

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

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

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**DEFENDANTS LIBERTY COUNSEL, MATHEW D. STAVER, AND  
RENA M. LINDEVALDSEN'S MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(2), Fed. R. Civ. P. 12(b)(3), Fed. R. Civ. P. 12(b)(6), and L.R. 7(a), Defendants Liberty Counsel, Mathew D. Staver (“Staver”), individually and as alleged agent of Liberty Counsel, and Rena M. Lindevaldsen (“Lindevaldsen”), individually and as alleged agent of Liberty Counsel, by and through the undersigned counsel, hereby submit this Motion to Dismiss Plaintiffs’ Revised Second Amended Complaint (dkt. 223, “RSAC”). Plaintiffs’ RSAC should be dismissed in its entirety as to these Defendants because this Court lacks personal jurisdiction over Liberty Counsel, Staver, and Lindevaldsen; venue is improper in this Court; and because Plaintiffs’ RSAC fails to state a claim upon which relief can be granted against Liberty Counsel, Staver, and Lindevaldsen.

A memorandum in support of this Motion is filed concurrently herewith.

Respectfully submitted,

Dated: June 5, 2017

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individual capacities)*

\*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

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|                            | ) |                          |

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS  
LIBERTY COUNSEL, MATHEW D. STAVER, AND RENA M.  
LINDEVALDSEN’S SPECIAL MOTION TO STRIKE PLAINTIFFS’  
CLAIMS PURSUANT TO VERMONT’S ANTI-SLAPP STATUTE**

Defendants Liberty Counsel, Mathew D. Staver (“Staver”), individually and as alleged agent of Liberty Counsel, and Rena M. Lindevaldsen (“Lindevaldsen”), individually and as alleged agent of Liberty Counsel (collectively “Defendants”), by and through the undersigned counsel, hereby submit this memorandum of law in support of their Special Motion to Strike under 12 Vt. Stat. Ann. § 1041(a). For the reasons that follow, all claims in Plaintiffs’ (“Jenkins”) Revised Second Amended Complaint (“RSAC”) against Liberty Counsel, Staver, and Lindevaldsen should be dismissed in their entirety.

**INTRODUCTION**

Jenkins’ RSAC represents an astounding and unconscionable attempt to punish and silence the protected speech of Liberty Counsel, Staver, and Lindevaldsen. Jenkins’ RSAC paints a fanciful narrative concerning a wide-ranging alleged conspiracy spanning over 13 years, four states, and five countries. Yet, Jenkins’ allegations concerning Liberty Counsel, Staver, and

Lindevaldsen arise from nothing more than the exercise of their right to free speech and from their lawful representation of Miller in a previous state-court matter. Both their speech and their lawful representation of Miller are protected activities under Vermont's anti-SLAPP statute. 12 Vt. Stat. Ann. § 1041. Thus, boiled down to their essence, Jenkins' claims are nothing more than a direct assault on the inviolable right which "lies at the foundation of free government by free men." *Schneider v. N.J.*, 308 U.S. 147, 151 (1939). Such a brazen attempt to punish speech cannot be permitted. Indeed, preventing such attacks on free speech is the *raison d'être* for Vermont's anti-SLAPP statute. *See Felis v. Downs Ranchlin Martin PLLC*, 133 A.3d 836, 847 (Vt. 2015) (noting that the purpose of Vermont's anti-SLAPP statute is to prevent the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights to freedom of speech and freedom to petition the government"). Jenkins' RSAC must be dismissed.

### ARGUMENT

Vermont's anti-SLAPP statute provides that "[a] defendant in an action arising from the defendant's exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution may file a special motion to strike under this section." 12 Vt. Stat. Ann. § 1041(a).

Analysis under the anti-SLAPP statute proceeds through a two-step burden-shifting process. First, the party bringing the motion to strike must make a threshold showing that the case arises from his or her exercise of the freedom of speech or freedom to petition the government. A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause of action fits one of the categories spelled out in subsection (i) of the anti-SLAPP statute. If the court concludes that this showing has been made, the burden shifts to the plaintiff. At this stage, the court must grant the special motion to strike unless the plaintiff shows that "the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law[,] and . . . the defendant's acts caused actual injury to the plaintiff."

*Haywood v. St. Michael's College*, No. 2:12-CV-164, 2012 WL 6552361 (D. Vt. Dec. 14, 2012)

(quoting 12 Vt. Stat. Ann. § 1041) (emphasis added); *see also Felis v. Downs Rachlin Martin PLLC*, 133 A.3d 836, 848-49 (Vt. 2015).

Vermont’s anti-SLAPP statute protects a defendant’s exercise of the right to free speech when it involves *inter alia* “any written or oral statement made before a legislative, executive, or judicial proceeding,” “any written or oral statement concerning an issue of public interest made in a public forum,” and “any other statement or conduct concerning a public issue or an issue of public interest.” 12 Vt. Stat. Ann. § 1041(i). As the Vermont Supreme Court has recognized, the purpose of the anti-SLAPP statute is to protect “First Amendment rights and to prevent the misuse of the courts as a vehicle to punish people for expressing their opinions on issues of *public interest*.” *Felis*, 133 A.3d at 848 (emphasis original).

Liberty Counsel, Staver, and Lindevaldsen easily satisfy the threshold requirement because Jenkins’ allegations in the RSAC concerning these Defendants all arise from the exercise of their right to free speech and to petition the government. Thus, “the **law plainly places the burden on [Jenkins]** to show that defendants’ exercise of their right to freedom of speech was devoid of any reasonably factual support and any arguable basis in law and that defendants’ acts caused actual injury.” *Chandler v. Rutland Gerald Publ’g*, No. 2015-265, 2015 WL 7628687 \*2 (Vt. Nov. 1, 2015) (emphasis added). Because Jenkins cannot satisfy this demanding burden, “the court **must** grant the motion to strike.” *Id.* at \*1 (emphasis added).

**I. JENKINS’ RSAC MUST BE DISMISSED AGAINST LIBERTY COUNSEL, STAVER, AND LINDEVALDSEN BECAUSE IT ARISES SOLELY FROM AND IS BASED ENTIRELY UPON DEFENDANTS’ RIGHT TO FREE SPEECH IN CONNECTION WITH A PUBLIC ISSUE.**

Liberty Counsel, Staver, and Lindevaldsen easily satisfy the threshold requirement under Section 1041(a). Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen arise entirely from the exercise of their right to free speech and to petition the government. Liberty Counsel,

Staver, and Lindevaldsen's exercise of their right to free speech was in connection with an issue of public interest.

**A. Jenkins' Claims Against Liberty Counsel, Staver, and Lindevaldsen Arise Entirely From The Exercise Of Their Right To Free Speech Under The United States Constitution.**

The allegations of Jenkins' RSAC demonstrate that the claims against Liberty Counsel, Staver, and Lindevaldsen arise entirely from their protected First Amendment activity and from their lawful representation of Miller in a previous proceeding. Their speech and alleged conduct thus falls squarely under the protection of the anti-SLAPP statute and cannot serve as the basis for a lawsuit "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and freedom to petition the government for the redress of grievances." *Felis*, 133 A.3d at 847.

As the statute makes plainly evident, "**any written or oral statement** made before a . . . judicial proceeding" is protected. 12 Vt. Stat. Ann. § 1041(i)(1) (emphasis added). The vast majority of Jenkins' allegations arise from Liberty Counsel, Staver, or Lindevaldsen's lawful and ethical representation of Miller in a **judicial proceeding**. (RSAC ¶ 21) (alleging that Staver and Lindevaldsen agreed to represent Miller in previous matter); (*id.* ¶ 31) (alleging that Staver and Lindevaldsen appeared in Virginia court); (*id.* ¶ 32) (alleging that "Miller's attorneys" participated in hearings via telephone); (*id.* ¶ 41) (alleging that Liberty Counsel allegedly provided certain advice to Miller); (*id.* ¶ 49) (alleging that Liberty Counsel filed an appeal on behalf of their client Miller); (*id.* ¶ 50) (alleging that Lindevaldsen testified to courts in Vermont regarding her representation of Miller); (*id.* ¶ 57) (alleging that Liberty Counsel attorneys told courts they did not know of Miller's whereabouts); (*id.* ¶ 61) (alleging that "Miller's attorneys" continued to press appeals until they were exhausted).

