

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

_____)	
JANET JENKINS, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 2:12-CV-00184
)	
KENNETH L. MILLER, ET AL.)	
)	
Defendants.)	
_____)	

**LIBERTY UNIVERSITY’S, MATHEW STAVER’S, AND RENA LINDEVALDSEN’S
OPPOSITION TO PLAINTIFFS’ MOTION TO JOIN ADDITIONAL DEFENDANTS**

NOW COME Liberty University, and Mathew Staver and Rena Lindevaldsen as alleged agents of Liberty University, by and through their attorneys, Dinse, Knapp & McAndrew, P.C., and oppose Plaintiffs’ motion to join them as additional defendants. Plaintiffs’ Proposed Third Amended Complaint references and reasserts allegations against Liberty University that Plaintiffs acknowledge the Court “ordered removed” from the First Amended Complaint when it dismissed Plaintiffs’ suit against the University for a lack of personal jurisdiction. ECF 204. Plaintiffs’ motion should be denied on the ground of futility; there is still no basis for asserting personal jurisdiction over Liberty University. Staver and Lindevaldsen likewise lack minimum contacts with Vermont. Additionally, the assertion of personal jurisdiction over them in this suit would offend traditional notions of fair play and substantial justice.

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MEMORANDUM OF LAW

I. The Governing Legal Standards

A. F.R.C.P. 15(a)(2) and Futility

Plaintiffs' motion to join is more properly viewed as a motion to amend and therefore is governed by Federal Rule of Civil Procedure 15(a)(2), which provides that a court should "freely give leave [to amend] when justice so requires." An amendment should not, however, be permitted if it would be futile. *Forman v. Davis*, 371 U.S. 178, 182 (1962). Indeed, the Court previously denied a motion to amend the Complaint by Plaintiffs on the ground of futility. ECF 153. Amendment is futile if the amended complaint "would not survive a motion to dismiss." *Shovah v. Mercure*, 44 F.Supp.3d 504, 508 (D. Vt. 2014); *see also Panther Partners, Inc. v. Ikanos Commc'ns, Inc.*, 347 Fed. Appx. 617, 622 (2d Cir. 2009) ("Granting leave to amend is futile if it appears that plaintiff cannot address the deficiencies identified by the Court and allege facts sufficient to support the claim.").

The Second Circuit's decision in *Spiegel v. Schulmann*, 604 F.3d 72, 78 (2d Cir. 2010), is instructive, as it involved review of a district court's decision denying plaintiffs' motion to amend a complaint to add a defendant. The district court concluded that because the proposed defendant was, in essence, another version of a defendant that the court had already determined it had no personal jurisdiction over, and because the proposed claims were identical, amendment would be futile. *Id.* The Second Circuit affirmed, holding:

A review of the proposed third amended complaint and the record demonstrates that the district court did not abuse its discretion in denying the motion to amend [T]he district court properly determined that it lacked personal jurisdiction over [the prior defendant]. Neither the Plaintiffs' third amended complaint nor the evidence adduced during discovery provided any basis to demonstrate that the district court would have had personal jurisdiction over [the second defendant]. Accordingly, we affirm the district court's order denying the Plaintiffs' motion for leave to amend their complaint.

Id; accord *Morris v. United States*, 156 Fed. Appx. 6, 7-8 (9th Cir. 2005). As will be shown below, the same rationale applies to Plaintiffs' attempted re-do as to Liberty University, as well as to Staver and Lindevaldsen as alleged agents of the University.

B. Personal Jurisdiction

Personal jurisdiction is “an essential element of the jurisdiction of a district[] court, without which the court is powerless to proceed to an adjudication.” *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (internal quotation and citation omitted). A plaintiff must demonstrate a defendant's contacts with the forum state are sufficient to establish personal jurisdiction over the defendant with respect to each claim asserted. *Country Home Prods., Inc. v. Schiller-Pfeiffer, Inc.*, 350 F.Supp.2d 561, 566-67 (D. Vt. 2004). This prima facie showing “must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.” *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010) (alteration omitted). “[T]he burden of proving jurisdiction is upon the party who asserts it and . . . he must show by the complaint and supporting affidavits the essential requirements of the jurisdictional statute.” *Lehigh Val. Industries, Inc. v. Birenbaum*, 527 F.2d 87, 92 (2d Cir. 1975).

II. Plaintiffs' “New” Jurisdictional Allegations Fare No Better Than Those Already Rejected By This Court, Rendering Their Proposed Amendment Futile.

After extensive briefing, the Court squarely rejected Plaintiffs' argument that both general and specific jurisdiction could be asserted over Liberty University. *Jenkins v. Miller*, 983 F.Supp.2d 423, 442-43, 447 (D. Vt. 2013). The Court first addressed general jurisdiction, holding that Plaintiffs' submissions “[did] not amount to a prima facie showing that this Court has general jurisdiction over Liberty University,” and finding that the University:

- Is not incorporated in Vermont;
- Does not have its principal place of business in Vermont;
- Is not registered to do business in Vermont;
- Has no facilities, offices, mailing address, or staff in Vermont;
- Has no registered agent for service of process in Vermont.
- Has no property in Vermont; and
- Pays no Vermont state taxes.

Id. at 442.¹

The Court next disposed of Plaintiffs’ argument that it could find specific jurisdiction over Liberty University. Specifically, the Court rejected Plaintiffs’ claim that Lisa Miller’s Liberty Counsel attorneys, Staver and Lindevaldsen, undertook actions in the course of litigating her custody case that demonstrated a “conspiracy to aid and abet Lisa Miller in evading the orders of a Vermont court,” and so constituted tortious acts with a foreseeable effect in Vermont. *Id.* at 446. The Court held that Plaintiffs’ arguments were triply flawed. First, there was no support for the claim that attorneys Staver and Lindevaldsen committed any tortious acts by “representing their client or publicly voicing their opinions concerning the issues”; second, even assuming *arguendo* Plaintiffs could show the attorneys were acting as agents of Liberty University, rather than Liberty Counsel, or that Liberty Counsel’s actions could be imputed to the University, their contacts with Vermont “[did] not amount to purposeful availment of the privilege of doing business here” and; third, Plaintiffs pled no facts to suggest that Victoria

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¹ The same dearth of contacts with Vermont is true as to Liberty Counsel, Inc. **Exhibit A ¶¶ 3, 11.**

Hyden, a student employed at the law school, was authorized to act as Liberty University's agent. *Id.* at 446-47. "Given the dearth of specific facts that connect Liberty University with tortious activity directed against Plaintiffs," the Court also denied Plaintiffs' request for jurisdictional discovery. *Id.* at 447.

In their Proposed Complaint, Plaintiffs' sole jurisdictional allegation as to Liberty University, Staver, and Lindevaldsen is unchanged from their previous version: "having had more than minimum contacts with Vermont (*sic*), as their conduct and connection with Vermont are such that they should reasonably anticipate being haled into Court here." Proposed Complaint ¶ 2. This conclusory allegation is legally inadequate and neither Plaintiffs' motion nor their Proposed Complaint allege any new facts making a prima facie showing that Liberty University, Staver and Lindevaldsen have minimum contacts with Vermont.² Accordingly, since the Proposed Complaint could not survive a Rule 12(b)(2) motion to dismiss, the Court should deny Plaintiffs' motion to join.

A. Liberty University, Staver, and Lindevaldsen Are Not Subject to General Jurisdiction in Vermont.

Plaintiffs allege no additional facts in their Proposed Complaint that would permit the Court to overturn its October 24, 2013 Decision and find that Liberty University is subject to general jurisdiction in Vermont.

In granting Liberty University's Motion to Dismiss, the Court held that even "credited as true," Plaintiffs' submissions "[did] not amount to a prima facie showing that this Court has general jurisdiction over Liberty University, such that it is 'essentially at home' in Vermont."

² Plaintiffs have also failed to allege specific facts that would permit the assertion of personal jurisdiction over Liberty Counsel, or over Lindevaldsen and Staver individually or in their capacities as agents of Liberty Counsel. As such, Plaintiffs' motion to join should be denied in its entirety.

Jenkins, 983 F. Supp.2d at 442-43. Recent decisions by the United States Supreme Court establish beyond dispute that the dismissal of Liberty University was correct. In *Daimler AG v. Bauman*, decided several months after the Court’s dismissal of Liberty University, the Supreme Court held that “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there”; for corporations, the paradigm bases for general jurisdiction are “the place of incorporation and principal place of business.” 134 S. Ct. 746, 760 (2014) (quotations and alteration omitted). The Supreme Court noted that only in an “exceptional case” could operations in a forum other than the place of incorporation or principal place of business be so substantial as to “render the corporation at home in that State,” as even a “substantial, continuous, and systematic course of business” in a state is an insufficient basis for general jurisdiction. *Id.* at 760, 761, n. 19.

Plaintiffs’ Proposed Complaint fails to meet *Daimler AG*’s rigorous test; there is no general jurisdiction over Liberty University.

Likewise, Staver and Lindevaldsen’s affidavits establish that neither of them has continuous and systematic contacts such that they could be deemed “at home” in Vermont and thereby subject to general jurisdiction. As to Staver, he:

- Is a resident of Florida;
 - Is not licensed to practice law in Vermont;
 - Has no professional or personal contacts with Vermont;
 - Has never transacted business or had clients or an office in Vermont;
 - Has been in Vermont only once, in 2001, for two days, unrelated to Lisa Miller’s case;
- and

- Has never appeared in person or telephonically in Vermont on behalf of Lisa Miller.

ECF 54-4, ¶¶ 1, 8, 11; **Exhibit A**, ¶ 11.

As to Lindevaldsen, she:

- Is a resident of Virginia;
- Is not licensed to practice law in Vermont;
- Has no office or place of business in Vermont;
- Has no professional or personal contacts with Vermont; and
- Came to Vermont only twice for Lisa Miller’s case, both times to argue before the Vermont Supreme Court.

ECF 54-5, ¶ 7.

In sum, there is no factual or legal basis for the Court to change its decision that Liberty University—and by extension its alleged agents Staver and Lindevaldsen—are not “at home” in Vermont. *See Schuppin v. Unification Church*, 435 F.Supp. 603, 607 (D. Vt. 1977). Indeed, considering *Daimler*’s declaration that the exercise of general jurisdiction in a state in which a corporation engaged in a substantial, continuous, and systematic course of business is “unacceptably grasping,” 134 S.Ct. at 761, there is no possibility of general jurisdiction over Liberty University, Staver, or Lindevaldsen.

B. Liberty University, Staver, and Lindevaldsen Are Not Subject to Specific Jurisdiction.

Plaintiff’s Proposed Complaint alleges no new facts which would support specific jurisdiction over Liberty University or Staver or Lindevaldsen as alleged agents of the University. Specific jurisdiction exists when the defendant’s “in-state activity is ‘continuous and

systematic” and *that activity gave rise to the episode-in-suit.*” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (quoting *Int’l Shoe v. Washington*, 326 U.S. 310, 317(1945)) (emphasis in original). This Court has already ruled that the actions of Staver and Lindevaldsen, and by extension, the public interest law firm they worked for, Liberty Counsel, “do not amount to purposeful availment of the privilege of doing business here . . . there is no suggestion that Miller’s attorneys sought to be known in the Vermont legal market or made efforts to promote a client base here.” *Jenkins*, 983 F.Supp.2d at 446. Plaintiffs have presented nothing to overcome that ruling.

