

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Joseph J. O'Hara

Civ. No. 1:12-CV-0252 (GLS/ATB)

Plaintiff,

v.

Keith A. Raniere a/k/a "Vanguard;"
Nancy Salzman a/k/a "Prefect;"
Kristin Keeffe; Clare W. Bronfman;
Sara R. Bronfman; Executive Success
Programs, Inc. a Nevada Corporation;
First Principles Incorporated, a Delaware Corporation;
NXIVM Corporation, d/b/a Executive Success Programs,
a Delaware Corporation;
NXIVM Corporation, a New York Corporation;
NXIVM LLC, A New York Limited Liability Company;
NXIVM Properties LLC, a New York Limited Liability Company;
P. David Soares; Albany (NY) County;
Proskauer Rose LLP; Scott A. Eggers;
Scott Harshbarger; Douglas C. Rennie; Peter J.W. Sherwin;
O'Connell & Aronowitz, Attorneys at Law;
Stephen R. Coffee; Joshua W. McMahon;
Pamela A. Nichols; Andrew J. Safranko; Richard H. Weiskopf;
Damon Morey LLP; Beth A. Bivona;
William F. Savino; Bernard Schenkler; Gregory Zini;
Bartolomei & Associates, PC; Joseph P. Bartolomei;
and To be Named Corporations, Limited Liability
Companies, Not-For-Profit Corporations,
Partnerships, Unincorporated Business Entities,
Foundations, Trusts and Other Entities;
To Be Named NXIVM Senior Counselors,
NXIVM Senior Proctors, NXIVM Proctors,
NXIVM Senior Coaches, and NXIVM Coaches,
and To be Named Law Firms and Individual Attorneys,

**STIPULATION
OF DISMISSAL
WITH PREJUDICE**

Defendants.

RECITALS

A. Joseph J. O'Hara ("O'Hara") filed the Complaint commencing this action ("Action") on February 9, 2012.

B. Each of the named defendants herein, through their attorneys, has filed a motion to dismiss the Action pursuant to Rule 12 of the Federal Rules of Civil Procedure.

C. In addition, two motions for sanctions pursuant to, *inter alia*, Rule 11 have been filed.

D. The said motions to dismiss and motions for sanctions are now pending in this Court.

E. O'Hara filed a petition for relief under chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of New York ("Bankruptcy Court"), Case No. 08-12108, on June 30, 2008.

F. Douglas J. Wolinsky is the duly appointed chapter 7 Trustee ("Trustee") of the bankruptcy estate of O'Hara ("Estate").

G. By Order of May 25, 2012, the Bankruptcy Court authorized the Trustee to employ Cory E. Friedman as Special Litigation Counsel for the Estate to, *inter alia*, analyze, evaluate and advise the Trustee with respect to the Action.

H. The Complaint herein was filed by O'Hara without notice to or consent of the Trustee.

I. The Trustee has determined the claims ("Claims") asserted by O'Hara in the Action are prepetition and, pursuant 11 U.S.C. § 541(a)(1), property of the Estate. *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008), *cert. denied*, 555 U.S. 1213 (2009); *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705 (9th Cir. 1986); *Ibok v. SIAC-Sector Inc.*, 2011 U.S. Dist. LEXIS 27301 (S.D.N.Y. Mar. 14, 2011), *affirmed*, 470 Fed. Appx 27 (2d Cir. 2012); *Stanley v. Cmty. Bank, N.A.*, 2009 U.S. Dist. LEXIS 8022 (N.D.N.Y. Feb. 4, 2009).

J. The Trustee has further determined that, because the Claims are property of the Estate, O'Hara may not assert them and only the Trustee may assert them. *Chartschlaa*, 538 F.3d at 122; *Coffaro v. Crespo*, 721 F. Supp. 2d 141, 148 (E.D.N.Y. 2010); *Ibok*, 2011 U.S. Dist. LEXIS 27301; *Stanley*, 2009 U.S. Dist. LEXIS 8022. The Trustee further is authorized to dismiss them. *Sherman v. Buckley*, 119 F.2d 280, 282 (2d Cir.) (L. Hand, J.) (. . .[the trustee] could have discontinued [the claim] altogether and disposed of the claim as he chose.), *cert. denied*, 314 U.S. 657 (1941), *disapproved in part on other grounds*, *Brown v. Gerdes*, 321 U.S. 178, 184 (1944).

K. The Trustee has determined that the Claims asserted in the Action are without merit, that no amendment of the Claims would have merit, and that the Action is an improper waste of judicial resources and an unjustifiable burden on the defendants.

