

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10956-GAO

BARBARA CURLEY, et al.,
Plaintiffs

v.

NORTH AMERICAN MAN BOY
LOVE ASSOCIATION, et.al.,
Defendants

MEMORANDUM AND ORDER ON MOTIONS TO DISMISS
March 31, 2003

O'TOOLE, D.J.

There are pending motions by various defendants to dismiss the second amended complaint in this action for a variety of reasons. Generally, the moving defendants assert the same or substantially similar grounds for dismissal, making it possible to address the grounds topically.

Some procedural history is appropriate. On or about October 1, 1997, Charles Jaynes, allegedly a member of the defendant North American Man Boy Love Association ("NAMBLA"), abducted and ultimately murdered ten-year old Jeffrey Curley of Cambridge, Massachusetts. On May 16, 2000, the plaintiffs Barbara Curley and Robert Curley ("the Curleys"), as administrators of the estate of their deceased son, commenced this action to recover for his conscious suffering and wrongful death under Mass. Gen. Laws. ch. 229, §§ 2 and 6, naming NAMBLA, Best Internet Communications, Inc., Verio, Inc., Roy Radow, Joe Power, David Thorstad, David Miller, Peter Herman, Max Hunter, and Arnold Schoen as defendants. The plaintiffs also asserted a federal claim under 42 U.S.C. § 1985(3). Two days later, the plaintiffs amended their complaint by dropping the

defendants Best Internet Communications, Inc. and Verio, Inc. and adding as a defendant “John Doe Inc.,” said to be an internet service provider whose actual identity was then unknown to the plaintiffs. The substantive claims remained the same.

The defendants attacked the first amended complaint by filing motions to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief can be granted. In addition, Power moved to dismiss on the ground of insufficiency of service of process. By orders dated September 27, 2001 and February 22, 2002, this Court denied these motions.¹

While the motions to dismiss the first amended complaint were pending, the plaintiffs moved for leave to file another amended complaint. Their proffered complaint added as defendants Denny Mintum, Bill Andriette, and “John Does 1-100.” It also added a civil RICO claim against all defendants. In addition, while the motions to dismiss the first amended complaint were pending, the plaintiffs commenced a separate civil action in this Court, Curley, et al. v. Andriette, 01-11643-GAO (the “Andriette case”). The substantive claims asserted in that case are identical to those asserted in the plaintiffs’ proposed amended complaint. In addition, in the Andriette case, the plaintiffs named as additional defendants (additional, that is, to those already included in the first amended complaint in this case) William Andriette, Dennis Mintum, Jonathan Michael Tampico, Christopher Farrell, Dennis Bejin, Timothy Bloomquist, Tecumseh Brown, Bruce Braverman, Gary Hann, Peter Reed, Thomas Reeves, Robert Rhodes, Peter Melzer, Robert Schwartz, Walter Bieder, Rennato Corazza, Charles Lee Dodson, and Leyland Stevenson.

In its September 27, 2001 Order, this Court denied the plaintiffs’ motion to file their proffered amended complaint, ruling that because damages for wrongful death or personal injury

¹ The Court concluded that service on Power had been insufficient, but permitted the plaintiffs a limited time to make good service, which they did.

are not available in a civil RICO claim under 18 U.S.C. § 1964(c), amendment to add such a claim was futile. However, the Court invited the plaintiffs to file a revised second amended complaint that omitted the RICO claim. Accepting the invitation, on November 1, 2001, the plaintiffs filed a second amended complaint. That complaint named the defendants that had already been included in the first amended complaint filed in May 2000, and also added the new individual defendants who had been included both in the proposed, but rejected, amended complaint and in the Andriette case. The substantive claims in the second amended complaint are claims under Massachusetts law for wrongful death and conscious suffering (Counts I and II) and a claim for damages under 42 U.S.C. § 1985(3) (Count III).

1. The Claim under 42 U.S.C. § 1985(3)

In its Order dated February 22, 2002, the Court ruled that the cause of action asserted under 42 U.S.C. § 1985(3) in the first amended complaint failed to state a claim for which relief can be granted. That Order did not address the second amended complaint, although it had been filed by the time the Order was issued. The defendants have formally moved to dismiss the claim from the second amended complaint as well. Adhering to the views expressed in the February 2002 Order, the Court grants the motion in this regard as to the second amended complaint. The § 1985(3) claim is dismissed.

