

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO City and County Building 1437 Bannock, Denver, CO 80202	<b>▲ COURT USE ONLY ▲</b>
Plaintiffs: <b>ANANDA MARGA, INC.</b> , a Colorado Nonprofit Corporation, et al.;  Defendants: <b>ACHARYA VIMALANANDA AVADHUTA</b> , an individual, et al.;  And  Intervenor: <b>ANANDA MARGA PRACARAKA SAMGHA-RANCHI</b> .	Case Number: 10CV1867  Courtroom: 259
<b>ORDER</b>	

**THIS MATTER** is before the Court on Defendants/Counterclaim-Plaintiffs Acharya (“Ac.”) Vimalananda Avadhuta (“Avt.”), Clark E. Forden, Dipendra Kumar Singh, Dirk Duill, Shyam Sundar Kaushesh and Piyush Bhatnagar (collectively “Defendants”) and Intervenor Ananda Marga Pracaraka Samgha-Ramchi’s (“AMPS” or “Intervenor”) Motion for Attorneys’ Fees and Bill of Costs filed on June 13, 2011, respectively. Plaintiffs, Ananda Marga, Inc. *et al.* (collectively “Plaintiffs”), filed their opposition to Defendants’ Motion and Bill of Costs on July 15, 2011. Defendants’ filed their Reply on July 29, 2011. On March 9, 2012, this Court held a hearing regarding Defendants’ Motion for Attorneys’ Fees and the parties filed Proposed Findings of Fact in support of and in opposition to the Motion thereafter. The Court has reviewed the Motion for Attorneys’ Fees and Bill of Costs, the briefs in support and opposition, the case file, and the relevant authority, and being fully informed finds and orders as follows:<sup>1</sup>

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<sup>1</sup> This action originally came before the Court for injunctive relief. The Court held an evidentiary hearing beginning on May 9, 2011 that lasted six days.

**I.**  
**FINDINGS OF FACT<sup>2</sup>**

**A. Founding of Ananda Marga/Ananda Marga Pracaraka Samgha**

1. Rev. P. R. Sarkar, aka. Shrii Shrii Anandamurti (“Rev. Baba”) revealed “Ananda Marga” (which means the “path of bliss”) to the world in 1955. (Defs.’ Ex. D94, p.7); (Defs.’ Ex. D72, p.6); (May 9, 199:19-24); (May 10, 112:4-7); (May 13, 2011, 62:24-63:15); (May 16, 10:18-21).
2. Rev. Baba first registered the society “Ananda Marga Pracaraka Samgha” (which means the “society for the propagation of the path of bliss”) in 1956 in Bihar, India and later under the Societies Act of West Bengal, India in 1964, for the purposes of propagating “Ananda Marga.” (Defs.’ Ex. D94, p.7); (May 9, 153:5-15, 199:19-24); (Defs.’ Ex. D72, p.6); (May 13, 62:24-63:15); (May 16, 10:18-25).
3. Ananda Marga has a recognized creed and form of worship, which are detailed in an extensive array of Rev. Baba’s published writings and teachings that establish the various doctrines, social codes and practices, and worship procedures – particularly Ananda Marga- The Path of Bliss, CaryaCarya Parts 1, 2, and 3, Ananda Sutram, and Ananda Marga Elementary Philosophy. (Defs.’ Ex. D72, p. 6); (Defs.’ Ex. D94, p. 7); (Defs.’ Ex. 105, p. 7); (May 16, 11:11-21).
4. AMPS has its own distinct and extensive codes of doctrines and disciplines that were given by Rev. Baba. Among those codes of doctrine and discipline is the Ananda Marga CaryaCarya Parts 1, 2, and 3. There are more exacting codes for ordained Ministers, and

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<sup>2</sup> The Court adopts the findings of fact as presented in the Proposed Findings of Fact submitted by the parties as relevant.

Wholetimer Acaryas have even stricter rules. (Defs.' Ex. D72, p.7); (Defs.' Ex. D94, p.8); (Defs.' Ex. 105, pp. 7-8); (May 16, 12:3-9; 17:19-25; 18:6-9).

5. The Supreme Court of India has ruled that AMPS is a denomination of Hinduism. (Defs.' Ex. D178, pp. 2-18 (*as redacted*)); (May 16, 12:20-23).

### **B. Ecclesiastical Hierarchical Structure**

6. Rev. Baba was very detailed in the structure he created for Ananda Marga, which enabled him even to manage its affairs while in prison in India. (May 11, 134:15-137:10); (May 16, 12:10-19).
7. Rev. Baba micromanaged AMPS. (Defs.' Ex. D293, p. 1); (May 11, 137:6-10). Rev. Baba established a distinct ecclesiastical, hierarchical system of governance for AMPS. (May 10, 27:14-28:15); (Defs.' Ex. 72, pp. 8-9); (Defs.' Ex. D94, pp. 10-11); (Defs.' Ex. 105, p. 7); (May 16, 12:20-23; 15:9-13).
8. AMPS's ecclesiastical hierarchy has a pyramidal structure. (May 12, 54:22-55:20); (Defs.' Ex. 105, p. 8); (May 16, 15:23-16:1).
9. A Purodha is the highest level of religious minister in AMPS, and the Purodha Pramukha is the spiritual head of AMPS. It is a position that is held for life unless the Purodha Pramukha resigns, such as for reason of ill health. The Purodha Pramukha serves as the President of AMPS unless he or she chooses not to, in which case he approves the President. (Pls.' Ex. 15, pp. 49-50); (Pls.' Ex. 121, p. 22); (Defs.' Ex. D72, p. 9); (Defs.' Ex. D94, p. 11); (Defs.' Ex. 105, p. 7); (May 12, 180:21-182:2); (May 16, 15:23-16:3; 16:9-15).
10. The Purodha Pramukha appoints and oversees the General Secretary and selects the members of the Central Executive Committee. The decision of the Purodha Pramukha is final and is

not appealable. (May 11, 5:21-25); (Pls.' Ex. 15, p. 50); (Def.' Ex. 72, p. 4); (Def.' Ex. 94, p. 10); (Pls.' Ex. 121, p. 21-22); (May 16, 16:16-17:1).

11. The first Purodha Pramukha was Rev. Baba, who held that position until his physical death in 1990. After Rev. Baba's physical death, Ac. Shradhananda Avt. was the Purodha Pramukha, and he held that position until his death in 2008. (May 9, 116:8-12); (May 11, 32:24-33:7); (May 13, 61:14-22).
12. Next in AMPS's pyramidal structure after the Purodha Pramukha is the Central Purodha Board, the highest ecclesiastical body of AMPS. The Central Purodha Board elects the Purodha Pramukha from among its own members. (Pls.' Ex. 15, p. 50); (May 16, 16:19-24).
13. Reverend Baba provided for AMPS Ministers to undergo a rigorous, systematic and prescribed program of instruction and training in a Global Basic Training Center, with the goal of becoming an Acarya, which is the generic term used to describe a duly ordained, bonafide AMPS Minister. (Pls.' Ex. 72; p. 8); (Pls.' Ex. 94; p. 10); (Def.' Ex. 105, p. 8-9); (May 16, 17:7-14).
14. AMPS ministers are of two distinct types: Grhi (married, "Family") Acaryas, and Wholtime Sannyasin (celibate or renunciate) Acaryas, who dedicate their whole lives to serve the Ananda Marga mission. (Def.' Ex. 72, p. 9); (Def.' Ex. 94, p. 10); (Def.' Ex. 105, p. 8); (May 16, 17:14-18).
15. Wholtime Ministers receive their assignment from AMPS Central Office in India. (May 11, 52:25-53:4); (Def.' Ex. 72, p. 9); (Def.' Ex. 94, p. 10); (Def.' Ex. 105, p. 8); (May 16, 17:19-21).