These allegations all arise from Liberty Counsel, Staver, and Lindevaldsen's exercise of their right to free speech, and all such allegations involve alleged activity unquestionably protected by the First Amendment. Indeed, agreeing to represent a client and advocating on their behalf (RSAC ¶21) involves protected speech. *See, e.g., NAACP v. Button*, 371 U.S. 415, 436 (1963). Liberty Counsel, Staver, and Lindevaldsen's statements made during the course of their representation of Miller (RSAC ¶¶ 31, 32, 41, 49, 50, 57, 61) all constitute protected speech. *See, e.g., Legal Servs. Corp. v. Valazquez*, 531 U.S. 533 (2001) (arguments of counsel on behalf of client are protected speech); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (legal advice is protected speech); *King v. Governor of New Jersey*, 767 F.3d 216, 225 (3d Cir. 2016) ("the Supreme Court had no difficulty characterizing legal counseling as 'speech'") (citing *Holder*, 561 U.S. at 28); *Batagiannis v. West Lafayette Cmty. Sch. Corp.*, 454 F.3d 738, 742-43 (7th Cir. 2006) (speech of attorneys in court is protected by the First Amendment).

Other of Jenkins' allegations involve a combination of the protection of Section 1041(i)(1) and the protection afforded under Section 1041(i)(4), which extends protection to "any other statement or conduct concerning a public issue or an issue of public interest which furthers the exercise of the constitutional right to freedom of speech." 12 Vt. Stat. Ann. § 1041(i)(4). Indeed, some allegations concern statements made during the course of Liberty Counsel, Staver, and Lindevaldsen's representation of Miller in a judicial proceeding and other statements and conduct exercised in support of that representation. (RSAC ¶ 26) (alleging that Miller's attorneys established a Facebook page to inform the public of Miller's case and solicit support); (*id.* ¶ 29) (alleging that Liberty Counsel attorneys attempted to raise money to support their pro bono representation of Miller in a judicial proceeding); (*id.* ¶ 31) (alleging that Staver and Lindevaldsen appeared at a press conference on Miller's behalf outside a Virginia courthouse); (*id.* ¶ 61)

(alleging that Staver and Lindevaldsen stated in media appearances that they did not know of their client's whereabouts); (*id.* ¶ 62) (alleging that Lindevaldsen wrote a book about her representation of Miller in a judicial proceeding and that Staver and Lindevaldsen appeared on radio and television to promote the book).

Under unequivocal First Amendment precedent, all such allegations are unquestionably directed at protected speech. Jenkins' allegations concerning Liberty Counsel, Staver, and Lindevaldsen's alleged attempts to raise money to support their representation of Miller in a judicial proceeding (RSAC ¶¶ 26, 29) involve speech and conduct unquestionably protected by the First Amendment. *See, e.g., Village of Schaumburg v. Citizens for a Better Env.*, 444 U.S. 620, 629 (1980) ("soliciting funds involves interests protected by the First Amendment's guarantee of freedom of speech"); *Bates v. State Bar of Arizona*, 433 U.S. 350, 363 (1977) ("our cases have long protected speech even though it is in the form of . . . solicitation to pay or contribute money"). Jenkins' allegations concerning the establishment of a Facebook page to help solicit funds (RSAC ¶21) also unquestionably attack activity protected by the First Amendment. *See Grutzmacher v. Howard Cnty.*, 851 F.3d 332 (4th Cir. 2017) (Facebook postings are protected speech); *Keefe v. Adams*, 840 F.3d 523 (8th Cir. 2016) (Facebook postings are protected speech and "[t]he First Amendment fully applied to that speech"). Jenkins' allegations concerning Staver and Lindevaldsen attending a press conference (RSAC ¶ 31) also arise from protected speech. *See Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991) (attorney holding press conference about representation of client is "pure speech"). Jenkins' allegations concerning Lindevaldsen writing a book about her representation of Miller in a judicial proceeding and Staver and Lindevaldsen appearing on television and radio to discuss that book (RSAC ¶ 62) arise from unquestionably protected speech. *See, e.g., Simon & Schuster, Inc. v. Members of N.Y. State Crime*

*Victims Bd.*, 502 U.S. 105, 116 (1991) (writing and publishing books are protected speech); *Mandel v. Cnty. Of Suffolk*, 316 F.3d 368 (2d Cir. 2003) (media interviews are protected speech); *Eisenhour v. Weber Cnty.*, 744 F.3d 1220 (10th Cir. 2014) (same).<sup>1</sup>

**B. Liberty Counsel, Staver, and Lindevaldsen’s Exercise Of Their Right To Free Speech Was In Connection With Issues Of Public Interest.**

Speech deals with a matter of public interest “when it can be fairly considered as relating to any matter of political, social, or other concerns to the community . . . or when it is the subject of legitimate news interest, that is, a subject of general interest and of value and concern to the public.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (internal citations omitted); *see also Lane v. Franks*, 134 S. Ct. 2369, 2380 (2014) (same). The allegations of Jenkins’ RSAC all demonstrate that Liberty Counsel, Staver, and Lindevaldsen’s speech dealt with matters of significant public concern. Defendants therefore easily satisfy the threshold requirements for protection under the anti-SLAPP statute.

First, Liberty Counsel, Staver, and Lindevaldsen’s speech all arose out of their representation of Miller in a judicial proceeding concerning issues related to homosexuality, same-sex marriage/civil unions, and children. (RSAC ¶¶ 18-19). The cases demonstrating the extraordinary public interest in such topics are legion. *See, e.g., Snyder*, 562 U.S. at 454 (speech relating to matters of homosexuality “are matter of public import” and “fairly characterized as

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<sup>1</sup> Jenkins’ RSAC contains only four additional allegations concerning Liberty Counsel, Staver, or Lindevaldsen. (RSAC ¶¶ 44-46, 60). However, the allegation in RSAC ¶ 60 alleges no activity on the part of these Defendants and merely notes that certain telephone lines registered to Liberty Counsel allegedly were called by Zodhiates. The allegation also ignores substantial evidence presented to this Court concerning the alleged phone call. *See Memorandum in Support of Motion to Dismiss at Argument*, Section III.A.3 and n.6. The only other allegations concern only Lindevaldsen and completely mischaracterize Jenkins’ own evidence, intentionally omit critical facts from her own evidence, and are designed only to mislead this Court concerning such allegations. *See Memorandum in Support of Motion to Dismiss at Factual Background*, Section IV.C.

constituting speech on a matter of public concern”); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015) (noting the significant and expansive public interest in issues surrounding homosexuality and same-sex marriage); *id.* at 2638 (Thomas, J., dissenting) (noting that the topics of homosexuality and same-sex marriage have been the “subject of heated debate in the States” and garnered the public interest of every state in the nation); *United States v. Windsor*, 133 S. Ct. 2675 (2013) (noting the significant public interest in same-sex marriage issues); *id.* at 2710-11 (Scalia, J., dissenting) (noting that the topics of homosexuality and same-sex marriage result in extraordinary public interest and stating that “[f]ew public controversies touch on an institution so central to the lives of so many, and few inspire such attendant passion by good people on all sides”); *Sable Commc’ns of Cal., Inc. v. F.C.C.*, 492 U.S. 115 (1989) (noting that the protection of children is certainly of public interest); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (significant public interest in protecting children). Because Jenkins’ allegations concerning Liberty Counsel, Staver, and Lindevaldsen all arise from speech related to their representation of Miller in a judicial proceeding concerning topics of significant public interest (RSAC ¶¶ 21, 26, 29, 31, 32, 41, 49, 50, 57, 61, 62), their speech is necessarily in connection with an issue of public interest. It therefore falls squarely under the protection of the anti-SLAPP statute.

Liberty Counsel, Staver, and Lindevaldsen’s speech is also necessarily connected to a matter of public interest by virtue of being specifically tied to their representation of Miller in a judicial proceeding. Since time immemorial, courts have recognized that speech in connection with and occurring in a judicial proceeding is of vital public concern. *See, e.g., Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991) (holding that an attorney’s speech in a press conference concerning ongoing judicial proceedings was certainly connected to the public interest in the court’s operations); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) (noting

that the First Amendment and the common law recognize the significant public interest pertaining to court proceedings); *Datson v. Bravo*, 321 F.3d 663, 668 n.4 (7th Cir. 2003) (noting the significant public interest of court proceedings and that it arises from the fact that “the public has a right to know who is using the courts”). Thus, Liberty Counsel, Staver, and Lindevaldsen’s speech concerning the judicial proceedings in their client’s previous matter occurred in connection with an issue of public concern. “Plainly, it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which [judicial proceedings] are conducted.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980).

That Liberty Counsel, Staver, and Lindevaldsen’s speech was made on behalf of their client in some instances does not diminish in any respect the protection afforded to their speech under the anti-SLAPP statute. Indeed, “[t]he statute does not require that a defendant moving to strike demonstrate that its protected statements or writings were made *on its own behalf*.” *Haywood v. St. Michael’s College*, No. 2:12-CV-164, 2012 WL 6552361 (D. Vt. Dec. 14, 2012) (emphasis original). Thus, Liberty Counsel, Staver, and Lindevaldsen’s speech on their own behalf and on behalf of their client falls squarely within the protection of the anti-SLAPP statute.

