

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ARMENIAN LIBRARY AND MUSEUM OF  
AMERICA, INC.,

Plaintiff,

v.

MAYER MORGANROTH,

Defendant.

Case No. 11-cv-11862-MLW

**PLAINTIFF ARMENIAN LIBRARY AND MUSEUM OF AMERICA, INC.'S  
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

Plaintiff Armenian Library and Museum of American, Inc. (“ALMA”), by and through its undersigned counsel, files this opposition to Defendant Mayer Morganroth’s Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) (“Motion to Dismiss” or “Motion”).

This action represents a claim against Morganroth as the Personal Representative of Jack Kevorkian’s estate.<sup>1</sup> See Compl. ¶ 2. As such, the authority of this Court to exercise personal jurisdiction over Morganroth stems not solely, as Morganroth argues, from Morganroth’s own activities in Massachusetts, see Def.’s Br. at 2, 6, but also from Kevorkian’s activities in Massachusetts, see Saporita v. Litner, 371 Mass. 607, 619 (1976) (exercising personal jurisdiction over the executor of an estate where “the testator had sufficient contacts with Massachusetts to allow the court to exercise personal jurisdiction over him”). Although

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<sup>1</sup> A “Personal Representative” of an estate is equivalent to an executor of that estate. Nile v. Nile, 432 Mass. 390, 394–95 (2000) (defining “personal representative[s]” as “persons appointed by courts to administer decedents’ estates, namely, executors and administrators in all forms”); Black’s Law Dictionary 1304 (7th ed. 1999) (defining “personal representative” as a “person who manages the legal affairs of another because of incapacity or death, such as the executor of an estate.”).

Kevorkian’s activities in Massachusetts alone unquestionably provide basis for this Court’s jurisdiction, Morganroth’s activities in Massachusetts confirm this Court’s authority to exercise personal jurisdiction over Morganroth.

### **STATEMENT OF FACTS**

ALMA is a nationally known, not-for-profit, ethnic Armenian museum with an extensive collection of paintings, artifacts, and books. Compl. ¶ 3. ALMA is located in Watertown, Massachusetts. Compl. ¶ 1. In 1999, through an agreement between the Ariana Gallery in Royal Oak, Michigan and ALMA’s curator, ALMA received seventeen paintings, writings, musical compositions, and clothing of Jack Kevorkian (collectively, “the Art Work”). See Compl. ¶¶ 4–6.

Beginning in September 1999 and following for approximately two months, ALMA exhibited the Art Work in its main gallery (“1999 Exhibition”). Compl. ¶ 7. At the opening of that exhibition, Kevorkian’s sister, Flora Holzheimer, on the direction of Kevorkian, announced that the Art Work was a gift to ALMA from Kevorkian.<sup>2</sup> Compl. ¶ 9; Ex. A ¶¶ 10, 18 (Aff. Haig Der Manuelian); Ex. B ¶ 4 (Aff. Gary Lind-Sinianian); see Compl. ¶ 10. In reliance upon that gift, ALMA maintained the Art Work as part of its permanent collection during the twelve years that have since elapsed. Compl. ¶¶ 11, 13; Ex. A. ¶ 6. The Art Work has remained in Watertown, Massachusetts since the 1999 Exhibition. Ex. A ¶ 6.

In October 2008, ALMA again exhibited the Art Work in its main gallery (“2008 Exhibition”). Compl. ¶ 14; see Ex. A ¶ 12. Kevorkian attended the 2008 Exhibition and confirmed that he had donated the Art Work to ALMA. Compl. ¶ 15; see Ex. A ¶¶ 13–15, 18. Morganroth was also present at the 2008 Exhibition. Ex. A ¶ 12.

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<sup>2</sup> Kevorkian was incarcerated at the time of the 1999 Exhibition and thus did not attend. See Compl. ¶ 8; Ex. A. ¶ 8; Ex. B ¶ 3.