16. When a person takes an oath to become an Acarya, he or she agrees to abide by the organizational system created by Rev. Baba and the conduct rules that he propounded, including the conduct rules that are specifically prescribed by Rev. Baba for Acaryas. Those conduct rules include rules of obedience to Rev. Baba's organizational system, to one's religious superiors, and one's postings by AMPS Central. (Defs.' Ex. 72, p. 7); (Defs.' Ex. 94, p. 8); (May 9, 176:17-21); (May 12, 33:5-11; 34:12-35:17; 40:16-25); (May 16, 17:21-25).
17. When a person takes an oath to become an Avadhuta or Wholetimer, he or she further agrees to abide by the even stricter conduct rules that are specifically prescribed for Wholetimers in addition to those prescribed for Acaryas. Those conduct rules include rules of strict obedience to the Rev. Baba's organizational system and to one's superiors, including obeying posting orders. (Defs.' Ex. 72, p. 7); (Defs.' Ex. 94, p. 8); (May 9, 171:11-15; 172:21-173:10; 173:17-19; 176:17-177:16; 178:2-7; 178:19-179:3); (May 12, 33:5-11); (May 16, 18:6-9).
18. One of the conduct rules for Acaryas and Avadhutas is that "obedience is discipline, discipline is obedience." (May 9, 173:17-19); (May 11, 54:21-55:2).
19. An Acarya or an Avadhuta could be disciplined for failing to follow his or her conduct rules. (Defs.' Ex. 45, p. 6) (May 11, 133:8-12; 134:3-14); (May 12, 30:1-24); (May 16, 18:1-5).
20. All Ministerial positions are defined, recognized and further regulated solely by the global governing body of Ananda Marga, AMPS Central. (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (Defs.' Ex. 105, p. 8); (May 16, 18:10-13).

### **C. Ecclesiastical Organizational Hierarchy**

21. The Ananda Marga Mission is worldwide and is organized legally as such. (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11).
22. For organizational purposes, Rev. Baba divided the globe into nine large geographical areas called Sectors, all reporting to their corresponding authorities at AMPS Central. Each Sector is further divided into subunits called (in descending order) Regions, Dioceses (States or Provinces), Districts/Bhukti, Villages, and local Units according to geography, size and population. (Defs.' Ex. D5, p. 6); (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (Defs.' Ex. D105, p. 7); (May 11, 145:15-146:16); (Defs.'s Ex. 246, p. 7); (Pls.' Ex. 121, pp. 4-6); (May 10, 18:14-24); (May 11, 34:17-36:19); (May 16, 18:14-25).
23. AMPS Central, based in Ananda Nagar, India, is the world headquarters and parent organization of the Ananda Marga Mission, including the New York Sector. (Defs.' Ex. 72, p. 10); (Defs.' Ex. 94, p. 11); (Pls.' Ex. 3, p. 1) (Pls.' Ex. 4, p. 1); (Pls.' Ex. 121, p. 4); (Defs.' Ex. 203, p. 1); (May 16, 19:1-4).
24. The Central Committee is an ecclesiastical governing body comprised of Purodhas and elected by the general body of Purodhas. The Purodha Pramukha selects the Central Executive Committee from the members of the Central Committee. The Central Committee is the highest policy-making body in AMPS. (Pls.' Ex. 121, p. 22); (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (May 16, 19:5-15).
25. The General Secretary of AMPS Central is appointed by the Purodha Pramukha from among the ranks of the Central Committee. Under the ecclesiastical governance system of AMPS, the General Secretary is charged with the administration of the entire

denomination/organization. The General Secretary reports to the Purodha Pramukha and President. (Pls.' Ex. 121, p. 22); (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (May 9, 211:3-12); (May 16, 19:16-23).

26. Under the ecclesiastical hierarchical system, the General Secretary of AMPS Central issues all posting orders assigning Wholetimer Acaryas to various organizational positions at one or more of the various levels of the organization. These Wholetimer Acaryas remain in these postings until removed or reassigned by the General Secretary. (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (Defs.' Ex. 121, p. 7); (Defs.' Ex. 203, pp. 1-2); (May 10, 30:5-31:7); (May 12, 52:11-16); (May 16, 19:16-23).
27. Rev. Baba directed that in each sector there would be an organizational structure similar to that in AMPS Central. Therefore, proceeding from the Purodha Pramukha, there are organizational structural authorities all the way through and including the Central, Sectorial, Regional, Diocesan, District and Village levels throughout the world. (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (Defs.' Ex. 105, p. 7); (May 12, 56:17-57:4); (May 16, 19:24-20:8).
28. Each of the various levels in the ecclesiastical organizational hierarchy are led by a secretary who reports to, receives direction from, and is subordinate to the next higher level of authority, with AMPS Central as the highest level and the local Unit the lowest level. AMPS has a highly regulated reporting system, with each subordinate having to follow the directions of its immediate superior and of AMPS Central. (May 11, 114:19-117:2; 134:15-137:5); (May 12, 67:9-69:25); (Defs.' Ex. D25, pp. 16-18); (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (Defs.' Ex. 105, p. 7); (Pls.' Ex. 121, pp. 7-9); (May 16, 20:9-12).

29. A Sectorial Secretary is the head of a Sector and is the personal representative of the General Secretary in the Sector where he or she is posted. The Sectorial Secretary serves at the pleasure of the General Secretary. This means, among other things, that the Sectorial Secretary: receives his or her direction from the General Secretary, is required to report to the General Secretary in person and in written form, must have his or her travel (tour programme) pre-approved by AMPS Central, must seek approval from AMPS Central and/or the General Secretary on a host of Sectorial matters, and can be transferred or removed by the General Secretary. (May 10, 11:25-12:9); (May 11, 9:25-10:23; 80:5-10; 150:11-22); (Pls.' Ex. 121, p. 7); (Defs.' Ex. 72, p. 9); (Defs.' Ex. 94, p. 11); (May 11, 100:13-19; 146:17-148:19); (Defs.' Ex D100, pp. 1-2); (May 12, 51:15-25; 52:1-10); (May 13, 85:10-22); (Defs.' Ex. D249, p. 4); (May 16, 20:13-21:3).
30. When the Sectorial Secretary is out of the sector or unavailable, the Sectorial ERAWS Secretary becomes the acting Sectorial Secretary. (May 12, 70:25-71:3).
31. Rev. Baba provided for a structure to ensure that the Ananda Marga mission was periodically evaluated for progress in propagating the mission. Under this structure established by Rev. Baba, AMPS Central periodically inspects each Sector to make sure that, among other things, the Sector is in compliance with the CaryaCarya and Conventions and to provide input related to changes that need to be made in the Sector. Among the things that AMPS Central inspects in a Sector are: the progress of each Sector in meeting its targets that were set in previous inspections; the completeness of the Sector's office records and filing systems; the Sector's finances (including progress in paying off loans); the Sector's land and asset records; and the Sector's progress on its comprehension and implementation of, and

compliance with, Central Committee or Central Executive Committee resolutions. If the AMPS Central finds areas of deficiency, those are noted in a rectification report, which is sent to AMPS Central. Part of the inspection process involves checking up on the progress of previous rectification reports. The results of the entire inspection are written up in reports that are sent to AMPS Central. (May 9, 218:12-219:7); (May 11, 129:1-6); (Pls' Ex. 121, p. 13); (Defs.' Ex. D37, p. 12); (Defs.' Ex. D72, p. 11); (Defs.' Ex. D94, p. 13) (Defs.' Ex. D240 (*entire document*)); (Defs.' Ex. D242 (*entire document*)); (May 12, 71:4-25); (May 16, 21:4-19).

