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October 11, 2006

HAND DELIVERED

Dianne Hill, Clerk
York County Superior Court
45 Kennebunk Road
P.O. Box 160
Alfred, ME 04002

RE: *The Gentle Wind Project, et al. v. Judy Garvey, et al.*
Docket No.: CV-06-11

Dear Ms. Hill:

I enclose for filing Defendants' motion *in limine* to exclude certain plaintiffs' trial exhibits with attachments as well as a request for hearing and proposed order.

Sincerely,


Jerrold A. Crouter

JAC/tn

cc: James Bergin
Judy Garvey
Mary Miller
Shelly Miller
Carol Miller
Joan Carreiro
Pam Ranheim
John Miller

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STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-11

| | | |
|--------------------------|---|-------------------------------------|
| THE GENTLE WIND PROJECT, |) | |
| et al., |) | |
| |) | |
| Plaintiffs |) | DEFENDANTS' MOTION <i>IN LIMINE</i> |
| v. |) | TO EXCLUDE CERTAIN OF |
| |) | PLAINTIFFS' TRIAL EXHIBITS |
| JUDY GARVEY, et al., |) | |
| |) | |
| Defendants |) | |

Defendants Judy Garvey and James Bergin move the Court *in limine* to exclude certain of the trial exhibits which have been pre-marked and are expected to be offered by the *pro se* plaintiffs at trial.¹ As discussed in more detail below and as indicated on Attachment A to this motion, of the 676 exhibits marked by the individual plaintiffs, many should be excluded *in limine*, principally on the grounds of hearsay or Rule 403.² The objectionable exhibits are so numerous that the failure to address them *in limine* would cause substantial delays at trial. Copies of the exhibits which are the subject of this motion are provided here for review by the Court.³

Discussion

Although plaintiffs' complaint is pled in five counts, plaintiffs' case at its core is one for defamation. The alleged defamation involved in the case arises, for the most part, out of

¹ Counsel for plaintiff Gentle Wind Project have moved to withdraw. Plaintiff Gentle Wind Project, since it is not represented by counsel, did not submit any pre-marked exhibits.
² The actual number of exhibits is difficult to discern, because some of plaintiffs' exhibits are repeated two, three, or even more times. In addition, however, some of plaintiffs' proposed exhibits actually consist of multiple documents which would ordinarily be marked as multiple exhibits (*see, e.g., Exhibit P-76* – defendants object to all but the first two pages as hearsay).
³ Plaintiffs have informed counsel for defendants that they have found an additional box of documents which they wish to mark as exhibits. Defendants will supplement this motion *in limine* by addressing those additional documents as soon as possible.

statements made by Bergin and Garvey on their “Wind of Changes” website, and falls into one of three categories of allegedly defamatory statements: that the Gentle Wind Project (“GWP”) is a “cult,” that GWP engaged in “sexual rituals,” and that GWP’s “healing instruments” are a brand of snake oil. The so-called “healing instruments” are either acrylic rods or pucks, or laminated cards, with embedded color patterns, metals or gems (like copper or diamond dust), and herbs and minerals (like sea salts and chili powder). Plaintiffs contend that the healing instruments, when held as instructed, repair the “etheric” or “energetic” structure or aura that surrounds human beings (or their pets). The plaintiffs also contend that the healing instruments are manufactured by them from blueprints which are transmitted telepathically to plaintiff John Miller from the “Spirit World.”

Bergin and Garvey were involved in the GWP for many years, and when involved they were enthusiastic supporters of the Project. Ultimately realizing that their involvement in GWP had adversely affected their marriage, their relationship with their children, and their financial stability, they drew away from GWP and the six individual plaintiff-insiders. In October, 2003 and early 2004 Garvey and Bergin, respectively, published memoirs of their experience with GWP on the internet. They were sued by plaintiffs in June, 2004.

It is clear from a review of plaintiffs’ proposed exhibits that they will seek to convince the jury at trial that the healing instruments work, and thus it is defamatory to call them “snake oil.” They will further seek to convince the jury that it is defamatory to refer to GWP as a cult, in part through documents in which a non-party author opines that GWP is not a cult. Many of the exhibits appear to be “testimonials” from partially-identified social workers or other practitioners who claim that the instruments are effective with their clients/patients.