2. Continuing Jurisdiction

The dismissal of the § 1985(3) claim leaves only state law claims in the case, as to which the Court may only exercise supplemental jurisdiction. See 28 U.S.C. § 1367. Although the option exists to dismiss the action in favor of one to be commenced in the state courts, all parties have urged the Court to retain jurisdiction of the case. It is in the interest of justice and judicial economy to do so.

3. Propriety of the Amendment to the Complaint

The defendants also complain that the plaintiffs failed to comply with Local Rule 15.1, which requires a party moving to amend by adding new parties to serve the new parties with a copy of the motion and proposed amended complaint. Because of some ambiguity surrounding the leave to amend, the objection is not well taken. In the first place, it is not clear that Local Rule 15.1 applies in this context. As noted above, the Court invited the plaintiffs to file an amended complaint. Though they had moved with respect to a different proposed amended complaint, they had not moved with respect to the one actually filed under the leave granted by the Court in the September 2001 Order. In any event, the Court's Order authorized the filing, and it was not unreasonable for the plaintiffs to have believed that the Order excused compliance with Local Rule 15.1.

It is true that the addition of several new defendants went beyond what had been proposed in the amended complaint proffered by the plaintiffs but rejected by the Court because of the inclusion of the RICO claim. It is possible to read the Court's September 2001 Order as limiting the permission to file a second amended complaint in a way that would preclude additional defendants. The plaintiffs had included the new defendants in the Andriette case, however, and if the issue had surfaced and been specifically addressed, the Court would have permitted the addition of these defendants in the second amended complaint. The newly added defendants' motion to dismiss the second amended complaint on this ground is denied.

4. Relation Back of the Second Amended Complaint

The second amended complaint was filed November 1, 2001. If an original suit had been filed on that day naming the newly added defendants, there is a substantial likelihood that they could

have prevailed on an objection that the three-year statute of limitations applicable to the state law wrongful death and conscious suffering claims, Mass. Gen. Laws ch. 229, § 2, barred the action. However, an amended complaint relates back to the date of the filing of the original complaint when relation back “is permitted by the law that provides the statute of limitations applicable to the action.” Fed. R. Civ. P. 15(c)(1). Here, if the second amended complaint relates back to the time of filing of the original complaint, the action against the newly joined defendants is clearly timely.

Massachusetts employs a liberal relation back rule that permits new parties to be added to an ongoing case even after the expiration of the limitations period. See Wadsworth v. Boston Gas Co., 223 N.E.2d 807, 809 (Mass. 1967). In Wadsworth, the Supreme Judicial Court (“SJC”) noted that “the law in this Commonwealth with respect to amendments is more liberal than elsewhere” and that “ample” Massachusetts case law supports “the proposition that where an action has been commenced before the statute of limitations has run, a plaintiff may be allowed to substitute one defendant for another after the statute of limitations has run against the proposed substitute defendant,” with the amendment relating back to the commencement of the original action. Id. at 809-10. The SJC concluded that there was no substantial difference between a new defendant joined in an ongoing case *as a substitute for* an existing party and a new defendant joined *in addition to* existing defendants. Id. at 810. That rule governs this case. Under Massachusetts law, the second amended complaint relates back to the original complaint, and the claims against the newly joined defendants are not barred by the statute of limitations. The motion to dismiss on this ground is denied.

5. Failure to Schedule this Claim in the Plaintiffs’ Bankruptcy

In August 2000, after the commencement of this action, the plaintiffs filed a voluntary petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. Chapter 7) in this District. The

defendants argue that the plaintiffs failed adequately to disclose the claims presented in this case in the bankruptcy proceedings, especially as they are asserted against the defendants added by the second amended complaint. The defendants contend that, on this basis, the plaintiffs should be barred from pursuing the claims.

The plaintiffs disclosed the existence of this action in their bankruptcy filings both in their schedule of personal property and in their statement of financial affairs, copies of which were submitted as part of the defendants' papers on the present motions. In the former, Schedule B to the Chapter 7 petition, the plaintiffs listed as a "contingent and unliquidated claim" a "Civil Claim against N. American Man Bay [sic] Assn." In the latter, in the section calling for identification of lawsuits, the plaintiffs more specifically identified this action by its docket number, adding that it was pending in the "US District Court, Boston, MA."

