

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

THE GENTLE WIND PROJECT, )  
MARY MILLER, SHELLY MILLER, )  
CAROL MILLER, JOAN CARREIRO, )  
PAM RANHEIM and JOHN MILLER, )

Plaintiffs, )

v. )

Civil Action Docket No. 04-103

JUDY GARVEY, JAMES F. BERGIN, )  
J.F.BERGIN COMPANY, )  
STEVE GAMBLE, EQUILIBRA, )  
IVAN FRASER, THE TRUTH CAMPAIGN, )  
STEVEN ALLAN HASSAN, FREEDOM )  
OF MIND RESOURCE CENTER, INC., )  
RICK A. ROSS, RICK A.ROSS INSTITUTE )  
FOR THE STUDY OF DESTRUCTIVE CULTS, )  
CONTROVERSIAL GROUPS AND )  
MOVEMENTS and IAN MANDER, )

Defendants. )

**MOTION TO DISMISS AMENDED COMPLAINT  
FOR LACK OF PERSONAL JURISDICTION  
BY DEFENDANTS RICK A. ROSS AND RICK A. ROSS  
INSTITUTE FOR THE STUDY OF DESTRUCTIVE CULTS,  
CONTROVERSIAL GROUPS AND MOVEMENTS  
(WITH INCORPORATED MEMORANDUM OF LAW)**

Now come Rick A. Ross and the Rick A. Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements (the “Ross Defendants”), and pursuant to Fed.R.Civ.P. 12(b)(2), move to dismiss the plaintiffs’ Amended Complaint for lack of personal jurisdiction. This motion is based upon the Affidavit of Rick Ross, previously submitted with the Ross Defendants’ Motion to Dismiss the original complaint (the “Ross Affidavit”), the arguments set forth below, and the arguments set forth in the Motion to Dismiss for Lack of

Personal Jurisdiction by Defendants Steve Gamble, et al, filed in this action on August 30, 2004, which are incorporated by reference herein.

The Ross Defendants previously moved to dismiss the original complaint for lack of personal jurisdiction. Plaintiffs, however, evidently in response to motions to dismiss filed by some of the other defendants, have filed their Amended Complaint, which moots all of the motions to dismiss, including the one filed by the Ross Defendants.

### **Background**

Defendant Rick Ross is a consultant on cults, and on occasion is retained to assist with cult “interventions.” Ross Affidavit, ¶3. He is Executive Director of Co-Defendant The Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements (“RRI”), a non-profit organization devoted to the study of destructive cults, groups that are called “cults” and other controversial groups and movements. The Ross Defendants operate a web site, [www.rickross.com](http://www.rickross.com), which is a free information source for persons interested in cults, controversial groups and movements, and related subjects. Ross Affidavit, ¶ 5. The claims against the Ross Defendants in this lawsuit arise from information posted on the RRI web site. They do *not* arise from any intervention conducted by Mr. Ross, nor do they arise from any commercial activity whatsoever conducted by Mr. Ross or RRI.

As Mr. Ross explains in his affidavit, when the RRI archive accumulates a sufficient number of articles about a given group, a separate web page is set up with links to all of the articles relating to that group. Ross Affidavit, ¶9. If the group has its own web page, a link to that web page is included and is given more prominence than any of the other links on that page. Id. A copy of the page for The Gentle Wind Project, current as of September 8, 2004, is attached

as Exhibit B to the Ross Affidavit.

Prominently posted throughout the RRI web site, including on the page devoted to The Gentle Wind Project, are links to a Disclaimer which states in relevant part that “the mention or inclusion of a group or leader within this archive does not define that group as a “cult” and / or an individual mentioned as either destructive and / or harmful. Instead, such inclusion simply reflects that archived articles and / or research is available about a group or person that has generated some interest and / or controversy.” Ross Affidavit, ¶8 and Exhibit A.

Initially, the only references to Plaintiffs on the RRI web site were “hyperlinks” to web sites maintained by some of the defendants. Ross Affidavit, ¶ 11; see Amended Complaint, ¶ 119. Subsequently, Plaintiffs were mentioned in a light-hearted section of the RRI web site, known as “Flaming Websites,” which is devoted to web sites critical of Ross or RRI. Ross Affidavit, ¶ 12. This entry is set forth in the second page of Exhibit L to the Amended Complaint. Plaintiffs only quote a portion of the entry in body of the Amended Complaint, at ¶118; the entry in its entirety reads as follows:

The Gentle Wind Project’s “Internet Scam Alert”

“The Gentle Wind Project” blew a bit roughly after a link to a critical website was posted on the Links page. The rather odd group decided to shoot the breeze about a “cult deprogrammer ... from New Jersey.” Guess who? They largely rehashed the much posted Scientology screed about my past. This purported “cult” is run by John and Mary Miller. They hawk so-called “instruments,” which includes everything from a wallet sized “healing card” (“requested donation \$450”) to a “Healing Bar Ver 1.3” (“requested donation \$8,600”). The Millers also have seminars. But don’t expect any objective peer-reviewed scientific evidence published about their puck in the pages of JAMA. Interestingly, since being called a “cult” the Millers have decided to offer free “cult deprogramming,” though probably not to dissuade anyone from making more “requested donation[s]” to them.