Kevorkian died on June 3, 2011.<sup>3</sup> Compl. ¶ 16; Ex. ¶ 17. Morganroth is the Personal Representative of Kevorkian’s estate (“Estate”). Compl. ¶¶ 2, 20. Morganroth sent ALMA a letter dated September 23, 2011 that alleged that the Art Work belonged to Kevorkian’s niece. Compl. ¶ 17; Ex. B ¶ 5. ALMA never knew until it received the letter that the Estate was claiming that it owned the Art Work. Ex. A ¶ 6. Also in that letter, Morganroth stated that the Art Work was scheduled for a public auction at the New York Institute of Technology on or about October 27, 2011. Compl. ¶ 18. ALMA never agreed to the sale of the Art Work. Ex. A ¶ 6. In an email response, ALMA’s Acting Director, Berj Chekijian, requested that Morganroth provide Chekijian with a copy of Kevorkian’s will. Compl. ¶ 20; Ex. C ¶ 3 (Aff. Berj Chekijian); see also Ex. C ¶ 5.

In response, Morganroth telephoned Chekijian and demanded that the Art Work be sent to New York for the October 27 auction. Compl. ¶ 21; Ex. C ¶ 4. During the telephone call, Morganroth threatened to instruct the police to remove the Art Work if ALMA did not send it. Compl. ¶ 21; Ex. C ¶ 4; see also Ex. B ¶ 6 (explaining that Morganroth left a voicemail for ALMA’s curator threatening to “bring proceedings” against the museum). Thereafter, in an October 4, 2011 email to Chekijian, Morganroth accused ALMA of “theft of the estate’s property.” Compl. ¶ 21; Ex. C ¶ 6.

On October 6, 2011, Morganroth informed ALMA, via email, that he had finalized arrangements to have the Art Work picked up on October 25, 2011 from ALMA, located in Watertown, Massachusetts, and shipped to New York. Ex. C ¶ 8; see also Ex. B ¶ 7. On October 12, 2011, Morganroth sent ALMA further information about the moving company that had been hired to pick up the Art Work from ALMA. Ex. B ¶ 8. The moving company, Craters &

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<sup>3</sup> Kevorkian’s will was purportedly executed on May 16, 2011, eighteen days before his death on June 3, 2011. See Compl. ¶ 16.

Freighters, see Ex. B ¶¶ 7–9, has three offices in Massachusetts, see Packaging Crating Shipping Locations, Craters & Freighters, <http://www.cratersandfreighters.com/packaging-crating-shipping-locations/ma/> (last visited Nov. 18, 2011). On October 25, 2011, the moving company arrived at ALMA to pick up the Art Work; ALMA did not permit the moving company to take the Art Work. See Ex. B ¶ 9.

ALMA filed the Complaint in this action in Middlesex Superior Court on October 13, 2011. Ex. A ¶ 6; see Compl.

## **ARGUMENT**

### **I. Standard of Review**

If a defendant contests personal jurisdiction, the plaintiff “bears the burden of persuading the court that jurisdiction exists.” Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 31 (1st Cir. 2010) (quoting Mass. Sch. of Law at Andover, Inc. v. Amer. Bar Ass’n, 142 F.3d 26, 34 (1st Cir. 1998)). The court must accept as true the “specific facts affirmatively alleged by the plaintiff” and must construe those facts in the light most favorable to the plaintiff. Mass. Sch. of Law, 142 F.3d at 34 (citing Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 203 (1st Cir. 1994)). A “district court deciding a motion to dismiss for want of personal jurisdiction should . . . consider[] ‘only whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction.’” Negron-Torres v. Verizon Commc’ns, 478 F.3d 19, 24 (1st Cir. 2007) (quoting Boit v. Gar-Tec Prods., Inc., 967 F.2d 671, 675 (1st Cir. 1992)); see Newman v. European Aeronautic Defence & Space Co. Eads N.V., 700 F. Supp. 2d 156, 159 (D. Mass. 2010) (Wolf, J) (explaining that the district court only “‘add[s] to the mix facts put forward by the defendants[] to the extent they are uncontradicted’” (alteration in original)).