In Exhibit P-105, for example, there is a document purporting to be from a LCSW named “Robert,” who writes that he has used the instruments on clients who “report feeling a lasting positive change” to their anxiety and mood disorders. Exhibit P-105 is hearsay within hearsay – it is an out of court document prepared by one “Robert,” who is reporting on what his clients allegedly have told him about the impact of using the healing instruments, and it is offered to prove the truth of the matter asserted, namely that the clients felt “a lasting positive change.” There are dozens of proposed exhibits which are inadmissible as hearsay, either as testimonials of the supposed effectiveness of the instruments, or offered as evidence of damages (*see, e.g.*, P-166 – letters to be offered as “evidence” that Bergin’s and Garvey’ publications caused cancellations of healing instrument seminars or caused some not to use the instruments).

Similarly, Exhibit P-21 (Bates numbered page GWP000132) purports to be an email from some unidentified person in England. He decries the labeling of GWP as a cult, which he claims was done “recklessly.” The email is inadmissible hearsay.

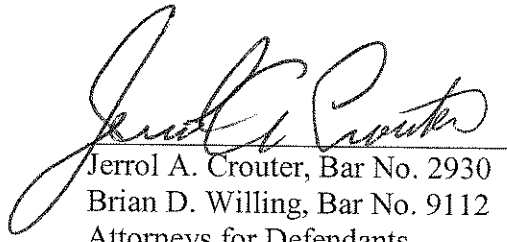
Other exhibits are inadmissible on the grounds of relevance. For example, Bergin and Garvey home-schooled and were active supporters of the concept of home schooling. A number of exhibits relate only to Bergin’s and Garvey’s home schooling, and therefore have nothing to do with the allegations involved in this case. *See, e.g.*, P-298 (various home school-related documents).

Finally, there are other exhibits which lack authenticity because the authors cannot be identified, and documents which are inadmissible on Rule 403 grounds. By way of example, in Exhibit P-21 (Bates numbered page GWP000130), “Grace” in New Zealand writes in support of GWP by referring to “Garvey’s insidious smear campaign” and “the destructive forces of these people, in particular one disgruntled woman compelled by obsessive vindictiveness to stop the

work of the Gentle Wind Project, epitomises (sic) humanity at its worst.” *See also* P-21 (Bates GWP000132)(unidentified author of email from England referring to the “scurrilous campaign” against GWP). Even if the hearsay objection could be overcome by plaintiffs, the documents are inadmissible on Rule 403 grounds.

For these reasons, and the grounds for objection set forth on Attachment A, defendants’ motion *in limine* should be granted, and the exhibits should be excluded from trial.

Dated: October 11, 2006


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Any opposition to this Motion must be filed not later than twenty-one (21) days after the filing of this Motion unless another time is provided by the Maine Rules of Civil Procedure or is set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the Motion, which may be granted without further hearing or notice.

Attachment A to
Defendants' Motion In Limine to
Exclude Certain of Plaintiffs' Trial Exhibits

