
3 Exhibit 101, Plaintiff's Exhibit 15 -- this is also in no  
4 particular order -- Plaintiff's Exhibit 98, Plaintiff's  
5 Exhibit 83, Plaintiff's Exhibit 113, Plaintiff's Exhibit 43  
6 through 47, Plaintiff's Exhibit 121.

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

25 There were also a number of exhibits that the

1 Court took judicial notice of, particularly those exhibits  
2 relating to the on going and varying stages of legal  
3 proceedings in India regarding many of the same parties and  
4 certainly most of the same issues.

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

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

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

1 the Societies Act of West Bengal, India in 1964. Its stated  
2 purpose was to propagate Ananda Marga.

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

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

12 Ananda Marga has a recognized creed in the form of  
13 worship. From every evidence that I have heard, Reverend  
14 Baba was very thorough, very detailed in his vision, and was  
15 also very prolific in his writings, that is probably an  
16 understatement. None the less, there were certain writings,  
17 doctrines, codes, and practices of Ananda Marga that stand  
18 out and have been corroborated by the testimony in the  
19 record as well as the exhibits.

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

1 everyone, to whomever may wish to avail themselves of it.

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

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

23           It is further undisputed that in order to further  
24 propagate Ananda Marga, Reverend Baba directed within the  
25 structure of Ananda Marga, his disciples, if you will, to

1 come to varying areas of the world. He divided the world  
2 into nine sectors, each of those sectors having meaning and  
3 purpose presumptively known only to him, the sectors don't  
4 have a geographical denomination that frankly doesn't make  
5 any sense to me, but it doesn't have to make sense to me.  
6 None the less, it was clear, and everyone that has testified  
7 in this case corroborated this fundamental structure, nine  
8 sectors.

9           The core of the dispute here involves one of those  
10 sectors and that is the sector referred to as the New York  
11 Sector, which I have come to understand includes I believe  
12 the entirety of North America including Alaska, Hawaii, the  
13 Caribbean, Central America and perhaps South America -- no,  
14 Central America. None the less, it is substantial and  
15 significant and it is definitely incorporates the entire  
16 contiguous continental United States.

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

22           In 1970, the New York Sector of AMPS was  
23 incorporated in Illinois, I believe that was in 1969.  
24 Ananda Marga began in Illinois, was incorporated there,  
25 again at the behest of Reverend Baba and with the approval

1 of Reverend Baba. The sectorial office was nominally in  
2 Illinois, but the sector was headquartered in New York.

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

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

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

23 That is an important point in time in this case  
24 because plaintiff, Ananda Marga, Inc, and the individual  
25 plaintiffs in this case have presented considerable evidence

1 as to going forward with the point of Ananda Marga, Inc, was  
2 how it was initiated; the degree and extent that it was  
3 autonomous and independent, although affiliated in a  
4 coordinated and cooperative fashion with AMPS.

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

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

22 All of the witnesses agreed in terms of the nature  
23 of the structure, I think the term pyramidal hierarchy was  
24 referenced multiple times with the highest level of  
25 religious minister in AMPS being a Purodha. And

1 specifically the Purodha Pramukha being the spiritual head  
2 of Ananda Marga and AMPS.

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

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

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

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

1 and remain.

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

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

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

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

25 There was even sufficient and credible testimony

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

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

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

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

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

25 The AMPS office, also known as AMPS Central was

1 based in Ananda Nagar, India, that was the world  
2 headquarters and parent association of the Ananda Marga  
3 mission, including the New York Sector.

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

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

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

23           Reverend Baba established that there would be  
24 similar -- and directed that similar organizational  
25 structure be created, established, if you will, and followed

1 in each of the organizational levels of Ananda Marga  
2 beginning in the sector going to the region, going to the  
3 diocese and the villages on down to the units.

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

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

13 The general secretary was charged with the  
14 responsibility of appointing a secretarial secretary of 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 in 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 ISMOOB (phonetic) to WWW, I  
11 think was one, and there was -- everything was an  
12 abbreviation of some sort and became a little distracting,  
13 and I pity the person transcribing the record. But none the  
14 less, what all of that credibly showed and persuasively  
15 showed the degree and extent to which Ananda Marga is a  
16 structured religious entity. A structured religion with  
17 core rules of conduct and discipline, procedural rules for  
18 inspection and evaluation, reporting, as I noted each level  
19 reporting up to the other levels.