The gist of the defendants' objection is that the information included in the bankruptcy papers was too general and did not specifically identify each individual defendant. As to those defendants who were parties of record in this case as of the time of the bankruptcy filings, the objection is wholly insubstantial. The bankruptcy forms do not require a detailed description of the claims identified. Sufficient information was presented to point the trustee, or any other interested person, to the public records from which detailed information about the claim could be obtained.

Those same public records – the docket and papers on file in this case – would have indicated to the interested inspector that the plaintiffs intended to press claims not only against those defendants specifically identified, but also against others – the John Doe defendants – whose identity was not then known to the plaintiffs. The case file also would have demonstrated that the claims asserted against the John Does were the same as those disclosed in the existing pleadings.

Even if, as the defendants assert, the plaintiffs had ascertained the identities of the defendants newly added in the second amended complaint before the close of the bankruptcy case and had a duty to disclose that information in the bankruptcy case, there is no reason to think that such information would have materially affected any decision by the bankruptcy trustee. That is to say, even if the plaintiffs “concealed” from the trustee the names of the new defendants, nothing presented suggests that the concealment had any harmful effect on the estate or gained the plaintiffs any benefit.

There is no reason to quarrel with the principles illustrated by the cases cited by the defendants. It is just that the facts do not warrant invocation of those principles here. The motions to dismiss on this ground are denied.

6. Suing NAMBLA as an Unincorporated Association

NAMBLA is an unincorporated association. Under Fed. R. Civ. P. 17(b), the capacity of an unincorporated association to be sued as an entity is determined by the law of the forum State. Northbrook Excess and Surplus Ins. Co. v. Med. Malpractice Joint Underwriting Ass’n of Mass., 900 F.2d 476, 477 (1st Cir. 1990).

It is a settled principle of Massachusetts law that an unincorporated association “is not a separate entity and cannot be a party to litigation.” Maria Konopnicka Soc’y of Holy Trinity Polish Roman Catholic Church v. Maria Konopnicka Soc’y, 120 N.E.2d 769, 771 (Mass. 1954). Rather, the older practice was to sue “certain named persons as fairly representative of all the members.” Id. That practice is now further authorized by the Massachusetts Rules of Civil Procedure. See Mass. R. Civ. P. 23.2 (permitting action to be brought against members of an unincorporated association as a class by naming certain members as representative parties if it appears that the representative parties will fairly and adequately protect the interests of the association and its members).

The plaintiffs do not seek to invoke Massachusetts Rule 23.2 or the common law principle which it codifies. They do not assert, either in their second amended complaint or in their argument in response to the pending motions to dismiss, that one or more of the individual defendants is sued in a representative capacity on behalf of the membership of NAMBLA. Rather, they urge this Court to extend to NAMBLA a limited exception recognized in the Massachusetts cases that permits labor unions, and perhaps other organizations having similar well-developed and regular structures, to be sued directly as entities. See DiLuzio v. United Elec. Radio and Mach. Workers of Am., Local 274, 435 N.E.2d 1027, 1031 & n.6 (Mass. 1982). To the extent they are asking this Court to extend the exception as a legal matter, the invitation must be rejected. That is a question for the state courts to entertain. To the extent that the plaintiffs contend that as a factual matter the structure and operations of NAMBLA are sufficiently similar to those of a labor union to be entitled to the benefit of the existing Massachusetts rule, the suggestion is also rejected. The documents submitted by the plaintiffs show that NAMBLA’s organization and operations are considerably more irregular than those of a labor union.

The plaintiffs have not given a sufficient reason why the prevailing Massachusetts rule prohibiting a suit against an unincorporated association as a separate entity should not be applied. Accordingly, NAMBLA as an entity must be dismissed from the suit.

7. Personal Jurisdiction

Under Massachusetts law, the Court may exercise personal jurisdiction over a nonresident who acts:

directly or by an agent, as to a cause of action in law or equity arising from the person's (a) transacting any business in this commonwealth; (b) contracting to supply services or things in this commonwealth; (c) causing tortious injury by an act or omission in this commonwealth; (d) causing a tortious injury in this commonwealth by an act or omission outside this commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this commonwealth.