Plaintiffs will presumably argue, as the Court noted in its decision, that a defendant’s “intentional and allegedly tortious out-of-state activity, if expressly aimed at the forum state, may establish specific personal jurisdiction.” *Id.* at 444 (citing *Calder v. Jones*, 465 U.S. 783, 789 (1984)). However, Plaintiffs at a minimum “must plead facts to show that Defendants expressly aimed intentional tortious acts at a Vermont resident, that her injuries arise out of or relate to those activities, and that Defendants knew that the brunt of the injury would be felt in Vermont.” *Id.* The mere fact that “harm in the forum is foreseeable . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant.” *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 674 (2d Cir. 2013). Plaintiffs have not satisfied this burden.

Initially, it must be noted that a difficulty in addressing Plaintiff’s motion to join is the fact that they make arguments in that motion which they fail to include as specific allegations in their Proposed Complaint. For example, in their motion, but not in the Proposed Complaint, Plaintiffs claim that Staver and Lindevaldsen committed “intentional torts directed at Janet Jenkins in their unethical and misleading representation of Lisa Miller” and that they “continued to commit acts in furtherance of the kidnapping conspiracy.” Mot. to Join at 9-10. In any case,

setting aside the deficiencies in Plaintiffs' pleading, the claims they actually do make are devoid of any factual basis, and inadequate as a matter of law to establish specific jurisdiction.

First, Plaintiffs have failed to make any showing that Staver and Lindevaldsen could be deemed agents of Liberty University for purposes of this case. The Court already rejected a similar allegation as to Ms. Hyden, who Plaintiffs argued in their Second Amended Complaint committed tortious actions as a student-employee of Liberty University which would permit the Court to exercise specific jurisdiction over the University. *Jenkins*, 983 F.Supp.2d at 447. In its holding, the Court recognized that under the law of agency, an agent is defined as a person authorized by another to act on that other's account. Moreover, "agency requires a manifestation by the principal that the agent shall act for it." *Id.* Just as Ms. Hyden was not authorized by Liberty University to act on its account, neither were Staver and Lindevaldsen in their capacities as Liberty Counsel attorneys representing Lisa Miller.

In September 2009, when the alleged "kidnapping conspiracy" took effect, Lindevaldsen—the only Liberty University employee named in any specific allegation in Plaintiffs' Proposed Complaint—was a professor of law at Liberty University School of Law who worked part-time for Liberty Counsel.. ECF 54-4, ¶ 7. She did not occupy the role of officer, director, manager, or hold any other office that would possibly indicate an implied or express authority to act for the University. *See, e.g., Associated Producers, LTD v. Vanderbilt Univ.*, 76 F.Supp.3d 154, 166-67 (D.D.C. 2014) (concluding that where university provided "simple encouragement and approval of an employee's outside activities without any allegation that the employee's activities were in any way subject to the employer's control," there could be no agency relationship sufficient to establish personal jurisdiction over the university).

Second, as was the case with their Second Amended Complaint, even assuming Staver or Lindevaldsen could in theory, and for some specified purpose, be agents of Liberty University, Plaintiffs allege no facts establishing that they were *acting* as agents of the University when allegedly engaging in the “conspiracy”. *See Jenkins*. 983 F.Supp.2d at 446-47. In fact, Lisa Miller's custody dispute with Janet Jenkins entered the docket of the Rutland Family Court in November 2003, at a time when Liberty University School of Law had not even opened its doors. *Id.* at 436-37. In June 2004, Miller contacted Liberty Counsel, the Florida-based public interest law firm founded in 1989 by Staver. ECF 54-4, ¶¶ 3, 6; ECF 54-5, ¶ 4. Liberty Counsel agreed to accept Miller as a client and assigned one of its Florida-based attorneys, Lindevaldsen, to be part of Miller's legal team. ECF 54-4, ¶ 6. These facts, by themselves, prove that Liberty Counsel's legal representation of Miller was not at the behest of, much less intended to be conducted in the name of, Liberty University.

Staver's and Lindevaldsen's motions to enter their pro hac vice appearances for Lisa Miller on behalf of Liberty Counsel were granted by the Rutland Family Court in October 2004. **Exhibit C.** Thus began a lengthy and complex legal case which ultimately involved Liberty Counsel taking appeals to the Vermont Supreme Court and conducting parallel litigation in the Virginia courts on Miller's behalf. From beginning to end—at every step—Staver, Lindevaldsen, and Miller's other Liberty Counsel attorneys entered their appearances and litigated for Miller solely in their capacities with Liberty Counsel. Not once did any of these attorneys file any pleading, motion, memoranda, or other document remotely suggesting they were appearing for Liberty University. *See, e.g., Miller-Jenkins v. Miller-Jenkins*, 2006 VT 78, 180 Vt. 441, 912 A.2d 951 (recording counsel for plaintiff-appellant Lisa Miller-Jenkins as “Mathew D. Staver and Rena M. Lindevaldsen, Liberty Counsel, Longwood, Florida”). To the contrary, every

single filing they made in the Rutland Family Court was in the name of and for Liberty Counsel.

Exhibit D.

Lindevaldsen was not even employed by Liberty University until August 2005, when she began at the School of Law as an adjunct professor before receiving a full-time appointment in July 2006. ECF 54-5, ¶ 3. Staver joined the School of Law in May 2006 as Dean and Professor of Law. ECF 54-4, ¶ 5. Both continued working part-time for Liberty Counsel, including completing their representation of Lisa Miller. Plaintiffs have not offered a shred of evidence that Liberty University or Staver or Lindevaldsen as employees of the University represented Miller or that the University took any action such that Staver or Lindevaldsen's legal work for Miller could be deemed to be the acts of the University for the purpose of assessing minimum contacts under the Due Process Clause. *See CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 366 (2d Cir. 1986) ("To be considered an agent for jurisdictional purposes, *the alleged agent must have acted in the state for the benefit of*, and with the knowledge and consent of, *the non-resident principal*." (quotation omitted)(emphasis added)).

Finally, although unnecessary to defeat Plaintiffs' motion, it must be said that Plaintiffs have engaged in rank speculation and outright misrepresentation in their effort to claim that Lindevaldsen committed intentional torts in the course of her legal representation of Lisa Miller. Mot. to Join at 9. In this regard, it is important to take note that Staver is not named in any substantive allegation in the Proposed Complaint and Liberty University is referenced only as Staver's and Lindevaldsen's employer, not as an independent actor or alleged tortfeasor. As to Lindevaldsen's alleged misconduct, instead of making good faith allegations in the Proposed Complaint, as required by Federal Rule of Civil Procedure 11, Plaintiffs rely on claims made in their motion or inferences they attempt to raise by reference to exhibits attached to that motion.

None of Plaintiffs' arguments withstand scrutiny and neither their motion nor their Proposed Complaint permits the Court to exercise specific jurisdiction over Liberty University, Staver, or Lindevaldsen. Turning to those arguments:

1. Philip Zodhiates' 1/21/09 email to William Sidebottom.

Exhibit 2 to Plaintiffs' motion is an email from Mr. Zodhiates to William Sidebottom who was employed for a few months in 1990 by Zodhiates' business, Response Unlimited, before he began his own business focused on direct mail. **Exhibit A**, ¶ 13. In 2006 Sidebottom began working for Liberty Counsel on direct mail and communications, dealing with vendors to rent mail lists, create mail pieces, and do mail prospecting. *Id.* ¶ 14. Sidebottom is not an attorney and he had no role in legal matters being handled by Liberty Counsel. Notably, Plaintiffs do not allege that Sidebottom provided the email to Staver or Lindevaldsen or even that he mentioned it to them. That omission is no doubt explained by the fact that neither Staver nor Lindevaldsen ever saw the email or had any idea it existed. **Exhibit B**, ¶ 2; **Exhibit A**, ¶ 20.

Additionally, Plaintiffs surely knew, but neglected to disclose in their motion, that at Zodhiates' criminal trial, Sidebottom testified that he had "no memory of this email at all," that he does not believe that he responded to it, and that he is sure he did not send it to any attorney at Liberty Counsel. **Exhibit E** at 28.³ Sidebottom further testified that he is not an attorney, he was "not part of the litigation team at Liberty Counsel", and he did not have Lisa Miller's contact information to give to Zodhiates. *Id.* at 29-30. During the defense's cross-examination, Sidebottom affirmed that he had no recollection of receiving the email or ever discussing it with Zodhiates. **Exhibit E** at 14-15.

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³ Only the relevant pages have been attached as Exhibit E to save space. Should the Court desire the full testimony, it will of course be provided.

Zodhiates' email is thus wholly irrelevant to personal jurisdiction over Liberty University, Staver, or Lindevaldsen.

2. Zodhiates' emails to his daughter between October 23 and November 11, 2009.

Exhibits 6, 8, 9, 10, and 11 to Plaintiffs' motion are emails apparently sent from Mr. Zodhiates to his daughter Victoria Hyden with the request that she give them to Lindevaldsen. Once again, however, Plaintiffs have not alleged, much less shown, that Lindevaldsen was ever shown these emails, or told of their contents. The fact is that Lindevaldsen never saw any of them until they were sent to her with Plaintiffs' pending motion. **Exhibit B**, ¶ 4. Moreover, the emails are wholly irrelevant to specific jurisdiction since they post-date by over a month Lisa Miller's departure from the United States. *See Jenkins*, 983 F.Supp.2d at 447-48 (rejecting Plaintiffs' claim that Thomas Road Baptist Church's alleged conduct after Miller fled the country could establish specific jurisdiction in Vermont).

3. Zodhiates' cell phone "was in contact" with phone numbers associated with Liberty Counsel and Liberty University School of Law, "including a cell phone known to be used by Staver"

In their motion, but not in their Proposed Complaint, Plaintiffs imply that Zodhiates may have spoken with Staver, Lindevaldsen, or perhaps someone "associated" with Liberty Counsel "[d]uring his journey to and from Buffalo on September 21 and 22, 2009." Mot. to Join at 3, ¶ 8. Once again, however, Plaintiffs fail to allege that an actual phone conversation occurred, let alone that it was related to the "conspiracy" they have claimed.

In fact, Lindevaldsen established previously that:

If those calls were made, none were to me. I have never had a cell phone that was registered to Liberty Counsel. Since July 2006, I have not had a landline that is registered to Liberty Counsel. I do, however, have a landline that is registered to Liberty University and have had that line since July 2006. As I mentioned above, if

Mr. Zodiates made those calls on September 22, 2009, none were to me.

