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b. Plaintiffs have entered into a Consent Decree with State of Maine in the aforementioned matter, docket number ALFSC-CV-2006-00221, because the information contained in the Consent Decree would unduly inflame and prejudice the minds of the jury against Plaintiffs.

4. This motion is made pursuant to M.R. Evid. 403. Plaintiffs state that any reference to the above-enumerated matters would be confusing and misleading for the jury and to the extent this evidence has any probative value whatsoever; its prejudicial effect substantially outweighs any such probative value. Although the information relating to the above-enumerated action may have relevance to any of the issues to be determined in the trial before the court, it is immaterial and unnecessary to the disposition of this case and to permit such evidence or inference from such evidence would be highly prejudicial to Plaintiffs in the minds of the jury. The fact that Plaintiffs were involved in the above-enumerated matters does not in any way relieve Defendants of their liability in the present action. Furthermore, an ordinary objection during the course of trial, even if sustained with proper instructions to the jury, will not remove the prejudicial effect thereof.

WHEREFORE, Plaintiffs request that this Court exercise its discretion and make an order absolutely prohibiting the offer or references specified above.

MEMORANDUM OF LAW

Factual Background:

Plaintiffs in the present matter were named as defendants in a Complaint brought by the State of Maine and Attorney General, docket number ALFSC-CV-2006-00221. On August 9, 2006, Plaintiffs consented to the entry of a Consent Decree and Order without trial or adjudication of any issue of fact or law in the matter brought by the State of Maine. The Consent

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Decree presents Findings that certain Plaintiffs violated Maine's Unfair Trade Practices Act¹ and violated certain provisions of Maine's Nonprofit Corporation.² In addition, the consent decree, among other things, enjoins Plaintiffs from taking certain actions, imposes certain civil penalties and orders the liquidation of The Gentle Wind Project.

I. Grounds for Exclusion of Relevant Evidence Because of Consideration of Unfair Prejudice

M.R. Evid. 403 empowers the court to exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice . . ."³ Any references to the case between the Plaintiffs and the State of Maine, and in particular reference to the findings of the Consent Decree dated August, 9, 2006, would more than merely cause harm to the Plaintiffs' cause by admitting evidence contrary to their contentions. Such references could move the jury to decide on an improper basis, which in this matter would be antipathy towards the Plaintiffs based on the findings of the Consent Decree. Permitting the jury to react to the findings in the Consent Decree and improperly act by punishing the Plaintiffs would deprive Plaintiffs of a fair and impartial trial. The court must "be alert to exclude any exhibit which may have an undue tendency to move the factfinders to decide the issue on an improper basis, commonly, although not invariably, an emotional one."⁴ The probable danger of the evidence if offered will substantially outweigh its probative value in any circumstance that might conceivably develop at trial.


II. Power to Exclude Relevant Evidence Because of Consideration of Confusion of the Issues or Misleading the Jury

¹ 5 M.R.S.A. §§ 205-A – 214.

² 13-B M.R.S.A. §§ 101-1401.

³ M.R. Evid. 403.

⁴ State v. Linnell, 408 A.2d 693, 695 (Me. 1979) (citing United States v. McRae, 593 F.2d 700, 707 (5th Cir. 1979)).

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Evidence may be subject to exclusion under M.R. Evid. 403 where admission of evidence would confuse the issues of the case or mislead the jury.⁵ Any reference to or mention of the suit between the State of Maine and Plaintiffs will distract the jury by unnecessarily going into the elements of Maine's Unfair Trade Practices Act⁶ and Maine's Nonprofit Corporation Act⁷ which are the basis of certain findings in the Consent Decree. Allowing Defendants to present evidence of the Consent Decree Findings as to the statutory violations would necessitate the introduction of collateral issues that are likely to confuse the jury.