Mass. Gen. Laws ch. 223A, § 3.

A claim “arise[s] from” activity in this Commonwealth if a defendant’s contacts with Massachusetts “constitute ‘the first step in a train of events that result[ed] in’” the injury complained of. Lyle Richards Int’l v. Ashworth, Inc., 132 F.3d 111,114 (1st Cir. 1997) (quoting Tatro v. Manor Care, Inc., 625 N.E.2d 549, 553 (Mass. 1994)). The First Circuit has noted that, as interpreted by the Massachusetts Supreme Judicial Court, the “transacting any business” provision “is not limited to commercial activity by the defendant, but rather is general and applies to purposeful acts by an individual, whether personal, private, or commercial.” Nova Biomedical Corp. v. Moller, 629 F.2d 190, 193 (1st Cir. 1980). Moreover, “the dissemination, on a persistent basis, of advertising, print and electronic, aimed at cultivating a market area in Massachusetts, without any other contact in Massachusetts” constitutes “transacting business” for purposes of the long-arm statute. Gunner v. Elmwood Dodge, Inc., 506 N.E.2d 175, 175 (Mass. App. Ct. 1987). To determine whether the

plaintiff has made a sufficient showing to establish that the Court has personal jurisdiction over the defendants, the Court should “take specific facts affirmatively alleged by the plaintiff as true (whether or not disputed) and construe them in the light most congenial to the plaintiff’s jurisdictional claim.” Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass’n, 142 F.3d 26, 34 (1st Cir. 1998).

The Court’s exercise of personal jurisdiction under Massachusetts’ long-arm statute also must be consistent with the constitutional requirement of due process. Foster-Miller Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir. 1995). The Supreme Judicial Court of Massachusetts has interpreted the state’s long-arm statute “as an assertion of jurisdiction over the person to the limits allowed by the Constitution.” Automatic Sprinkler Corp. of Am. v. Seneca Foods Corp., 280 N.E.2d 423, 424 (Mass. 1972). “The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985) (quoting Int’l Shoe Co. v. Washington, Office of Unemployment, 326 U.S. 310, 319 (1945)). “[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” Int’l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)); see also Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 52 (1st Cir. 2002). This “minimum contacts” requirement is met if the defendant “purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 (1958).

To establish personal jurisdiction over a nonresident defendant in a tort claim, under the due process clause, the plaintiffs must show a sufficient causal nexus between defendant's contacts with the forum state and plaintiff's causes of action. Jet Wine & Spirits, Inc. v. Bacardi & Co. Ltd., 298 F.3d 1, 7 (1st Cir. 2002). The contacts need not be undertaken directly by the individual, nonresident defendants. Id. Rather, plaintiffs may rely in whole or in part on actions imputed to the defendants by their agents. Id.

Three of the individual defendants named in this case – William Andriette, Thomas Reeves, and Robert Rhodes – are residents of Massachusetts. As to them, there is no question of personal jurisdiction.

The other defendants claim that this Court may not exercise personal jurisdiction over them because of their nonresident status and because their individual participation in NAMBLA and its activities were not directed specifically at persons in Massachusetts. The defendants fail to acknowledge, however, that virtually all them – both those living in Massachusetts and those living elsewhere – served as members of NAMBLA's national Steering Committee ("Steering Committee"), a group which purposefully directed NAMBLA's outreach activities generally and, in particular, purposefully directed those activities into Massachusetts.

The materials submitted by the plaintiffs support the following facts. The Steering Committee served as NAMBLA's executive body, directing and supervising the organization's functions. NAMBLA was established as an unincorporated association in 1978 to encourage public acceptance of consensual sexual relationships between men and boys. Its principal place of business is New York, and its primary mechanisms of public outreach include its "Bulletin," a quarterly publication sent to dues-paying members, including Jaynes; Gayme Magazine, a NAMBLA publication mailed periodically to dues-paying members and sold at some bookstores; a NAMBLA

website, allegedly accessed by Jaynes from the Boston Public Library immediately before he abducted Jeffrey Curley; TOPICS, a series of booklets providing more focused consideration of issues related to “man-boy love”; a prison newsletter; Ariel’s Pages, a NAMBLA project through which literature concerning “man-boy love” was sold; and membership conferences. The Steering Committee, through several of its members, also formed “Zymurgy, Inc.,” a Delaware corporation, which was operated as a profit-making arm of NAMBLA. Although the defendants describe the Bulletin, Gayme Magazine, Ariel’s Pages, and Zymurgy, Inc. as separate and distinct from NAMBLA, it appears from the materials submitted, including minutes of Steering Committee meetings, that the Steering Committee controlled all of these entities, providing monies to initiate and support various projects and freely transferring funds among them.²