## **II. JENKINS CANNOT SATISFY HER DEMANDING BURDEN UNDER VERMONT’S ANTI-SLAPP STATUTE.**

Because Liberty Counsel, Staver, and Lindevaldsen have made the threshold showing that the allegations of Jenkins’ RSAC arise from the exercise of their right to free speech under the First Amendment, “the court must grant the motion to strike unless the plaintiff shows that (A) the defendant’s exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and (B) the defendant’s acts cause actual injury to the plaintiff.” *Chandler v. Rutland Gerald Publ’g*, No. 2015-265, 2015 WL 7628687 \*2 (Vt. Nov. 1, 2015). The law “plainly places the burden” on Jenkins. *Id.* Indeed, once the threshold

showing under the anti-SLAPP statute has been made, “**defendants ha[ve] no burden.**” *Id.* at \*1 (emphasis added). To satisfy the burden that clearly falls on Jenkins’ shoulders, “generalized contentions are insufficient.” *Id.* at \*2.

**A. Jenkins Cannot Demonstrate That Liberty Counsel, Staver, Or Lindevaldsen’s Exercise Of Their Right To Free Speech Was Devoid Of Factual Support Or Arguable Basis In Law.**

In considering this element of Jenkins’ burden, this Court has often looked at the merits of a defendant’s motion to dismiss. *See Haywood*, 2012 WL 6552361 at \*15 (considering the arguments of a defendant’s motion to dismiss to determine whether his speech had an arguable basis in law). “At the very least, to meet the first prong of this test, Plaintiff must demonstrate that his claim is legally sufficient.” *Id.* For the numerous reasons demonstrated in Liberty Counsel, Staver, and Lindevaldsen’s motion to dismiss, Jenkins has not and cannot prove that her claims are legally sufficient. Indeed, each one of them fails as a matter of law for myriad reasons:

- Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen are grossly untimely and thus must be dismissed against these Defendants. *See Memorandum in Support of Motion to Dismiss at Argument, Section I.*
- Jenkins’ purported next-friend claims against Liberty Counsel, Staver, and Lindevaldsen do not and cannot save her untimely RSAC. *See id.* at Section II.
- This Court lacks personal jurisdiction over Liberty Counsel, Staver, and Lindevaldsen. *See id.* at Section III.
- This Court is not the proper venue for Jenkins’ claims against Liberty Counsel, Staver, and Lindevaldsen. *See id.* at Section IV.
- Jenkins’ custodial interference claims fail to state a claim as a matter of settled law. *See id.* at Section V.A.1-2.

- Jenkins' purported custodial interference claim on behalf of Isabella fails to state a claim as a matter of law. *See id.* at Section V.A.3.
- Jenkins cannot state a claim for civil conspiracy. *See id.* at Section V.B.
- Jenkins cannot state a claim for aiding and abetting liability. *See id.* at Section V.C.
- Jenkins' Section 1985(3) claims against Liberty Counsel, Staver, and Lindevaldsen fail to state a claim. *See id.* at Section V.D.1-3.
- Jenkins' purported Section 1985(3) claims on behalf of Isabella fail to state a claim as a matter of law. *See id.* at Section V.D.4.

Thus, because Jenkins' claims are time barred, jurisdictionally improper, and fail to state a claim upon which relief can be granted, she cannot satisfy her high burden of demonstrating that her claims are legally sufficient. *Haywood*, 2012 WL 6552361 at \*15. Indeed, because Jenkins' claims must be dismissed against Liberty Counsel, Staver, and Lindevaldsen, the exercise of their First Amendment rights "have much more than an **arguable** basis in law; **they have a decidedly firm basis in law.**" *Id.* (emphasis added). Jenkins' cannot satisfy her burden under the first prong of the burden shifting analysis in Vermont's anti-SLAPP statute. Liberty Counsel, Staver, and Lindevaldsen's motion to strike must therefore be granted and all claims against them dismissed.

**B. Jenkins Cannot Demonstrate That Liberty Counsel, Staver, Or Lindevaldsen's Exercise Of Their Right To Free Speech Caused Jenkins Actual Injury.**

Where, as here, Jenkins cannot show that "the petitioning activity in issue was devoid of any reasonable factual basis or basis in law, it is not necessary to reach the question whether the activity caused the plaintiffs actual injury." *Office One, Inc. v. Lopez*, 769 N.E.2d 749, 758 (Mass. 2002). This is because, as the Vermont Supreme Court recognized, once the threshold showing has been made, Liberty Counsel, Staver, and Lindevaldsen "have no burden." *Chandler*, 2015 WL

7628687 at \*1. Because Jenkins' RSAC is time barred, jurisdictionally improper, and fails to state a claim as a matter of law against Liberty Counsel, Staver, and Lindevaldsen, this Court need not even consider the actual damage prong. If the burden shifting "standard is not met for one or both elements, the special motion to dismiss must be allowed." *Wenger v. Aceto*, 883 N.E.2d 262, 265 (Mass. 2008).

Nevertheless, even if Jenkins could somehow demonstrate that her claims had any legal sufficiency, which she cannot, Liberty Counsel, Staver, and Lindevaldsen's special motion to strike must still be granted unless she can demonstrate actual injury **caused** by Liberty Counsel, Staver, and Lindevaldsen's protected speech. She simply cannot do so. To satisfy the second prong of her burden, Jenkins must demonstrate with specificity that Liberty Counsel, Staver, and Lindevaldsen caused her actual injury. "[G]eneralized contentions are insufficient to meet [her] burden." *Chandler*, 2015 WL 7628687 at \*3. Jenkins cannot rest her claims against Liberty Counsel, Staver, and Lindevaldsen on a "highly speculative" assertion of actual injury caused by these Defendants. *Haywood*, 2012 WL 6552361 at \*16. Indeed, a showing of actual injury requires Jenkins to demonstrate "affirmative evidence of an injury." *Lynch v. Christie*, 815 F. Supp. 2d 341, 350 (D. Me. 2011). Most importantly, Jenkins must "meet her burden to prove causation through prima facie evidence." *Camden Nat'l Bank v. Weintraub*, 143 A.3d 789, 794 (Me. 2016) (the second element in the burden shifting analysis "**requires the nonmoving party to show that the moving party's acts caused actual injury to the responding party.**" (bold emphasis added; italics original)).

For any one of numerous reasons, Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, or Lindevaldsen caused her actual injury as a result of their protected speech:

- Jenkins' custodial interference claim against Liberty Counsel, Staver, and

Lindevaldsen fails to state a claim as a matter of law because she cannot allege that Liberty Counsel, Staver, and Lindevaldsen engaged in any acts post-January 1, 2010 when she became entitled to custody. *See* Memorandum in Support of Defendants' Motion to Dismiss at Argument, Section V.A.2.

- Jenkins' civil conspiracy claim against Liberty Counsel, Staver, and Lindevaldsen fails as a matter of law because she has failed to allege any agreement and cannot allege any underlying act liability. *See id.* at Section V.B.
- Jenkins' aiding and abetting claim against Liberty Counsel, Staver, and Lindevaldsen fails to state a claim as a matter of law because Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen's speech activities were part of some common design or plan or that they engaged in any tortious act. *See id.* at Section V.C.1.
- Jenkins' aiding and abetting claim against Liberty Counsel, Staver, and Lindevaldsen fails to state a claim as a matter of law because Jenkins has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen knew of Miller's alleged plans, that they provided substantial assistance to Miller in the carrying out of those alleged plans, or that they were the proximate cause of Jenkins' alleged injuries. *See id.* at Section V.C.2-3.
- Jenkins' Section 1985(3) claims against Liberty Counsel, Staver, and Lindevaldsen fail to state a claim as a matter of law. *See id.* at Section V.D.1-3.
- Jenkins' purported Section 1985(3) claims on behalf of Isabella also fail to state a claim as a matter of law. *See id.* at Section V.D.4.

Because all of Jenkins' claims against Liberty Counsel, Staver, and Lindevaldsen fail to

state a claim upon which relief can be granted, she simply has not and cannot demonstrate that Liberty Counsel, Staver, and Lindevaldsen's protected speech caused her any injury whatsoever. Her generalized claims that her alleged injuries were the result of the actions of these Defendants fall far short of the mark. She therefore cannot meet her burden under the second prong of the anti-SLAPP statute. Liberty Counsel, Staver, and Lindevaldsen's special motion to strike "must be granted." 12 Vt. Stat. Ann. § 1041(e).