The issues in this case center on defamatory statements made by Defendants, Defendants tortuous interference with Plaintiffs' advantageous relationships, infliction of emotional distress and false light invasion of privacy. Evidence of statutory violations contained within the Findings of the Consent Decree as to Maine's Unfair Trade Practices Act and Maine's Nonprofit Corporation Act are of limited relevance to the issues of this case, and are likely to confuse and mislead the jury. Moreover, such evidence will likely create side issues that will confuse and unduly distract the jurors from the main issues of the present case. In *State v. Clough* the exclusion of certain evidence was upheld on the basis that "[a] trial justice has broad discretion in determining whether the probative value of evidence is outweighed by the danger of confusing issues or by sheer waste of time."⁸

III. Conclusion

For the foregoing reasons, Defendants should be barred from referring to, commenting on or introducing evidence as to the fact that Plaintiffs have been a party to a lawsuit with the State

⁵ M.R. Evid. 403.

⁶ 5 M.R.S.A. §§ 205-A – 214.

⁷ 13-B M.R.A.S. §§ 101-1401.

⁸ 391 A.2d 361, 362 (Me. 1978). See also *Littlefield v. State*, 408 A.2d 695, 697 (Me. 1979) (upholding the exclusion of evidence concerning crimes of the defendant's associate and a witness's knowledge of those crimes on the basis that evidence of the statement would tend to confuse the issue of defendant's guilt).

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of Maine or have settled any claims in the Consent Decree in such lawsuit. Consequently, Plaintiffs move this Court to bar any evidence Defendants should attempt to offer in relation to the aforementioned lawsuit.

Dated: 9-08-06

Plaintiff
S/ Mary Miller
Mary Miller
PMB 396
1465 Woodbury Avenue
Portsmouth, NH 03801-3246
(603) 817-2378

Plaintiff
S/ Shelbourne Miller
Shelbourne Miller

Plaintiff
S/ Carol Miller
Carol Miller

Plaintiff
S/ Joan Carreiro
Joan Carreiro


Plaintiff
S/ Pamela Ranheim
Pamela Ranheim

Plaintiff
S/ John Miller
John Miller

cc: Jerrol A. Crouter, Esq.

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John C. Turner
Jonathan R. Doolittle, Esq.

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NOTICE TO DEFENDANTS:

Pursuant to Maine Rules of Civil Procedure 7(b)(1), Plaintiffs hereby give notice to all parties in this lawsuit that if you oppose this motion, you must file with the Court a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 21 days after the date of the filing of this motion and mail or deliver a copy of such memorandums and any supporting documents to the undersigned Parties. If you fail to file a memorandum and any supporting affidavits or other documents in opposition to the motion within 21 days, it will be assumed that you do not object to the motion. If you fail to file a memorandum and any supporting affidavits or other supporting documents in opposition within 21 days, the motion may be granted by the Court without further notice to you without a hearing.

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STATE OF MAINE
York, ss.

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

THE GENTLE WIND PROJECT,
ET AL.,

v.

JUDY GARVEY, ET AL.,

Defendants

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ORDER

Upon consideration of Plaintiffs' Motion In Limine to Exclude Certain Evidence, **IT IS HEREBY ORDERED** that counsel for Defendants, and through counsel any and all witnesses called on behalf of Defendants, are instructed to absolutely refrain from any mention or interrogation, directly or indirectly, in any manner whatsoever, including offering of documentary evidence, concerning to the claims and proceedings involving:

1. State of Maine and Attorney General v. The Gentle Wind Project, f/k/a The Gentle Wind Retreat, and Mary E. Miller, Carol R. Miller, John D. Miller, Joan G. Carreiro, Pamela Ranheim, and Shelbourne Miller, docket number ALFSC-CV-2006-0022; and
2. Plaintiffs having entered into a Consent Decree with State of Maine in the aforementioned matter, docket number ALFSC-CV-2006-00221.

The Clerk is directed to enter this Order on the docket by reference thereto pursuant to M.R.Civ.P. 79(a).

Dated: _____

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Justice