ECF 54-5, ¶ 11. Staver also made clear that:

The phone registered to Liberty Counsel is a number that had been publically disseminated on press releases at least since 2003 to literally several thousand media and nonprofit organizations and representatives. I never received such a call from Philip Zodiates or anyone associated with him, which is apparently what the Amended Complaint insinuates. I do not know of anyone who received such a call. Indeed, the short duration of time on its face suggests no one answered. On that day I had back-to-back meetings from the beginning of the work day to the end, including a meeting that went from 1:00-1:30 pm and another meeting from 1:30-2:15 pm. My entire day was booked in this manner. I never talked to Philip Zodiates or anyone associated with him about the whereabouts of Lisa Miller or any plan or intent to leave Virginia or the country with her child. The insinuation is absolutely false.

ECF 54-4, ¶ 17. As such, Plaintiffs' speculation proves nothing.

4. Lisa Miller's attorneys "continued to press appeals" for her and argue venue in Virginia should be in Bedford County

In their motion, Plaintiffs again make the extraordinary claim that by continuing to represent Lisa Miller's legal interests, Staver and Lindevaldsen are subject to being sued in the State of Vermont. Mot. to Join at 6, ¶ 23.⁴ However, the Court has already rejected the "bold assertion" that, by litigating Miller's case, Staver and Lindevaldsen engaged in intentional tortious acts aimed at Plaintiffs from which jurisdiction can be derived. *Jenkins*, 983 F.Supp.2d at 446. The Court emphasized that there was "no factual support for the assertion that the attorneys committed a tortious act" as there was "no suggestion that the attorneys committed a tort by representing their client." *Id.* Unquestionably, Staver and Lindevaldsen had a legal obligation to follow their client's instructions as expressed to them—including pursuing the

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⁴ In this paragraph of their motion, Plaintiffs reference and attach Exhibit 16 which, ironically, directly undercuts their argument that Staver and Lindevaldsen were acting as agents of Liberty University, instead of as attorneys with Liberty Counsel. That document is a pleading signed and filed in Virginia by Lindevaldsen for Liberty Counsel on behalf of Lisa Miller.

appeal and seeking a stay of the order to transfer custody—even if she was no longer in regular communication. The Rutland Family Court recognized that obligation and elected to deny Liberty Counsel’s January 20, 2010 request to withdraw as Miller’s counsel. **Exhibit A**, ¶ 22; **Exhibit F**.

5. Lindevaldsen informed Plaintiffs’ counsel and the Rutland Family Court that she had no reason to believe that Lisa Miller had left her home and that she had continued to leave Miller messages

In their Proposed Complaint at ¶¶ 50 and 61, Plaintiffs allege that Lindevaldsen provided “demonstrably false” information “to various courts” as to her knowledge of Lisa Miller’s whereabouts. However, the opinions of Plaintiffs’ counsel are no substitute for facts. Lindevaldsen’s sworn affidavits establish that she “had no knowledge that Lisa Miller would flee.” ECF 54-5, ¶ 9. Lindevaldsen had no notice from Lisa Miller (or any other person) that she planned to leave with her child and Lindevaldsen accurately told the Vermont Family Court, as well as Ms. Jenkins’ attorneys, that Lisa Miller had stopped contacting her. **Exhibit B**, ¶ 4. Thus, not only is Plaintiffs’ allegation demonstrably false, but the proper venue for that allegation to be lodged is the court that was purportedly misled, not a federal district court of specific and limited jurisdiction.

6. Lindevaldsen, described as an “elder of the Thomas Road Baptist Church,” allegedly packs up Lisa Miller’s personal belongings for transport to her in Nicaragua

Plaintiffs in their Proposed Complaint at ¶ 45 allege that in early November 2009, Lindevaldsen, serving as an “elder” of the Thomas Road Baptist Church, assisted in packing Lisa Miller’s belongings at her apartment for shipment to Nicaragua. Plaintiffs’ claims, once again, are demonstrably false. First, Lindevaldsen has never been an elder of the Thomas Road Baptist Church, nor, for good measure, does that church have elders. **Exhibit B**, ¶ 7. Second, Lindevaldsen never packed up Miller’s belongings in November 2009, or at any other time. *Id.*

Third, Lindevaldsen had never been to Miller's apartment, at any time, for any reason. *Id.* Finally, Plaintiffs' allegation, in addition to being untrue, could not create personal jurisdiction over Liberty University or Staver and Lindevaldsen.⁵

7. Testimony or arguments at Zodhiates' criminal trial

Plaintiffs in their Motion at 6-7, ¶¶ 24, 27, but not in their Proposed Complaint, make claims as to testimony offered or arguments made during the criminal trial of Philip Zodiates. The short answer is that even if Plaintiffs' references to that trial are accurate, they prove nothing as to this matter and in no way permit the exercise of specific jurisdiction over Liberty University, Staver or Lindevaldsen.

Both Staver and Lindevaldsen earlier provided sworn affidavits that they never counseled Lisa Miller to disobey any court orders or to leave the country and that they had no knowledge that she would flee. *See* ECF 54-4, ¶ 12; ECF 54-5, ¶ 8. Plaintiffs point to no admissible evidence to the contrary, because there is none. Zodiates was never a client of Liberty Counsel and neither Staver nor Lindevaldsen ever discussed disobeying any court order with him. **Exhibit A**, ¶ 23; **Exhibit B**, ¶ 3. As to the claimed closing argument made by Zodiates' attorney at his criminal trial, even assuming it occurred, it is simply that—argument. *See United States v. Arboleda*, 20 F.3d 58, 61 (2d Cir. 1994) (affirming that “[a] summation is not evidence.”).

In sum, Plaintiffs have alleged no new facts that would allow this Court to overturn its decision and assert personal jurisdiction over Liberty University or Staver and Lindevaldsen as

⁵ The Court had already held that the injuries Plaintiffs allege “cannot reasonably be characterized as arising out of or relating to” any alleged activities by individuals outside Vermont involving “packing Lisa Miller and Isabella’s belongings and shipping them to Lisa Miller in Nicaragua.” *Jenkins*, 983 F.Supp.2d at 447-48 (granting Thomas Road Baptist Church’s motion to dismiss for lack of personal jurisdiction based on “the complete absence of a colorable claim of specific personal jurisdiction.”).

alleged agents of Liberty University. Plaintiffs have not pled *any* facts showing that Staver’s and Lindevaldsen’s legal representation of Lisa Miller can be imputed to Liberty University for personal jurisdiction. Additionally, the Court lacks personal jurisdiction over Liberty Counsel and Staver and Lindevaldsen in their individual capacities or as agents for Liberty Counsel, for the reasons discussed above.

C. Exercising Personal Jurisdiction Over Liberty University, Staver, and Lindevaldsen Would Offend Traditional Notions of Fair Play and Substantial Justice.

The second prong of the personal jurisdiction due process test, the reasonableness inquiry, focuses on “whether the assertion of personal jurisdiction comports with ‘traditional notions of fair play and substantial justice’—that is, whether it is reasonable under the circumstances of the particular case.” *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir. 1996). The Court need only consider this prong of the test in the unlikely event that it were to conclude that Plaintiffs have met their burden with respect to minimum contacts. *Id.* at 573. Only then would the Court need to evaluate the following issues for the “reasonableness” inquiry: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies. *Id.* at 568.

If the Court were to consider them, they weigh decidedly against the assertion of jurisdiction.

First, the exercise of jurisdiction over Liberty University, Staver, and Lindevaldsen would be personally and financially burdensome. Liberty University and Lindevaldsen are based in Virginia and Staver in Florida and none has any connections whatsoever to Vermont. Further,

the vast majority of witnesses and documentary evidence in this case are located outside Vermont, a factor that has weighed heavily in cases where defendants had no office, employees, or property in the forum state. *Metropolitan Life*, 84 F.3d at 574-75; *see also Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995) (observing that “the law of personal jurisdiction is asymmetrical and is primarily concerned with the defendant’s burden.”); *Hyperkinetics Corp. v. Flotec, Inc.*, No.1:03cv33, 2003 WL 25278086 at *5 (D. Vt. Sept. 25, 2003) (“Because it is based in Indiana, the defendant will certainly incur some burden litigating in this state At best, the defendant’s contacts with Vermont are indirect, minimal, and insubstantial.”).

Second, although the Court determined that Vermont has a strong interest in adjudicating claims involving violations of Vermont court orders and injuries sustained by a Vermont resident, *Jenkins*, 983 F.Supp.2d at 450, Virginia has at least an equal interest in providing a forum for her citizens, especially given the fact that Plaintiffs’ claims are primarily based on an attorney licensed and located in Virginia providing legal counsel to a Virginia-residing client.

Third, while Plaintiffs’ interest in obtaining convenient and effective relief is served by bringing this suit in Vermont, *id.*, that interest could be equally served by bringing suit in Virginia, where the alleged wrongs occurred and where Liberty University, Lindevaldsen, and most of the witnesses and evidence are located.

Fourth, the interstate judicial system’s interest in an efficient resolution “is not particularly implicated” or served by the election of Vermont as a forum. *Id.*

Finally, Plaintiffs have alleged nothing to show Vermont has a particular substantive social policy that is furthered by adjudication of this suit; instead, both Vermont and Virginia have an equal interest in addressing alleged violations of federal law. *Id.*

Since Liberty University, Staver, and Lindevaldsen have no contacts with Vermont, and it would be a considerable burden on them to defend this litigation in Vermont, the exercise of personal jurisdiction over them would offend traditional notions of fair play and substantial justice.⁶

CONCLUSION

A federal district court's exercise of personal jurisdiction must comport with constitutional due process principles. Plaintiffs' Proposed Complaint provides no basis for the Court to overturn its prior ruling that Liberty University, and by extension Staver and Lindevaldsen as its alleged agents, has no minimum contacts with Vermont. It is also clear that the Court lacks personal jurisdiction over Liberty Counsel and Staver and Lindevaldsen individually or as agents of Liberty Counsel. Plaintiffs' Motion to Join is therefore futile and should be denied in its entirety.

⁶ Another factor demonstrating the unreasonableness of asserting personal jurisdiction here is the fact that all claims sought to be raised in the Proposed Complaint by Plaintiff Janet Jenkins on her own behalf are indisputably barred by the controlling statute of limitations, 12 V.S.A. § 512. *See Meyer v. Frank*, 550 F.2d 726, 728 (2d Cir. 1967) (“An action brought under the federal Civil Rights Act is subject to the statute of limitations the state courts would apply in an analogous situation.”); *Fellows v. Earth Const., Inc.*, 794 F. Supp. 531, 535-36 (D. Vt. 1992) (“The Vermont Supreme Court ... has indicated that civil rights claims brought under the [Civil Rights Act] are governed by the statute of limitations for personal injury actions.”). The actions Jenkins complains of allegedly culminated on September 21, 2009, meaning the three year statute of limitations ran on September 21, 2012, and all her claims are therefore time barred. Indeed, this is an additional reason the requested amendment is futile.

DATED at Burlington, Vermont, this 18th day of November, 2016.

DINSE, KNAPP & McANDREW, P.C.