### **CONCLUSION**

Because Liberty Counsel, Staver, and Lindevaldsen satisfy the threshold burden to demonstrate that Jenkins' claims against them are based upon and arise from the exercise of their right to free speech under the United States Constitution, Jenkins has the burden to show that her claims are legally sufficient and that Liberty Counsel, Staver, and Lindevaldsen caused her actual injury. Jenkins' RSAC is devoid of any support for such a showing, her claims are without merit, and these Defendants caused her no injury. Liberty Counsel, Staver, and Lindevaldsen's special motion to strike under Vermont's anti-SLAPP statute must be granted.

Respectfully submitted,

Dated: June 5, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of June, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

|                            |   |                          |
|----------------------------|---|--------------------------|
| _____                      | ) |                          |
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|                            | ) | Docket No. 2:12-cv-00184 |
| v.                         | ) |                          |
|                            | ) |                          |
| KENNETH L. MILLER, ET AL., | ) |                          |
|                            | ) |                          |
| Defendants.                | ) |                          |
| _____                      | ) |                          |

**AFFIDAVIT OF MATHEW D. STAVER IN SUPPORT OF DEFENDANTS MATHEW STAVER, RENA LINDEVALDSEN, AND LIBERTY COUNSEL’S MOTION TO DISMISS PLAINTIFFS’ REVISED SECOND AMENDED COMPLAINT**

1. I, Mathew D. Staver, am over the age of 18 years. The statements in this Affidavit are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently, and having been first duly sworn, do hereby depose and state as follows:

2. I am an attorney licensed to practice law in Florida since 1987, and, at all times relevant to this case, was and remain a resident of the State of Florida.

3. 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, the District of Columbia, 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 am AV rated by Martindale-Hubble. I received a Bachelor of Arts degree *Cum Laude*, a Master of Arts

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

4. 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 always been headquartered in Florida since its inception. In 2005 and 2007, branch offices were opened in Virginia and the District of Columbia. Contrary to the Revised Second Amended Complaint (“Rev. Sec. Amend. Compl.”) in ¶16, Liberty Counsel’s principal place of business has always been Florida. It has never been Virginia or elsewhere.

5. From 1989 until May 2006, I was the President and General Counsel of Liberty Counsel. Beginning on or about May 15, 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 certain active cases and continued to argue some motion hearings and select appellate cases for Liberty Counsel throughout the country. My appearances and representation were always and only in my role with Liberty Counsel.

6. I served as Dean and Professor of Law with Liberty University School of Law from May 15, 2006 until the end of 2014. I committed to working with Liberty University School of Law through all stages of the initial accreditation years. My resignation as Dean of Liberty University School of Law had nothing to do with anyone or anything associated with Lisa Miller or her case. 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 new fully approved law school must have a follow up site visit three years after obtaining full approval, and thereafter obtain reaffirmation of continuing approval. The ABA reaffirmation 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. On October 17, 2014, I provided notice to the President of Liberty University of my transition from the Dean position. My tenure as Dean and Professor of Law concluded at the end of December 2014. During the time I served as Dean and Professor of Law from May 15, 2006 to the end of 2014, I continued in my role as Founder and Chairman of Liberty Counsel appearing in a limited capacity on certain cases, primarily at the appellate level. As already noted, at all times my appearances and representation was solely and only on behalf of Liberty Counsel. Contrary to the allegations in the Rev. Sec. Amend. Compl. in ¶¶21 and 31, neither Rena Lindevaldsen, nor I were attorneys or lawyers for Liberty University or Liberty University School of Law regarding Lisa Miller or her case.

7. I first became aware of Lisa Miller when I was President and General Counsel of Liberty Counsel sometime in 2004. On or about October 2004, Liberty Counsel agreed to represent Lisa Miller who resided in Virginia. At that time Rena Lindevaldsen was Senior Litigation Counsel with Liberty Counsel. She and I both worked full-time with Liberty Counsel out of the Florida headquarters and were not employed by Liberty University or Liberty University School of Law.

8. The Rev. Sec. Amend. Compl. alleges in ¶21 that “in 2004 she [Linda Wall] was contacted by attorney Rena Lindevaldsen, of Liberty University and was asked to meet with Lisa Miller to screen her for representation by lawyers working at Liberty University and its related law firm, Liberty Counsel, LLC. After this screening, Lisa Miller was accepted for

representation by Liberty University attorneys, and also formed a friendship with Defendant Wall. Lisa Miller's lead attorneys were Dean of the Law School Mathew Staver, and Rena Lindevaldsen, a law professor." First, neither I nor Lindevaldsen worked at Liberty University in 2004. I did not become the Dean of Liberty University School of Law until May 15, 2006. In 2004, Lindevaldsen worked full-time with Liberty Counsel in Florida. She became a part-time adjunct professor of law at Liberty University School of Law in August 2005, but she continued working full-time with Liberty Counsel. In August 2006, when Lindevaldsen joined the law faculty at Liberty University School of Law, she ceased her full-time work with Liberty Counsel. She continued to serve in a limited independent contractor role for Liberty Counsel on Lisa Miller's case. Lindevaldsen never appeared on behalf of Liberty University or Liberty University School of Law or represented anyone in her capacity with Liberty University or Liberty University School of Law. Second, no one acting in the capacity of an attorney or an employee of Liberty University or Liberty University School of Law ever provided legal assistance, representation, or counsel to Lisa Miller or anyone associated with her case. Third, at the time Lindevaldsen and I became legal counsel for Lisa Miller on or about October 2004, we were working in our full-time capacity with Liberty Counsel in Florida. At no time did either of us represent Lisa Miller on behalf of or in association with Liberty University or Liberty University School of Law. All representation was provided through Liberty Counsel, separate and apart from Liberty University and Liberty University School of Law. Fourth, Linda Wall has never been an employee or agent or representative of Liberty Counsel, Liberty University, or Liberty University School of Law.

9. Liberty Counsel is a separate entity from Liberty University and Liberty University School of Law. It has been incorporated in Florida since 1989 as a nonprofit

organization. Contrary to the Rev. Sec. Amend. Compl. in ¶16, Liberty Counsel is not an LLC. It is not a law firm or legal arm of Liberty University. Liberty Counsel has its own attorneys, administration, and staff who oversee and manage its day-to-day operations. Liberty University is incorporated in the Commonwealth of Virginia and began in or about 1971. Liberty Counsel is headquartered in Florida and governed by a separate and independent board of directors. Liberty University is headquartered in Virginia, governed by a separate and independent board of trustees, and has never had governing, management, or control over Liberty Counsel. Liberty Counsel and Liberty University are legally and corporately separate and distinct entities.

10. On or about August 12, 2012, Plaintiffs filed the initial Complaint, naming several defendants, including Liberty University School of Law. Plaintiffs filed an amended Complaint after discovering that Liberty University School of Law is not a separate entity of Liberty University, thereby dropping Liberty University School of Law and naming Liberty University. The Complaint and Amended Complaint did not name Liberty Counsel, Lindevaldsen, or me.

11. On November 12, 2012, I executed an Affidavit in support of a Motion to Dismiss filed by Liberty University (Dkt. 66-4). I hereby adopt and reaffirm that Affidavit in its entirety, except to note that I am no longer employed by Liberty University. On November 18, 2016, I executed an Affidavit filed by Liberty University in response to Plaintiffs' Motion to Lift Stay and Join Additional Defendants (Dkt. 213-1). That Affidavit is also hereby adopted and reaffirmed, except to note that in ¶16, "November 2008" should be "February 2008." Nothing else has changed and there is no evidence that supports Plaintiffs' Rev. Sec. Amend. Compl. regarding Liberty Counsel, Liberty University, Lindevaldsen, or me. I had no knowledge of Lisa Miller's intent or plan to leave the country or knowledge of anyone who may have encouraged,

assisted or participated in her departure, concealment, or evasion of the law. I have only read about these allegations in the charging affidavit for Timothy Miller (Dkt. 76-15), the media, and in Plaintiffs' pleadings. I never counseled or suggested to Lisa Miller or anyone else that she should evade the jurisdiction of the courts, disobey any court order, or disappear. Lisa Miller was always counseled to obey all court orders. Contrary to the Rev. Sec. Amend. Compl. in the first paragraph on page 2, from the inception of representation in 2005 until she disappeared and ceased all contact in September 2009, Lisa Miller's legal options had not been exhausted as her legal cases were active and pending in Vermont and Virginia.

12. As I testified in my above-referenced Affidavit in 2012 (Dkt. 66-4), Victoria Hyden in 2009 was a student at Liberty University. In 2008, she was hired as one of many part-time student workers at Liberty University School of Law. She married sometime thereafter and changed her last name from Zodiates to Hyden. After she graduated in May 2010, she was hired full-time in the Admissions Department of Liberty University School of Law. At no time was Victoria Hyden an employee or agent of Liberty Counsel, nor was she an agent of Liberty University or Liberty University School of Law.