Thus, although the Steering Committee may have attempted to keep NAMBLA legally separate from the Bulletin, Gayme Magazine, Ariel’s Pages, and Zymurgy, Inc., the distinctions were purely formal and did not reflect the reality that the Steering Committee routinely disregarded

² For example, the Steering Committee used funds from NAMBLA to support Zymurgy, Inc. and vice versa. William Andriette, a Steering Committee member residing in Massachusetts and the editor of NAMBLA’s membership publication, the “Bulletin,” served as an officer of Zymurgy. Steering Committee members Andriette, Robert Rhodes, Peter Melzer, and Gary Hann were authorized to write checks on behalf of NAMBLA and Zymurgy. NAMBLA and Zymurgy checks bear an identical New York post office box address. Some checks drawn on NAMBLA’s bank account carried the notation “NAMBLA d/b/a Zymurgy.” Steering Committee members Andriette, Dennis Bejin, and Hann applied to the Massachusetts Secretary of State for a “Foreign Corporation Certificate” on behalf of Zymurgy, Inc. In their application, they listed “325 Huntington Avenue, Boston,” as their address, which was also the mailing address for NAMBLA’s Bulletin and Gayme Magazine, publications produced by Andriette. They also indicated that if the exact name “Zymurgy” was not available for use in Massachusetts, they were prepared to transact business in Massachusetts under the name “Gayme.” Zymurgy, Inc., the Bulletin, and Gayme Magazine apparently maintained one or more accounts at the Shawmut Bank in Massachusetts to further their activities. Generally, to protect the anonymity of individual members and protect NAMBLA from unwanted public controversy, arrangements for Steering Committee meetings and general membership conferences were made under the obscure name “Zymurgy,” rather than the more notorious “NAMBLA.”

the separate legal forms when it seemed convenient to do so. The evidence indicates that the monies generated by the association's profit centers (the Bulletin, Gayme Magazine, and book sales through "Ariel's Pages") were used to pay for all NAMBLA-related expenses, including creating and distributing publications, organizing conferences, hiring legal counsel, and paying for office space, equipment, and telephone services. NAMBLA's treasurer regularly tracked the income and expenses of each of these activities and gave detailed reports to the Steering Committee.

In addition to managing NAMBLA's financial matters, the Steering Committee also directed the association's policy, political, legal, and public relations efforts. Steering Committee members held frequent meetings and retreats during which they discussed NAMBLA's public image, formulated the association's outreach efforts, and nominated spokespersons. Members of the Steering Committee in close coordination with each other, created and maintained NAMBLA's website, and wrote, marketed, sold, and otherwise disseminated a variety of publications.³ Working in Massachusetts, Andriette served as the editor of the Bulletin and Gayme Magazine. He did not act alone but rather under the supervision of the Steering Committee in producing these publications and in holding himself out as a NAMBLA spokesman. In addition to the financial support and supervision provided by the full Steering Committee, the content of the Bulletin was guided by the "Bulletin Collective," an editorial board comprised of NAMBLA members from across the country who contributed and edited articles, screened photos and pictures, and participated in coordinating the production and distribution of the publication.

The extent to which the Steering Committee exercised control over NAMBLA's image and its members' public outreach efforts is illustrated by the Committee's removal of Leyland

³ The plaintiffs allege that Charles Jaynes accessed NAMBLA's website from the Boston Public Library shortly before he abducted Jeffrey Curley.