32. AMPS Central has conducted inspections of the New York Sector. (May 9, 242:11-243:8); (May 11, 189:6-191:12); (Defs.' Ex. D366, p. 2); (May 12, 25:8-17; 71:4-25).

33. AMPS has a pyramidal order, with the Purodha Pramukha and AMPS Central at the top of the pyramid and the local unit at the bottom of the pyramid. (Defs.' Ex. 105, p. 8); (May 11, 80:11-81:15; 117:6-118:6); (May 12, 54:22-55:20); (May 16, 21:20-22).

34. Rev. Baba also created a judicial system to resolve disputes within the AMPS worldwide organization, as set forth in the Caryacarya and the Conventions of AMPS. Shortly after the physical death of Rev. Baba, the Central Committee memorialized in writing *A Manual on Tribunal*, that was instituted in 1992. Rev. Baba had the final determination on all matters involving AMPS during his physical life. Because Ananda Margiis believe that Rev. Baba was infallible, His words were final and must be followed by all adherents of Ananda Marga. (May 11, 54:11-20); (Defs.' Ex. D60, p. 20); (Defs.' Ex. D294 (*entire document*)); (Defs.' Ex. D293, p. 2).

#### **D. Ananda Marga, Inc. – AMPS in the New York Sector**

35. The New York Sector of AMPS is comprised of the entirety of the United States (including Hawaii and Alaska), Mexico, Canada, the Caribbean, and Central America. (Defs.' Ex. D72, p. 9); (Defs.' Ex. D94, p. 11); (May 16, 13:10-18).
36. Ananda Marga in North America and in the United States was formed and has existed as a nonprofit corporation in various states in the United States since 1969 to propagate Rev. Baba's ideals in the countries of North and Central America and the Caribbean. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (May 16, 13:18-22).
37. In 1969, at the direction of Rev. Baba, Ananda Marga Yoga Society was incorporated in Illinois to further the work of AMPS in the New York Sector and implement the programs of Rev. Baba. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (May 10, 189:22-190:2; 191:6-14; 191:21-24; 192:19-193:10); (May 16, 13:23-14:2).
38. In 1970, with the approval of Rev. Baba, Ananda Marga Yoga Society of Kansas, Inc. was incorporated in Kansas to further the work of AMPS in the New York Sector and implement the programs of Rev. Baba. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (Defs.' Ex. D100, p. 3) (May 10, 193:11-194:19; 196:13-18); (May 16, 14:4-11).
39. In 1974, with the approval of Rev. Baba, Ananda Marga, Inc. was incorporated in Colorado to further the work of AMPS in the New York Sector and implement the programs of Rev. Baba. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (Defs.' Ex. D144 (*entire document*)); (May 16, 14:12-17).
40. In 1974, AMPS Central decided that Ananda Marga, Inc. would be the successor corporation of both Ananda Marga Yoga Society, Inc. and Ananda Marga Yoga Society of Kansas, Inc.,

and that all of the work of the New York Sector would be conducted through Ananda Marga, Inc. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7).

41. Ananda Marga, Inc. was the successor of Ananda Marga Yoga Society of Kansas, Inc., which in turn was the successor to Ananda Marga Yoga Society of Illinois, which derived from Rev. Baba. (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (May 16, 22:23-23:1).
42. Ananda Marga was charged with the responsibility to propagate the Ananda Marga Mission in the New York Sector. (May 9, 196:18-197:8); (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (May 16, 25:14-21).
43. Ananda Marga, Inc. was created to be and is the legal embodiment of the New York Sector of AMPS, and its jurisdiction is the work of AMPS Central in the New York Sector. (Defs.' Ex. D156, p. 1); (Defs.' Ex. D159, p. 1); (Defs.' Ex. D160, p. 1); (Defs.' Ex. D161, p. 1); (Defs.' Ex. D162, p. 1); (May 12, 38:13-39:7); (May 13, 43:4-44:4); (May 16, 25:13-14).
44. Ananda Marga, Inc. is the highest Ananda Marga legal corporate authority within the New York Sector. It is the central church organization for the Ananda Marga Mission in North America, plus being the seat of ecclesiastical administration as well. (Defs.' Ex. D72, p. 1); (May 16, 25:21-22).
45. Ananda Marga, Inc. raises funds for Ananda Marga in the New York Sector. (May 12, 80:21-24; 82:25-83:7; 84:18-87:5); (May 13, 74:13-76:6); (May 16, 25:21-25).
46. AMPS continues its work in the New York Sector under the auspices of Ananda Marga, Inc. and its subordinate organizations and assemblies. (Defs.' Ex. 72, p. 6); (Defs.' Ex. 94, p. 7); (May 16, 25:21-25).

47. Ananda Marga, Inc.'s affiliates report up to Ananda Marga, Inc. (Defs.' Ex. D149 (*entire document*)); (May 16, 26:1-5).
48. Ananda Marga, Inc. is organized and operated exclusively for religious purposes. (Defs.' Ex. D144, p. 1); (Defs.' Ex. D145, p. 1); (Defs.' Ex. D71, p. 7); (Defs.' Ex. D94, p. 17); (May 16, 27:2-6).
49. Ananda Marga, Inc. is governed by Caryacarya; Caryacarya are the Scriptures of Ananda Marga. (May 10, 35:17-24; 89:4-22); (Defs.' Ex. D72, pp. 6-7); (Defs.' Ex. D94, pp. 7-8; (Defs.' Ex. D263 (*entire document*)); (May 11, 66:15-68:1); (May 12, 36:18-39:1; 54:4-8; 78:18-25); (May 16, 27:6-8).
50. The Bylaws of Ananda Marga, Inc. were approved by AMPS Central in 1974 ("1974 Bylaws"), and were created in a manner to reflect the hierarchical ecclesiastical structure of AMPS, with AMPS Central having authority over its subordinate corporation. (Defs.' Ex. D146 (*entire document*)); (May 16, 27:9-12).
51. AMPS Central's authority over Ananda Marga, Inc. is exercised in part through the General Secretary's power, at the General Secretary's discretion, to appoint and remove the Sectorial Secretary and all Acarayyas in the New York Sector (as stated in Article XV), and through the manner in which the Board of Directors is appointed or removed, to ensure that AMPS Central maintains control over its Sector. This power of appointment is according to the hierarchical structure instituted by Rev. Baba. (Defs.' Ex. D146, pp. 3-4; 13); (Defs.' Ex. D147, p. 2; 5); (May 16, 27:12-28:2).
52. Ananda Marga, Inc. requested permission from AMPS Central to sell a property. (May 10, 59:19-60:22); (Defs.' Ex. 362).