13. After learning from an online news source about the indictment of Timothy Miller sometime in 2011, I obtained a copy of the charging affidavit. Prior to reading the affidavit, I had never discussed Lisa Miller or anything related about her with Victoria Hyden. I had never heard Victoria Hyden mention Lisa Miller or anything related to her with anyone. The charging affidavit alleged that Philip Zodiates sent an email to Victoria Hyden, his daughter, requesting her to disseminate a request to get supplies for Lisa Miller. Upon reading Victoria Hyden's name, I met with her to determine if she had received or made such a request, and I was assured

she had not. This is the first time I met with or spoke to Victoria Hyden about Lisa Miller and my meeting was limited to this inquiry.

14. After obtaining a copy of Plaintiffs' initial Complaint sometime in 2012, and reading the allegation in ¶41 (also ¶41 in the Amended Complaint), that "On information and belief, Victoria Zodhiates sent an email during this time to her co-workers at the law school requesting donations for supplies to be sent to Lisa Miller..." I again met with Victoria Hyden a second time to determine if she had ever sent such an email or made any such request. I was again assured by her she had not. Other than these two meetings with Victoria Hyden, I have never met with or spoken to her regarding Lisa Miller before or after these two occasions. After meeting with her, I investigated the matter with other staff in the Administrative and Admissions Departments who were employed before, during, and after 2009 to see if anyone had any knowledge of such an email or emails or any other request by any method of communication from anyone. No one had received or had any knowledge of any such email or communication or request from Victoria Hyden or from anyone else. Lisa Miller was not a topic of discussion among the law school staff. Victoria Hyden testified by Affidavit in 2012, that she did not send an email to co-workers at Liberty University School of Law regarding Lisa Miller; that she never requested or solicited donations from anyone for supplies or anything else regarding Lisa Miller; that she never heard of or saw anyone solicit donations for or on behalf of Lisa Miller; that she was not aware of Lisa Miller's whereabouts or that she left the United States or moved to Nicaragua; that she first heard of her leaving the United States and moving to Nicaragua was when she was contacted by a reporter some time in 2010; that she never provided assistance, aid, or advice of any kind to Lisa Miller; that she never participated in or conspired to kidnap Isabella or intentionally cause her continued detention outside the State of Vermont; and that she never

participated or conspired to participate in the affairs of the Beachy Amish-Mennonite Christian Brotherhood or conspired to violate Plaintiffs' civil rights. See Affidavit of Victoria Hyden, dated December 6, 2012. (Dkt. 66-3). Despite having this Affidavit of Victoria Hyden; Lindevaldsen's Affidavits submitted in 2012 (Dkt. 66-5, Affidavit of Rena M. Lindevaldsen in Support of Motion to Dismiss) and 2016 (Dkt. 213-2, Affidavit of Rena M. Lindevaldsen in Response to Plaintiffs' Motion to Join Additional Defendants); and my Affidavits submitted in 2012 (Dkt. 66-4, Affidavit of Mathew D. Staver in Support of Motion to Dismiss) and 2016 (Dkt. 213-1, Affidavit of Mathew D. Staver in Response to Plaintiffs' Motion to Join Additional Defendants), Plaintiffs continue to falsely assert that Victoria Hyden used her work at Liberty University School of Law to communicate to Lindevaldsen about Lisa Miller. See Rev. Sec. Amend. Compl. ¶¶44 and 46. This false assertion is made by Plaintiffs even though the same Rev. Sec. Amend. Compl. in ¶61 admits that "Lisa Miller's attorneys, Matthew Staver and Rena Lindevaldsen have at all times maintained that they did not know of their client's location to various courts in Vermont (including sworn testimony of Rena Lindevaldsen) and Virginia, and to the press that Lisa Miller simply stopped communicating with them and disappeared."

15. 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 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.

16. More than four years after filing the Complaint and Amended Complaint, Plaintiffs again sued Liberty University, and for the first time named Liberty Counsel, Lindevaldsen, and me individually and as agents for Liberty University and Liberty Counsel.

17. Contrary to the Rev. Sec. Amend. Compl. in ¶¶14-16, neither I, Lindevaldsen, nor Liberty Counsel have constitutionally sufficient contacts with Vermont. Plaintiffs have not—and cannot—allege sufficient contacts. 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 case, and was several years before I knew of Lisa Miller. Neither I nor Liberty Counsel transact business in Vermont. Neither do we have clients in Vermont, or ever had an office, or a principal place of business in Vermont. Neither I nor Liberty Counsel own property or pay taxes in Vermont. I never appeared in person or telephonically in Vermont on behalf of Lisa Miller or in any proceeding regarding her case.

18. Contrary to the Rev. Sec. Amend. Compl. in ¶14, Lindevaldsen was not an employee of Liberty Counsel in 2009. Lindevaldsen was an independent contract attorney with a limited role in 2009 representing Lisa Miller on behalf of Liberty Counsel, not Liberty University or Liberty University School of Law. Lindevaldsen has never been an officer or

director of Liberty Counsel. Lindevaldsen's legal representation of Lisa Miller had no connection to Liberty University or Liberty University School of Law.

19. Contrary to the Rev. Sec. Amend. Complaint in ¶¶20, 24, 34, 41, 43-44, 64-65, and 67, I have no knowledge of anyone ever receiving any request or information from any source about any intent of Lisa Miller to leave the jurisdiction of the courts or the United States, and have no knowledge of any request or information from any source to plan, assist, devise, or help Lisa Miller evade the jurisdiction of the courts or the United States or to disobey any court order. I rarely communicated with Lisa Miller by phone, in person, or otherwise. The few in-person encounters with her was when I appeared to argue a motion or an appellate matter in Virginia only. Sometime in September 2009, Lisa Miller stopped communicating and did not respond to phone calls or emails. From that time to the present, Lisa Miller ceased all communications with me or anyone associated with Liberty Counsel. I have no knowledge of any communication from Lisa Miller directly or indirectly after September 2009.

20. Other than reading their names in the indictment of Timothy Miller, in the Complaint, the Amended Complaint, the Rev. Sec. Amend. Compl., and in news reports about the case, I have no knowledge of Kenneth Miller, Timothy Miller, Andrew Yoder, Christian Aid Ministries, Inc., or the Nicaragua Beachy Amish-Mennonite Christian Brethren. I have never met or communicated with any of these people or organizations or any of their agents or employees. I have never communicated with anyone associated with the Amish or Mennonite communities about Lisa Miller. Lisa Miller was neither Amish nor Mennonite and never mentioned either to me or anyone I know.

21. I have no knowledge of anyone who spoke of Lisa Miller's plan or intent to leave Virginia or the United States before or after she disappeared. I have no knowledge of anyone

who aided, abetted, conspired, or had any knowledge respecting Lisa Miller's disappearance before or after the fact.

22. William Sidebottom is the Managing Director of Signa Response Communications, which is a brokerage of direct marketing communications, vendors, and services. He has done work for Liberty Counsel since 2006, assisting the organization with its relationship to various vendors which aid Liberty Counsel with mailings, mailing list rentals, electronic mass email communications, and other print communications. Prior to 2006, neither RU nor Zodhiates did any work for Liberty Counsel. Based on his prior work with RU, Sidebottom included RU as one of many vendors renting mail lists for prospecting mail. At all times, Sidebottom was the sole contact point with RU and Zodhiates. Prospect mailing involves sending mail to rented lists. In the prospect mail industry, it is extremely rare that revenue generated from prospect mail is sufficient to cover the cost of the mail. Liberty Counsel used many vendors for direct mail and mail lists prior to and after Sidebottom began working with Liberty Counsel. See Affidavit of William Sidebottom in Support of Motion to Dismiss.

23. Neither RU nor Zodhiates were ever agents or representatives of Liberty Counsel or acting on behalf of Liberty Counsel, nor were either acting with implied or apparent authority. The 2007 "List Brokerage Agreement," which Sidebottom brokered and is attached to Plaintiffs' Proposed Revised Second Amended Complaint (Dkt. 204-2) as Exh. 2, 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.**" (emphasis added). That agreement was dated May 14, 2007, with a duration of three months followed by a 30-day notice cancellation. I did not sign this agreement, nor did I communicate with RU or Zodhiates about it.

24. Sidebottom's Affidavit states he worked with RU to create only one prospecting mail piece regarding Lisa Miller, which was mailed in February 2008. It did not have a successful response and was discontinued after the one mailing. Liberty Counsel undertook no other mail prospecting regarding Lisa Miller with RU or Zodhiates after February 2008.

