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10 Reddy Sheelum; Siva Vallabhaneni; Ragini
11 Vallabhaneni; International Governing Body
12 Commission of Nithyananda Dhyanapectam
13 and Nithyananda Mission; and Ma Nithya
14 Sadhananda

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

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

NOV 26 2012

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BY *Nancy L. Cardoza*
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22 Attorneys for Defendants Nithyananda Foundation; Life Bliss Foundation; Gopal Reddy Sheelum;
23 Siva Vallabhaneni; Ragini Vallabhaneni; and Ma Nithya Sadhananda

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

26 VINAY BHARADWAJ,
27 Plaintiff,
28 v.

) CASE NO.: CIVRS1013793
)
) Assigned For All Purposes To:
) Hon. Judge Keith D. Davis
) Department R6
)

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

) ~~PROPOSED~~ ORDER GRANTING
) DEFENDANTS' MOTION FOR
) TERMINATING AND/OR ISSUE
) SANCTIONS; REQUEST FOR
) MONETARY SANCTIONS
)

) Date : November 26, 2012
) Time : 8:30 a.m.
) Department: R6
)

Defendants.

1 Defendants' Motion for Terminating Sanctions and/or Issues Sanctions; Request for
2 Monetary Sanctions ("Motion") filed by Defendants Nithyananda Foundation, Life Bliss
3 Foundation, Gopal Reddy Sheelum, Siva Vallabhaneni, Ragini Vallabhaneni, and International
4 Governing Body Commission of Nithyananda Dhyanapectam and Nithyananda Mission, and timely
5 joined by Ma Nithya Sadhananda and Nithyananda Dhyanapectam Temple & Cultural Center
6 (collectively, "Defendants") came for hearing in Department R6 of this Court on November 26,
7 2012. Appearances were as noted in the record.

8 The Motion was unopposed.

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

- 11 1. On January 12, 2012, Defendants' counsel Aviv Tuchman sent a letter to Plaintiff's
12 counsel Ford Greene requesting that Plaintiff submit to a psychiatric and psychological
13 examination.
- 14 2. On January 19, 2012, Mr. Greene responded by letter requesting Mr. Tuchman prepare a
15 stipulation for Plaintiff's mental examination containing the information required under CCP
16 § 2032.310.
- 17 3. On May 15, 2012, Mr. Tuchman advised Mr. Greene in person that a psychiatrist had
18 been retained and was available to take Plaintiff's mental examination on June 16, 2012.
19 Later that same day, Mr. Tuchman emailed a stipulation which contained the terms he
20 requested and set the examination for June 16, 2012, as discussed.
- 21 4. On May 22, 2012, Mr. Greene responded and requested that an additional condition be
22 placed into the stipulation. He made no other requests. Nor did he object that Plaintiff was
23 not available on June 16, 2012.
- 24 5. On May 23, 2012, Defendants' counsel incorporated Mr. Greene's revisions into the
25 stipulation and emailed him the final version for review and signature.
- 26 6. On June 3, 2012, Mr. Greene signed and emailed the stipulation to Defendants' counsel.
27 He also interposed additional language in handwriting within the stipulation. There was no
28

1 objection to the examination date, nor did he request or interpose any conditions relating to
2 the use and disclosure of the examination results.

3 7. Later that same day, Mr. Greene sent another email to Defendants' counsel, rescinding
4 the stipulation and requesting a further condition be added that "the use of the IME will be
5 limited to this case and not to be used in any other case and the IME will not be released to
6 the press." He did not object to the examination date June 16, 2012.

7 8. On June 4, 2012, Mr. Tuchman, first in person and then by letter, requested that the
8 examination go forward as scheduled and the results withheld pending further meet and
9 confer on the issue and, if necessary, a Court ruling as to the same.

10 9. On June 6, 2012, Mr. Tuchman sent another letter to Mr. Greene wherein he proposed
11 that the mental examination go forward as scheduled on June 16, 2012 and that the results
12 would not be published or released to the press.

13 10. On June 8, 2012, Mr. Greene responded by letter advising that Plaintiff would not
14 stipulate to any examination unless Defendants agreed that the results would be limited to
15 use in this case only. That same day, Mr. Tuchman sent a letter proposing this issue be
16 decided by this Court following the examination.

17 11. On June 11, 2012, Mr. Greene rejected Mr. Tuchman's proposal. He also denied that
18 Plaintiff agreed to submit to the examination date of June 16, 2012. This was the first time
19 Mr. Greene ever raised any issue concerning the examination date.

20 12. Plaintiff's mental examination did not go forward on June 16, 2012.

21 13. On June 25, 2012, Nithyananda Foundation, Life Bliss Foundation, Gopal Reddy
22 Sheelum, Siva Vallabhaneni, and Ragini Vallabhaneni filed a Motion for Order of Mental
23 Examination of Plaintiff Vinay Bharadwaj.

24 14. On July 10, 2012, Plaintiff filed his Opposition requesting that the mental examination be
25 postponed until after his criminal trial scheduled for July 30, 2012, or in the alternative, that
26 the Court "prohibit the defense psychiatrist from asking any questions regarding subject
27 areas that are related to the Seattle case."
28

1 15. On July 23, 2012, the Court rejected Plaintiff's requests and granted the motion. Plaintiff
2 was ordered to submit to a mental examination on July 26, 2012, before his criminal trial and
3 without precluding the psychiatrist from asking questions about the criminal charges.