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------|
| P-17 | Hearsay, Authenticity |
| P-19 | Hearsay |
| P-21 | Hearsay, 403 |
| P-22 | Hearsay, Relevance |
| P-27 (paragraph description only) | Improper summary (Rule 1006), 403, Improper characterization. Objection will be withdrawn if paragraph removed. |
| P-32 | Hearsay |
| P-34 | Hearsay |
| P-38 | Hearsay, Relevance |
| P-40 | Relevance |
| P-41 | Relevance |
| P-42 | Relevance |
| P-43 | Hearsay, Relevance |
| P-44 | Relevance |
| P-45 | Hearsay, Relevance |
| P-46 | Hearsay, Relevance |
| P-47 | Hearsay |
| P-76 | Hearsay (except first two pages) |
| P-77 | Hearsay |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|------------------------------|
| P-78 | Hearsay |
| P-82 | Hearsay |
| P-83 | Hearsay |
| P-84 | Hearsay |
| P-85 | Hearsay |
| P-86 | Hearsay |
| P-87 | Hearsay |
| P-88 | Hearsay (all but first page) |
| P-89 | Hearsay |
| P-90 | Hearsay |
| P-91 | Hearsay |
| P-92 | Hearsay |
| P-93 | Hearsay, Authenticity |
| P-94 | Hearsay |
| P-95 | Hearsay |
| P-96 | Hearsay |
| P-97 | Hearsay |
| P-98 | Hearsay |
| P-99 | Hearsay |
| P-100 | Hearsay |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|----------------------------|
| P-101 | Hearsay, Authenticity |
| P-102 | Hearsay, Authenticity |
| P-103 | Hearsay, Authenticity |
| P-104 | Hearsay |
| P-105 | Hearsay |
| P-106 | Hearsay |
| P-107 | Hearsay, Authenticity |
| P-108 | Hearsay |
| P-109 | Hearsay |
| P-110 | Authenticity |
| P-111 | Hearsay |
| P-113 | Hearsay, Authenticity |
| P-114 | Hearsay |
| P-115 | Hearsay |
| P-116 | Hearsay, Authenticity |
| P-118 | Hearsay, Authenticity |
| P-119 | Hearsay, Authenticity |
| P-120 | Hearsay, Authenticity |
| P-121 | Hearsay |
| P-122 | Hearsay |
| P-123 | Hearsay |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|-------------------------------------------------|
| P-124 | Hearsay, Authenticity |
| P-135 | Hearsay |
| P-136 | Hearsay (except first two pages) |
| P-137 | Hearsay |
| P-141 | Hearsay, Relevance, Authenticity, 403, 608, 609 |
| P-143 | Hearsay, Relevance, Authenticity |
| P-144 | Hearsay |
| P-145 | Hearsay |
| P-151 | Hearsay, Relevance |
| P-153 | Hearsay |
| P-156 | Hearsay, Authenticity |
| P-157 | Hearsay, Authenticity |
| P-159 | Hearsay, Authenticity |
| P-161 | Hearsay, Authenticity |
| P-163 | Hearsay, Relevance, Authenticity |
| P-164 | Hearsay |
| P-165 | Hearsay, Relevance |
| P-166 | Hearsay, Relevance |
| P-168 | Hearsay |
| P-170 | Hearsay |
| P-171 | Hearsay (pages 3 and 4) |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|--------------------------------------------|
| P-172 | Hearsay |
| P-184 | Relevance, 403 |
| P-203 | Hearsay |
| P-211 | Hearsay |
| P-220 | Hearsay, 403 |
| P-236 | Hearsay |
| P-241 | Hearsay, 403, Inadmissible opinion |
| P-244 | Hearsay (top email), 403 |
| P-246 | Hearsay, Authenticity |
| P-249 | Hearsay, Authenticity, Incomplete document |
| P-250 | Hearsay |
| P-255 | Hearsay |
| P-256 | Hearsay |
| P-258 | Hearsay |
| P-259 | Hearsay |
| P-260 | Hearsay |
| P-261 | Hearsay |
| P-265 | Hearsay |
| P-279 | Hearsay, Authenticity |
| P-294 | Hearsay, Relevance |
| P-297 | Relevance |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|------------------------------------|
| P-298 | Relevance |
| P-300 | Authenticity (incomplete document) |
| P-308 | Relevance |
| P-310 | Relevance |
| P-311 | Hearsay, Relevance |
| P-313 | Relevance |
| P-315 | Relevance |
| P-318 | Relevance |
| P-325 | Hearsay |
| P-326 | Hearsay |
| P-329 | Relevance |
| P-331 | Hearsay |
| P-332 | Relevance |
| P-333 | Relevance |
| P-334 | Relevance |
| P-335 | Relevance |
| P-337 | Relevance, 403 |
| P-338 | Relevance |
| P-344 | Hearsay |
| P-346 | Hearsay |
| P-354 | Hearsay |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P-355 | Hearsay, 403 |
| P-356 | Hearsay, Authenticity |
| P-358 | Hearsay, 403 (Bergin/Garvey materials are repetitive) |
| P-359 | Hearsay |
| P-361 | Hearsay, Relevance |
| P-362 | Hearsay, Authenticity (documents appear to be multiple copies of an email sent by Bergin/Garvey, which was forwarded to plaintiff Gentle Wind Project by unidentified recipients) |
| P-364 | Hearsay, Relevance, 403 |
| P-366 | Hearsay, Authenticity, Relevance, 403 |
| P-370 | Hearsay, Relevance |
| P-371 | Hearsay |
| P-376 | Hearsay |
| P-383 | Hearsay, Relevance |
| P-384 | Hearsay, Relevance |
| P-396 | Hearsay |
| P-398 | Hearsay |
| P-405 | Hearsay |
| P-408 | Hearsay |
| P-412 | Hearsay, Relevance, 403 |
| P-413 | Hearsay |
| P-417 | Hearsay, 403 |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|-----------------------------------------------------------------------------------------------------------------------|
| P-418 | 403 |
| P-419 | Hearsay |
| P-420 | Hearsay, 403 |
| P-421 | Relevance, 403 |
| P-422 | Hearsay |
| P-423 | Hearsay |
| P-425 | Hearsay |
| P-426 | Hearsay, 403 |
| P-427 | Hearsay |
| P-447 | 403 |
| P-486 | Hearsay |
| P-489 | 403 |
| P-506 | Hearsay, 403 |
| P-509 | Hearsay |
| P-510 | Hearsay |
| P-512 | Hearsay |
| P-518 | Hearsay, 403 (also plaintiffs' communication with counsel, which could create privilege waiver issues for plaintiffs) |
| P-519 | Hearsay |
| P-520 | Hearsay |
| P-522 | Hearsay, Relevance, 403 |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|-----------------------------------------------------------------------------------|
| P-523 | Hearsay, 403 |
| P-524 | Hearsay, 403 |
| P-525 | 403 (only as to color differential – red) |
| P-527 | 403 (improper characterization of evidence in introduction) |
| P533 | Hearsay, 403 |
| P-536 | Hearsay |
| P-547 | Hearsay |
| P-548 | Hearsay |
| P-549 | Hearsay |
| P-551 | Hearsay |
| P-553 | Relevance, 403 |
| P-555 | Hearsay, 403 |
| P-556 | Hearsay |
| P-557 | Hearsay |
| P-570 | Hearsay, 403 |
| P-573 | Hearsay |
| P-575 | Hearsay |
| P-578 | Relevance, 403 |
| P-580 | Relevance, 403 |
| P-583 | 403, 408 (reference to settlement agreement involving other original defendants). |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|----------------------------|
| P-600 | 403 |
| P-601 | Hearsay |
| P-604 | Relevance, 403 |
| P-612 | Hearsay |
| P-614 | Hearsay |
| P-615 | Hearsay, Relevance, 403 |
| P-616 | Hearsay |
| P-617 | Hearsay |
| P-618 | Hearsay |
| P-619 | Hearsay |
| P-622 | Hearsay |
| P-623 | 403 |
| P-626 | Hearsay |
| P-627 | Hearsay |
| P-629 | Hearsay, 403 |
| P-630 | Hearsay |
| P-631 | Hearsay |
| P-634 | Hearsay |
| P-635 | Hearsay |
| P-636 | Hearsay |
| P-638 | Hearsay |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|----------------------------------|
| P-586 | Hearsay |
| P-639 | Hearsay |
| P-640 | Hearsay |
| P-641 | Hearsay |
| P-642 | Hearsay |
| P-643 | Hearsay |
| P-645 | Hearsay, Relevance |
| P-646 | Hearsay, Relevance |
| P-648 | Hearsay |
| P-652 | Hearsay |
| P-653 | Hearsay |
| P-655 | Hearsay |
| P-656 | 403 (only the paragraph of text) |
| P-657 | Hearsay, 403 |
| P-660 | Hearsay |
| P-661 | Hearsay, Relevance |
| P-662 | Hearsay, Relevance |
| P-663 | Hearsay |
| P-667 | Hearsay |
| P-668 | Hearsay, Relevance |