53. AMPS Central is the parent organization of Ananda Marga, Inc. (May 9, 204:1-205:1; 206:3-208:17); (Defs.' Ex. D146, p. 1); (Defs.' Ex. D147, p. 1); (Defs.' Ex. D72, p. 6); (Defs.' Ex. D94, p. 7); (Defs.' Ex. D79, p. 2); (Defs.' Ex. D80, p. 2); (Defs.' Ex. D81, p. 2); (Defs.' Ex. D82, p. 2); (Defs.' Ex. D83, p. 2); (Defs.' Ex. D84, p. 2); (Defs.' Ex. D85, p. 2); (Defs.' Ex. D86, p. 2); (Defs.' Ex. D93, p. 2); (May 16, 23:2-9).
54. The 1974 Bylaws state that AMPS Central is the parent of Ananda Marga, Inc. and the programs listed in Article XIV of the 1974 Bylaws reflect the various standing programs of AMPS Central. (May 9, 224:16-20); (May 11, 34:17-36:19); (May 13: 15:21-16:1); (Defs.' Ex. D146, pp. 9-13); (May 16, 28:3-7).
55. With the prior authorization of Rev. Baba and AMPS Central, Ananda Marga, Inc. amended its Bylaws in 1982. These Bylaws stated that AMPS is the global parent organization of Ananda Marga, Inc. (May 11, 150:2-10); (Defs.' Ex. D147, p. 1); (May 16, 28:7-13).
56. Ananda Marga, Inc.'s Board meeting minutes reflect that Ananda Marga, Inc. is the legal embodiment of Ananda Marga Pracaraka Samgha New York Sector. (Defs.' Ex. D156, p. 1); (Defs.' Ex. D159, p. 1); (Defs.' Ex. D160, p. 1); (Defs.' Ex. D161, p. 1); (Defs.' Ex. D162, p. 1); (Defs.' Ex. D156, p. 1); (Defs.' Ex. D159, p. 1); (Defs.' Ex. D160, p. 1); (Defs.' Ex. D161, p. 1); (May 16, 28:13-16).
57. Ananda Marga, Inc. has repeatedly represented in the *Crimson Dawn* (the newsletter of the New York Sector of AMPS) and other publications that AMPS Central dictates policies that Ananda Marga, Inc. and its subordinates must follow. (May 11, 97:15-99:4; 108:23-110:6; 118:19-130:12; 126:24-127:5; 129:10-131:18; ); (Defs.' Ex. D21, p. 34); (Defs.' Ex. D24,

p. 2); (Defs.' Ex. 25, p. 56); (Defs.' Ex. D32, p. 20); (Defs.' Ex. D39, p. 6); (Pls.' Ex. 121, pp. 7, 11, 14, 22-24, 30, 52).

58. Ananda Marga, Inc. has repeatedly represented to the United States Internal Revenue Service, under penalty of perjury, and to the United States immigration authorities that AMPS has a definite and distinctive ecclesiastical hierarchy and that AMPS Central is its parent organization. (May 9, 204:1-205:1; 206:3-208:17; 226:16-227:18); (Defs.' Ex. D71, p. 9); (Defs.' Ex. D72, p. 6, 9); (Defs.' Ex. D94, p. 7, 11); (Defs.' Ex. D79, p. 2); (Defs.' Ex. D80, p. 2); (Defs.' Ex. D81, p. 2); (Defs.' Ex. D82, p. 2); (Defs.' Ex. D83, p. 2); (Defs.' Ex. D84, p. 2); (Defs.' Ex. D85, p. 2); (Defs.' Ex. D86, p. 2); (Defs.' Ex. D93, p. 2); (Defs.' Ex. D105, p. 7); (May 13, 71:22-72:20); (May 16, 28:17-29:21).
59. Ananda Marga, Inc. and AMPS New York Sector are one and the same. (May 9, 166:7-16); (May 10, 40:18-41:19; 84:8-85:1; 98:10-99:6; 101:18-102:5; 102:11-103:5; 107:19-24); (Pls.' Ex. 3, p. 2); (Defs.' Ex. 215); (Defs.' Ex. D220); (Defs.' Ex. 224, p. 2); (Defs.' Ex. 256); (Defs.' Ex. 288, p. 2); (Defs.' Ex. D310); (May 11, 49:18-50:9; 52:3-15; 94:19-95:18); (Defs.' Ex. D156, p. 1); (Defs.' Ex. D159, p. 1); (Defs.' Ex. D160, p. 1); (Defs.' Ex. D161, p. 1); (Defs.' Ex. D162, p. 1); (May 16, 28:17-29:21).
60. There is nothing in the evidence presented in the record either by testimony or in the exhibits sufficient to establish Plaintiffs' claim that Ananda Marga, Inc. was a stand-alone, autonomous entity. (May 16, 22:18-23:4; 29:22-30:6).
61. There was no credible persuasive evidence in the record from any of the witnesses or the exhibits that the words in the Ananda Marga, Inc.'s filings with government entities describing Ananda Marga, Inc. were ambiguous. (May 16, 25:4-8).

### **E. Defection of Kolkata Dissidents from AMPS**

62. In or around 2003, tensions within AMPS in India led to several Purodhas and Acaryas leaving AMPS and setting up a separate organization based in Kolkata (“AMPS-Kolkata”). (May 10, 232:25-233:14; 233:25-234:4); (May 12, 113:11-114:16).
63. AMPS-Kolkata set up its own governing body. (May 9, 113:13-24; 232:19-233:4); (May 10, 236:21-23); (May 11, 108:23-209:10); (May 12, 113:11-114:16).
64. After the split, neither Ananda Marga, Inc. nor the Plaintiff Board members recognized AMPS-Kolkata as legitimate. Instead, they recognized the original AMPS, operating out of Ranchi, as the legitimate AMPS. (May 9, 232:19-232:24); (May 10, 16:23-17:19); (May 12, 46:7-12); (Defs.’ Ex. 203, p. 1); (Defs.’ Ex. 327, p. 1).
65. AMPS-Kolkata appointed its own Sectorial Secretary of the New York Sector, which was not Fernando Kumar, fka Ac. Tirthananda Avt. (May 12, 45:21-46:12; 114:23-116:4; 153:23-154:1).
66. AMPS-Kolkata made no effort to control Ananda Marga, Inc. (May 12, 115:19-116:4).

### **F. Transfer of Fernando Kumar, formerly known as Ac. Tirthananda Avt., Reconstitution of Ananda Marga, Inc.’s Board of Directors, and seizure of Fernando Kumar’s Religious Titles and Certificates**

67. Fernando Kumar, fka Ac. Tirthananda Avt, was posted as the Sectorial Secretary of the New York Sector of AMPS in 2003 by the General Secretary of AMPS Central, Ac. Dhruvananda Avt., and Fernando Kumar obeyed the posting order. (May 12, 102:8-103:6; 109:4-22).
68. On October 30, 2005, the General Secretary of AMPS Central, Ac. Dhruvananda Avt. posted Ac. Shubhatmananda Avt. (aka. Sarva Dutta) as the Sectorial Secretary of the New York Sector, replacing Fernando Kumar, and assigning Fernando Kumar as Sectorial Secretary of

the Suva (Australia) Sector of AMPS. (Pls.' Ex. 98); (May 12, 126:24-127:15); (May 16, 30:20-25; 32:19-24).

69. Ac. Dhruvananda Avt., was the unquestioned General Secretary of AMPS Central at the time and had the authority to transfer Fernando Kumar. (May 9, 70:10-25; 93:10-11); (May 10, 13:23-14:6; 61:9-62:2); (May 11, 50:10-14); (Defs.' Ex. D366, p. 2); (May 13, 38:2-7); (May 16, 30:25-31:8; 31:18-24).