A. *Personal Jurisdiction Under the Massachusetts Long-Arm Statute*

A court may exercise authority over a party on the basis of either specific or general personal jurisdiction.<sup>4</sup> E.g., Mass. Sch. of Law, 142 F.3d at 34 (citing Donatelli v. Nat'l Hockey League, 893 F.2d 459, 462–63 (1st Cir. 1990)). To establish specific jurisdiction, a plaintiff must show that the Massachusetts long-arm statute, G.L. c. 223A, § 3, grants jurisdiction over the defendant and, “if it does, that the exercise of jurisdiction under the statute is consistent with the [U.S. C]onstitution,” Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 51 (1st Cir. 2002) (citing Foster-Miller, Inc. v. Babcock & Wilcox Can., 46 F.3d 138, 144 (1st Cir. 1995)).

The Massachusetts long-arm statute provides, in relevant part: “A court may exercise personal jurisdiction over a person, 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 . . . .” G.L. c. 223A, § 3. The statute’s “reference to ‘transacting any business’ does not require that the defendant have engaged in commercial activity. That language is general and applies to any purposeful acts by an individual, whether personal, private, or commercial.” Ross v. Ross, 371 Mass. 439, 441 (1976) (citing Van Wagenberg v. Van Wagenberg, 241 Md. 154, 170–72 (1966), cert. denied, 385 U.S. 833 (1966)); see United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1087 (1st Cir. 1992) (“Both federal and state courts have regularly construed the ‘transacting any business’ language of the statute in a general manner.”); Tatro v. Manor Care, Inc., 416 Mass. 763 (1994) (reading the Massachusetts long-arm statute broadly);

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<sup>4</sup> General jurisdiction exists if a defendant has engaged in “‘continuous and systematic activity, unrelated to the suit, in the forum state.’” Mass. Sch. of Law, 142 F.3d at 34 (quoting United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1088 (1st Cir. 1992)). ALMA does not contend that this Court may exercise general personal jurisdiction over Morganroth.

Marsella v. Walt Disney World Co., No. 84-3045, 1985 WL 17364, at \*1 (D. Mass. Sept. 30, 1985) (Wolf, J.).

Further, the Supreme Judicial Court of Massachusetts has interpreted the 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., 361 Mass. 441, 444 (1972). For that reason, a court considering a challenge to personal jurisdiction may “sidestep the statutory inquiry and proceed directly to the constitutional analysis.” Daynard, 290 F.3d at 52; see Sawtelle v. Farrell, 70 F.3d 1381, 1388 (1st Cir. 1995) (“[W]hen a state’s long-arm statute is coextensive with the outer limits of due process, the court’s attention properly turns to the issue of whether the exercise of personal jurisdiction comports with federal constitutional standards.”).

*B. Personal Jurisdiction Under the Due Process Clause*

To be subject to specific personal jurisdiction pursuant to the Due Process Clause, a defendant must “have certain minimum contacts with [the forum] such that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). To support specific jurisdiction under the Due Process Clause, a plaintiff must establish three elements: “‘relatedness, purposeful availment, and reasonableness.’” Negron-Torres, 478 F.3d at 24 (quoting Platten v. HG Bermuda Exempted Ltd., 437 F.3d 118, 135 (1st Cir. 2006)).

The relatedness inquiry “‘requires a showing of a material connection’” between the cause of action and the defendant’s forum-state contacts. Id. (quoting 432 F.3d at 61). The “‘defendant’s in-state conduct must form an important, or [at least] material, element of proof in the plaintiff’s case.’” Id. (quoting 163 Pleasant St., 960 F.2d at 1089) (alteration in original).

The purposeful availment element requires a court to determine whether a defendant, “through its own affirmative conduct, purposefully availed itself of the privilege of conducting activities in Massachusetts such that it could reasonably anticipate being haled into court there.” 163 Pleasant St., 960 F.2d at 1091.

Finally, as part of the reasonableness inquiry, a court must consider the following elements:

“(1) the defendant’s burden of appearing, (2) the forum state’s interest in adjudicating the dispute, (3) the plaintiff’s interest in obtaining convenient and effective relief, (4) the judicial system’s interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.”

Harlow, 432 F.3d at 67 (quoting 163 Pleasant St., 960 F.2d at 1088). The reasonableness inquiry “evokes a sliding scale”: if the evidence strongly supports relatedness and purposefulness elements, the strength of the reasonableness inquiry is less important, and, likewise, “an especially strong showing of reasonableness may serve to fortify a borderline showing of relatedness and purposefulness.” Id. (quoting Ticketmaster-New York, 26 F.3d at 210).