Amended Complaint, Exhibit L.

Plaintiffs allege that The Gentle Wind Project “is a nonprofit corporation dedicated to education and research aimed at alleviating human suffering and trauma.” Amended Complaint, ¶ 21. Plaintiffs assert that Gentle Wind “pursues these goals by researching, developing and distributing healing instruments that it believes restore and regenerate the human energy field and contribute to human healing.” *Id.* As alleged in Paragraph 22 of the Amended Complaint, Gentle Wind maintains a web site, [www.gentlewindproject.org](http://www.gentlewindproject.org), which provides additional details concerning these “healing instruments,” including the fact that they have been transmitted by “telepathic communications from non-physical entities living outside of the Earth’s physical and astral systems” and will “alleviate most negative human conditions.”

As with the Plaintiffs’ original pleading, the bulk of the Amended Complaint (and bulky it is) is devoted to describing, in excruciating detail, a dispute between the Plaintiffs and two of their former associates, Defendants Judy Garvey and James F. Bergin, including copious quotations from various “reports” and correspondence. Amended Complaint, ¶¶ 28-65.

Additional portions of the Amended Complaint recite the minutiae of various publications on the Internet by Garvey and Bergin, as well as Defendants Steve Gamble, Equilibra, Ivan Fraser, The Truth Campaign and Ian Mander. Amended Complaint, ¶¶ 66-110, 123-133.

The allegations in the Amended Complaint which specifically mention Defendants Rick Ross and RRI are set forth at Paragraphs 16 (which identifies Rick Ross as a resident and citizen of Jersey City, New Jersey), 17 (which identifies RRI as a New Jersey nonprofit corporation also located in Jersey City), 51 (which alleges that a web site maintained by Defendants Garvey and Bergin includes a reference to the RRI web site, among others), and 111-122 and portions of Exhibit L, which includes print-outs of various pages from the RRI web site. The only specific

allegations concerning Ross and RRI are set forth in Paragraphs 111-122 of the Amended Complaint. These paragraphs merely recite the reporting of Plaintiffs' organization in the RRI web site and allege, in conclusory fashion, that the aforementioned references are defamatory.

The Ross Defendants are being sued in this case because they committed the cardinal sins of including The Gentle Wind Project in their free public archive of information concerning "cults, destructive cults, controversial groups and movements" and referring to plaintiffs on the RRI web site as a "rather odd group." Amended Complaint, ¶118. As noted above, Plaintiffs also claim that various statements on the sites to which the RRI web site provides links are fraudulent and/or defamatory. Plaintiffs make conclusory allegations in Paragraph 136 that "[t]he Count I Defendants [which include the Ross Defendants] conspired together, were organized and associated in fact and acted as an enterprise as defined by 18 U.S.C. § 1961(4) when they violated 18 U.S.C. § 1343)." However, the Amended Complaint fails to allege any facts concerning this conspiracy or "RICO enterprise," fails to allege any communication whatsoever between the Ross Defendants and the other Defendants, fails to provide any detail concerning the structure and organization of the "RICO enterprise," and fails to allege any specific facts - as opposed to conclusory and speculative assertions - concerning the participation, role or motivation of the Ross Defendants in the alleged conspiracy.

In suing the Ross Defendants, Plaintiffs have invoked the heavy artillery of RICO, 18 U.S.C. §1962(c), the Lanham Act, 15 U.S.C. §1125(a)(1)(B), and common law claims for defamation, tortious interference with advantageous relationships, intentional and negligent infliction of emotional distress, and "false light" invasion of privacy. These claims, as alleged against the Ross Defendants, are patently frivolous and the Ross Defendants intend to move for

appropriate relief if this litigation continues against them. At this stage of the litigation, however, the Ross Defendants request only that the Amended Complaint be dismissed for lack of personal jurisdiction.