70. Fernando Kumar was aware of the transfer order, but he did not inform the members of the Board of Ananda Marga, Inc. about it. (May 12, 126:24-127:15); (May 13, 28:2-7; 36:15-18); (May 16, 32:21-33:3).

71. Fernando Kumar was obligated to follow the posting order, which he has not done. (May 9, 176:17-21); (May 10, 8:19-9:8); (May 12, 40:1-43:3; 134:1-135:1; 137:5-138:2); (May 16, 31:23-32:5)

72. Although Fernando Kumar obtained a stay of the transfer order, that stay was vacated in January 2006. (May 12, 183:25-184:10; 187:23-188:13); (Defs.' Ex. D316); (Defs.' Ex. D323, p. 10); (Defs.' Ex. D392); (May 16, 31:2-15).

73. It was not properly within Fernando Kumar's or the Ananda Marga, Inc. Board's authority to ignore a posting order from the General Secretary of AMPS Central transferring the Sectorial Secretary of the New York Sector. (May 9, 176:17-21); (May 10, 8:19-9:8); (May 12, 40:1-43:3); (May 16, 32:6-9).

74. According to the practice and Conventions of AMPS, the posting took immediate effect. (May 10, 45:6-46:14; 47:3-48:6); (May 13, 52:9-17; 53:12-54:13; 54:14-21); (May 16, 32:10-18).

75. On October 30, 2005, Fernando Kumar ceased being the Sectorial Secretary of New York Sector of AMPS and ceased being the chairman of the Board, President and CEO of Ananda Marga, Inc. (May 16, 33:15-21).
76. AMPS Central subsequently learned that Fernando Kumar was not obeying the Posting Order. Because Ac. Shubhatmananda Avt. (Sarva Dutta) needed to remain at AMPS Central, on February 28, 2006, the General Secretary posted Ac. Vimalananda Avt. as the Sectorial Secretary of the New York Sector and transferred Fernando Kumar to the Qahira Sector. (May 12, 135:2-5); (May 16, 33:21-34:4).
77. In February 2006, the Ananda Marga, Inc. Board of Directors attempted to change the Bylaws of Ananda Marga, Inc. to restrict the power of the General Secretary to appoint and remove the Sectorial Secretary. At the time of the purported amendments to the Bylaws of Ananda Marga, Inc., Fernando Kumar, was no longer the Sectorial Secretary, and the purported amendments to the Bylaws are therefore invalid. (May 10, 111:5-18); (May 12, 132:18-133:25); (May 13, 41:17-21); (May 16, 34:5-14).
78. The purported amendments to the Bylaws are also contrary to the ecclesiastical, hierarchical governance structure of AMPS and go against the very core of the teachings of Rev. Baba. (Defs.' Ex. 299, p. 2); (May 16, 34:5-14).
79. Ac. Vimalananda Avt., the rightfully appointed Sectorial Secretary, did not approve the purported 2006 amendments to the Bylaws of Ananda Marga, Inc. (Pls.' Ex. 37, (*entire document*)); (Pls.' Ex. 38, (*entire document*)); (Pls.' Ex. 101 (*entire document*)); (May 16, 34:17-18).

80. Fernando Kumar and the individual Plaintiffs did not avail themselves of AMPS tribunal process. (May 16, 34:16-23).

81. Because the Fernando Kumar Board of Directors of Ananda Marga, Inc. continued to ignore the transfer order and recognize Ac. Vimalananda Avt. as Sectorial Secretary of the New York Sector of AMPS, in January 2009, the General Secretary instructed Ac. Vimalananda Avt., the Sectorial Secretary of the New York Sector, to reconstitute the Board of Directors of Ananda Marga, Inc., which he did with AMPS Central's approval. (Pls.' Ex. 101 (*entire document*)); (May 16, 34:24-35:5).

### **G. Court Rulings In India**

82. The courts in India have ordered that Ac. Dhruvananda Avt., the General Secretary of AMPS Central, should function as the Purodha Pramukha until resolution of the cases pending in the Indian Courts. (Defs.' Ex. D347, p. 68); (May 16, 35:6-11).

## **II. DISCUSSION**

Defendants' and Intervenor's Motion for Attorneys' Fees and Bill of Costs are currently pending before the Court. The Court addresses each item in turn.

### **A. Motion For Attorneys' Fees**

Defendants and Intervenor request the attorneys' fees incurred in defending this action under C.R.S. § 13-17-101, *et seq.* Defendants and Intervenor allege that the claims alleged in Plaintiffs' Amended Complaint were groundless as they were unsupported by any credible evidence at trial.

#### **a. Standard of Review**

Colorado statute allows the trial court to effectuate substantial justice by granting the recovery of attorney fees when the bringing of an action is determined to be substantially frivolous, substantially groundless, or substantially vexatious. *See* C.R.S. § 13-17-101, *et seq.* C.R.S. § 13-17-102(2) additionally provides for an award of attorney fees against an attorney or party who asserts a claim or defense that “lacked substantial justification.” In that context, “lacked substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious. C.R.S. § 13-17-102(4). A party seeking attorney fees bears the burden of proving, by a preponderance of the evidence, its entitlement to an award under § 13-17-101, *et seq.* *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960, 962 (Colo. App. 2001) (citing *American Water Development, Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994)).

A claim or defense is groundless if the proponent's allegations are not supported by any credible evidence at trial. *See Double Oak Const., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140, 151 (Colo. App. 2003) (citing *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo.1984)). This test assumes that the proponent has a valid legal theory but can offer little or nothing in the way of evidence to support the claim. *See Bilawsky v. Faseehudin*, 916 P.2d 586, 590 (Colo. App. 1995).

The determination of whether a claim or defense is groundless under C.R.S. § 13–17–102 is within the discretion of the trial court, whose decision will not be disturbed on appeal if supported by the record. *Double Oak Const., L.L.C.*, 97 P.3d at 151 (citing *Schoonover v. Hedlund Abstract Co.*, 727 P.2d 408 (Colo. App. 1986)). Included among the factors a trial court must consider in making the determination that a litigant is entitled to an award of attorney fees under C.R.S. § 13-17-101, *et seq.*, are: (a) the extent of any effort made to determine the validity

of any action or claim before the action or claim was asserted; (b) the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action; and (c) the availability of facts to assist a party in determining the validity of a claim or defense. *Bilawsky*, 916 P.2d at 590. A trial court is not required to make a finding on every factor addressed by the parties, rather, the court need only specify the reasons for the award and the factors that are relevant to the circumstances involved in the case. *Id.*

**b. Analysis**

Defendants and Intervenor request the Court to grant their Motion for Attorneys' Fees as Plaintiffs' claims were not supported by any credible evidence at trial. Specifically, Defendants and Intervenor allege that there was no credible evidence in the record to support Plaintiffs' claim that Ananda Marga, Inc. was a stand-alone entity independent of the ecclesiastical hierarchy of AMPS and that, at all times, Ananda Marga, Inc. was subordinate to AMPS Central. Being intimately familiar with the factual and legal issues presented in this action, and after revisiting the trial transcripts and evidence presented during the weeklong trial, the Court finds that Defendants and Intervenor are entitled to an award of their attorneys' fees as Plaintiffs' claims collectively ignored controlling case law and failed to present credible evidence to support their claims at trial.