/s/ Ritchie E. Berger, Esq. _____
Ritchie E. Berger, Esq.
Attorney for Liberty University, and Mathew Staver
and Rena Lindevaldsen as Alleged Agents of
Liberty University
P.O. Box 988
Burlington, VT 05402-0988

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November, 2016, the foregoing **LIBERTY UNIVERSITY'S, MATHEW STAVER'S, AND RENA LINDEVALDSEN'S OPPOSITION TO PLAINTIFFS' MOTION TO JOIN ADDITIONAL DEFENDANTS,** with exhibits, was served on the following counsel by email and U.S. mail:

Brooks G. McArthur, Esq.
bmcArthur@jarvismcarthur.com

David A. Boyd, Esq.
dboyd@gravelshea.com

Emily J. Joselson, Esq.
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Thomas E. McCormick, Esq.
tem@mc-fitz.com

By: /s/ Ritchie E. Berger
Ritchie E. Berger

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JANET JENKINS, ET AL.,

Plaintiffs

v.

Docket No.: 2:12-cv-184

KENNETH L. MILLER, ET AL,
LISA ANN MILLER f/k/a LISA MILLER-
JENKINS, TIMOTHY D. MILLER,
ANDREW YODER, individually and as an
Agent for CHRISTIAN AID MINISTRIES,
INC., CHRISTIAN AID MINISTRIES,
INC., RESPONSE UNLIMITED, INC.,
PHILIP ZODHIATES, individually and as
an agent for RESPONSE UNLIMITED,
INC., VICTORIA HYDEN, f/k/a
VICTORIA ZODHIATES individually and
As an agent for both RESPONSE
UNLIMITED, INC., LINDA M. WALL,
individually and DOUGLAS WRIGHT,
Defendants

AFFIDAVIT OF MATHEW D. STAVER IN RESPONSE TO PLAINTIFFS' MOTION TO JOIN ADDITIONAL DEFENDANTS

I, Mathew D. Staver, being first duly sworn, do hereby depose and state as follows:

1. I am an attorney licensed to practice law since 1987, and I have knowledge of the following facts and if called upon to testify to them could and would do so competently.

2. I am a member of the Florida and District of Columbia Bars, and have been admitted to practice before the United States Supreme Court, the Florida Supreme Court, all twelve circuits of the United States Court of Appeals, and other courts. I have been board certified since 1995 in Appellate Practice in the State of Florida. I received a Bachelor of Arts degree *Cum*

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Laude, a Master of Arts degree *Summa Cum Laude*, and received my Juris Doctor degree from the University of Kentucky College of Law.

3. I began in private practice in 1987 in the State of Florida and in 1989 opened my own private law practice in the state. Later in 1989, I founded Liberty Counsel, Inc., a Florida nonprofit public interest law firm. Liberty Counsel has been headquartered in Central Florida since its inception to the present. In 2005 and 2007, branch offices were opened in Virginia and the District of Columbia, respectively. Liberty Counsel is a Florida nonprofit corporation and has never been incorporated in Vermont; does not have its principal place of business in Vermont; is not registered to do business in Vermont; has no facilities, offices, mailing address, or staff in Vermont; has no registered agent for service of process in Vermont; has no property in Vermont; and pays no Vermont state taxes.

4. From 1989 until May 2006, I was the President and General Counsel of Liberty Counsel. Beginning in May 2006, I transitioned from President and General Counsel to Founder and Chairman of Liberty Counsel. In that capacity, I maintained my appearances of record in active cases and continued to argue some trial and appellate cases for Liberty Counsel throughout the country.

5. I served as Dean and Professor of Law with Liberty University School of Law from May 15, 2006 until the end of 2014.

6. On or about August 12, 2012, Plaintiffs filed this action, naming a number of defendants, including Liberty University School of Law. Plaintiffs filed an amended Complaint after being advised that Liberty University School of Law was not a separate entity of Liberty University, thereby dropping Liberty University School of Law and naming Liberty University.

7. Although the Complaint and Amended Complaint did not name Liberty Counsel, Rena Lindevaldsen or me, both pleadings in some detail identified Liberty Counsel,

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Lindevaldsen, and me in relation to Liberty Counsel's representation of Lisa Miller as well as Lindevaldsen's and my affiliation with both Liberty Counsel and Liberty University School of Law.

8. On November 12, 2012, I executed an Affidavit in support of a Motion to Dismiss filed by Liberty University (Document 54-4). I hereby adopt and reaffirm that Affidavit in its entirety, except to note that I am no longer employed by Liberty University. Nothing else has changed and I submit that there is no evidence that supports Plaintiffs' request to join Liberty Counsel, Liberty University, Lindevaldsen, or me as additional defendants. I had no prior knowledge of Lisa Miller's intent or plan to leave the country or knowledge of anyone who may have assisted or participated in her departure. At no time did I counsel or suggest to Lisa Miller (or anyone else) that she should disappear. At all times, Lisa Miller was counseled to obey all court orders.

9. On October 24, 2013, this Court dismissed Liberty University as a Defendant in this case for lack of personal jurisdiction. *Jenkins v. Miller*, 983 F.Supp.2d 423, 442-443, 447-448 (D. Vt. 2013). With respect to Lindevaldsen and me, this Court found: "There are at least two flaws in Plaintiffs' argument that the actions of Lisa Miller's attorneys support the exercise of specific personal jurisdiction over Liberty University. One, there is no factual support for the assertion that the attorneys committed a tortious act—or conspired to commit a tortious act—that caused injury to Janet Jenkins. There is no suggestion that the attorneys committed a tort by representing their client or publicly voicing their opinions concerning the issues. Two, assuming at this pre-discovery stage of the litigation that Plaintiffs could prove that the attorneys were agents of or employed by Liberty University as opposed to its affiliated entity Liberty Counsel, or that the actions of Liberty Counsel should be attributed to Liberty University for purposes of assessing minimum contacts, the contacts with the forum do not amount to purposeful availment of the privilege of doing business here. Unlike the firm in *Bank Brussels [Lambert v. Fiddler Gonzalez & Rodriguez]*, 305 F.3d 120, 128–29 (2d Cir.2002)], there is no suggestion that Miller's

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attorneys sought to be known in the Vermont legal market, or made efforts to promote a client base here.” *Jenkins*, 983 F.Supp.2d at 446-447.

10. Now, more than four years after filing their Complaint and Amended Complaint, Plaintiffs request this Court to allow an amendment joining Liberty Counsel, Lindevaldsen, and me as Defendants. Plaintiffs’ Motion also seeks to re-join Liberty University, and name Lindevaldsen and me individually and as agents for both Liberty University and Liberty Counsel.

11. Contrary to the proposed “Revised Second Amended Complaint” (Proposed Amendment) in ¶¶ 15-16, neither I nor Liberty Counsel have any contacts with Vermont. Plaintiffs have not—and cannot—allege that I have constitutionally sufficient contacts with the State of Vermont. I have only been in Vermont once in my life, for two days in 2001, and that visit had nothing to do with Lisa Miller or her custody case. Neither I nor Liberty Counsel transacts business in Vermont. Neither I nor Liberty Counsel have clients in Vermont and neither of us has ever had an office in Vermont. I never appeared in person or telephonically in Vermont on behalf of Lisa Miller or in any proceeding in Vermont connected with her case. Contrary to the Proposed Amendment, Liberty Counsel is not an LLC, is not a legal or corporate affiliate of Liberty University, and it does not have a principal place of business in the City of Lynchburg, Virginia. Liberty Counsel’s principal place of business is in Florida with only a branch office in Virginia.

12. Contrary to the Proposed Amendment in ¶ 14, Lindevaldsen was not an employee of Liberty Counsel in 2009. Her employment with Liberty Counsel ended in 2006. Lindevaldsen was a contract attorney for Liberty Counsel in 2009; she continued to represent Lisa Miller on behalf of Liberty Counsel, not Liberty University or Liberty University School of Law. As was discussed in my prior affidavit, and in ¶ 11 above, Liberty Counsel is a corporate entity separate and independent from Liberty University and Lindevaldsen’s legal representation of Lisa Miller had no connection to Liberty University or its law school.

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13. William Sidebottom was employed by Response Unlimited (RU) for only a few months in 1990, and then began his own business focused on direct mail. Between 1990 and 2006, Mr. Sidebottom occasionally retained RU as an independent vendor in order to rent mail lists and create prospecting mail for other organizations he represented.

14. Mr. Sidebottom began working for Liberty Counsel on direct mail and communications in 2006. He was responsible for working with a variety of independent vendors to rent mail lists, create mail pieces, and do mail prospecting. Based on his prior work with RU, Sidebottom included RU as one of a number of vendors renting mail lists for such prospecting.

15. Neither RU nor Philip Zodhiates were ever agents of Liberty Counsel or acting on behalf of Liberty Counsel, nor was either acting with implied or apparent authority. The 2007 "List Brokerage Agreement" attached to Plaintiffs' Motion as Exh. 1, expressly states in section 3 that: "Response Unlimited is an independent contractor specifically secured to obtain mailing lists for LIBERTY COUNSEL'S new donor acquisition program, and is not an agent, partner, or representative of LIBERTY COUNSEL." That agreement was dated May 14, 2007, and its duration was three months followed by a 30-day notice cancellation. I did not sign this agreement, nor did I have any communications with RU or Mr. Zodhiates about it.

16. In 2008 Mr. Sidebottom worked with RU to create a prospecting mail piece regarding Lisa Miller. That piece was mailed in November 2008, but because it did not have a successful response the program was discontinued after the one mailing. Liberty Counsel undertook no other mail prospecting with RU or Mr. Zodhiates after November 2008.

17. Contrary to the Motion in ¶ 6 (with no similar mention in the Proposed Amendment), neither RU nor Mr. Zodhiates performed any work for Liberty Counsel regarding Lisa Miller in 2009, or at any time thereafter. If Mr. Zodhiates brought Lisa Miller to his RU office in 2009, as the Motion in ¶ 5 alleges (with no similar allegation in the Proposed Amendment), it was without my knowledge and it was not arranged or authorized by anyone with Liberty Counsel.

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18. Contrary to the Motion in ¶ 31 (with no similar allegation in the Proposed Amendment), neither RU nor Mr. Zodhiates continue to work for Liberty Counsel. As noted above, RU's work as an outside independent vendor was of limited duration and Mr. Zodhiates was not "working on Liberty Counsel from home" on September 21, 2009, as he allegedly told one of his employees at RU (Pl. Exh. 3) since, other than the prospect mailing in 2008, he was not authorized to do any work on behalf of Liberty Counsel regarding Lisa Miller.

19. Although the Motion in ¶¶ 6 and 31 (with no similar allegation in the Proposed Amendment) implies that RU and Mr. Zodhiates worked or continued to work for Liberty University or Liberty University School of Law, that implication is inaccurate. Neither RU nor Mr. Zodhiates worked for Liberty University or Liberty University School of Law in any capacity. Contrary to the Motion in ¶ 8 (with no similar allegation in the Proposed Amendment), Liberty University School of Law was never a customer of RU or Zodhiates.

