

R-12

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**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

JAN 27 2014

BY K. Benavides  
KARIM BENAVIDES, DEPUTY

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

VINAY BHARADWAJ,  
Plaintiff,

v

SRI SWAMI NITHYANANDA, an  
individual, and agent and employee of  
Nithyananda Foundation, Life Bliss  
Foundation, International Governing Body  
Commission Of Nithyananda Dhyanapectam  
And Nithyananda Mission, Dhyanapecta  
Charitable Trust, and Dhyanapectam Hindu  
Temple & Cultural Center, et al

Defendants

) CASE NO CIVRS1013793  
)  
) Assigned For All Purposes To  
) Hon Judge Keith D Davis, Department R12

) ~~PROPOSED~~ ORDER GRANTING  
) DEFENDANTS' MOTION FOR  
) ATTORNEY'S FEES

) Date January 13, 2014  
) Time 8 30 a m  
) Department R12

1 Defendants' Motion for Attorney's Fees filed by Defendant NITHYANANDA  
2 FOUNDATION and LIFE BLISS FOUNDATION (collectively, "Defendants") against Plaintiff  
3 VINAY BHARADWAJ came for hearing in Department R12 of this Court on January 13, 2014  
4 Attorneys Aviv L. Tuchman appeared on behalf of Defendants. Plaintiff did not appear. There  
5 were no other appearances.

6 Having read the motion, opposition, points and authorities, and declarations filed by the  
7 parties, and having heard argument of counsel, the Court finds that

- 8 1 On August 10, 2009, Plaintiff Vinay Bharadwaj and Gopal Reddy Sheelum, on behalf  
9 of Defendants, entered into a valid, enforceable mutual release agreement, which was  
10 even notarized (the "Release Agreement"). The Release Agreement contained a release  
11 provision at page 2, paragraph 3, which released any and all claims Plaintiff had as  
12 against Defendants. The Release Agreement also contained an attorney's fee provision  
13 at page 6, paragraph 12, which provided, in relevant part "If any party to this  
14 Agreement employs attorneys to enforce any rights arising out of or in relation to this  
15 Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees."
- 16 2 On January 3, 2011, Mr. Bharadwaj initiated this action, alleging both contract and tort  
17 claims. The tort claims were subject to the release provision of the Release Agreement,  
18 and in an attempt to get around that release, the complaint alleged a claim for  
19 declaratory relief that the Release Agreement between the parties was "null, void, and  
20 is of no legal force and effect." On February 14, 2012, Defendants filed their Answer to  
21 Verified Second Amended Complaint and asserted as their Tenth Affirmative Defense  
22 that Plaintiff's complaint, and each cause of action therein, was barred by the written  
23 release in the Release Agreement. Defendants also prayed for their reasonable  
24 attorney's fees pursuant to the fee provision in the release.
- 25 3 On September 11, 2012, following nearly a year-and-a-half of discovery abuse by  
26 Plaintiff, Defendants filed a Motion for Terminating and/or Issue Sanctions. On  
27 November 26, 2012, this Court granted the motion and ordered the entire action to be  
28 dismissed with prejudice.



1 4 On February 6, 2013, Plaintiff filed an appeal of the Order Granting Defendant's  
2 Motion for Terminating and/or Issue Sanctions and dismissing the entire action On  
3 February 18, 2013, Plaintiff filed Appellant's Notice Designating Record on Appeal,  
4 and then, on March 4, 2013, an amended notice On March 12, 2013, Defendants filed  
5 their Respondents' Notice Designating Record on Appeal, which included numerous  
6 hearings and filings from the record that were omitted by Plaintiff

7 5 But then Plaintiff never filed his opening brief As a result, on July 30, 2013, his appeal  
8 was dismissed Two days later, on August 1, 2013, Plaintiff filed a Motion to Vacate  
9 Dismissal and Reinstate Appeal Defendants opposed the motion and, on August 28,  
10 2013, the appellate court denied it Then, on September 11, 2013, Plaintiff served  
11 Defendants with Appellant's Motion for Rehearing of Denial of Appellant's Motion to  
12 Vacate Dismissal and to Reinstate Appeal The motion was not immediately filed  
13 Instead, on September 23, 2013, Plaintiff filed Appellant's Motion to Stay Issuance of  
14 Remittitur Defendants also opposed that motion and it too was denied by the appellate  
15 court On October 18, 2013, the remittitur issued