**i. Plaintiffs' claims ignored controlling authority.**

Over two years ago, Plaintiffs filed an Amended Complaint setting forth the issue for this Court's determination of which party maintained control over Ananda Marga, Inc., a religious organization. Now, in Plaintiffs' Opposition to Defendants' and Intervenor's Motion for

Attorneys' Fees, Plaintiffs stray from the allegations contained in its Amended Complaint and assert that "[a]lthough there was considerable disagreement as to the nature of the relationship between AMPS and Ananda Marga, Inc., this issue is not directly relevant to Plaintiffs' claims." However, based upon the weeklong trial held before the Court, the significant amount of exhibits tendered to the Court and the numerous witnesses presented by Plaintiffs, the Court wholly rejects Plaintiffs' newly revised contention as the nature of the relationship between Ananda Marga Inc. and AMPS was critical to the claims presented by Plaintiffs.

Plaintiffs' Opposition to the Motion for Attorneys' Fees additionally attempts to frame this case as a pure property dispute requiring the application of neutral principles of law. The Court finds this contention without merit. Specifically, this argument is contrary to the allegations contained in Plaintiffs' Amended Complaint, the testimony, evidence, and the Court's findings at trial, and even in parts of Plaintiffs' Opposition where Plaintiffs' specify that "there is no dispute as to who holds title to the property: AMI and its various subsidiaries."

Plaintiffs' assertion that "no disputes over any religious practice or doctrine are relevant to [Plaintiffs'] request for injunctive and declaratory relief" is equally unavailing. The Court is not persuaded by this argument and finds that Plaintiffs' ignored the controlling authority in disputes involving the ecclesiastical governance and control of a religious organization in the filing of this action. In fact, in their Opposition to the Motion for Attorneys' Fees, Plaintiffs' directly ignore the principal case this Court found controlling during trial, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) ("*Serbian Orthodox*"). At trial, the Court found *Serbian Orthodox* to be "factually and legally on all fours to the facts in this case and

the law that [this Court] must apply.” Instead, Plaintiffs merely assert throughout its opposition that this Court misapplied the law.<sup>3</sup>

In *Serbian Orthodox*, the United States Supreme Court determined that decisions regarding the structure and administration of a hierarchical religious organization and the removal of officials within that hierarchy must be made by deferring to and enforcing the decisions of the highest authorities within the religious denomination. *Serbian Orthodox*, 426 U.S. at 709. The Constitution requires this deference to a religion’s ecclesiastical authorities even if the result would have the practical effect of determining control over church property. *Id.* at 709-10.

While granting Defendants’ and Intervenor’s Motion for Directed Verdict, the Court found that:

[T]his case is about a dispute regarding ecclesiastical governance and religious organization similar to the Serbian Orthodox case, failure of a subordinate and dominated officer to comply with the orders of the highest religious authorities and the denomination reassigning him to a different ecclesiastical position. The case is not about real property, although at varying times when the Court's decision in these matters inherently have the effect of resolving property disputes, that standing alone is not a reason for the Court to act or take a different position. As noted as a secular Court, I'm obligated to defer to and enforce the decisions of the religious denominations highest ecclesiastical authorities in matters concerning the governance of the religious denomination. That is [*Serbian Orthodox*], the case I have already cited. Simply put, US Supreme Court in Colorado case [sic] interpreting that decision or those decisions have routinely held that it is for an individual religious denomination to determine their structure, who resides in what positions, who controls the organizations and its affiliated entities, not for the courts. Under *Serbian Orthodox*, the Court is called upon to defer to the religious denominations of matters regarding the authoritative interpretation of the nomination scriptures, their structural guidelines and procedures.

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<sup>3</sup> The Court notes that this argument is more appropriately raised in the context of C.R.C.P. 59. A Motion for Post-Trial Relief was not submitted by Plaintiffs here.

(May 16, 36:22-37:23).

Accordingly, Plaintiffs' proposition that this case did not involve any issues of religious doctrine is not credible or persuasive in light of the record here. Neither is Plaintiffs' reliance on *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986). Rather, *Mote* further discusses and cites *Serbian Orthodox* for the proposition that courts must defer to the determination of denominational authorities regarding issues of religious doctrine, religious practice, religious polity, and the appointment, discipline, and removal of ecclesiastical officials. *Mote*, 716 P.2d at 90-94.

The underlying issue throughout this entire proceeding was which party controls Ananda Marga, Inc. Accordingly, the Court was to determine whether Ananda Marga is a hierarchical religious organization, and, if so, pursuant to *Serbian Orthodox*, the Court was to enforce the decisions of its highest ecclesiastical body, in this case, Intervenor. The Court therefore finds that Plaintiffs' claims lacked any basis in law and, by ignoring controlling authority, Plaintiffs failed to demonstrate that their claims were "viable" as a matter of law.

**ii. Plaintiffs' claims were not supported by any credible evidence at trial.**

Assuming, *arguendo*, that Plaintiffs' asserted a viable legal theory in this action, the Court finds that Plaintiffs' allegations were not supported by any credible evidence at trial. *See Double Oak Const., L.L.C.*, 97 P.3d at 151. Based upon the findings of fact set forth above, established through the testimony of Plaintiffs' own witnesses and from the numerous amounts of documentary exhibits, much of which contained statements from Plaintiffs themselves, Plaintiffs' presented no credible evidence at trial that Ananda Marga, Inc. was anything other than one part of the highly-organized hierarchical religious organization, AMPS. Certainly,

there was an absence of credible evidence supporting Plaintiffs' contention that Ananda Marga, Inc. was an independent, stand-alone entity untethered from the AMPS and its strict hierarchal structure.

The overwhelming weight of the undisputed evidence presented at trial demonstrated that: (1) Ananda Marga, Inc. was subordinate to AMPS Central; (2) the directors of Ananda Marga, Inc. (*i.e.*, the individual Plaintiffs) were required to acknowledge and obey the posting order transferring Fernando Kumar from the post of Sectorial Secretary of New York Sector and replacing Fernando Kumar with Ac. Vimalananda Avt.; (3) the individual Plaintiffs failed to acknowledge and obey the Kumar posting order; (4) Ac. Vimalananda Avt. is the rightfully appointed Sectorial Secretary of Ananda Marga, Inc.; and (5) the Board of Ananda Marga, Inc. was properly replaced by Ac. Vimalananda. At trial, the Court specifically found that there was no credible evidence in the record from any of the witnesses or the exhibits that could compel any other conclusion than that AMPS was the parent organization of Ananda Marga, Inc. (May 16, 25:6-14). The Court further found that there was no credible evidence in the record from any of the witnesses or the exhibits that Ananda Marga, Inc. was a stand-alone autonomous entity. (May 16, 29:24-30:8).

Accordingly, based upon the lack of credible evidence pervasive throughout the length of the trial, which the Court finds abundantly obvious when revisiting the transcripts, the Court finds Plaintiffs' claims groundless due to the undisputed facts ultimately presented at trial and Plaintiffs' failure to reduce the number of claims being asserted, the availability of the facts to assist Plaintiffs' in determining the validity of the claim, and to the extent Defendants and

Intervenor prevailed with respect to the amount of claims in controversy. *See* C.R.S. § 13-17-103(1)(b), (c), (f), (g); *see also Bilawsky*, 916 P.2d at 590.

**iii. The individual Plaintiffs are personally liable for Defendants' and Intervenor's Attorneys' Fees.**

Finally, upon finding that Plaintiffs' claims were groundless and awarding Defendants' and Intervenor's request for attorneys' fees, the Court must now determine whether the individual Plaintiffs' (the directors of Ananda Marga, Inc.) may be held personally liable for the attorneys' fees. Plaintiffs' contend that the individual Plaintiffs' are protected by the corporate veil and other statutory schemes designed to protect unpaid volunteers in a position of officer or director for a nonprofit corporation. The Court finds Plaintiffs' arguments unavailing.

