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August 28, 2018

Open Letter to the Shambhala Community

Re: Buddhist Project Sunshine Phase 3 Final Report, *The nail: Bringing things to a clear point*

This law firm represents Shambhala USA and its affiliates (“Shambhala”). We have undertaken this representation on a *pro bono* basis.

We write in response to the August 23 Memorandum, *Update on The Allegations of Sexual Misconduct of The Sakyong* (“Memo”), and the Buddhist Project Sunshine Phase 3 Final Report, *The nail: Bringing things to a clear point* (“Nail Report”).

Specifically, we will address the unfounded criticism of Shambhala’s third-party investigation process lodged by Buddhist Project Sunshine (“BPS”). I do this because, in my experience, the success of any large scale workplace investigation depends on the willingness of people with complaints to come forward. To the extent there are issues in the Shambhala community, this is the time to bring those issues to light, and a fair process has been designed to achieve this result.

As a preliminary matter, Shambhala’s response to the allegations made in BPS’s June 28, 2018 report was prompt and consistent with “best practices” for any organization faced with similar accusations against its leadership. Indeed, Shambhala has followed recommendations published by the U.S. Equal Employment Opportunity Commission (“EEOC”) for creating robust reporting systems and performing workplace investigations. *See generally* June 2016 Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace; June 1999 EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors. The EEOC endorses the following principles: (1) organizations should offer reporting systems that are multi-faceted, offering a range of methods and multiple points-of-contact; (2) organizations should devote sufficient resources so that workplace investigations are prompt, objective, and thorough; and (3) organizations should ensure that where harassment/inappropriate conduct is found to have occurred, discipline is prompt and appropriate.

Shambhala has followed each of these recommendations to the letter. In response to allegations of widespread harm, Shambhala hired the Wickwire Holm law firm and An Olive Branch, both third party organizations with experience in conducting workplace investigations, to process and investigate complaints, as a supplement to the existing Shambhala “Care and Conduct” reporting process. Shambhala also retained Ballard Spahr LLP to provide advice on the investigation and the appropriate responses to Wickwire Holm’s forthcoming report, especially if there is any finding of wrong-doing by the Sakyong or any other Shambhala leaders.

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Contrary to the assertion that the Wickwire Holm investigation is not sufficiently “independent” to be credible, nowhere does EEOC guidance recommend that an investigation must be overseen by any sort of “independent monitor” or advisory board. There can be no question that this investigation will be sufficiently independent and conducted in full compliance with widely-accepted professional standards. There is no reason for the structure or mechanics of the Wickwire Holm investigation to give rise to any legitimate suspicion.

Next, Shambhala specifically responds to the purported “problems” with the Wickwire Holm investigation raised in the Memo and the Nail Report:

1. The Memo questions whether Shambhala’s current Board (the Kalapa Council) or “a patron of the Sakyong” hired Wickwire Holm. Shambhala’s July 20, 2018 letter to the community says that “Shambhala has contracted with Wickwire Holm . . . to serve as an investigator.” No “private donor” is sponsoring the Wickwire Holm investigation. In my professional experience in advising many organizations facing similar allegations, including those involving high-level executives, the organization itself always retains and pays the investigator. This type of process cannot realistically be accomplished any other way.

2. The Memo criticizes the Wickwire Holm attorneys for not disclosing their client’s name to BPS third-parties. Under the Rules of Professional Conduct in every state and in Canada, lawyers are barred from revealing a client’s name without permission. The BPS “investigator,” a former practicing attorney, surprisingly states that she “does not know why the name of the client would be secret.” [August 23 Memo at 12]. The commentary for Canadian Model Rule of Professional Conduct 3.3 - Confidentiality provides that “generally, unless the nature of the matter requires such disclosure, a lawyer should not disclose having been retained by a person about a particular matter.” The Wickwire Holm lawyers were following their professional obligations when they refused to identify their client to BPS. Regardless, Shambhala already published that information in its July 20 letter.

3. Shambhala’s outside general counsel, Alex Halpern, retained Wickwire Holm to serve as a neutral third-party investigator and asked Ballard Spahr to assist in advising Shambhala throughout the investigative process. The Memo opines that the current Kalapa Council (Shambhala’s current board of directors) “is not exactly interested in discovering the truth.” There is no basis for this accusation. Shambhala’s only interest is in discovering the truth. And that can only happen if people with honest claims come forward, and present their information to the independent third party investigators at Wickwire Holm or to An Olive Branch. BPS must cease and desist from continuing to try to raise public doubts about the integrity of the investigation process with baseless speculation, and it should actively encourage its anonymous sources to contact Wickwire Holm or An Olive Branch

4. BPS contends that the “only way to actually trust the results of the investigation is for it to be fully independent of the leadership past, present and future.” Shambhala’s general counsel is Wickwire Holm’s point of contact. No current or future board members are communicating directly with anyone at Wickwire Holm. Shambhala’s incoming board will be charged with responding to the findings of Wickwire Holm’s investigation, given their responsibility

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to make sure that Shambhala's employees and contractors do not engage in misconduct while serving the Shambhala community.

5. In the many third-party investigations I have conducted and supervised, and in my decades of practice, I have almost never seen an organization designate an outsider to manage the investigative process and make decisions for the organization in response to any findings. The self-serving suggestion that Shambhala appoint (and compensate) BPS to oversee and act on the Wickwire Holm investigation is unreasonable, contrary to EEOC guidance and best practices, and highly questionable under the circumstances. Shambhala's board has a fiduciary duty to protect the organization and its members. It must and will respond to the findings of the investigators. Because Shambhala and its board will be accountable for Shambhala's response to Wickwire Holm's findings; it is only logical that the incoming interim board decide how Shambhala should move forward at this point.

6. The August 23 Memo states: "I have no reason to believe that the lawyers who will lead the investigation are anything but professional and neutral." Given this admission, we encourage BPS to fulfill its promise to turn over all the information that it has compiled to Wickwire Holm. And we ask that others do the same.

Shambhala is committed to a prompt, thorough, and effective investigation of all complaints. No one should be intimidated by BPS or discouraged from coming forward to present good faith complaints about anyone to either Wickwire Holm or An Olive Branch. Shambhala sincerely encourages all to do so.

The *Nail* Report writes that there are "questions about what the true, clear objective is for this initiative and who it ultimately serves." Let me be clear on behalf of our client: The goal of this investigative process is to serve the Shambhala mandala's commitment to create and sustain an enlightened society and a safe and respectful Shambhala community. Nothing more. And, nothing less.

We trust that this letter has dispelled any fears or confusion generated by the August 23 Memo or the *Nail* Report.

Very truly yours,

Steven W. Suflas

SWS/paa

[enclosure(s)/attachment(s)]

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