20. The Motion at ¶ 4 (and the Proposed Amendment at ¶ 29 through implication) misquotes the referenced Pl. Exh. 1 to allege that Mr. Zodhiates sent an email to Sidebottom on or about January 21, 2009, mentioning a so-called "personal option." However, Plaintiffs fail to mention Sidebottom's sworn testimony in Zodhiates' criminal trial that he did not recall receiving such an email and he never responded to such a communication. For my part, the first time I saw that email (Pl. Exh. 2) was when I read Plaintiffs' Motion. I was not aware of this alleged email or any similar communication from Mr. Zodhiates or anyone acting on his behalf.

21. The Motion in ¶ 8 (not mentioned in the Proposed Amendment) repeats the allegation in the Complaint and Amended Complaint that on or about September 22, 2009, Mr. Zodhiates allegedly tried to call "several phone numbers associated with his clients Liberty Counsel and Liberty University School of Law, including a cell phone known to be used by Staver." First, Liberty University School of Law was never a customer of Zodhiates and, as noted above, Liberty Counsel was not a customer of Zodhiates at the time and he was not

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authorized by me or anyone else at Liberty Counsel to work on anything related to Lisa Miller. Second, as noted in my prior Affidavit in ¶ 17: “The Amended Complaint at ¶ 57 states that a cell phone allegedly belonging to Philip Zodhiates made three calls purportedly within a matter of two minutes on September 22, 2009, between 1:28 pm and 1:30 pm to a cell phone with an Orlando area code registered to Liberty Counsel, to a landline registered to Liberty Counsel, and to a landline registered to “Liberty University School of Law” (as stated in the Complaint) or “Liberty University” (as statement in the Amended Complaint). The phone registered to Liberty Counsel is a number that had been publically disseminated on press releases at least since 2003 to literally several thousand media and nonprofit organizations and representatives. I never received such a call from Phillip Zodhiates or anyone associated with him, which is apparently what the Amended Complaint insinuates. I do not know of anyone who received such a call. Indeed, the short duration of time on its face suggests no one answered. On that day I had back-to-back meetings from the beginning of the work day to the end, including a meeting that went from 1:00-1:30 pm and another meeting from 1:30-2:15 pm. My entire day was booked in this manner. I never talked to Phillip Zodhiates or anyone associated with him about the whereabouts of Lisa Miller or any plan or intent to leave Virginia or the country with her child. The insinuation is absolutely false.” (Document 54-4). As stated at the beginning of this Affidavit, I re-affirm the truth of this statement. I received no telephone calls, cellular or otherwise, or any voicemail, text message or other communication from Mr. Zodhiates on September 22, 2009.

22. The Motion in ¶ 21 and the Proposed Amendment in ¶ 49 state that during a status conference on or about December 18, 2009, Plaintiffs’ counsel informed the Vermont Family Court that Lisa Miller and Isabella Miller seemed to be missing and “Liberty Counsel persisted in filing an appeal in the Vermont Supreme Court.” However, Plaintiffs omit the fact that Liberty Counsel informed the Vermont court that all contact with and knowledge of the whereabouts of Lisa Miller had been lost. The Vermont court exercised its discretion and denied Liberty Counsel’s request to withdraw, notwithstanding that fact.

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23. Contrary to the implied allegation in the Motion at ¶ 27 (not mentioned in the Proposed Amendment), Mr. Zodhiates was never a client of mine and at no time did I discuss with him disobeying any court order, including orders of the Vermont court. Regardless of what Mr. Zodhiates' criminal defense attorney may have allegedly "suggested to the jury," Motion at ¶ 27, I never had any conversation with Mr. Zodhiates as to whether it would be lawful to remove Isabella from the country and I have no knowledge of anyone saying that to him.

24. Contrary to the implication in the Motion in ¶ 29 (not mentioned in the Proposed Amendment), my resignation as Dean of Liberty University School of Law had nothing to do with Mr. Zodhiates, RU, or Lisa Miller. In the spring of 2013, I communicated with the President of Liberty University that I would transition out of the Dean position after the reaffirmation of accreditation of the law school. The School of Law obtained provisional accreditation from the American Bar Association (ABA) on or about February 13, 2006. On or about August 5, 2010, the School of Law was granted full accreditation approval. A newly fully approved law school must have a follow up site visit and obtain reaffirmation of continuing approval three years after obtaining full approval. The ABA site visit occurred in the fall of 2013, and on or about October 16, 2014, the ABA notified the law school that the accreditation had been reaffirmed. The next day, I provided notice to the President of Liberty University of my transition from the Dean position. My transition and the timing of it had nothing to do with Zodhiates, RU, or Lisa Miller.

25. Contrary to the implied allegation in the Proposed Amendment ¶ 41, neither I nor anyone with Liberty Counsel advised Lisa Miller that it would be in her best interest to disappear. I have no knowledge of anyone providing her with such advice. To the contrary, I always counseled her to obey all court orders.

26. Contrary to the allegation of the Proposed Amendment in ¶¶ 44 and 46, and as stated in my prior Affidavit, I never had any communications with Victoria Hyden (formerly Zodhiates) regarding Lisa Miller or anything relating to her. Also, as previously stated, the only

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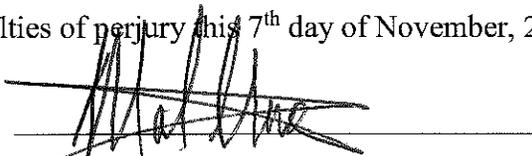
time I spoke with Mrs. Hyden was after I learned from the media that her name was mentioned in the original charging affidavit filed long after Lisa Miller's disappearance. I questioned her about emails mentioned in the charging affidavit and Mrs. Hyden said that she had not sent or passed on any emails regarding Lisa Miller. I had never seen nor heard of any such emails being sent or received or distributed; the first time I saw the emails from Mr. Zodiates to his daughter was when I read the Exhibits to Plaintiffs' Motion.

27. Contrary to the allegations in the Proposed Amendment in ¶57, neither I, Lindevaldsen, nor anyone else with Liberty Counsel, "misled courts in two states to delay contempt proceedings aimed at locating Isabella."

28. Contrary to the allegations in the Proposed Amendment in ¶ 61, I never knew of Lisa Miller's whereabouts and I know of no one who did. At no time did I or Lindevaldsen (or anyone else at Liberty Counsel) mislead any court.

I declare under penalty of perjury under the laws of the United States of America and State of Florida that the foregoing is true and correct.

Subscribed and sworn to under penalties of perjury this 7th day of November, 2016.



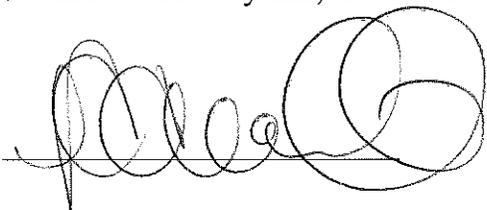
Mathew D. Staver

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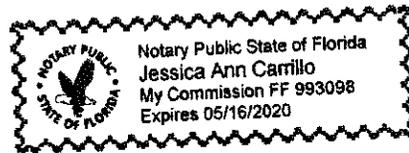
STATE OF FLORIDA

At Maitland, Florida, this 7th day of November, 2016, personally appeared MATHEW D. STAVER, and he acknowledged this instrument, subscribed and sworn to by him, to be his free act and deed.

Before me, 

Notary Public

My Commission Expires: May 16, 2020



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JANET JENKINS, ET AL.,

Plaintiffs,

v.

KENNETH L. MILLER, ET AL.

Defendants.

Docket No. 2:12-CV-00184

AFFIDAVIT OF RENA M. LINDEVALDSEN IN RESPONSE TO PLAINTIFFS' MOTION TO JOIN ADDITIONAL DEFENDANTS

I, Rena M. Lindevaldsen, being first duly sworn, do hereby depose and state as follows:

1. I reaffirm the statements made in my affidavit dated November 2, 2012, ECF No. 54-5, submitted in support of Liberty University's motion to dismiss, except to note that I no longer serve as Academic Dean at Liberty University Law School, although I am still a professor there, and I no longer actively litigate cases on behalf of Liberty Counsel.
2. In their Motion to Join Additional Defendants, Plaintiffs allege at ¶ 4 that on January 21, 2009, Philip Zodhiates sent an email (Pl. Exh. 2) to William Sidebottom. I never saw that email (or any communication referring to a so-called "personal option") before Attorney Berger sent that email to me with Plaintiffs' Motion and at no time did Mr. Sidebottom (or anyone else) mention it to me.
3. Mr. Zodhiates has never been a client of mine and at no time did I discuss with him

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disobeying any court order, including orders of the Vermont Family Court concerning Lisa Miller. And, regardless of what Mr. Zodhiates's criminal defense lawyer may have "suggested to the jury," *see* Motion at ¶ 27, I never had a conversation with Mr. Zodhiates as to whether it was lawful to remove Isabella from the country.

4. In ¶¶ 13-16 of their Motion, Plaintiffs attempt to suggest that Mr. Zodhiates passed messages from or concerning Lisa Miller to me through his daughter Victoria. Specifically, Plaintiffs' Motion references five emails between Mr. Zodhiates and his daughter, apparently sent on October 23, November 9, 10, and 11, 2009 (Pl. Exh. 6, 8, 9, 10 & 11), in support of their claim that I engaged in the "unethical and misleading representation of Lisa Miller" in Vermont Family Court. Pls' Motion at 9. I never saw any of these emails until Attorney Berger sent them to me with Plaintiffs' Motion. As stated in my earlier affidavit, I had no knowledge at the time that Lisa Miller planned to leave the country or that she had left the country. In fact, on September 12, 2009, Lisa advised me that she had a job interview scheduled for September 15 and if offered the position she would start in October. She ceased all communication with me and with Liberty Counsel later that month, and I had no notice from her (or from anyone else) that she had moved from her apartment in Virginia. In December 2009, I accurately told the Vermont Family Court that Lisa had stopped contacting me, even as I continued to leave her voicemail or email messages concerning her pending legal matters.
5. As noted in my prior affidavit, at all times relevant to this case, I saw Victoria only occasionally in the hallways or shared kitchen space of the law school. We never spoke at any length about any subject and we never discussed Lisa Miller, her

custody case, or anything to do with Victoria's father. I have no idea why Mr. Zodiates apparently sent Victoria the emails that Plaintiffs have attached to their Motion as Exhibits 6, 8-11, but Victoria did not provide, or even mention, any of them to me.