Whether or not an individual has the authority to act on behalf of the corporation as an officer, or purported officer, is a question of authority governed by principles of agency law. *Mortgage Investments Corp. v. Battle Mountain Corp.*, 70 P.3d 1176, 1182 (Colo. 2003) (citations omitted). "There is a recognized distinction between a lack of authority on the part of the particular officers assuming to do a legal act for a corporation, and the lack of authority on the part of the corporation itself to do the act at all. In the former case, the act of the officers is unauthorized, in the latter, the act of the corporation itself is Ultra Vires." *Id.* (citing William Meade Fletcher, *Fletcher Cyclopedia Corporations* § 434 (perm. ed. rev. vol. 1998)).

When determining whether a party may pierce the corporate veil, the general rule is that members of a nonprofit corporation are not liable for the debts for the corporation. *See Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859, 867 (Colo. 2004). However, those members are jointly and severally liable for all liabilities that result when the members purport to act as or on behalf of a nonprofit corporation without the existence of at least a good faith belief

that those members have the authority to act. *Id.* Protections afforded to volunteer officers or directors of a non-profit corporation are unavailable when the injury is caused by the willful and wanton conduct of those officers or directors. *See* C.R.S. § 13-21-115.5(2)(c); C.R.S. § 13-21-115.7(2); C.R.S. § 13-21-116(2)(b).

Here, based upon the record and the credible evidence that was presented to the Court, the Court finds that the actions taken by the individual Plaintiffs were unauthorized and that the individual Plaintiffs were fully aware that those actions were unauthorized. As set forth through their own trial testimony and the litany of admitted documents, the individual Plaintiffs were cognizant of the hierarchical nature of AMPS. At trial, the Court determined:

[T]here was no credible persuasive evidence in the record from any of the witnesses or the exhibits that these words that were used in the documents that were used were ambiguous, whether at the time that they were presented and even today that they were intended to be ambiguous. And giving those words and phrases the plain and ordinary meaning of the words compels a conclusion that AMPS Central is the parent organization of AMI Ananda Marga, Inc. Ananda Marga, Inc.'s own filings demonstrated that fact. Ananda Marga, Inc. was created to be and is the legal embodiment of the New York Sector of the AMPS. The New York Sector of the AMPS obligation and responsibility was the work of the AMPS Central in the New York Sector of the AMPS.

(May 16, 25:6-16). These facts were additionally confirmed through the testimony of individual Plaintiff, Michael Hemmelgarn, whose testimony overall the Court found lacking in credibility.

(May 16, 26:5-19). Further testimony and documents supporting the individual Plaintiffs unauthorized actions include, but are not limited to, over 30 years of publications by Ananda Marga, Inc. and its predecessors in interest (including, without limitation, the multiple editions of the AMPS official publication/newsletter *Crimson Dawn* that were admitted into evidence), approximately 60 documents submitted to United States governmental agencies under penalty of

perjury, and several years of past minutes of Ananda Marga, Inc. board meetings, emails by the individual Plaintiffs, and statements on Ananda Marga, Inc.'s website.

Ultimately, the individual Plaintiffs, as the directors of Ananda Marga, Inc., were required as subordinates under AMPS to acknowledge and obey the posting order transferring Fernando Kumar from the post of Sectorial Secretary of New York Sector and replacing Fernando Kumar with Ac. Vimalananda Avt., and the individual Plaintiffs intentionally ignored those posting orders in derogation of the strict procedures they vehemently followed. Accordingly, in light of the individual Plaintiffs' unauthorized actions, the Court finds that the individual Plaintiffs' are personally liable for the award of attorneys' fees to Defendants and Intervenor and Plaintiffs' shall ultimately be held liable jointly and severally.

## **B. Bill Of Costs**

Defendants' and Intervenor's Bill of Costs seeks reimbursement for costs incurred in this case in the total amount of \$55,510.68.<sup>4</sup> Of this total amount, Plaintiffs specifically object to costs claimed by Defendants and Intervenor in four categories: (1) expert witness fees; (2) fact witness travel expenses; (3) copy costs; and (4) various miscellaneous costs.

### **a. Standard of Review**

A party seeking costs need only provide the court with sufficient information and supporting documentation to allow a judge to make a reasoned decision for each cost item presented. *City of Aurora ex rel. Utility Enterprise v. Colorado State Engineer*, 105 P.3d 595, 627 (Colo. 2005). The law is well settled in Colorado that the standard for whether an expense is

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<sup>4</sup> Defendants' and Intervenor's originally sought an award of costs in the amount of \$55,901.90. However, in their Reply to support their Bill of Costs, Defendants and Intervenor reduced their Bill of Costs by \$391.22 due to invoices being submitted in error for travel between Denver and New York for Ac. Keshavananda Avt. in the amount of \$303.90 and for copying costs in the amount of \$87.32.

recoverable is whether the expense was “reasonably necessary for the development of the case in light of the facts known to counsel at the time” the expense was incurred. *See Cherry Creek School Dist. v. Voelker*, 859 P.2d 805, 813-14 (Colo. 1993). The court may only permit the recovery of “reasonable” costs, rather than all costs which the successful litigant chose to incur. *Jorgensen v. Heinz*, 847 P.2d 181, 184 (Colo. App. 1992). In general, absent a specific prohibition, the court has discretion over the awarding of any reasonable costs. *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 390 (Colo. 1994). The court may disallow requested costs as unreasonable so long as the court includes in the record its reasons for doing so. *Bennett v. Hickman*, 992 P.2d 670, 673 (Colo. App. 1999).

**b. Analysis**

Plaintiffs specifically object to costs incurred by Defendants and Intervenor in four categories: (1) expert witness fees; (2) fact witness travel expenses; (3) copy costs; and (4) various miscellaneous costs. The Court addresses each objection below.

**i. Expert witness fees and expenses**

Defendants and Intervenor request their costs associated with their expert witness fees and expenses in the amount of \$24,746.28. Plaintiffs’ object to Defendants’ and Intervenor’s request for reimbursement of their costs incurred by their expert Adarsh Hathi in the amount of \$9,500.00, alleging that his expenses are unreasonable, unnecessary, and without reasonable justification. Specifically, Plaintiffs’ object to the costs incurred from his expert report in which he spent 37 hours, charging \$9,250.00, for a report consisting of a cover page, a brief summary of the issues presented, a single-page flow chart depicting the three levels of the India judicial system, approximately three pages of double spaced written analysis regarding the India judicial

system and the standard of review for disputes regarding governance and control of religious denominations, and eighteen pages of India case law with various sentences underlined throughout by hand. Plaintiff further contends that the two issues Mr. Hathi was hired to discuss were never in dispute and did not require expert opinion.

The Court is not persuaded by Plaintiffs' latter argument that the issues reviewed, and opined on, by Mr. Hathi were not in dispute and did not require expert opinion, however, the Court finds that the 37 hours charged by Mr. Hathi in the drafting of his expert report excessive. Breaking down the analysis portion of the expert report, which includes a full page flow chart followed by three pages of written analysis, the cost totaled approximately \$2,312.50 per page. The Court finds the total amount charged by Mr. Hathi unreasonable to pass onto Plaintiffs in its entirety as Mr. Hathi's invoice is significantly lacking in detail as to the number of hours incurred for each of the identified activities. Therefore, the Court reduces the amount of the costs associated with Mr. Hathi's expert report by \$5,500, and finds that the reasonable amount of time spent on his expert report is 15 hours. More specifically, the Court finds that the reasonable amount spent on the expert report amounts to 10 hours on reviewing litigation and statutes and case law in the United States and India and 5 hours on drafting the expert report. Accordingly, the Court grants Defendants' and Intervenor's request for reimbursement of costs for expert witness fees and expenses in the total amount of \$19,246.28.