### *C. Personal Jurisdiction over an Executor*

Although traditionally an estate’s executor or administrator appointed in another state (a “foreign administrator”) was not subject to suit in Massachusetts unless a statute dictated to the contrary, Massachusetts courts often exercise personal jurisdiction over foreign administrators on the basis of a number of exceptions. See, e.g., Martel v. Stafford, 992 F.2d 1244, 1246 (1st Cir. 1993); Nile, 432 Mass. at 396; Saporita, 371 Mass. at 619. Massachusetts courts consistently exercise personal jurisdiction over a foreign administrator if the testator of the administrator’s estate was subject to personal jurisdiction in Massachusetts. See, e.g., Martel, 992 F.2d at 1247 (“[T]he Saporita exception confers personal jurisdiction over a foreign executor . . . when the testator manifests sufficient contacts with Massachusetts to support the exercise of

jurisdiction . . . .”); Bohl v. Leibowitz, 1 F. Supp. 2d 67, 70 (D. Mass. 1998) (“[A] foreign executor shall be subject to the jurisdiction of Massachusetts courts ‘to the same extent that his decedent was subject to jurisdiction immediately prior to his death.’” (quoting G.L. c. 199A, § 9) (emphasis omitted)); Moore v. Healy, 745 F. Supp. 791, 793 (D. Mass. 1990); Nile, 432 Mass. at 396 (“[The decedent’s] personal contacts with Massachusetts were both substantial and sufficient for the Superior Court to exercise personal jurisdiction over his personal representatives. It is immaterial that [the decedent]’s successor trustees had no contacts with Massachusetts. [The decedent] had the requisite contact, so jurisdiction extends to the trustees as his personal representatives.” (internal citations omitted)).

**II. This Court May Exercise Specific Personal Jurisdiction over Morganroth Pursuant to the Massachusetts Long-Arm Statute and the Due Process Clause of the U.S. Constitution**

In deciding this motion, this Court may consider the facts alleged in ALMA’s complaint and the affidavits attached to this opposition. See Negron-Torres, 478 F.3d at 24. Further, this Court may only consider Morganroth’s affidavit, Def.’s Br., Ex. 2, to the extent that it is uncontradicted by ALMA, see Newman, 700, F. Supp. 2d at 159.

Here, this Court may exercise specific personal jurisdiction over Morganroth pursuant to the Massachusetts long-arm statute. Kevorkian and Morganroth’s activities with regard to ALMA and the Art Work constitute “transacting . . . business” within the meaning of the long-arm statute, G.L. c. 223A, § 3, and exercising personal jurisdiction over Morganroth is constitutionally permissible.

*A. Morganroth Is Subject to Personal Jurisdiction Because Kevorkian Was Subject to Personal Jurisdiction*

Morganroth, as a foreign administrator, see Compl. ¶ 2, is subject to personal jurisdiction in Massachusetts as long as Kevorkian was subject to personal jurisdiction in Massachusetts, see,



e.g., Martel, 992 F.2d at 1247. That is, this Court’s authority over Kevorkian, were he alive, is sufficient to form the basis of authority over Morganroth. Nevertheless, this Court may equally exercise personal jurisdiction over Morganroth on the basis of his activities in Massachusetts, and, out of an abundance of caution, ALMA details both such bases below.

*B. Kevorkian and Morganroth’s Activities in Massachusetts Are Related to ALMA’s Cause of Action*

Kevorkian’s activities in Massachusetts are materially related to ALMA’s cause of action in this case. See Negron-Torres, 478 F.3d at 24. ALMA has propounded only one cause of action, declaratory judgment that the Art Work belongs to ALMA. See Compl. ¶¶ 22–25. That cause of action is based on ALMA’s belief that ALMA is the rightful owner of the Art Work. ALMA’s status as owner of the Art Work is the result of Kevorkian’s activities in Massachusetts. Holzheimer, Kevorkian’s agent, attended the 1999 Exhibition in Watertown, Massachusetts and announced that the Art Work was a gift from Kevorkian to ALMA. See Compl. ¶ 9; Ex. A ¶ 10; Ex. B ¶ 4. Nine years later, Kevorkian attended the 2008 Exhibition, also in Watertown, Massachusetts, and confirmed that the Art Work was a gift. See Compl. ¶ 15; Ex. A ¶ 13–15. These Massachusetts activities—the expression of donative intent and the subsequent confirmation of that intent—are not simply “related” to ALMA’s cause of action. Rather, these activities are the basis of ALMA’s cause of action.