25. Neither RU nor Zodhiates performed any work for Liberty Counsel regarding Lisa Miller in 2009. Other than the one prospect mail in February 2008, neither RU nor Zodhiates were requested, directed, or authorized by Liberty Counsel or anyone associated with or acting on behalf of Liberty Counsel to do any work or take any action regarding Lisa Miller or her case. Contrary to the Rev. Sec. Amend. Compl. in ¶29, neither RU nor Zodhiates ever remitted funds to Liberty Counsel regarding Lisa Miller or her case.

26. The Rev. Sec. Amend. Compl. at ¶29 states that Zodhiates "offered Liberty Counsel a 'personal option,'" but the allegation intentionally leaves out critical facts well-known to the Plaintiffs, which undermine the allegation. Plaintiffs fail to mention that the communication was an email allegedly sent to Sidebottom in or about January 2009. Plaintiffs are no doubt aware of Sidebottom's sworn testimony in Zodhiates' 2016 criminal trial in which Sidebottom testified he did not recall receiving the alleged email and he never responded to such a communication. The full email bearing Zodhiates' name as the sender to Sidebottom, states: "Is there no legal recourse now for Lisa Miller? See the attached article from WND [WorldNetDaily]. If not, I would like to suggest to her some personal options, **which LC should not or would not want to know about.** In other words, if there is nothing else LC can do for her, I would like her contact information." (emphasis added). On its face, the email states "LC should not and would not want to know about" the so-called "personal option." Plaintiffs must be aware that Sidebottom testified in the Zodhiates trial (which he reaffirmed in his Affidavit in

Support of Motion to Dismiss cited above), that he has no recollection of ever receiving this alleged email, viewing this email, or responding to it. He testified the first time he recalled ever seeing this email was when it was presented to him by Paul Van de Graaf, Assistant U.S. Attorney for the State of Vermont in October 2014. He testified he has no idea what this alleged email was talking about or inferring. Sidebottom testified he did not act on or respond to this email. Prior to the time when Assistant U.S. Attorney Van de Graaf presented this alleged email to Sidebottom in October 2014, he never communicated to anyone this email or the contents thereof. See Affidavit of William Sidebottom in Support of Motion to Dismiss.

27. In 2016, Sidebottom testified, as he has done in his Affidavit in Support of Motion to Dismiss, that he has no recollection of ever receiving this email, viewing this email, or responding to this email. Attached to Sidebottom's Affidavit is a transcript of the testimony he gave in *United States v. Philip Zodhiates* (Case No. 1:14-CR-00175).

28. Sidebottom also testified that he has no memory and no record of Zodhiates or anyone associated with him ever following up regarding the alleged email. (Ex. A at 54).

29. Sidebottom never communicated with me regarding the email or communication referenced above until sometime after the Assistant U.S. Attorney Van de Graaf presented this alleged email to him in October 2014. And even then, I never saw the actual contents of the email. The first time I saw a copy of the email was in the fall of 2016 when it was attached to the pleadings for the Plaintiffs' Motion and Proposed Revised Second Amended Complaint. (Dkt. 204-3).

30. The Rev. Sec. Amend. Compl. at ¶60 repeats the allegation in the Complaint and Amended Complaint that on or about September 22, 2009, Zodhiates, between 1:28 pm and 1:30 pm, allegedly tried to call a cell number and a land line registered to Liberty Counsel and a

landline registered to Liberty University. My response to this allegation is the same response as noted in my prior Affidavit in ¶17 (dkt. 66-4): “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 stated in the Amended Complaint). The phone registered to Liberty Counsel is a number that had been publicly 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.” (Dkt. 66-4). 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 Zodhiates or anyone on his behalf on about September 22, 2009, or at any time regarding Lisa Miller evading the jurisdiction of the courts or leaving the United States or disobeying any court order, her hearings, or any other option regarding Lisa Miller.

31. The Rev. Sec. Amend. Compl. in ¶49 states that during a status conference on or about December 18, 2009, Plaintiffs’ counsel informed the Vermont Family Court that Lisa

Miller and Isabella seemed to be missing and “Liberty Counsel persisted in filing an appeal in the Vermont Supreme Court.” However, Plaintiffs omit the fact, which they clearly know, that Liberty Counsel informed the Vermont court all contact with and knowledge of the whereabouts of Lisa Miller had been lost. Liberty Counsel requested to withdraw from representing Lisa Miller, but the Vermont court denied Liberty Counsel’s request to withdraw, notwithstanding that fact.

32. In January 2010, following the Vermont order transferring custody to Janet Jenkins, I informed local law enforcement in Virginia and provided the last known address of Lisa Miller.

33. Contrary to the allegations in the Rev. Sec. Amend. Compl. in ¶57, neither I, Lindevaldsen, nor anyone associated with Liberty Counsel, “misled courts in two states to delay contempt proceedings aimed at locating Isabella.” We never misrepresented anything to or misled the Virginia or Vermont courts about Lisa Miller or her case.

34. Contrary to the allegations in the Rev. Sec. Amend. Compl. in ¶61, I never knew and still do not know of Lisa Miller’s whereabouts.

35. At all times, I instructed Lisa Miller to obey all court orders. I never advised, counseled, or suggested to anyone that Lisa Miller should disobey any court order or that she should flee the jurisdiction of the courts or the United States. In addition to the legal and ethical reasons why I have never advised or encouraged any client to disobey a court order, there are also common sense reasons. A client who disobeyed a court order and was fined or jailed for contempt could later regret the decision and blame counsel for providing such advice. It makes no sense to advise a client to disobey a court order. Neither I nor to my knowledge any attorney

working for or on behalf of Liberty Counsel ever advised or encouraged Lisa Miller or any client to disobey a court order.

36. I had no involvement in the "Protect Isabella Coalition" or a Facebook site regarding Lisa Miller referenced in the Rev. Sec. Amend. Compl. at ¶26.

37. I never participated or acquiesced directly or indirectly in any plan or action or conspiracy to kidnap or remove Isabella Miller-Jenkins from the jurisdiction of the courts or from the United States.

38. I never participated or acquiesced directly or indirectly in any plan or action or conspiracy to violate the civil rights of the Plaintiffs or anyone associated with Lisa Miller.

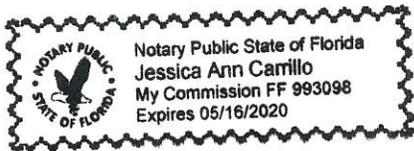
I declare under penalty of perjury under the laws of the United States of America and the Commonwealth of Virginia that the foregoing is true and correct.

Subscribed and sworn to under penalties of perjury this 15<sup>th</sup> day of May, 2017.

Mathew D. Staver

STATE OF FLORIDA

At Maitland, Florida this 15<sup>th</sup> day of May, 2017, 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: 5/16/2020

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.               | ) |                          |
| _____                     | ) |                          |

**AFFIDAVIT OF RENA M. LINDEVALDSEN IN SUPPORT OF DEFENDANTS  
MATHEW STAVER, RENA LINDEVALDSEN, AND LIBERTY COUNSEL’S MOTION  
TO DISMISS PLAINTIFFS’ REVISED SECOND AMENDED COMPLAINT**

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

1. I am over the age of 18 years. The statements in this Affidavit are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.

**My Contacts with Vermont**

2. I am an attorney licensed to practice law in New York since 1996, Florida since 2003, and Virginia since 2005. I was a resident of Florida from January 2003 until March 2005, at which time I moved to Virginia and have remained a resident of Virginia since that time. I have never been a resident of Vermont. My only connections with Vermont are two in-person trips to the state to argue before the Vermont Supreme Court on behalf of Lisa Miller, a limited number of telephone appearances in the Vermont courts on behalf of Lisa Miller, and submissions made to Vermont courts on behalf of Lisa Miller.

3. After eight years in private practice, I began working at Liberty Counsel in January of 2003. I remained an employee of Liberty Counsel through July 31, 2006, at which time I became a full-time employee of Liberty University. During the 2005-2006 academic year, while working full-time for Liberty Counsel, I also served as a part-time adjunct professor at Liberty University School of Law. When I became a full-time professor in August 2006, I continued a limited relationship with Liberty Counsel as an independent contractor. All of my appearances and representation on behalf of Lisa Miller in Virginia and Vermont courts were done in my role as an independent contractor for Liberty Counsel. At no time did I represent any clients on behalf of Liberty University.

**Adopt and Affirm Prior Affidavits**

4. On November 2, 2012, I executed an Affidavit in Support of Defendant's Motion to Dismiss filed by Liberty University (Dkt. 66-5). I hereby adopt and affirm that affidavit in its entirety, except to note three points: *first*, I am no longer admitted to practice in all twelve circuit courts as I did not renew one or more of the admissions; *second*, I no longer serve as Associate Dean for Academic Affairs at Liberty University School of Law, although I continue to serve as a Professor of Law; and *third*, during the time I served as Interim Dean of Liberty University School of Law between November 2014 and September 2015, I interacted professionally with Ms. Hyden on a slightly more frequent basis than I did at the time of executing the November 2, 2012 affidavit.