20           Again, the term pyramidal order comes into play  
21 and I think that is a app description in term and I think  
22 that it was borne out in the evidence incredibly 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 beholdng  
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 of the witnesses. The nature and degree and  
8 extent to which this was subordination or 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 bottom 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 I think derived from Ananda Marga Yoga Society Kansas,  
25 derived from Ananda Marga Illinois, derived from Ananda

1 Marga Reverend Baba.

2           This 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 a new, 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 it  
18 is revisionist, and it is revisionist now when it is  
19 beneficial to the proponent to make that revisionist  
20 assessment.

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

1 Court's primary obligation is to effectuate the intent of  
2 the contracting parties according to the plain language and  
3 the meaning of the contract, that is Albright versus  
4 Mcdermott, 415 P.3d 318, 322, Colorado Supreme Court from  
5 2000.

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

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

1           And the mere fact that the parties differ on their  
2 interpretation of an instrument does not of itself create an  
3 ambiguity. That is Fiberglass Fabricators, Inc versus  
4 Kylberg, K-y-l-b-e-r-g 799 p.2d 371, 374 Colorado Supreme  
5 Court from 1990.

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

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

1 York Sector; and continues to serve as the highest Ananda  
2 Marga branch of the Ananda Marga mission in North America.

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

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

22           As I have noted in Colorado law, certainly has  
23 held, words have meaning and absent any ambiguity they are  
24 given their ordinary and plain meaning. Constrained or  
25 creative construction is unwarranted and unauthorized based

1 on the facts and circumstances in this case and I will not  
2 entertain such a constrained and unwarranted interpretation  
3 here.

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

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

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

1           It remained the authority of the general secretary  
2 to make the appointment, to make removals, to repost that  
3 individual consistent with the Ananda Marga doctrine and  
4 structure and guidelines.

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

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

1 appropriate.

2           Those representations, all of those  
3 representations, were confirmed to be made under oath, with  
4 the intention and understanding that the relevant authority  
5 rely upon that information in making important decisions.

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

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

24           There is no credible persuasive evidence in the  
25 record from any of the witnesses that testified or any of

1 the exhibits that I reviewed and received into evidence to  
2 confirm the plaintiff's position that they were a stand  
3 alone autonomous entity. It simply was not the case.

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

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

20 What is within the scope of my authority is to  
21 resolve the questions presented here pursuant to Rule 57 and  
22 Rule 65. And the reason these prior findings are important  
23 is because we are here primarily because in October of 2005,  
24 the then general secretary Dhruvananda endeavored to  
25 transfer the then sectorial secretary from the New York

1 Sector, Acarya Tiirthananda Avadhuta, also known as Fernando  
2 Kumar. And what is not in dispute, it is not, it is not in  
3 dispute, I found no evidence to the contrary, was that on  
4 the date and time of that transfer and change in posting  
5 Dhruvananda was the stand alone general secretary with the  
6 unquestioned authority pursuant to Ananda Marga structure  
7 and authority and code and doctrine to do what he did, which  
8 is to transfer Tiirthananda, unquestionably.

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

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

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

25           Dhruvananda was appropriately in the position of

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

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

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

21 So Tiirthananda did not have the authority to  
22 ignore the transfer. The general secretary of AMPS Central,  
23 Tiirthananda posted Sarvadutta, d-u-t-t-a, as the new  
24 sectorial secretary, the New York Sector, replacing  
25 Tiirthananda on October 30, 2005, and resigning

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

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

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

24           Upon becoming aware that Tiirthananda was ignoring  
25 or not following his posting, general secretary attempted to

1 obtain his cooperation, and because the original designee,  
2 the replacement for Tirthananda had become needed  
3 elsewhere, the general secretary posted Acharya Vimalananda  
4 Avadhuta as the sectorial secretary of the New York Sector  
5 on February 28, 2006. That order was approved by the  
6 Purodha Pramukha and notice was given.

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

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

1           As the years went by and Tiirthananda, Mr. Kumar,  
2 continued to fail to recognize the dually appointed general  
3 secretary, the general secretary of the AMPS -- the general  
4 secretary directed the sectorial secretary Vimalananda to  
5 order a reconstitution of the board of the directors of  
6 Ananda Marga, Inc, which was accomplished with the approval  
7 of AMPS Central.

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

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

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

1 limitations on the Court's authority to act in this matter.

2 Serbian Orthodox case I find is not only  
3 instructive, but it is also factually and legally on all  
4 fours to the facts in this case and the law that I must  
5 apply. And so it compels a similar resolution to the  
6 dispute. And there was another Colorado case that I looked  
7 at that was similar, Moses versus Diocese of Colorado, 863  
8 P.2d 310 and 320, a 1993 Colorado Supreme Court case.