Morganroth’s activities in Massachusetts are also related to ALMA’s cause of action. An action for declaratory judgment requires that an actual controversy exist between the parties. See, e.g., 28 U.S.C. § 2201. Here, ALMA became aware of the actual controversy between the parties solely as a result of Morganroth’s in-forum activities. Specifically, ALMA was first alerted to the controversy by Morganroth’s September 23, 2011 letter, sent to ALMA in Massachusetts, that alleged that the Art Work did not belong to ALMA. Thereafter, Morganroth telephoned ALMA,

a Massachusetts organization, and demanded the Art Work, which has been located in Massachusetts for over twelve years. Finally, Morganroth hired a national moving company with three offices in Massachusetts and directed it to collect the Art Work from ALMA in Watertown, Massachusetts.<sup>5</sup> Indeed, all of Morganroth's activities in Massachusetts of which ALMA is aware are materially related to ALMA's cause of action in this case.

*C. Kevorkian and Morganroth Purposefully Availed Themselves of the Privilege of Conducting Activities in Massachusetts*

Kevorkian purposefully availed himself of the privilege of conducting activities in Massachusetts. See 163 Pleasant St., 960 F.2d at 1091. To wit, Kevorkian's agent made a gift in Massachusetts to ALMA, a Massachusetts non-profit organization. Kevorkian later visited ALMA and confirmed, in a statement in Watertown, Massachusetts, that he was pleased that he had made that gift.

Morganroth, too, has purposefully availed himself "of the privilege of conducting activities in Massachusetts such that [he] could reasonably anticipate being haled into court there." Id. In his communications with ALMA, Morganroth threatened to call the police if ALMA did not send the Art Work to New York. See Compl. ¶ 21; Ex. C ¶ 4; see also Ex. B ¶ 6. Because Morganroth threatened the use of law enforcement in Massachusetts, which could have caused ALMA to be "haled into court" in Massachusetts, Morganroth reasonably should have anticipated being haled into Massachusetts court himself. Likewise, a reasonable person would anticipate that sending a moving company to forcibly collect the possessions of a Massachusetts non-profit organization might lead to court action in Massachusetts.

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<sup>5</sup> This act by Morganroth, in addition to being one of many factors forming the basis of personal jurisdiction, also directly refutes Morganroth's contention that he "has not had any contacts with Massachusetts other than his communications . . . to ALMA demanding the return of the Kevorkian Art Work." Def.'s Br. at 7.

Morganroth cites Sterilite Corp. v. Spectrum Int’l, Inc., No. 94-10320, 1997 U.S. Dist. LEXIS 11151 (D. Mass. Feb. 28, 1997), a patent litigation in which the defendant successfully challenged personal jurisdiction, as support, see Def.’s Br. at 8. In Sterilite, the defendant had no contact with Massachusetts other than “a series of letters,” 1997 U.S. Dist. LEXIS 11151 at \*1, that were “not part of [the defendant’s] patent-related business activities” and “failed to charge patent infringement [or] threaten litigation,” id. at \*13.

Morganroth’s actions here are vastly unlike the actions of the Sterilite defendant. Morganroth did not simply “attempt to seek information or reconcile claims through written communications.” Id. at \*15. Rather, Morganroth aggressively demanded the Art Work, see, e.g., Compl., Ex. D (“This is not a ‘request’, it is a demand . . .”), and, when ALMA did not immediately acquiesce, Morganroth took affirmative steps to recover the Art Work from ALMA in Massachusetts, see, e.g., Ex. B ¶¶ 5–9; Ex. C ¶¶ 4, 6, 8–10.<sup>6</sup>

*D. The Exercise of Personal Jurisdiction over Morganroth Is Reasonable*

Because the relatedness and purposefulness elements are clearly fulfilled here, the reasonableness inquiry is less critical. See Harlow, 432 F.3d at 67. Nevertheless, it is reasonable for this Court to exercise personal jurisdiction over Morganroth for the following reasons.

