

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.)

Case No. 04-CV-103-P-C

JUDY GARVEY, JAMES F. BERGIN,)
J. F. BERGIN COMPANY,)
RICK A. ROSS, RICK A. ROSS)
INSTITUTE FOR THE STUDY OF)
DESTRUCTIVE CULTS, CONTRO-)
VERSIAL GROUPS AND MOVEMENTS,)
and IAN MANDER,)

Defendants.)

**ORDER AFFIRMING THE RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE AND REFERRING TO THE
MAGISTRATE JUDGE THE REMAINING PENDING MOTIONS
FOR A RECOMMENDED DECISION**

Before the Court for action are several motions in this convoluted case. First, there is the Recommended Decision of the Magistrate Judge (Docket Item No. 36) on the Motion to Dismiss the two claims based on federal law as set forth in the original Complaint by Defendants Judy Garvey, James Bergin, and J. F. Bergin Company.¹ After full de novo review of the Recommended Decision and the record made by the parties on the Motion to Dismiss the Court **ACCEPTS, AFFIRMS** and **ADOPTS** the recommendation made therein that the federal claims against Bergin, the J. F. Bergin

¹ The Recommended Decision recommends that the Motion to Dismiss be granted, but recommends that the Court “continue to exercise [supplemental] jurisdiction [under 28 U.S.C. § 1367] over the state-law claims asserted against ...[the moving defendants].” Recommended Decision at 11. The predicate for this latter recommendation is the then existing “fact that four other defendants against whom the same state-law claims are asserted...remain in this action.” *Id* at 10.

Company and Garvey as made in the original Complaint be dismissed and that the Motion be **GRANTED**. The Court **RESERVES** decision on the recommendation that the Court continue to exercise supplemental jurisdiction over the remaining state-law based claims pending the rendition of recommended decisions on the Motions hereinafter referred. The Court simply notes that the posture of the case has changed markedly since the filing of the Recommended Decision. The principle change is that the four (actually six) other defendants who remain in the case also subject to the state-law claims are no longer active parties in the case.

The Complaint asserts RICO and Lanham Act claims against ten defendants in Count I, Complaint at 35, and eleven defendants in Count II, *id.* at 57. It asserts state-law based claims against eleven defendants in Count III-VII, *id.* at 38-44. J. F. Bergin Company is not named as a party defendant on Count II, the Lanham Act claim, or on any of Counts III-VII, the state-law claims. Ian Mander is not named as a party/defendant on Count II but is so named on all other counts of the Complaint.

As the matter now stands, Defendants Steve Allen Hasson and Freedom of Mind Resource Center, Inc., have been removed from the case by Plaintiffs' Notice of Dismissal of the claims against them (Docket Item No. 30). Also, Defendants Steve Gamble, Equilibra, Ivan Fraser, and Truth Campaign, have been dismissed as Defendants by Plaintiffs' Notice of Voluntary Dismissal of the Complaint against those Defendants (Docket Item No. 75) which results from a settlement of those claims. *See* Docket Item No. 66).²

Hence, there now remain as parties only defendants Garvey, Bergin and J. F. Bergin Company, who have a pending Motion to Dismiss Counts I and II (Docket Item

² There is also pending a Motion for Default Judgment against Defendant Mander (Docket Item No. 70).

No. 64) of the Amended Complaint³ (Docket Item No. 37, see attachment) and Defendants Rick Ross and Rick A. Ross Institute for the Study of Destructive Cults, who have pending a Motion to Dismiss for Lack of Personal Jurisdiction (Docket Item No. 61).

I hereby **ORDER** that the Motion of Garvey, Bergin and J. F. Bergin Company to Dismiss as to Counts I and II of the original Complaint (Docket Item No. 1) be, and it is hereby, **GRANTED** and those Counts, as alleged therein, are **DISMISSED**, without prejudice to restatement as set forth in the Amended Complaint (Docket Item No. 37). It is further **ORDERED** that the Motion to Dismiss Counts I and II of the Amended Complaint by Defendants Garvey, Bergin and J. F. Bergin Company (Docket Item No. 64) and the Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Rick A. Ross and Rick A. Ross Institute for Study of Destructive Cults (Docket Item No. 61) both be, and are hereby, **REFERRED** to the Magistrate Judge for Recommended Decisions thereon in due course.

/s/Gene Carter
Gene Carter
Senior U.S. District Court Judge

Dated at Portland, Maine this 6th day of December, 2004.

³ The Magistrate Judge granted leave for Plaintiffs to file an Amended Complaint after the Recommended Decision was filed (Docket Item No. 54).

-PLAINTIFF-----

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