Stevenson from its ranks. A long-time member of the Steering Committee and one of the organization's spokespersons, Stevenson on several occasions spoke directly to the media about "man-boy love" in a way that brought unwanted controversy to the organization. According to the minutes of a Steering Committee meeting held on February 2, 1995, members voted him off the Committee because he had a different agenda and was not "prepared to subsume his will to the group's will." In sum, there is ample support in the record for the conclusion that the financial, political, legal, and public outreach activities of NAMBLA, Zymurgy, Inc., the Bulletin, Ariel's Pages, and Gayme Magazine were managed by NAMBLA's Steering Committee to further the organization's purposes.

The records submitted belie the defendants' protestations that their activities were not directed into Massachusetts. The materials show that the Steering Committee controlled or substantially influenced the Massachusetts activities of Andriette and the other two Massachusetts residents, Reeves and Rhodes. Consequently, consistent with the long-arm and constitutional standards, the Court may exercise jurisdiction not only over those members of NAMBLA's Steering Committee who resided in Massachusetts but also many of those who resided in other States. The Court briefly examines the existence of personal jurisdiction over each of the nonresident defendants as follows:⁴

Dennis Bejin has been a resident of the State of Washington since 1973. He served as a member of NAMBLA's Steering Committee. In 1995, Bejin joined in applying to the Massachusetts Secretary of State for a "Foreign Corporation Certificate" on behalf of Zymurgy, Inc.,

⁴ Defendant Roy Radow's request that the Court reconsider its prior ruling that he had waived any objection to personal jurisdiction by failing to present it in his first motion or responsive pleading is denied.

through which NAMBLA conducted some of its business affairs and paid its bills. In the application, Bejin is listed as the “President/Vice President” of Zymurgy. Bejin was also a member of the Bulletin Collective, the editorial board for the publication. He attended numerous Steering Committee meetings. Bejin directly availed himself of the benefits of transacting business in Massachusetts by applying for a Foreign Corporation Certificate from the Commonwealth’s Secretary of State. In addition, as a member of NAMBLA’s Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Dennis Bejin.

Joe Power asserts that he has been a resident of California for years, but he is listed in NAMBLA’s Steering Committee directory as having a Florida mailing address. Power was a member of the Steering Committee. He assisted with NAMBLA’s website by training members to run the website’s various programs. For three months in 1997, Power used his own credit card to pay a Massachusetts-based internet service provider that hosted NAMBLA’s webpage. Records reflect his participation at Steering Committee meetings between November 1994 and January 1996. In 1995, Power was designated an official spokesman for NAMBLA. Power directly availed himself of the benefits of transacting business in Massachusetts by paying for NAMBLA’s website with his own credit card. In addition, as a member of NAMBLA’s Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Joe Power.

David Thorstad has been a resident of St. Paul, Minnesota since approximately 1992. Thorstad has been a member of NAMBLA since 1978, and served as a member of the Steering

Committee from some undetermined time until September 1996. He is listed as a member of the Bulletin Collective, though he claims he “had no role in producing” the publication. He did contribute letters and articles to the Bulletin, and one of his articles was also posted on NAMBLA’s webpage. In 1995, he was nominated to be an official NAMBLA spokesman. As a member of NAMBLA’s Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over David Thorstad.

David Miller (also known as David Menasco) is a resident of San Francisco, California. He has served as a member of NAMBLA’s Steering Committee since 1992. Miller has helped maintain NAMBLA’s webpage and has served as an editor of NAMBLA publications from as early as 1995. As a member of NAMBLA’s Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over David Miller.

Peter Melzer (also known as Peter Herman) is a resident of New York. He served as a member of NAMBLA’s Steering Committee. Herman helped to write text for NAMBLA’s website and for its publications. He was responsible for checking the organization’s mailbox in New York, sending out membership information to those who requested it, and preparing fundraising correspondence. In one of the documents submitted by the plaintiffs, Melzer, explaining the rationale for registering Zymurgy, Inc. in New York, described the interrelationship of the various NAMBLA ventures: “We obtain the powerful DBA (doing business as) tool. We are already doing business as Gayme, Wallace Hamilton Press, NAMBLA publications, as well as NAMBLA itself.”