6. In ¶ 17 of their Motion, Plaintiffs attempt to suggest that I spoke by telephone with Linda Wall on November 12, 2009, and that such "contact" related to the removal of Lisa Miller's belongings from her apartment. That suggestion is not true. During the time that I actively litigated for Liberty Counsel, Linda Wall and I would speak fairly regularly on matters related to her public advocacy work. Although I have no recollection of speaking with Ms. Wall on November 12, if I did I can state unequivocally that it was not about removing anything from Lisa Miller's apartment as no such conversation took place. I do recall speaking with Ms. Wall at some point after Lisa Miller stopped communicating with me to ask whether Ms. Wall had heard from Lisa as they were acquaintances. Ms. Wall advised me that she had not. At some later time, Ms. Wall told me she had gone to Lisa's apartment to check up on her and that her things were still there.
7. In their proposed Revised Second Amended Complaint at ¶ 45, Plaintiffs allege that I was an elder of the Thomas Road Baptist Church and that in early November 2009, I and Ms. Wall "packed up the personal belongings of Lisa Miller in two bags." These allegations are false. First, I have never been an elder of Thomas Road Baptist Church. Second, I never packed up Lisa Miller's personal belongings in November 2009, or at any other time. In fact, I have never been to Lisa Miller's apartment at any time for any reason.

8. In sum, at no time did Lisa Miller, Mr. Zodiates, or any other person alert me to Lisa Miller's intent to leave the United States with her child. I did not aid or assist Lisa Miller in leaving the country and I have no personal knowledge of anyone who may have participated in her leaving the country. At all times, Lisa Miller was counseled by me and her other attorneys with Liberty Counsel to obey all court orders. I accurately stated my lack of knowledge as to Lisa Miller's whereabouts to the Vermont Family Court at the December 22, 2009 motion hearing in the custody action. And, I did not participate in—or have knowledge of—any efforts by any person to obtain any items from Lisa Miller's apartment or to send them to her overseas.

Subscribed and sworn to under penalties of perjury this 14th day of November, 2016.

Rena M Lindevaldsen
Rena M. Lindevaldsen

COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG, SS

At Lynchburg, Virginia in said County, this 14th day of November, 2016, personally appeared Rena M. Lindevaldsen, and she acknowledged this instrument, subscribed and sworn by her, to be her free act and deed.

Before me,

Carol J. Cordle
Notary Public
My Commission Expires: 7/31/2019



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STATE OF VERMONT
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT
DOCKET NO. 454-11-03

LISA MILLER-JENKINS,)
)
Plaintiff,)
)
v.)
)
JANET MILLER-JENKINS,)
)
Defendant.)

ORIGINAL

FILED
OCT - 1 2004
RUTLAND FAMILY
COURT

MOTION TO ADMIT ATTORNEY RENA M. LINDEVALDSEN *PRO HAC VICE*

COMES NOW the undersigned attorney, pursuant to the Vermont Rules of Civil Procedure Rule 79.1(e) and Vermont Rules of Family Court Procedure Rule 15 and petitions this Court for permission to appear Pro Hac Vice on behalf of the above-named Plaintiff(s), and in support thereof would show unto the Court as follows:

1. The undersigned resides in Orange County, Florida, and her office address is 210 East Palmetto Avenue, Longwood, Florida, 32750.
2. The undersigned has been admitted to the following courts:
 New York Court of Appeals (includes all New York State Courts) - 5/8/96
 U.S. District Court for the Southern District of New York - 3/17/98
 U.S. District Court for the Eastern District of New York - 7/16/98
 U.S. Court of Appeals for the Second Circuit - 10/01/02
 U.S. Court of Appeals for the Fifth Circuit - 2/26/03
 Supreme Court of the United States - 3/10/03
 U.S. Court of Appeals for the Fourth Circuit - 4/17/03



U.S. District Court for the Eastern District of Wisconsin - 6/9/03

Florida Supreme Court - 9/18/03

U.S. District Court for the Eastern District of Arkansas - 3/11/04

U.S. District Court for the Western District of Arkansas - 3/11/04

U.S. District Court for the Middle District of Florida - 5/5/04

U.S. District Court for the Northern District of Florida - 5/26/04

U.S. District Court for the Southern District of Florida - 7/9/04

U.S. District Court for the Northern District of New York - 7/9/04

The undersigned's status is active in all courts.

3. Rena Lindevaldsen received her J.D. from Brooklyn Law School in 1995. She has practiced law continuously since she was admitted to the New York Bar in May 1996, and has participated in matters both in state and federal courts.

4. Rena Lindevaldsen has not been held in contempt of court, censured, suspended or disbarred by any court. Rena Lindevaldsen is in good standing with the Appellate Division, Second Judicial Department of the State of New York and is authorized to practice in all courts in the State of New York and the State of Florida.

5. A Certificate of Good Standing from the Supreme Court of the State of Florida is attached to this Motion.

6. The undersigned is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Vermont Rules of Civil Procedure; the Vermont Rules of Family Court Procedure; the Vermont Rules of

Appellage Procedure and the Code of Professional Responsibility of the American Bar Association.

The undersigned further affirms faithful adherence to these Rules and responsibilities.

7. Attorney Judy Barone will continue to actively participate as counsel, accepting all process, notice and other papers service, and signing all papers pursuant to Rule 11.

8. Mathew D. Staver will serve as lead counsel.

WHEREFORE the undersigned counsel, respectfully requests that the Court grant permission to appear Pro Hac Vice in the above-captioned cause.

Respectfully Submitted,



Rena M. Lindevaldsen

Florida Bar No. 0659045
Liberty Counsel
210 East Palmetto Avenue
Longwood, FL 32750
(407) 875-2100 - Telephone
(407) 875-0770 - Facsimile
Attorney for Plaintiff(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight delivery via Federal Express this 30th day of September, 2004, to the following:

Mr. Theodore A Parisi, Jr., Esq.
Theodore A. Parisi, Jr., P.C.
PO Box 297
Castleton VT 05735
Telephone: (802) 265-3311
Telefacsimile: (802) 265-8023
Attorney for Defendant

Judy G. Barone, Esq.
(Local Counsel)
READNOUR & BARONE
225 South Main Street
Rutland, Vermont 05701
Telephone: (802) 775-9886
Telefacsimile: (802) 775-9774
Attorney for Plaintiff


Mathew D. Staver
Florida Bar No. 0701092
(Lead Trial Counsel)
Rena M. Lindevaldsen
Florida Bar No. 0659045
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, FL 32750
Telephone: (407) 875-2100
Telefacsimile: (407) 875-0770
Attorneys for Plaintiff(s)

Supreme Court of Florida

Certificate of Good Standing

I THOMAS D. HALL, Clerk of the Supreme Court of the State of Florida, do hereby certify that

RENA MARI-ANNE LINDEVALDSEN

was admitted as an attorney and counselor entitled to practice law in all the Courts of the State of Florida on September 18, 2003, is presently in good standing, and that the private and professional character of the attorney appear to be good.

*WITNESS my hand and the Seal of the
Supreme Court of Florida at Tallahassee,
the Capital, this November 21, 2003.*

The seal of the Supreme Court of Florida is circular, featuring a central figure holding a scale and a sword, surrounded by the text "THE SUPREME COURT OF THE STATE OF FLORIDA".
Thomas D. Hall
Clerk
Clerk of the Supreme Court of Florida.

103

Form Number 368
Motion Reaction Form

Hold for memo until: _____

STATE OF VERMONT

<input type="checkbox"/> DISTRICT COURT OF VERMONT	Unit No.	Circuit/County	Docket Number
<input type="checkbox"/> SUPERIOR COURT OF VERMONT		Rutland	F459-1103 McD

Lisa Miller Jenkins v. Janet Miller Jenkins

ENTRY REGARDING MOTION

Title of Motion: Motion to Admit Attorney Rebecca Lindewaldson Pro Hac Vice

Date Motion Filed: 10/10/14

Party Filing Motion: Plaintiff/State _____
 Defendant _____
 Other Rebecca Lindewaldson

Date Response Filed: _____

("NONE" if None Filed)

/ Granted Compliance by _____

_____ Denied

_____ Scheduled for hearing on: _____ at _____; Time Allotted _____
(Date) (Time)

_____ Other

[Signature] Presiding Judge _____ Assistant Judge _____ Assistant Judge 10/18/14 Date

Date copies sent to:
 Plaintiff/State _____
 Defense _____
 Other _____

Clerk's Initials _____

Liberty Counsel

210 East Palmetto Avenue
Longwood, Florida 32750
(407) 875-2100 Telephone

<http://www.lc.org>
liberty@lc.org
(407) 875-0770 Fax

January 05, 2005

Clerk of the Court
Rutland Family Court
Rutland County Courthouse
83 Center Street
Rutland, VT 05701-4017

FILED
JAN 06 2005
RUTLAND FAMILY
COURT

Re: Miller, Lisa v. Jenkins, Janet
Ref. No: 4-42
Case No: Docket No. 454-11-03
Appeal: DOCKET NO. 2004-443

Dear Clerk of the Court:

Enclosed please find the Original plus two copies of the **Motion for Permission to Appeal** December 21, 2004 Order of Judge Cohen on the above-captioned file. This document is being submitted on behalf of the Plaintiff for your consideration at this time. Also enclosed is a self-addressed stamped envelope for return of a file-stamped copy of said document.

Copies of same have been provided for all parties. Thank you for your attention to this matter.

Sincerely,


Rena M. Lindevaldsen

RML/lkc
Enclosures

cc: Judy G. Barone, Esq.
Mary L. Bonauto, Esq.
David L. Cleary, Esq.
Lisa Miller
Theodore A Parisi, Jr., Esq.



STATE OF VERMONT
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT
DOCKET NO. 454-11-03

LISA MILLER-JENKINS,)
)
Plaintiff-Appellant,)
)
v.)
)
JANET MILLER-JENKINS,)
)
Defendant-Appellee.)

FILED

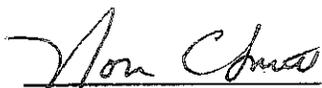
OCT 29 2007

RUTLAND FAMILY
COURT

NOTICE OF APPEAL

Notice is hereby given that the Plaintiff-Appellant named in the above caption, by and through her undersigned counsel, hereby appeals to the Vermont Supreme Court from the September 28, 2007 Entry Order entered in this action, a copy of which is attached hereto.

Respectfully submitted this 29th day of October, 2007.



Norman C. Smith
Vermont License No. 1182
76 Lincoln St
Essex Junction VT 05452
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(802) 879-9640 - Telefacsimile
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Attorneys for Plaintiff-Appellant



LIBERTY COUNSEL, INC. 01-93
P.O. BOX 540774
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WACHOVIA BANK, NA
ORLANDO, FL 32806
63-751/631

09648

October 26, 2007

PAY TO THE
ORDER OF

Vermont Supreme Court

\$ 225.00

*** Two Hundred Twenty Five and NO/100 *****

DOLLARS

Filing Fee
Notice of Appeal
RE: Rutland Family Court
Case No. 454-11-03
Miller-Jenkins v. Miller-Jenkins

Thay E. The Allister

MEMO

⑈009648⑈ ⑆063607513⑆ 2090000720592⑈

Liberty Counsel

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

AUG 2 2005

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July 28, 2005

Clerk of the Court
Vermont Supreme Court
109 State St
Montpelier, VT 05609-0801

Re: Miller, Lisa v. Jenkins, Janet
Ref. No: 4-42
Case No: Vermont Supreme Court, DOCKET NOS.
2004-443; 2005-030

Dear Clerk of the Court:

Enclosed please find an original and five copies of Notice of Unavailability.