L. The Trustee has further determined as a fiduciary, an officer of the Court, and as a matter of professional responsibility, the Action should be dismissed with prejudice.

M. Each of the named defendants, through their counsel, has consented to the dismissal of the Action with prejudice, on conditions set forth hereafter.

N. By Order entered October 29, 2012 (Bankruptcy Court docket Doc 264), attached hereto as Exhibit A, the Honorable Robert E. Littlefield, C.B.J., ordered that:

1. The Trustee is duly authorized to dismiss the Action;
2. The Stipulation is approved; and
3. Special Litigation Counsel Cory E. Friedman is authorized to execute the Stipulation on behalf of the Trustee and take all action necessary and proper to present it to be So Ordered and entered by the Court.

O. Pursuant to F.R.B.P. 8002 to time to appeal the October 29, 2012 order of the Bankruptcy Court has expired.

NOW THEREFORE, the parties hereto stipulate and agree as follows:

1. This Stipulation and each of its terms only shall become effective upon an Order of the Court approving this Stipulation.
2. The Action shall be dismissed with prejudice and without costs to any party to this Stipulation.
3. No party to this Stipulation shall seek Rule 11 or other sanctions against the Trustee or his counsel in connection with the Action, and each party to this Stipulation acknowledges that no sanction against O'Hara shall be a claim against the Estate.
4. As a result of and upon the dismissal of the Action, all pending motions to dismiss shall be deemed withdrawn as moot.

5. Except as set forth herein, this Stipulation is without prejudice to the pending motions for sanctions.

6. This dismissal is not intended to and does not have any effect on claims filed by creditors (including Clare W. Bronfman and Sara R. Bronfman) in the bankruptcy case of O'Hara, nor of the enforcement of claims or judgments against O'Hara individually (including the judgment rendered in favor of Clare W. Bronfman and Sara R. Bronfman in *NXIVM Corp., v. O'Hara*, Civ. No. 05-1546).

7. This Stipulation may be executed in counterparts, all of which taken together shall constitute the Stipulation of Dismissal with Prejudice.

Cory E.
Friedman

Digitally signed by Cory E. Friedman
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c=US
Date: 2012.11.15 10:18:27 -0500



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Date: November 15, 2012

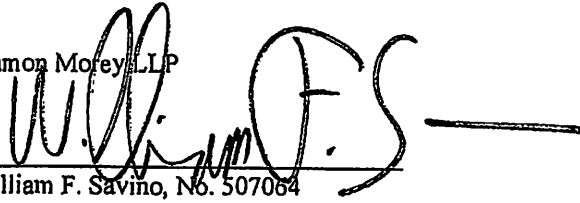
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[Consents Continued on Next Page]

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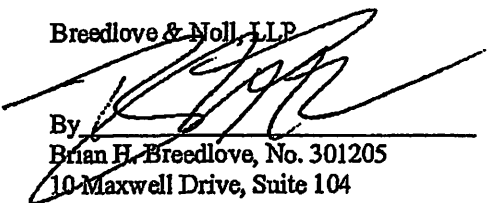
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Date: November __, 2012

[Consents Continued on Next Page]

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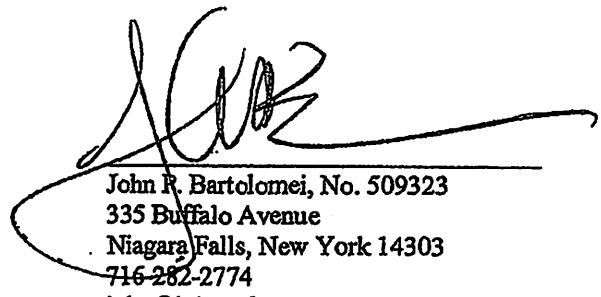
SO ORDERED:

Dated: November __, 2012

Hon. Gary L. Sharpe,
Chief United States District Judge

O'Connell and Aronowitz, PC

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Dated: November __, 2012

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Chief United States District Judge

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SO ORDERED:

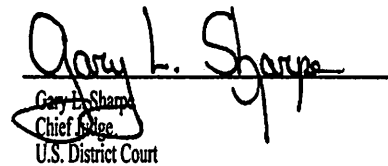
Dated: November __, 2012

December 4, 2012

Gary L. Sharpe
Hon. Gary L. Sharpe,
Chief United States District Judge

In addition, the outstanding motions for sanctions, (see Dkt. Nos. 61, 70), which were specifically excepted from the Stipulation of Dismissal, are **DENIED**. All remaining motions are **DENIED** as moot.

Date: December 4, 2012
Albany, New York


Gary L. Sharpe
Chief Judge
U.S. District Court