*1. The Burden of a Massachusetts Litigation on Kevorkian and Morganroth Is Comparatively Low*

A Massachusetts litigation is not a burden on the late Kevorkian. See Harlow, 432 F.3d at 67.

Further, the burden on Morganroth to appear in Massachusetts is low compared to the potential burden on ALMA to appear in Michigan. Morganroth is but one person, but ALMA is

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<sup>6</sup> For these same reasons, Morganroth’s threats and demands are unlike the cease-and-desist letters Morganroth describes, in which one party “solely . . . inform[s] a party who happens to be located [in the forum] of suspected infringement.” Def.’s Br., at 8–9 (quoting Red Wing Shoe Co., Inc. v. Hockerson-Halberstadt, Inc., 148 F.3d 1355, 1361 (Fed. Cir. 1998)).

an organization comprised of multiple potential witnesses. Moreover, because all of the relevant events occurred in Massachusetts, the eyewitnesses of the 1999 and 2008 Exhibitions, besides Morganroth himself, are located in Massachusetts.

Morganroth's argument that "many of the . . . documents relevant to this claim are located in Michigan" is not only untrue but irrelevant. See Def.'s Br. at 9. Although "the documents of the Estate" are in Michigan, see Def.'s Br. at 10, those documents are irrelevant in this action. The sole issue in this case is the ownership of the Art Work, which ALMA contends is controlled by Holzheimer's and Kevorkian's statements in Massachusetts and which Morganroth contends is controlled by the agreement between the Ariana Gallery and ALMA's curator. See Def.'s Br. at 1. The documents pertaining to this issue of ownership are located in Massachusetts, not Michigan.

Further, the location of documents matters little compared to the location of the Art Work itself, the sole subject of this litigation. The Art Work, of course, is in Massachusetts.

2. *Massachusetts's Interest in Adjudicating This Dispute Is Strong; Michigan Has Little to No Interest in Adjudicating This Dispute*

Massachusetts's interest in adjudicating this controversy is strong. See Harlow, 432 F.3d at 67. The Art Work is located in Massachusetts. The non-profit organization that owns the Art Work, ALMA, is a Massachusetts museum and library. Massachusetts thus has an interest in preserving cultural and artistic artifacts for the benefit of its citizens. Michigan, on the contrary, has no such interest; as Morganroth has repeatedly stated, if the Estate gained possession of the Art Work, it would auction the Art Work to buyers in New York. See Compl. ¶¶ 18, 21. Indeed, if ALMA had acquiesced to Morganroth's demands for the Art Work, the Art Work would have gone directly from Massachusetts to New York and never entered Michigan. See id.

Morganroth’s argument that ALMA “only recently asserted its claim of ownership as to the Kevorkian Art Work,” see Def.’s Br. at 10, borders on the absurd. ALMA has never needed to “assert[] its claim of ownership” because the Art Work has been in ALMA’s rightful possession for over twelve years. Indeed, it is Morganroth, as Personal Representative of the Estate, who “only recently asserted [a] claim of ownership” to the Art Work.<sup>7</sup>

Finally, Morganroth’s argument that this action should be litigated in the forum in which the Estate’s will was created, see Def.’s Br. at 10, is irrelevant, see supra Part II.D.1 (arguing that the sole issue here is controlled either by Kevorkian’s activities in Massachusetts or by the agreement between the Ariana Gallery and ALMA’s curator).