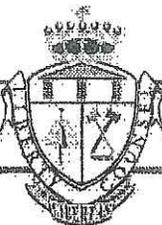
Copies of same have been provided for all parties. Thank you for your attention to this matter.

Sincerely,



Rena M. Lindevaldsen

LIBERTY COUNSEL



Post Office Box 540774
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Facsimile: 202-216-9656

Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 434-592-7000
Facsimile: 434-592-7700
liberty@LC.org

Reply to: Virginia

January 7, 2010

Via Facsimile (802) 786-5871
Clerk of the Court
Rutland Family Court
ATTN: Diane
9 Merchants Row
Rutland VT 05701

FILED
JAN - 7 2010

Re: Request for Appearance by Telephone; Hearing before The
Honorable William Cohen January 22, 2010; Miller, Lisa v.
Jenkins, Janet; Docket No. 454-11-03 Rddm; Ref. 4-42

Dear Clerk of Court:

As requested by the Court, this letter is to request permission of counsel for Plaintiff Lisa Miller (attorneys Stephen M. Crampton and Rena M. Lindevaldsen) to appear by telephone at the hearing scheduled for Friday, January 22, at 1:30PM EST as noticed on January 5.

Please confirm the Court's permission and any necessary pre-arrangements by telephone at the above Virginia office telephone number, or fax to my attention at 434-592-7700. Should any questions arise, you may reach me directly at 434-592-4880.

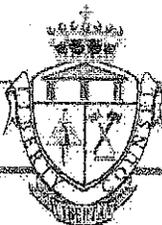
Sincerely,

Bonnie M. Gentry
Legal Assistant to Liberty Counsel

/bmg

cc: Stephen M. Crampton, Esq.
Rena M. Lindevaldsen, Esq.

LIBERTY COUNSEL



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Post Office Box 11108
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Telephone: 434-592-7000
Facsimile: 434-592-7700
liberty@LC.org

Reply to: Virginia

February 22, 2010

Via Facsimile (802) 786-5871

The Honorable Judge Cohen
Rutland Family Court
9 Merchants Row
Rutland, VT 05701

Re: Request to Participate by Telephone; Miller, Lisa v. Jenkins,
Janet; Docket No. 454-11-03 Rddm; Ref. 4-42

Dear Judge Cohen:

A few minutes ago, our offices spoke with Debbie Garro to bring to this Court's attention the fact that Steve Crampton, who was en route from Tupelo, Mississippi to Burlington, Vermont for the scheduled hearing before your Honor, is stuck in Detroit, Michigan as a result of snow. As the attached travel itinerary documents show, Mr. Crampton first departed at 7:00 am. The first flight connected through Memphis and then on to Detroit. He was scheduled to leave Detroit at 1:50 pm today for arrival in Burlington, VT today at 3:38 pm. The 1:50 pm flight was cancelled due to snow and the airline could not get him on another flight that could get him to the court before tomorrow's hearing. As a result, Mr. Crampton is requesting that he be permitted to participate by telephone for tomorrow's hearing.

Sincerely,

Rena M. Lindevaldsen

/ses

cc: Sarah Star (by fax)
Lisa Chalidze (by fax)
Tara Devine (by fax)
Michelle Kenny (by fax)
Norman Smith (by fax)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
) Case No. 1:14-CR-00175
) (RJA) (JJM)
 Plaintiff,)
)
 vs.) September 22nd, 2016
)
 PHILIP ZODHIATES,)
)
 Defendant.)

TRANSCRIPT OF TRIAL TESTIMONY OF WILLIAM SIDEBOTTOM
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: U.S. ATTORNEY'S OFFICE
BY: PAUL J. VAN DE GRAAF, ESQ.
11 Elmwood Avenue, 3rd Floor
Burlington, VT 05401

WILLIAM J. HOCHUL, JR.
UNITED STATES ATTORNEY
BY: MICHAEL DIGIACOMO, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: CONNORS LLP
BY: JAMES W. GRABLE, JR., ESQ.,
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Buffalo, NY 14202

GRAVEL & SHEA PC
BY: ROBERT B. HEMLEY, ESQ.
DAVID A. BOYD, ESQ.
76 St. Paul Street
P.O. Box 369
Burlington, VT 05402



1 APPEARANCES CONTINUED:

2 Court Reporter: MEGAN E. PELKA, RPR
3 Robert H. Jackson Courthouse
4 2 Niagara Square
5 Buffalo, NY 14202
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I N D E X

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E X H I B I T S

12			
13	GOVERNMENT	DESCRIPTION	PAGE
	Exhibit 125	Stipulation	16
14	Exhibit 57	Response Unlimited philipz@responseunlimited.com	
15		Re: FW: Response Unlimited 5/14/2007 (Bates 014616-014622)	16
16	Exhibit 59	Liberty Counsel Bluebook for Lisa Miller Prospecting Package	
17		(Bates 015559)	23
18	Exhibit 26	Response Unlimited philipz@responseunlimited.com	
19		Re: LISA MILLER 1/21/2009 (Bates 012048-012050)	26
20	Exhibit 28	Response Unlimited philipz@responseunlimited.com	
21		FW: Update on the Hearing in Lisa Miller's Case 1/29/2009	
22		(Bates 012452-012453)	30
23			
24			
25			

1 MR. VAN DE GRAAF: Your Honor, the next government
2 calls witness 27, Bill Sidebottom.

3 THE CLERK: Please state your full name and spell
4 your last name for the record.

5 THE WITNESS: William G. Sidebottom. Sidebottom is
6 S-I-D-E-B-O-T-T-O-M.

7 (The witness was sworn at 2:34 p.m.)

8

9 DIRECT EXAMINATION

10

11 BY MR. VAN DE GRAAF:

12 Q. Good afternoon, Mr. Sidebottom.

13 A. Good afternoon.

14 Q. Sir, where do you live currently?

15 A. I live in Forest, Virginia.

16 Q. And are you employed?

17 A. I am employed. I'm self-employed.

18 Q. What do you do for a living?

19 A. I work with non-profit organizations in developing
20 constituencies that support those non-profit organizations.

21 Q. When you say constituencies, what do you mean?

22 A. I mean a group of people that support any certain group
23 or cause or activity.

24 Q. Do you particularly specialize in certain kinds of causes
25 in your work?

1 Lisa Miller case for Liberty Counsel, or was this the only
2 one?

3 A. This is a prospecting package, but yes, we did do
4 mailings into the house -- those names that are already
5 supporters or donors of Liberty Counsel. We did do a package
6 on Lisa Miller.

7 Q. Okay. So, there's another package for the house people?

8 A. That's right.

9 Q. Let me show you what's marked for identification as
10 Exhibit 26. Do you see that?

11 A. I do.

12 MR. VAN DE GRAAF: Your Honor, this is subject to the
13 stipulation I read before, so I'd move the admission of
14 Government Exhibit 26, one of the emails from Response
15 Unlimited.

16 THE COURT: All right. It will be received.

17 MR. HEMLEY: No objection.

18 (Government Exhibit 26 was received in evidence.)

19 MR. VAN DE GRAAF: Ms. Whalen, if you could put
20 Exhibit 26 there at the top.

21 BY MR. VAN DE GRAAF:

22 Q. So, this is an email from Mr. Zodhiates. What's the date
23 of the email, according to this email?

24 A. January 21st, 2009.

25 Q. And who was the email sent to?

1 A. To myself, Bill Sidebottom, at my Liberty Counsel email
2 address.

3 Q. So, we have your sort of other address before. This was
4 your one within Liberty Counsel?

5 A. I always have two.

6 Q. And there's an attachment to the email. Do you notice
7 that?

8 A. I do.

9 Q. Now, could you just turn to the attachment, can you
10 describe, generally, to the jury, what the attachment is?

11 A. The attachment is an article that was published on
12 January 20th of 2009 by an internet news organization called
13 World Net Daily.

14 Q. Are you familiar with World Net Daily?

15 A. I am.

16 Q. What kind of publishing operation is that?

17 A. It has a conservative viewpoint. It's popular amongst
18 conservatives looking for news and interpretation of news.

19 Q. Now, if I could get back to the email. It reads: Bill,
20 is there no legal recourse for Lisa Miller? And it says:
21 See the attached article from WND. Is that --

22 A. World Net Daily.

23 Q. So, that's the attachment that's attached right to
24 Exhibit 26?

25 A. Right.

1 Q. What did you understand -- what do you understand
2 Mr. Zodhiates to mean by, is there no illegal recourse now
3 for Lisa Miller?

4 A. Well, as I have shared with you before, I had no memory
5 of this email at all until it was presented to me by the
6 State's attorney in 2014 and I think it was October probably.

7 Q. What do you understand it to mean?

8 A. In the after fact?

9 Q. Well, it's an email to you, correct?

10 A. Yes.

11 Q. And you know Mr. Zodhiates?

12 A. I do.

13 Q. And can you tell, in this email to you, what would you
14 understand Mr. Zodhiates to mean to you by, is there no legal
15 recourse now for Lisa Miller?

16 A. Well, then, this is my 2014 understanding. I mean, I
17 have no recollection at all of this email, but I would say
18 Philip is asking what is the legal position for Lisa Miller.
19 He's inquiring of me.

20 Q. Now, you said that you don't remember getting this email?

21 A. That's correct.

22 Q. Is it possible you responded to this email?

23 A. I have no record of that and I don't believe that I did.

24 Q. So, you don't think you responded?

25 A. I don't think I responded, no.

1 Q. Now, were you in a position in 2009 -- in January of
2 2009, to give legal opinions to anybody?

3 A. I was not. And that's the essence of probably why I
4 don't remember this, because I'm not an attorney and I'm not
5 a part of the litigation team at Liberty Counsel.

6 Q. Did you send it on to somebody associated with the legal
7 side?

8 A. I had no recollection that I ever even got this email
9 until you showed it to me in 2014, so I'm sure I did not send
10 it on.

11 Q. Now, knowing Mr. Zoghiates and seeing this email written
12 to you, it reads: If not, I'd like to suggest to her some
13 personal options which LC probably should not or would not
14 want to know about. Do you see that?

15 A. Yes.

16 Q. And what does LC stand for?

17 A. Liberty Counsel.

18 Q. What does probably should not or would not -- what would
19 you understand probably should not or would not want to know
20 about mean?

21 A. Well, I would think, as I did in 2014 when you showed
22 this to me, that it probably meant something outside of
23 Liberty Counsel.

24 Q. Well, what do you mean outside of Liberty Counsel, that
25 they wouldn't want to know about it?

1 A. Well, Philip works with several public interest law
2 firms. That's how he and I began our collaboration with
3 the National Legal Foundation and I know he works with four
4 or five others beyond Liberty Counsel. It could have been
5 that's what he meant, but I have no idea what he meant.