As a member of NAMBLA's Steering Committee, Melzer participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Peter Melzer

Max Hunter (also known as Frank Rhuland) has resided in Florida since 1994. Before 1994, he lived in New Hampshire and in other places. Although his name is listed on the Bulletin masthead as a member of the Bulletin Collective, he asserts that he was never a member of the group that produced the Bulletin and never did anything to help produce the Bulletin. (It does appear that he contributed short stories and an excerpt from one of his books to the Bulletin.) He also asserts that he was never a member of the Steering Committee. He is not listed in any of the Steering Committee directories or other records submitted by the plaintiffs. The plaintiffs have not established that Hunter was a member of NAMBLA's Steering Committee, and there is no other evidence that he helped to control and direct the actions of Andriette, Reeves, Rhodes, and others in their public outreach activities in Massachusetts on behalf of NAMBLA. Personal jurisdiction of Hunter is thus lacking, and Hunter's motion to dismiss is granted.

Arnold Schoen (also known as Floyd Conaway) is a resident of California and has been a member of NAMBLA's Steering Committee. Schoen has also served as part of the Bulletin Collective. He has been involved in choosing the content for and running NAMBLA's webpage. From the documents submitted, it appears that Schoen served in some kind of a financial decision-making capacity for NAMBLA during 1995 and 1996. As an active member of NAMBLA's Steering Committee, Schoen participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in

or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Arnold Schoen.

Dennis Mintun is a resident of San Lorenzo, California. Mintun was authorized by the Steering Committee to collect Gayme Magazine's receivables. He is mentioned as a NAMBLA spokesman. He attended Steering Committee meetings. It appears that he participated in the formation and execution of NAMBLA's activities purposefully directed into Massachusetts. Personal jurisdiction exists over Dennis Mintun.

Jonathan M. Tampico answered the plaintiffs' complaint informing the Court he is incarcerated in Pennsylvania. His *pro se* answer includes the affirmative defense of lack of personal jurisdiction. Because his pleading was filed *pro se*, the Court will liberally construe it as also presenting a motion to dismiss for lack of personal jurisdiction. Tampico asserts that he was never a member of NAMBLA and never served on its Steering Committee. Tampico is not listed in any

of the Steering Committee directories submitted by the plaintiffs, and his name does not appear in any of the other NAMBLA records submitted. In a stipulation filed January 11, 2002, NAMBLA stated it had no record or knowledge of Tampico's address. The plaintiffs have failed to offer facts sufficient to establish personal jurisdiction over Tampico, and the complaint is dismissed as to him.

Chris Farrell has resided in New York since 1983. As a member of NAMBLA, Farrell oversees "Ariel's Pages," pursuant to a "d/b/a certificate" filed in New York. By selling books, pamphlets, and other literature for profit, Ariel's Pages was intended to fill in a gap in NAMBLA's publications program. In addition to Gayme Magazine, Ariel's Pages was considered one of NAMBLA's "major physical assets." Although Farrell was supposed to be paid from profits from sales, NAMBLA supported his efforts directly. For example, NAMBLA paid for books, office equipment, and advertising for Ariel's Pages. Farrell was not listed in any of the Steering Committee directories submitted by the plaintiffs. However, his trusted role within the association indicates that he was a member of the NAMBLA's leadership group. As such, he participated in NAMBLA's activities that were directed into Massachusetts. Personal jurisdiction exists over Chris Farrell.

Tim Bloomquist resides in New York. As a member of NAMBLA's Steering Committee, Bloomquist served as the chair of the membership committee. He signed fundraising letters sent to members, attended steering committee meetings, and signed NAMBLA checks to pay for teleconferencing bills and advertising for NAMBLA publications. As a member of NAMBLA's Steering Committee, Bloomquist participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Tim Bloomquist.

Tecumseh Brown has resided in Rhode Island since 1994. Brown served on the NAMBLA Steering Committee. He was a member of the Bulletin Collective and wrote and edited articles in the Bulletin. In 1996 and 1997, Brown stayed in Massachusetts for several-day periods while working for a Boston-based production company as a script writer, but it is not clear that this employment was related to NAMBLA's activities. Nevertheless, as a member of NAMBLA's Steering Committee, Brown participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Tecumseh Brown.

Bruce Braverman has resided in New York State for many years. Braverman joined NAMBLA as a general member in 1982 or 1983. He asserts that he did not serve on NAMBLA's Steering Committee, although records indicate his attendance at at least one meeting in May 1995. He is not listed in the Steering Committee directories included in the materials submitted by the plaintiffs. The evidence is insufficient to establish that Braverman participated directly or through cooperation with others in NAMBLA's activities conducted in or directed into Massachusetts. The plaintiffs have not established that personal jurisdiction exists over Bruce Braverman, and his motion to dismiss on that ground is granted.