#### **ii. Fact witness travel expenses**

Defendants and Intervenor request reimbursement for their costs associated with the travel of their fact witnesses in the amount of \$13,846.19. Plaintiffs' object to a number of the fees and expenses related to the travel expenses of Defendants' and Intervenor's fact witnesses.

Initially, Plaintiffs' object to the reimbursement for two international airline tickets, in the amount of \$888.45, for witness Kamalesh Patil on the basis that he was never disclosed as a person with relevant information pursuant to C.R.C.P. 26(a)(1), and was not designated on Defendants' and Intervenor's TMO witness list. However, upon review of the record, Kamalesh Patil was designated on Defendants' and Intervenor's trial witness lists as Ac. Krpamayananda Avt. Accordingly, Defendants' and Intervenor's are entitled to reimbursement for his travel expenses of \$888.45.

Next, Plaintiffs object to the reimbursement for Mr. "Sandipan," aka Ac. Shubhaniriyasananda Avt., and his roundtrip air travel from Taipei City, Taiwan to Denver in the amount of \$1,105.09. Plaintiffs again object that Ac. Shubhaniriyasananda Avt. was not disclosed pursuant to C.R.C.P. 26(a)(1). Plaintiffs additionally object that his airfare was paid by check and no copy of the check was included with the invoice. Upon review, Ac. Shubhaniriyasananda Avt. was designated on Defendants' and Intervenor's trial witness lists. The Court further finds inconsequential, for purposes of reimbursement under C.R.S. § 13-16-122, the fact that a copy of the check used to pay for the airfare of Ac. Shubhaniriyasananda Avt. was not included with the invoice for his airfare as the witness ultimately traveled to Denver and appeared in the courtroom during trial. Accordingly, Defendants' and Intervenor's are entitled to reimbursement for his travel expenses of \$1,105.09.

Plaintiffs next contend that Defendants' and Intervenor's reimbursement of costs for \$4,518.08 for an "AVS Travels & Tours" invoice should be reduced by \$1,516.02 because three roundtrip tickets were purchased for allegedly only two trial witnesses, Ac. Svarupananda Act. and Ac. Ramananda Avt. However, upon close inspection of the Bill of Costs and supporting

exhibits, although the summary of the “AVS Travels & Tours” expense only lists two witnesses for which roundtrip tickets were purchased, when viewing the AVS Travels & Tours invoices themselves, the invoices specifically identify that three roundtrip tickets were purchased for three trial witnesses properly identified on Defendants’ and Intervenor’s trial witness lists, Ac. Svarupananda Act., Ac. Ramananda Avt., and Ac. Keshavananda Avt. Accordingly, Defendants’ and Intervenor’s are entitled to reimbursement for the full amount of the AVS Travels & Tour invoices totaling \$4,518.08.

Next, Plaintiffs’ assert that \$871.82 should be excluded from Defendants’ and Intervenor’s Bill of Costs because they seek reimbursement for two separate roundtrip air fares for Ramesh Kohli, aka Ac. Shambhushivananda Avt., during overlapping periods of time. However, again, while Defendants’ and Intervenor’s summary of the costs misstate the travel as from Stockholm to Denver, upon inspection of the invoices, the travel was actually from Stockholm to New York to Denver. The costs for Ac. Shambhushivananda Avt. appropriately breakdown as travel from Stockholm to New York in the amount of \$871.82 and from New York to Denver in the amount of \$426.30. Accordingly, Defendants’ and Intervenor’s are entitled to reimbursement for Ac. Shambhushivananda Avt.’s travel expenses in the amount of \$1,298.12.

Plaintiffs’ further object to the rental cost of \$4,090.00 for a 15 night partial house rental on Genesee Avenue in Golden, Colorado as excessive and unnecessary. 15 parties/witnesses stayed at this rental house. The Court notes that the cost of each party/witness staying over the course of the 15 days amounts to \$18.18/day per individual. This amount is far less than if Defendants’ and Intervenor’s attempted to book the parties/witnesses separate hotel accommodations. Further, trial was originally scheduled in this case for two weeks in this case.

However, because trial ended after one week, Defendants and Intervenor were not entitled to a refund for staying fewer nights pursuant to their rental agreement. Accordingly, the Court finds the cost for the rental house reasonably necessary and that Defendants' and Intervenor's are entitled to reimbursement for the full amount of the lodging in the amount of \$4,090.00.

Finally, Plaintiffs' object to the cost of an Alamo van rental for witness transportation in the amount of \$458.61. Plaintiffs' contend that there was no need to have a 24-hour shuttle service available for the witnesses for a week after the trial ended except to transport witnesses to the airport for their return flights. The Court finds this argument unpersuasive as Plaintiffs assume that all of the parties/witnesses originally scheduled their return flights to leave at the same time and on the same day. The cost of changing flights for the parties/witnesses would likely have far exceeded the costs in keeping the van through the end of the original rental term. Accordingly, the Court finds that Defendants and Intervenor are entitled to the cost for the rental van in the amount of \$458.61.

### **iii. Copying costs**

Plaintiffs' contend that Defendants' and Intervenor's request for reimbursement of \$4,641.69 in copying charges is not reasonable and necessary.<sup>5</sup> This amount represents charges for in-house copies among the three law firms in the amount of \$459.69 and \$4,182.04 for copying and scanning costs incurred to third-party vendors. Upon review of the Bill of Costs and exhibits attached in support, the Court finds that these costs incurred by Defendants and Intervenor were reasonably necessary as this case involved substantial quantities of documents

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<sup>5</sup> This amount does not include the subtraction of \$87.32 in photocopying costs withdrawn by Defendants and Intervenor.

and exhibits for trial and trial preparation purposes. Accordingly, the Court grants Defendants and Intervenor their full copying and scanning costs in the amount of \$4,554.37.

**iv. Various miscellaneous expenses**

Finally, Plaintiffs' object to Defendants and Intervenor's request for \$1,077.87 in costs for: parking at trial, postage, courier/messenger services, and the purchase of the book "Comprehending Cults." Upon review of the Bill of Costs and exhibits attached in support, the Court finds that these costs incurred by Defendants and Intervenor were reasonably necessary by reason of the litigation and for proper preparation for trial. Accordingly, the Court grants Defendants and Intervenor their full miscellaneous expenses in the amount of \$1,077.87.

**III.  
CONCLUSION**

WHEREFORE, based upon the reasoning set forth above, the Court hereby ORDERS as follows:

1. Defendants' and Intervenor's Motion for Attorneys' Fees is **GRANTED**. Plaintiffs' shall have fourteen (14) days to file an objection to the reasonableness and necessity of the fees requested by Defendants and Intervenor as specified in Exs. B1-7 attached to the Motion for Attorneys' Fees.
2. Defendants' and Intervenor's Bill of Costs is **GRANTED** in the amount of \$50,010.68.

**DONE** this 25<sup>th</sup> day of April, 2012.

BY THE COURT:



MICHAEL A. MARTINEZ  
District Court Judge