4 16. On July 26, 2012, Plaintiff appeared for his mental examination. However, he failed and
5 refused to answer certain questions during the examination, including as relating to the
6 pending criminal charges against him. Those questions sought relevant and discoverable
7 information and concerned matters that went to the heart of Plaintiff's claims in this case.
8 Moreover, Plaintiff failed and refused to submit to any psychological testing and left early,
9 even though there was sufficient time remaining to complete the examination.

10 17. Vinay Bharadwaj's criminal trial commenced on July 31, 2012 at the Kings County
11 Courthouse in the State of Washington. On August 14, 2012, he was convicted of three
12 Felony Counts of Child Molestation in the Second Degree and one Gross Misdemeanor
13 Count of Communication with a Minor for Immoral Purposes. He was immediately taken
14 into custody. On September 21, 2012, he was sentenced to 57 months imprisonment at the
15 Washington Corrections Center, where he is currently serving out his sentence.

16 18. Plaintiff's failure and refusal to answer the questions at issue in this Motion during his
17 mental examination and to submit to psychological testing before the examination was
18 completed constitutes a violation of this Court's Order of July 23, 2012.

19 19. Plaintiff's violation of this Court's Order was willful and without any justification.

20 20. Thus, Plaintiff has engaged in the misuse of the discovery process.

21 21. Moreover, by his own verified allegations in the Second Amended Complaint, Plaintiff
22 placed at issue the criminal charges of child molestation against him and consequently, as a
23 matter of law, waived his 5th and 6th Amendment privileges as to those issues. In continuing
24 to assert those privileges during his mental examination, Plaintiff elected to have this action
25 dismissed with prejudice as against Defendants.

26 22. Plaintiff's willful violation of this Court's Order and failure to provide discovery have
27 substantially prejudiced Defendants in their ability to fully and fairly evaluate the merits of
28 Plaintiff's claims, the real value of his injuries, and prepare their defenses.

1 23. This most recent misuse of discovery is considered alongside Plaintiff's extensive history
2 of discovery abuse in this case. The Court's file is replete with evidence of continuous use of
3 dilatory tactics and misuse of discovery by Plaintiff. For example:

4 a. Plaintiff commenced this action on January 3, 2011. On two separate occasions,
5 October 19, 2011 and then November 17, 2011, Plaintiff tried to stay this action
6 pending the resolution of his criminal case in Washington, without success.

7 b. Also, Plaintiff repeatedly failed and refused to appear for deposition, which was
8 first noticed for April 20, 2011. This caused Defendants to file a Motion to Compel
9 and resulted in sanctions against Plaintiff and a Court Order for his deposition, which
10 he violated. Defendants then filed a Motion for Terminating Sanctions which led to
11 another Court Order on January 5, 2012 for Plaintiff's deposition, which finally took
12 place on February 14, 2012 nearly one year after it was first noticed.

13 c. On May 4, 2012, Plaintiff filed a frivolous Motion for Protective Order to delay
14 the deposition of a third party witness Yamini Nerurkar. The Motion was denied and
15 Plaintiff was sanctioned.

16 d. Recently, on November 6, 2012, this Court granted three Motions to Compel
17 discovery against Plaintiff, two of which were unopposed. The Motions concerned
18 discovery that was due and outstanding well before Plaintiff's criminal trial.

19 24. Plaintiff's persistent failure and refusal to comply with discovery in this case results in
20 the presumption, as a matter of law, that his asserted causes of action are without merit.

21 25. Accordingly, it is in the interests of justice that Plaintiff's Second Amended Complaint
22 be dismissed with prejudice as against the Defendants.

23 THEREFORE, IT IS SO ORDERED THAT Defendants' Motion for Terminating Sanctions
24 and/or Issues Sanctions is GRANTED and that Plaintiff's Second Amended Complaint is dismissed
25 with prejudice as against Defendants Nithyananda Foundation, Life Bliss Foundation, Gopal Reddy
26 Sheelum, Siva Vallabhaneni, Ragini Vallabhaneni, International Governing Body Commission of
27 Nithyananda Dhyanapectam and Nithyananda Mission, Ma Nithya Sadhananda, and Nithyananda
28 Dhyanapectam Temple & Cultural Center.

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~~IT IS FURTHER ORDERED THAT Plaintiff Vinay Bharadwaj shall pay monetary sanctions to Defendant Nithyananda Foundation in the amount of \$7,570.00 within the next ten (10) days.~~

Date: 11/26/12


Hon. Judge Keith D. Davis

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed at Tuchman & Associates in the aforesaid County, State of California; I am over the age of 18 years and am not a party to the within action; my business address is 6080 West Pico Boulevard, Los Angeles, California 90035.

On November 26, 2012, I served the foregoing: **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR TERMINATING AND/OR ISSUE SANCTIONS; REQUEST FOR MONETARY SANCTIONS** on interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Plaintiff, in Pro Per

Vinay Bharadwaj
DOC No. 361033
Washington Corrections Center
2321 West Dayton Airport Road
P.O. Box 900
Shelton, WA 98584

**Attorneys for Defendant Nithyananda
Dhyanapeetam Temple & Cultural Center**

McKay de Lorimier & Acain
3250 Wilshire Blvd., Suite 603
Los Angeles, California 90010
Tel: (213) 386-6900
Fax: (213) 381-1762

Attn: Paul de Lorimier, Esq.

_____ **BY MAIL:** I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid.

_____ **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. CCP §1013(d)(e).

X (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 26, 2012, at Los Angeles, California.

Rebecca E. Myers
Type or Print Name

Signature