5. On November 14, 2016, I submitted an Affidavit in Response to Plaintiffs' Motion to Join Additional Defendants (Dkt. 213-2). I hereby adopt and reaffirm that affidavit in its entirety.

**Allegations Concerning Assistance Offered to Lisa Miller**

6. Contrary to the allegations contained in the Revised Second Amended Complaint (Rev. Sec. Amend. Compl.), I had no knowledge of Lisa Miller's intent or plan to leave the country

or of anyone who encouraged, assisted, or participated in her departure, concealment, or evasion of the law. In fact, as stated in my November 14, 2016 Affidavit, on September 12, 2009, Lisa Miller advised me by email that she had a job interview scheduled for September 15 and if offered the position she would start in October. (Dkt. 213-2, ¶ 4). I never counseled Lisa Miller that she should evade the jurisdiction of the courts, disobey any court order, or disappear. In fact, I frequently advised her of the consequences of noncompliance with the visitation orders. She was well aware that she could face jail time or loss of custody if she did not comply with the court orders.

7. The Rev. Sec. Amend. Compl. alleges that Ms. Hyden delivered emails to me to facilitate communications between Lisa Miller and myself and to request donations, supplies, and assistance with moving Lisa Miller's belongings out of her apartment. (RSAC ¶¶ 44, 46). Those allegations are false. As stated previously in my affidavits, I lost contact with Lisa Miller sometime in late September, 2009. At no time after mid-September did I directly or indirectly communicate with Lisa Miller. Contrary to the allegations in ¶ 46 of the Rev. Sec. Amend. Compl., Lisa Miller did not communicate with me, directly or indirectly, concerning her case or any "attempt to help her duck service of contempt and enforcement pleadings filed by Janet Jenkins to help locate Isabella."

8. Nor did I receive any emails from Philip Zodhiates (directly, through Ms. Hyden, or from any other source) concerning Lisa Miller or any other matter. Specifically, I did not receive any emails from Ms. Hyden "requesting donations for supplies and coordinating the removal of items from Lisa Miller's apartment to send to Lisa Miller to enable her to remain outside the country." In fact, the first time I heard of any such emails or communicated with Ms. Hyden about Lisa Miller was in September 2015 when I received notice that Sarah Star, Vermont counsel for

plaintiffs in this case, had filed a complaint against me with the Vermont Bar (which has since been dismissed), asserting that I “knew of, and participated in a scheme to violate Vermont custody orders . . . and lied to the Vermont courts in furtherance of that scheme.” That complaint referred to the same emails mentioned in the Rev. Sec. Amend. Compl., although the emails were not provided as exhibits to the bar complaint. After receiving that bar complaint, I spoke to Ms. Hyden for the first and only time about the allegations that she received emails and delivered them to me. She informed me that she previously testified under oath that she had no recollection of forwarding any emails to me or asking me to do the things that her father is alleged to have asked her to do. As stated in my November 14, 2016 affidavit, the first time I actually saw the emails was when Attorney Berger sent them to me upon receiving Plaintiffs’ Motion to Join Additional Defendants. (Dkt. 213-2, ¶ 2).

9. It is important to note that the September 8, 2015 bar complaint filed by Ms. Star against me contained the same allegations asserted against me in this case more than a year later in October 2016, when Ms. Star, on behalf of Janet Jenkins, filed a motion to join additional defendants. The bar complaint raised the same allegations concerning a “personal option,” a phone call allegedly by Mr. Zodiates to Liberty University School of Law, a landline with an Orlando area code, and a cell phone registered to Liberty Counsel; whether I truthfully testified that I did not know Lisa Miller’s whereabouts or that she had left the country; Ms. Star’s suspicion over advance instructions to pursue appeals on Ms. Miller’s behalf even though we could no longer communicate with her; and the same emails allegedly sent to Ms. Hyden by Mr. Zodiates. On April 28, 2017, the Vermont Professional Responsibility Program dismissed the complaint.

10. Contrary to the allegations of the Rev. Sec. Amend. Compl. (¶¶ 44, 45, 61), I did not receive any *request* for donations to aid Ms. Miller in leaving the country or remaining out of

the country; I did not *solicit* donations to aid Ms. Miller in leaving the country or remaining out of the country; I did not *arrange* for Ms. Miller's belongings to be retrieved from her apartment; and I *did not pack* up any of Ms. Miller's belongings for any purpose and, certainly, not for the purpose of transporting her belongings to Nicaragua. In fact, I have never even been to Ms. Miller's apartment.

11. Contrary to the allegations contained in the Rev. Sec. Amend. Compl. (¶ 29), I was not aware of any alleged "personal option" prior to receiving Plaintiffs' Motion to Join Additional Defendants. In fact, the language in the email belies the notion that I would have any such knowledge insofar as it states that Liberty Counsel would not and should not know about the personal option.

**Alleged Contacts with Response Unlimited and Other Defendants**

12. As I stated in my previous affidavit, at no time did I discuss with Response Unlimited or Mr. Zodiates, directly or indirectly, concerning Lisa Miller's compliance (or lack thereof) with custody or visitation orders.

13. In addition, other than reading their names in press or court documents, I have no knowledge of Kenneth Miller, Timothy Miller, Andrew Yoder, Christian Aid Ministries, Inc., or the Nicaragua Beachy Amish-Mennonite Christian Brethren. I have never spoken to, communicated with, or met anyone associated with the Amish or Mennonite communities concerning Lisa Miller.

14. The Rev. Sec. Amend. Compl. also contains allegations concerning the Protect Isabella Coalition (PIC), including that it was allegedly organized in the spring of 2008 for purposes of preventing court ordered contact between Isabella and Janet Jenkins. (¶ 26). Nowhere does the Rev. Sec. Amend. Compl. allege that I had any involvement in that organization. In fact,

I was not a member of that organization and to the extent the organization ever held any meetings, I never attended any of them.

**Allegations Concerning *Only One Mommy***

15. The Rev. Sec. Amend. Compl. contains an allegation mentioning that I authored a book about Lisa Miller that was published in 2011. (¶ 62). The allegation seems to suggest (although it does not expressly state) that in order to write the book I must have had contact with Lisa Miller after she left in September 2009. The reality is that Lisa and I outlined the concept for the book in the summer of 2008 and exchanged drafts of chapters throughout 2008 and early 2009. Lisa and I did not communicate (directly or indirectly) about the book after her September 2009 departure.

**Conclusion**

16. 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 participated in her leaving the country. Nor did I aid or assist Lisa Miller in remaining outside the country. At all times, Lisa Miller was counseled by me to obey all court orders and advised of the legal implications of a failure to comply with custody or visitation 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 obtaining any items from Lisa Miller's apartment to send them to her or anyone else.

17. I never participated or acquiesced directly or indirectly in any plan or action or conspiracy to kidnap or remove Isabella Miller-Jenkins from the jurisdiction of the courts or from the United States.

18. I never participated or acquiesced directly or indirectly in any plan or action or conspiracy to violate the civil rights of the Plaintiffs or anyone associated with Lisa Miller.

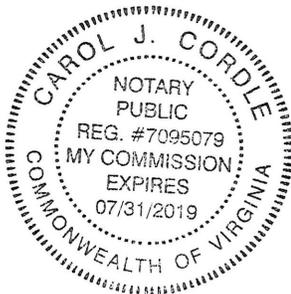
I declare under penalty of perjury under the laws of the United States of America and the Commonwealth of Virginia that the foregoing is true and correct.

Subscribed and sworn to under penalties of perjury this 17 day of May, 2017.

  
Rena M. Lindevaldsen

COMMONWEALTH OF VIRGINIA  
CITY OF LYNCHBURG, SS

At Lynchburg, Virginia in said County, this 17<sup>th</sup> day of May, 2017 personally appeared Rena M. Lindevaldsen, and she acknowledged this instrument, subscribed and sworn by her, to be her free act and deed.



Before me,

  
Notary Public

My Commission Expires: 7/31/2019

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

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

**AFFIDAVIT OF WILLIAM G. SIDEBOTTOM IN SUPPORT OF DEFENDANTS  
MATHEW STAVER, RENA LINDEVALDSEN, AND LIBERTY COUNSEL'S  
MOTION TO DISMISS PLAINTIFFS' REVISED SECOND AMENDED COMPLAINT**

1. I, William G. Sidebottom, am over the age of 18 years. The statements in this Affidavit are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently, and having been first duly sworn, do hereby depose and state as follows:

2. I am the Managing Director of Signa Response Communications, which is a brokerage of direct marketing communications, vendors, and services.