Gary Hann is a resident of Michigan. He joined NAMBLA in 1994, and became a member of the organization's Steering Committee in 1995, serving as the group's treasurer. In this capacity, he tracked NAMBLA's income and expenses, paid its bills, and generally maintained all of the association's financial and other business records. Hann organized the Steering Committee's meetings and produced minutes of their meetings. As a member of the Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they

purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Gary Hann.

Peter Reed (also known as Rock Thatcher) has resided in Arizona since 1960, except for a three and one-half year period from 1986 through 1990, when he lived in Florida. He served on NAMBLA's Steering Committee and was involved in making NAMBLA's publications available to men incarcerated in prisons around the country. There is evidence that some of these publications were directed to inmates in Massachusetts penal institutions. Accordingly, it appears that Reed participated in activities purposefully directed into Massachusetts sufficient to provide a basis for personal jurisdiction over him.

Robert Schwartz is a resident of Georgia. A member of NAMBLA since 1980, Schwartz served on the Steering Committee for three years, beginning in June 1994. As a member of the Steering Committee, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Robert Schwartz.

Walter Bieder is a resident of San Diego, California. Bieder was a member of NAMBLA's Steering Committee. As such, he participated in controlling and directing the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities conducted in or directed into Massachusetts on behalf of NAMBLA. Personal jurisdiction exists over Walter Bieder.

Leyland Stevenson is a resident of New York State. He served on the NAMBLA Steering Committee as membership secretary and as an official NAMBLA spokesman. He was removed from the Steering Committee by majority vote in February 1995 because, while acting as a

representative of NAMBLA, he failed to follow the Committee's direction, and consequently brought unwanted controversy to the organization. Stevenson's active participation in the Steering Committee until his removal helped to control and direct the actions of Andriette, Reeves, Rhodes, and others as they purposefully engaged in public outreach activities on behalf of NAMBLA conducted in or directed into Massachusetts. Personal jurisdiction exists over Leyland Stevenson.

8. Failure to State a Claim upon Which Relief Can Be Granted

The defendants renew their attack on the plaintiffs' theory of liability. In its September 2001 ruling, the Court rejected the argument and now adheres to that ruling, recalling that, on a motion under Fed. R. Civ. P. 12(b)(6) a claim should be dismissed "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" of the complaint. Gorski v. N.H. Dep't of Corrs., 290 F.3d 466, 473 (1st Cir. 2002) (citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

9. Short and Plain Statement

Finally, the defendants object that the second amended complaint violates the requirement of Fed. R. Civ. P. 8(a) that such a pleading set forth a "short and plain statement of the claim." It is certainly true that the second amended complaint, like the prior versions of the complaint, is long and detailed. But the Court of Appeals has cautioned that dismissal of a complaint for violation of the "short and plain statement" requirement is a severe sanction that should not be lightly applied,

the policy of the law strongly preferring that cases be addressed on their merits. See Kuehl v. Fed. Deposit Ins. Corp., 8 F.3d 905, 908 (1st Cir. 1993). This complaint is not so offensive as to justify dismissal because it is not “short and plain.”

10. Other Defendants

A suggestion of death was filed indicating that the defendant Rennato Corazza died on or about July 9, 2002. In addition, NAMBLA says it has no record or knowledge of the defendant Charles Lee Dodson. There is no record of Dodson being served with process. It is likely that the name is a pseudonym. Corazza and Dodson are dismissed as defendants.

11. Conclusion

For the reasons set forth above, all pending motions to dismiss are DENIED, except: (1) the motions to dismiss the claim under 42 U.S.C. § 1985(3) is GRANTED; (2) the motions to dismiss for want of personal jurisdiction made on behalf of defendants Braverman, Hunter, and Tampico are GRANTED; and (3) the motion to dismiss the action as against the unincorporated association NAMBLA is GRANTED. For administrative reasons, the defendants Corazza and Dodson are dismissed from the case.

It is SO ORDERED.

DATE

DISTRICT JUDGE