| <u>Exhibit</u> | <u>Basis for Objection</u> |
|----------------|----------------------------|
| P-670 | Hearsay |
| P-672 | Hearsay |
| P-673 | Hearsay |
| P-674 | Hearsay |

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-11

THE GENTLE WIND PROJECT,)
et al.,)
)
Plaintiffs)
v.)
)
JUDY GARVEY, et al.,)
)
Defendants)

DEFENDANTS' REQUEST FOR
HEARING ON ITS MOTION *IN LIMINE*

Defendants Judy Garvey and James Bergin, by and through counsel, hereby requests the Clerk to schedule the Defendant's Motion *in Limine*, for hearing.

The motion to be heard is non-testimonial.

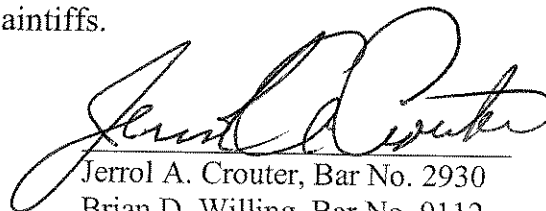
To the nearest one-quarter hour, the undersigned counsel's good faith estimate of the time which the hearing will take is ½ hour.

Pursuant to Rule 7(b)(3) I have included:

X Defendants' Motion *in Limine* to Exclude Certain of Plaintiffs' Trial Exhibits.¹

The motion is opposed by Plaintiffs.

Dated: October 11, 2006



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Attorneys for Defendants
James Bergin and Judy Garvey

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Portland, ME 04104-5081

¹ A number of other motions in this case are scheduled to be heard on November 8, 2006 and we request that the Court combine this motion with the other pending motions.

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-11

THE GENTLE WIND PROJECT,)
et al.,)
)
Plaintiffs)
v.)
)
JUDY GARVEY, et al.,)
)
Defendants)

ORDER

After hearing and consideration, Defendants' Motion *In Limine* is hereby granted.

Dated: October __, 2006

Justice, Superior Court