9 For the proposition that the Court not bottom  
10 embroiled in disputes involving a religious organization if  
11 the Court would be required to interpret or wage a doctrine.  
12 So I have been careful not to -- and counsel frankly have  
13 been careful to guide me as we went through the evidentiary  
14 presentation at varying points when either or both of them  
15 believed that the presentation was inviting the Court's  
16 interpretation of religious doctrine. And so I don't find  
17 that anything in the evidence that I did hear and certainly  
18 the evidence in the exhibits and testimony that I considered  
19 crosses that boundary.

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

1 authorities and the denomination reassigning him to a  
2 different ecclesiastical position.

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

8           As noted as a secular Court, I'm obligated to  
9 defer to and enforce the decisions of the religious  
10 denominations highest ecclesiastical authorities in matters  
11 concerning the governance of the religious denomination.  
12 That is Serbian Orthodox Diocese versus (inaudible) 426 US  
13 696, the case I have already cited.

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

20           Under Serbian Orthodox, the Court is called upon  
21 to defer to the religious denominations of matters regarding  
22 the authoritative interpretation of the nomination  
23 scriptures, their structural guidelines and 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 of AMPS Central headquartered in Ananda  
9 Nagar, India. AMPS is the parent organization of Ananda  
10 Marga, Inc, and all US organizations subordinate to Ananda  
11 Marga, Inc. Ananda Marga, Inc, and the New York Sector of  
12 AMPS are one in the same. Ananda Marga, Inc, is governed by  
13 the Caryacarya, AMPS procedural rules, and other wholly  
14 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 keynotes 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 that he held  
2 as a result of that position he no longer held as a result  
3 of the 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 Kumar as reported sectorial secretary of New York  
12 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, Dirk Duill, Shyam Sundar Kaushesh, and Piyush  
5 Bhatnagar are the rightfully appointed board of directors  
6 for Ananda Marga, Inc.

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

13 2006 purported amendments to the Ananda Marga  
14 bylaws have no legal effect and the counterclaim plaintiffs  
15 will have the right to exercise authority and control over  
16 the assets, real property, and personal property of Ananda  
17 Marga, Inc.

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

24 Further, the record reflects and the Court finds  
25 that the plaintiffs have failed to meet their burden to

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

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

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

22 The counterclaim defendants, Mr. Kumar,  
23 Mr. Nelson, Mr. Teixeira, Prabha Thakur, Jody Wright,  
24 William Dorf, Mr. Hemmelgarn, Mr. Secrest, are now enjoined  
25 from individually holding themselves out as the officers and

1 or directors of Ananda Marga, Inc.

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

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

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

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

23 The Court also has been asked to reconsider the  
24 ruling on motion for summary judgment submitted by the  
25 defendants in light of the findings that I have made, the

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

11           Specifically as to the plaintiff's third and  
12 fourth claims for relief, the Court notes that C.R.S.  
13 71-22-4 articulating the provisions for unauthorized  
14 assumption of corporate powers specifically provides that it  
15 is a statute imposing liability for assuming to act as a  
16 corporation without authority to do so and applies only to  
17 those persons who act as a corporation without making any  
18 bonafied effort to achieve corporate status by complying  
19 with statutory requirements from a corporation.

20           Simms versus Ottenhoff, 879 P.2d 436, Colorado  
21 Court of Appeals case from 1994. Clearly that statute and  
22 the claim based upon it is inapplicable and doesn't apply.

23           As to the fourth claim for relief, the Court finds  
24 no legal and now no factual basis to support it, so summary  
25 judgment is entered as a matter of law on those two claims.

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

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

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

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

19                   MR. OBITTS: Yes, Your Honor.

20                   THE COURT: All right.

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

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

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

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

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

11          MR. OBITTS: Thank you, Your Honor.

12          THE COURT: Anything else?

13          MR. OBITTS: Your Honor --

14          THE COURT: Yes.

15          MR. OBITTS: How long does it take to receive a  
16 transcript of these proceedings, specifically today?

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

21          MR. OBITTS: Thank you, Your Honor.

22          THE COURT: If there is nothing further, I  
23 appreciate your time and your professionalism and I wish  
24 everyone involved great peace and harmony, if you can find  
25 it.

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Court is adjourned.

(End of proceedings.)

\* \* \* \* \*

CERTIFICATION

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

Dated this 1st day of June, 2011.

  
Christine Reeder  
High Plains Reporting &  
Transcription, LLC