The Ross Defendants have no connection with the State of Maine. Mr. Ross has never been in the State of Maine, neither he nor the Ross Institute have any agents or property in the State of Maine, and they do not solicit business in the State of Maine. Ross Affidavit, ¶¶ 13-20. Moreover, while Plaintiffs' Amended Complaint includes allegations concerning Mr. Ross' alleged motivation in posting information concerning the Plaintiffs on the RRI web site, there is no allegation or evidence whatsoever that the Ross Defendants derived any revenue from any activity remotely connected with the Plaintiffs. Ross Affidavit, ¶¶ 21-22. It is well settled that a web site operator cannot be subject to personal jurisdiction merely because the subject of an alleged defamatory statement resides in the forum state, which is all that Plaintiffs have alleged here. Accordingly, the Complaint against the Ross Defendants should be dismissed for lack of personal jurisdiction.

### **Argument**

The Ross Defendants incorporate by reference all of the arguments and authorities set forth in the Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Steve Gamble, et al, filed in this action on August 30, 2004, and in addition state as follows:

#### **1. There is No Basis for General Jurisdiction over the Ross Defendants**

There are no allegations in the Amended Complaint that either Rick Ross or the Ross Institute engaged in "continuous and systematic general business contacts" with the State of Maine that would support the exercise of jurisdiction over either of them on a "general

jurisdiction” theory. Moreover, the Affidavit of Rick Ross establishes that the Ross Defendants have had no such contacts with Maine.

**2. There is No Basis for Specific Jurisdiction Over the Ross Defendants**

In addition, there are no allegations in the Amended Complaint which would support the exercise of personal jurisdiction over the Ross Defendants on a “specific jurisdiction” theory. There is no allegation that the Ross Defendants did or said anything in Maine. They have been dragged into this lawsuit solely due to the rather innocuous - and entirely justified - statement on the RRI web site that Plaintiffs are a “rather odd group.”

In Zippo Mfg. Co. v. Zippo Dot Com, 952 F.Supp. 1119 (W.D.Pa. 1997), the District Court held that whether personal jurisdiction can be constitutionally exercised over the out-of-state operator of a web site “is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.” 952 F.Supp. at 1124. There is a “sliding scale” of Internet contacts. At one end are sites where the operator “enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet.” With such sites personal jurisdiction over the foreign operator is proper. Id. At the opposite end are sites “where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions.” Operating such a “passive” web site is not grounds for the exercise of personal jurisdiction in a foreign state. Id. In the middle are “interactive Web sites where a user can exchange information with the host computer.” With such sites “the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.” Id.

The RRI web site is a prototypical example of a “passive” web site. Persons who access the site do not have to enter into a contract or complete any informational form. The site is free and available to anyone with an Internet connection. Ross Affidavit, ¶¶5, 7. The only activity which could be characterized as “commercial” consists of the sale of a limited number of specialized books concerning cults, and occasional cult intervention work done by Mr. Ross. Ross Affidavit, ¶6. There is no allegation or evidence that any of the book sales or cult consulting or intervention work done by Mr. Ross has anything to do with the Plaintiffs or the allegations in the Amended Complaint. Ross Affidavit, ¶21. See Revell v. Lidov, 317 F.3d 467, 472 (5<sup>th</sup> Cir. 2002) (“For specific jurisdiction we look only to the contact out of which the cause of action arises ... Since this defamation action does not arise out of the solicitation of subscriptions or applications by Columbia, those portions of the website need not be considered.”); Best Van Lines, Inc. v. Walker, 2004 WL 964009 at \*6 (S.D.N.Y. May 5, 2004) (“Whether or not MovingScam.com received donations from New York residents is irrelevant ... jurisdiction is only proper ... where the cause of action ‘arises out of the subject matter of the business transacted.’”).

It is not sufficient, for jurisdictional purposes, that the Plaintiffs are located in Maine. See IMO Industries, Inc. v. Kiekert, 155 F.3d 254, 267 (3<sup>rd</sup> Cir. 1998). An allegedly defamatory statement on a web site, as opposed to a defamatory statement purposefully “sent” to the forum (as by sending an email or publishing and distributing a magazine) is not a sufficient basis for personal jurisdiction. See Bailey v. Turbine Design, Inc., 86 F.Supp.2d 790, 795 (W.D.Tenn. 2000) (posting allegedly defamatory statements on website not sufficient to confer jurisdiction).

In Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482 (1984), the Supreme Court held that a



California court had jurisdiction over a Florida defendant who published a libelous article in the National Enquirer. The factors supporting the assertion of personal jurisdiction in that case included the facts that the National Enquirer had a weekly circulation of over 5 million, with over 600,000 copies sold in California (almost twice the level of circulation in New York, the next highest State), 465 U.S. at 785 & n.2, that the individual defendants traveled to California and interviewed California residents in connection with the article, and that the article “impugned the professionalism of an entertainer whose television career was centered in California.” 465 U.S. at 788. Plaintiffs have not and cannot point to anything done by the Ross Defendants which approaches this level of activity found to support personal jurisdiction in Calder v. Jones.

Moreover, subsequent decisions applying the Calder v. Jones “effects” test have made it clear that the Plaintiffs’ presence in Maine is not sufficient to confer jurisdiction over an out-of-state defendant. See IMO Industries, Inc. v. Kiekert AG, 155 F.3d at 263 (“the mere allegation that the plaintiff feels the effects of the defendant’s tortious conduct in the forum because the plaintiff is located there is insufficient to satisfy Calder”).

Similarly, in Barrett v. The Catacombs Press, 44 F.Supp.2d 717 (E.D.Pa. 1999), the District Court declined to exercise jurisdiction over an out-of-state defendant based on statements made in “passive” web sites and internet discussion groups. The court held that “the weight of authority favor[s] the rationale that a “passive” Web site is insufficient to trigger jurisdiction.” 44 F.Supp.2d at 727. The court noted that “Defendant’s Web sites may include defamatory information about the Plaintiff ... but the fact that such information is accessible worldwide does not mean that the Defendant had the intent of targeting Pennsylvania residents with such information.” Id. The court addressed the Calder v. Jones “effects” test, and held that “[i]t is

certainly foreseeable that some of the harm would be felt in Pennsylvania because Plaintiff lives and works there, but such foreseeability is not sufficient for an assertion of jurisdiction. ... *The fact that harm is felt in Pennsylvania is never sufficient to satisfy due process.*” 44 F.Supp.2d at 731 (emphasis supplied).

It should be noted that if this Court holds that the Ross Defendants are subject to personal jurisdiction in Maine solely by virtue of their posting negative information (if the statement that Plaintiffs are “a rather odd group” can properly be so characterized) concerning Plaintiffs on their web site, then every web site operator would be subject to nationwide jurisdiction. Such a ruling would have a draconian effect on the use of the Internet. In light of the foregoing authorities, exercise of personal jurisdiction over the Ross Defendants cannot be held to comply with due process. See *Amberson Holdings, L.L.C. v. Westside Story Newspaper*, 110 F.Supp.2d 332, 336 n.2 (D.N.J. 2000) (“[The] Internet is a vast and expanding global resource. Through the World Wide Web, private individuals and corporations alike can make information and products available to almost anywhere in the world, without ever leaving their respective state. ... If courts were to deem that the mere accessibility of a website could establish the necessary ‘minimum contacts’ to subject a defendant to personal jurisdiction ... there would not be the ‘degree of predictability’ to the legal system that allows potential defendant[s] to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”); Barrett, *supra*, 44 F.Supp.2d at 731 (“the exercise of personal jurisdiction over non-commercial on-line speech that does not purposefully target any forum would result in hindering the wide range of discussion permissible on ... discussion groups and Web sites that are informational in nature”).

## Conclusion

For the reasons set forth above, the Amended Complaint against the Ross Defendants should be dismissed for lack of personal jurisdiction.

Dated: October 4, 2004

RICK A. ROSS AND RICK A. ROSS  
INSTITUTE FOR THE STUDY OF  
DESTRUCTIVE CULTS,  
CONTROVERSIAL GROUPS AND  
MOVEMENTS  
By their Attorneys:

/s/ Douglas M. Brooks  
Douglas M. Brooks (Mass. BBO#058850)  
MARTLAND AND BROOKS, LLP  
Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, MA 01906  
(781) 231-7811

William Leete  
Leete & Lemieux  
95 Exchange Street  
Portland, ME 04101  
(207) 879-9440

## CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of October, 2004, electronically filed the Motion to Dismiss Amended Complaint for Lack of Personal Jurisdiction by Defendants Rick A. Ross and Rick A. Ross Institute for the Study of Destructive Cults, Controversial Groups and Movements(with Incorporated Memorandum of Law) with the Clerk of Court using the CM/ECF system which will send notice of such filing to Jerrol A. Crouter, Esquire, Robert S. Frank, Esquire, James G. Goggin, Esquire, William H. Leete, Jr., Esquire, and that I mailed the document by United States Postal Service to the following non-registered participants: Ian Mander, 38 Arundel Avenue, Mt. Roskill, Auckland, New Zealand.

/s/ Douglas M. Brooks  
Douglas M. Brooks