3. *ALMA Has a Strong Interest in Obtaining Convenient and Effective Relief, Which Necessarily Requires This Action to Proceed in Massachusetts*

It is most convenient for ALMA to litigate this action in Massachusetts. See Harlow, 432 F.3d at 67. Further, because it is Morganroth who seeks to change the status quo, it is Morganroth who should travel from his home forum to litigate.<sup>8</sup>

Morganroth’s suggestion that ALMA can obtain convenient and effective relief in the Oakland County Circuit Court in Michigan, Def.’s Br. at 10, is an attempt to obscure the fact that Morganroth filed a second lawsuit in Michigan, concerning the exact issues that are at issue here, eight days after ALMA filed this action in the Superior Court of Massachusetts and on the same day that Morganroth removed this action to federal court, see Def.’s Br. at 10; Def’s Notice Removal. For this reason, ALMA has moved to dismiss Morganroth’s Michigan complaint based

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<sup>7</sup> Likewise, it is fallacious to argue, as Morganroth does, that simply because ALMA “owns many pieces of art,” the Art Work is less valuable to ALMA than it is to the Estate. See Def.’s Br. at 10. No two pieces of art are the same, and the ownership of other art is irrelevant to ownership of the Art Work.

<sup>8</sup> Analogously, other areas of the law place a higher burden on parties seeking to change the status quo. See, e.g., Tom Doherty Assocs., Inc. v. Saban Entm’t, Inc., 60 F.3d 27, 33 (2d Cir. 1995) (“[W]e have required the movant to meet a higher standard where . . . an injunction will alter, rather than maintain, the status quo . . . .”); In re Rare Earth Minerals, Inc., 347 B.R. 802 (N.D. W. Va. 2006) (“[T]he burden of proof rests with the party who is attempting to change the status quo . . . .”).

on a Michigan court rule that requires that an action be dismissed if another action has been initiated between the same parties involving the same claim.<sup>9</sup> See Mich. Ct. Rule 2.116(C)(6), available at <http://coa.courts.mi.gov/rules/>.

4. *The Judicial System's Interest in Obtaining the Most Effective Resolution of the Controversy Dictates that This Court Adjudicate This Action*

It is in the judicial system's interest, see Harlow, 432 F.3d at 67, to permit an action like this one to continue in the forum in which it was first filed, cf. Keymer v. Mgmt. Recruiters, Int'l Inc., 169 F.3d 501, 503 n.2 (8th Cir. 1999) (discussing the "first-filed rule," which gives priority, "when parallel litigation has been instituted in separate courts, to the party who first establishes jurisdiction in order to conserve judicial resources and avoid conflicting rulings"). That interest is reflected in Michigan's court rule, Mich. Ct. Rule 2.116(C)(6), which requires actions like Morganroth's duplicative complaint in Michigan to be dismissed.

Finally, Morganroth's bald statement that "Michigan law clearly governs the claims in the two matters" is unsupported and simply untrue. Def.'s Br. at 12. To the contrary, Kevorkian's gift to ALMA, which occurred in Massachusetts, is governed by Massachusetts law.

5. *The Common Interests of the States in Promoting Substantive Social Policies Dictate that This Court Adjudicate This Action*

This case does not involve, as Morganroth argues, the property of a decedent's estate. The property at issue belongs to ALMA, and the controversy that gives rise to this action relates to events that occurred before Kevorkian died. Morganroth's argument, therefore, that Michigan should resolve the interests of a Michigan estate is irrelevant.

This case is about a gift that a Massachusetts non-profit organization received in Massachusetts. The donor's agent and the donor both appeared personally in Massachusetts to

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<sup>9</sup> ALMA has alternatively sought to dismiss Morganroth's Michigan complaint based upon the doctrine of *forum non conveniens*. See Radeljak v. DaimlerChrysler, Corp., 475 Mich. 598, 604 (2006).

make that gift. The gift, the Art Work, has been continuously located in Massachusetts. Morganroth has taken affirmative steps in Massachusetts to seize the Art Work. Morganroth, as Personal Representative of the Estate, is thus subject to personal jurisdiction in Massachusetts.

WHEREFORE, ALMA respectfully requests that this Court deny Morganroth's Motion to Dismiss.

ARMENIAN LIBRARY AND MUSEUM OF  
AMERICA, INC.

By its attorneys,

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Dated: November 18, 2011  
Boston, Massachusetts

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Zsaleh E. Harivandi  
Zsaleh E. Harivandi