16 6 The Court has already determined this entire action, including the tort claims, was "on a  
17 contract" within the meaning of Civil Code § 1717, entitling the prevailing party to  
18 recover its attorney's fees pursuant to the fee provision in the Release Agreement On  
19 April 8, 2013, the Court awarded Defendants their reasonable attorney's fees as the  
20 prevailing party after obtaining a simple, unqualified dismissal with prejudice of the  
21 action In its order, the Court found, among other things, that 1 the Release Agreement  
22 is a valid, enforceable agreement between the parties, 2 the entire action, including the  
23 tort claims, was "on a contract" within the meaning of Civil Code § 1717, and 3 the  
24 attorney's fee provision in the Release Agreement entitled the prevailing party to  
25 recover their fees in this case The time for appeal of that Order has expired, and no  
26 appeal having been filed, the court's Order and the above-findings are now final and  
27 binding in this case, including as they relate to this Motion  
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7 Defendants are the prevailing party in this matter as having successfully defended the appeal and obtained a simple, unqualified dismissal of the appeal

8 As the prevailing party, Defendants are entitled to their reasonable attorney's fees on appeal pursuant to the attorney's fee provision of the Release Agreement under Civil Code § 1717 A judgment of dismissal of the action "on a contract" was already rendered in Defendants' favor By his appeal, Plaintiff attempted -- and failed -- to have the dismissal reversed so that he could pursue his action to invalidate the Release Agreement and assert the contractually-released tort claims against Defendants Thus, as was the underlying action, the appeal of its dismissal was "on a contract" within the meaning of Civil Code § 1717 By their opposition, Defendants fought to affirm the dismissal so that the Release Agreement would remain enforceable and achieved that result when the appellate court dismissed the appeal and awarded them their costs Thus, Defendants obtained a simple, unqualified win on appeal and are therefore entitled to their attorney's fees, as a matter of right

9 Moreover, the subject attorney's fee provision is broadly-worded and contemplates that any attorney's fees incurred as relating to the Release Agreement warrant reimbursement to the prevailing party There is no limitation within the fee provision to exclude fees incurred on appeals The provision also does not condition the manner in which a prevailing party prevails on the action in order to be deemed a prevailing party As such, the provision entitles Defendants to its attorney's fees incurred on appeal

10 The amount of attorney's fees requested by Defendants is full, fair, and reasonable  
a Hourly Rates Defendants have presented substantial and sufficient evidence that their attorneys' hourly rates on appeal of \$400 for attorney Aviv L Tuchman, \$350 for attorneys Michael C Dicecca and Andrew C Jhun, and \$150 for law clerk Anthony Gentile are reasonable and in line, if not more competitive, than the rates charged by attorneys of comparable skill, reputation, and experience for similar cases On the other hand, no evidence has been presented by Plaintiff challenging the moving party's



1 hourly rates, and therefore they are presumed reasonable. Nonetheless, the Court finds  
2 that the hourly rates claimed and actually billed by Defendants' counsel on appeal are  
3 reasonable based upon their individual and collective experience.

4 b. Hours Billed The total numbers of hours claimed on appeal is thoroughly  
5 documented by detailed contemporaneous time records, which were submitted as part  
6 of the Motion. Defendants' are claiming \$42,132.00 in fees. Other than a general  
7 objection to all fees, Plaintiff did not challenge any specific billing entries. The Court  
8 has thoroughly reviewed all Defendants' counsels' billings and finds that \$32,500.00 in  
9 fees is the reasonable number of hours spent on this matter and is commensurate with  
10 the nature of the appeal and Plaintiff's numerous filings relating to the appeal.

11 THEREFORE, IT IS SO ORDERED THAT the Motion for Attorney's Fees is GRANTED,  
12 and Defendants Nithyananda Foundation and Life Bliss Foundation are awarded their reasonable  
13 attorney's fees as costs against Plaintiff Vinay Bharadwaj in the total amount of \$32,500.00

14 Date 1/27/14



*Keith D. Davis*  
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 January 14, 2014, I served the foregoing **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEY'S FEES** on interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows

X **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

**Plaintiff Vinay Bharadwaj, pro per**

Vinay Bharadwaj	Vinay Bharadwaj
DOC No 361033	DOC No 361033
Washington Corrections Center	Stafford Creek Corrections Center
2321 West Dayton Airport Road	191 Constantine Way
P O Box 900	Aberdeen, WA 98520
Shelton, WA 98584	

X **BY EMAIL** I caused such document to be transmitted by email to the email address of the addressee listed below

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Attn Paul de Lorimier, Esq

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 January 14, 2014, at Los Angeles, California

\_\_\_\_\_  
Rebecca E Myers  
Type or Print Name

  
Signature



THE DOCUMENT TO WHICH THIS CERTIFICATION IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST Christina M. Volkers  
Clerk of the Superior Court of the State of California,  
in and for the County of San Bernardino.

By  Ashley Dawson Deputy

DATE FEB 04 2016

lepgs