6 Q. And he ends by asking for her contact information, is
7 that right?

8 A. Yes. That's the last paragraph.

9 Q. Did you have her contact information?

10 A. I did not.

11 Q. Let me show you what's marked as Government Exhibit 28.

12 Do you see that?

13 A. I do.

14 MR. VAN DE GRAAF: Your Honor, I move the admission
15 of 28 under the same stipulation.

16 THE COURT: All right. It will be received.

17 MR. HEMLEY: I have no objection to it.

18 (Government Exhibit 28 was received in evidence.)

19 MR. VAN DE GRAAF: Could you call up Exhibit 28 at
20 the top of it there?

21 BY MR. VAN DE GRAAF:

22 Q. Now, this is eight days later and he's writing to your
23 same account, is that right?

24 A. That is correct.

25 Q. And he has forwarded something here -- we'll talk about

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
) Case No. 1:14-CR-00175
) (RJA) (JJM)
Plaintiff,)
)
vs.) September 23rd, 2016
)
PHILIP ZODHIATES,)
)
Defendant.)

TRANSCRIPT OF CONTINUATION OF TRIAL TESTIMONY OF
WILLIAM SIDEBOTTOM
BEFORE THE HONORABLE RICHARD J. ARCARA
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: U.S. ATTORNEY'S OFFICE
BY: PAUL J. VAN DE GRAAF, ESQ.
11 Elmwood Avenue, 3rd Floor
Burlington, VT 05401

WILLIAM J. HOCHUL, JR.
UNITED STATES ATTORNEY
BY: MICHAEL DIGIACOMO, ESQ.
ASSISTANT UNITED STATES ATTORNEY
138 Delaware Avenue
Buffalo, NY 14202

For the Defendant: CONNORS LLP
BY: JAMES W. GRABLE, JR., ESQ.,
1000 Liberty Building
Buffalo, NY 14202

GRAVEL & SHEA PC
BY: ROBERT B. HEMLEY, ESQ.
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APPEARANCES CONTINUED:

Court Reporter: MEGAN E. PELKA, RPR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, NY 14202

I N D E X

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E X H I B I T S

10			
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	Exhibit 26	8/25/09 Email	5
14	Exhibit 41	12/10/09 Email	5
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1 ask you about an email that the government introduced into
2 evidence yesterday as Government Exhibit 26. This is the
3 email.

4 MR. HEMLEY: Do you have a copy of that? This is
5 Government Exhibit 26. If we can put that up, please.

6 BY MR. HEMLEY:

7 Q. This is an email dated January 21, 2009, to which there
8 was attached a World Net Daily news item?

9 A. Yes.

10 Q. And it's from Philip Zodhiates to you and it asks: Bill,
11 is there no legal recourse now for Lisa Miller? See the
12 attached article from WND. If not, I'd like to suggest to
13 her some personal options, which LC probably should not or
14 would not want to know about. In other words, if there's
15 nothing else LC can do for her, I'd like some contact
16 information. Philip.

17 As I understand your testimony, you did not know
18 what to make of that email?

19 A. I have no remembrance of having received it on
20 January 21st, 2009.

21 Q. You did not -- you have no recollection of ever
22 discussing it with Mr. Zodhiates?

23 A. That's correct. I have no memory of any conversation
24 about this email.

25 Q. You have no recollection of Mr. Zodhiates ever pursuing

1 anything further about this, is that correct?

2 A. Not with me.

3 Q. As far as you can recall, Mr. Zodiates did not discuss
4 this with you at all?

5 A. That's correct.

6 Q. Now, we have looked at the Liberty Alerts, the most
7 recent one being 41, please.

8 MR. HEMLEY: Can we just put that up, please?

9 BY MR. HEMLEY:

10 Q. The email we just looked at was dated January of 2009?

11 A. Correct.

12 Q. This is a Liberty Alert dated December 2009, almost 12
13 months later?

14 A. Correct.

15 Q. In this Liberty Alert, 12 months later, there is a
16 continuing reference to Liberty Counsel being involved in
17 legal matters both in Virginia and in Vermont on this issue,
18 correct?

19 A. Correct.

20 MR. HEMLEY: Your Honor, at this time, I'm going to
21 ask some questions on direct examination, if I may. And I
22 want, in deference to the Court's order, to make that clear
23 that I'm now going to ask questions of Mr. Sidebottom, not on
24 cross, but as my own witness.

25 THE COURT: All right.

STATE OF VERMONT
RUTLAND COUNTY, SS

FILED

JAN 20 2010

Rutland Family Court

LISA MILLER-JENKINS,
Plaintiff-Respondent

RUTLAND FAMILY COURT

V.

JANET MILLER-JENKINS,
Defendant-Petitioner

DOCKET NO. F454-11-03Rddm

NOW COME Plaintiff's attorneys Liberty Counsel (Mathew D. Staver, Steve Crampton, Rena M. Lindevaldsen, David Corry, and Harry Mihet) and Norman C. Smith, pursuant to V.R.F.P. 15(f) and hereby request permission to withdraw their representation of Plaintiff Lisa Miller in the above-captioned matter in the Rutland Family Court as counsel for Plaintiff are unable to fulfill their duties as officers of the Court. In support of this Motion, Plaintiff's Counsel state as follows:

1. As stated in the accompanying affidavit of Rena M. Lindevaldsen, the last known address of Plaintiff is 203 B Green Tree Drive, Forest, Virginia 24551. However, Plaintiff's counsel has been unable to reach Plaintiff to verify that this is her present address. When asked by this Court during the December 22, 2009 hearing whether Attorney Lindevaldsen or Liberty Counsel had spoken with Plaintiff Lisa Miller since this Court issued its order on November 20, 2009, Attorney Lindevaldsen stated that neither she nor any other attorney in the firm had spoken with her since the order was issued. As set forth in the accompanying affidavit, Attorney Lindevaldsen has left voice mail messages several times for Ms. Miller since November 20, 2009, all of which have been unanswered. Accordingly, Plaintiff's Counsel is unable to provide Plaintiff with notice of this motion and asks that the requirement be waived pursuant to V.R.F.P. 15(f)(4).



2. Counsel request permission to withdraw as Plaintiff's attorney in this matter, while continuing as counsel for purposes of the current, pending appeal from this Court's November 20, 2009 order. As discussed below, in paragraph four, Counsel believe that they can continue as Plaintiff's attorneys for purposes of appealing the November 20, 2009 order.

3. First, Plaintiff's Counsel are no longer able to consult with their client concerning the means of accomplishing the client's objectives in the ongoing, or future, enforcement proceedings before this Court. Rules 1.2 and 1.4 of the Vermont Rules of Professional Conduct require that we (i) "abide by a client's decisions concerning the objectives of representation" and (ii) "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Given our inability to consult with our client, we are unable to consult with her about the means to accomplish her defense in the enforcement proceedings.

4. In contrast, Plaintiff's Counsel believe they are able to continue to represent Plaintiff for purposes of appealing the November 20, 2009 order because clear instructions were given to Plaintiff's counsel shortly after the August 21, 2009 hearing as to Plaintiff's desire to appeal any decision granting Defendant's motion to award her legal and physical custody of IMJ. The means of accomplishing that objective were also discussed - Plaintiff's Counsel would continue to press before the Vermont Supreme Court and United States Supreme Court her arguments that the orders treating Defendant as a parent to IMJ violate Plaintiff's constitutional rights.

5. Second, Plaintiff's Counsel request permission to withdraw as counsel because, aside from pointing out technical deficiencies in the current motion, or any future contempt or enforcement motions, of which this Court can itself consider sua sponte, Plaintiff's Counsel are not able to confer with their client to be able to mount a substantive defense to the motions on

her behalf. For example, this Court does not need the participation of Plaintiff's Counsel to inform it that (i) Defendant's motion for contempt is defective on its face, because the verification of Defendant is legally insufficient (stating that "the foregoing Petition for Expedited Enforcement is true and correct to the best of my knowledge"); (ii) the motion was not properly served, as required under Rule 4 (requiring personal service on the party, or at least service by mail); and (iii) the relief sought is futile or without legal authority. See generally Vt. Fam. Proc. Rules 4 and 16; see also *Levy v. Town of St. Albans Zoning Bd. of Adjustment* 152 Vt. 139, 145-146, 564 A.2d 1361, 1365 (Vt. 1989) (affidavit based only "upon information and belief" insufficient as a matter of law in summary judgment context); *In re Dobbins* 2007 WL 2501365 (Tex.App.- Dallas 2007) (striking affidavit attesting that facts were true "to the best of my knowledge") (emphasis added).

WHEREFORE, Plaintiff's Counsel move this Court to grant their motion to withdraw as Plaintiff's Counsel before the Family Court, and for such other and further relief to which they may be entitled.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the MOTION TO WITHDRAW AS COUNSEL and the AFFIDAVIT IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL has been furnished by regular U.S. Mail delivery and via facsimile this 20th day of January, 2010, to the following:

Sarah R. Star, Esq.
6 Mill Street
PO Box 106
Middlebury, VT 05753
Facsimile: (802) 419-3600
Attorney for Defendant

Michelle A. Kenny, Esq.
Kenlan Schwiebert Facey & Goss, P.C.
PO Box 578
Rutland, VT 05702
Facsimile: 802-775-1581
Attorney for the minor child

Tara J. Devine, Esq.
Lorentz Lorentz & Harnett
26 Court Street
Rutland VT 05701
Facsimile: 802-775-9896
Guardian ad Litem


Renia M. Lindevaldsen

STATE OF VERMONT
RUTLAND COUNTY, SS

FILED

JAN 20 2010

Rutland Family Court

LISA MILLER-JENKINS,
Plaintiff-Respondent

RUTLAND FAMILY COURT

V.

JANET MILLER-JENKINS,
Defendant-Petitioner

DOCKET NO. F454-11-03Rddm

AFFIDAVIT IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL

I, RENA M. LINDEVALDSEN, being duly sworn, hereby state as follows in support of the motion by Plaintiff's Counsel to withdraw:

1. Although the last known address of Plaintiff is 203 B Green Tree Drive, Forest, Virginia 24551, I, as counsel to Plaintiff, have not been able to reach Plaintiff to verify that this is her present address. When asked by this Court during the December 22, 2009 hearing whether I had spoken with Plaintiff Lisa Miller since this Court issued its order on November 20, 2009, I explained that I had not. To my knowledge, none of Plaintiff's attorneys has spoken to her since that time. I have left several voice mail messages for Ms. Miller, all of which have been unanswered.

Rena M. Lindevaldsen

Rena M. Lindevaldsen

CERTIFICATE OF NOTARY

STATE OF VIRGINIA:

The forgoing Affidavit was subscribed and sworn before me this 19th day of January, 2010 by Rena Lindevaldsen.

Beverly K. Smith

Notary Public

My commission expires the 31st day of August, 20 11.



Respectfully submitted,



Mathew D. Staver
Rena Lindevaldsen
Stephen M. Crampton
David M. Corry
Harry Mihet
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Attorneys for Plaintiff, Lisa Miller