3. I have been a resident of Virginia since 1978. I continue to live and work in Virginia. I have never visited or entered Vermont. I have never had an office or a place of business in Vermont and never had any reason to do business with Vermont.

4. I began working for Liberty Counsel in 2006. My work for Liberty Counsel was primarily to assist the organization with its relationship to various vendors which aid Liberty Counsel with mailings, mailing list rentals, electronic mass email communications, and other print

communications. The primary aim was to inform and educate the public concerning the activities and work of Liberty Counsel.

5. I first learned of Philip Zodhiates and Response Unlimited (RU) sometime in 1986 when I received a catalogue from RU regarding rental mailing lists. As a broker of direct marketing, my first client was the National Legal Foundation, which rented mail lists from RU for direct mail prospecting. Another client of mine that rented mail lists from RU about that time was the Southwest Indian Foundation. Sometime around 1990, I worked for a telemarketing company, which rented mail lists from RU. Some of the clients included Concerned Women for America, The Bible League, the Republican National Congressional Committee, and others. About that same time, I worked for RU for a few months, and thereafter continued my independent work as a broker of direct marketing services. Some of my clients rented mail lists from RU, including Coral Ridge Ministries, the American Center for Law and Justice, Regent University, Operation Blessing, and other organizations. Prior to working for Liberty Counsel in 2006, I also used a variety of other vendors to rent mail lists.

6. In 2007, I was the one who arranged for RU to assist Liberty Counsel with mailing rental mailing lists and prospect mailings. RU was a list broker that rented mailing lists and did prospect mailing. Prospect mailing involves sending mail to rented lists. In the prospect mail industry, it is extremely rare that revenue generated from prospect mail is sufficient to cover the cost of the mail. The agreement I arranged involved renting mailing lists maintained by RU with the aim of sending prospect mail to the rented lists. Liberty Counsel used many vendors for direct mail and mailing lists prior to my work with Liberty Counsel and continued to use them after I began my services for Liberty Counsel. As an independent vendor, RU provided services to many clients and performed limited work for Liberty Counsel. At all times, I was the sole point of contact

between Liberty Counsel and RU. Zodhates was my point of contact with RU. I communicated with him concerning all matters related to the direct mail and rental lists regarding Liberty Counsel.

7. Neither RU nor Zodhates were ever agents of Liberty Counsel or acting on behalf of Liberty Counsel, nor were either acting with implied or apparent authority. The 2007 “List Brokerage Agreement” attached to Plaintiffs’ Proposed Revised Second Amended Complaint (Dkt. 204-1) as Exh. 2, which I brokered and was the sole point of contact, 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.**” (emphasis added). Dated May 14, 2007, the agreement’s duration was three months followed by a 30-day notice cancellation.

8. In 2007, I arranged for RU to send one prospecting mail piece in February 2008 regarding the Lisa Miller case to an RU rented mail list. That piece was not successful and was discontinued after the one mailing. Neither RU nor Zodhates undertook any other mail prospecting regarding Lisa Miller after February 2008. Neither RU nor Zodhates ever remitted funds to Liberty Counsel regarding Lisa Miller or her case.

9. In Plaintiffs’ Revised Second Amended Complaint (“Rev. Sec. Amend. Compl.”) at ¶29, Plaintiffs assert that Zodhates “offered Liberty Counsel a ‘personal option’ for Lisa Miller in the event her legal fight failed.” Plaintiffs fail to disclose that they are referring to an alleged email from Zodhates to me. The full email states: “Is there no legal recourse now for Lisa Miller? See the attached article from WND [WorldNetDaily]. If not, I would like to suggest to her some personal options, **which LC should not or would not want to know about.** In other words, if there is nothing else LC can do for her, I would like her contact information.” (emphasis added). I have no recollection of ever receiving this alleged email, viewing this alleged email, or

responding to it. The first time I recall seeing this email was when it was presented to me by Paul Van de Graaf, Assistant U.S. Attorney for the State of Vermont in October 2014. I have no idea what this alleged email was talking about or inferring. Zodhiates worked with other public interest organizations and law firms. But again, I do not recall receiving this email. I did not act on or respond to this email. Prior to the time when Assistant U.S. Attorney Van de Graaf presented this alleged email to me in October 2014, I never communicated to anyone this email or the contents thereof. I never provided Zodhiates with Lisa Miller's contact information.

10. In 2016, I was subpoenaed by the U.S. Attorney's Office for the State of Vermont to testify in Zodhiates' criminal trial, and this email was a topic raised in my testimony. I swore under oath, as I do here, that I have no recollection of ever receiving this email, viewing this email, or responding to this email. Attached to my Affidavit is a transcript of the testimony I gave in *United States v. Philip Zodhiates* (Case No. 1:14-CR-00175), hereto as Exhibit A and incorporated herein.

11. In my testimony, I stated numerous times that I have no memory of this email at all. In that testimony, I stated "I have no recollection at all of this email," (Ex. A at 30), and that "I had no recollection that I ever even got this email." (*Id.* at 31).

12. I also testified under oath that I did not respond to this email or send it to anyone. (Ex. A at 30) ("I have no record of [responding to this email] and I don't believe that I did.").

13. I also stated under oath that I have no recollection of ever discussing this email with Zodhiates or anyone, and prior to the time when Assistant U.S. Attorney Van de Graaf presented this alleged email to me in October 2014, I never discussed this email with any one associated with Liberty Counsel. (Ex. A at 54) ("I have no remembrance of having received it. . . . I have no memory of any conversations about this email.").

14. I also testified that I have no memory and no record of Zodiates or anyone associated with him ever following up regarding the alleged email. (Ex. A at 54).

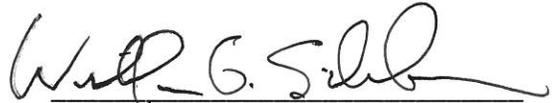
15. I never communicated to Mathew Staver, Rena Lindevaldsen, anyone associated with Liberty Counsel, Liberty University, Liberty University School of Law, or anyone else regarding the alleged email or communication referenced above. As already noted, the first time I recall seeing this email was when it was presented to me by Paul Van de Graaf, Assistant U.S. Attorney for the State of Vermont in October 2014.

16. I have not directly or indirectly participated in or know of any one who participated in or who planned, devised, or carried out any plan or action to remove Lisa Miller or Isabella Miller-Jenkins from the jurisdiction of the courts or of the United States. I have no knowledge of anyone involved in kidnapping Isabella Miller-Jenkins or involved in a conspiracy to violate the civil rights of Plaintiffs or anyone associated with the Lisa Miller case.

17. Other than what I have read in subsequent media reports, I had and have no knowledge before, during, or after the fact, of any plan or action involving Lisa Miller to flee or anyone working with or assisting her to flee and have no knowledge of where she went or her whereabouts. I have never communicated with Kenneth Miller, Timothy Miller, Andrew Yoder, Christian Aid Ministries, Inc., the Nicaragua Beachy Amish-Mennonite Christian Brethren, or with any of these people or organizations or any of their agents or employees regarding Lisa Miller or her case. I have never communicated with anyone associated with the Amish or Mennonite communities about Lisa Miller.

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

Subscribed and sworn to under penalties of perjury this 16<sup>th</sup> day of May, 2017.



William G. Sidebottom

COMMONWEALTH OF VIRGINIA  
CITY OF LYNCHBURG

At Lynchburg, Virginia in said County, this 16<sup>th</sup> day of May, 2017, personally appeared William G. Sidebottom, and he acknowledged this instrument, subscribed and sworn by him, to be his free act and deed.



Before me,



Notary Public

My Commission Expires: 7-31-20

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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.  
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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:

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4 2 Niagara Square  
5 Buffalo, NY 14202  
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I N D E X

| WITNESSES                              | PAGE |
|--|------|
| GOVERNMENT                             |      |
| WILLIAM SIDEBOTTOM                     |      |
| Direct Examination by Mr. Van De Graaf | 2    |

E X H I B I T S

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

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 A. I have, in my career, typically worked with public  
2 interest law firms.

3 Q. Did you want to say more?

4 A. And some other things, some philanthropies, charities,  
5 relief organizations and so forth.

6 Q. What is the name of your business right now?

7 A. Signa, S-I-G-N-A, Response Communications.

8 Q. Was there a time that you worked for Liberty Counsel?

9 A. There was.

10 Q. When did you work for Liberty Counsel?

11 A. I began in 2006 and I left Liberty Counsel's direct  
12 employment in May of 2015.

13 Q. What did you do at Liberty Counsel?

14 A. Well, my position and title was Vice President of  
15 Communications during my employment there.

16 Q. And what did you actually do? What did your job entail,  
17 your day-to-day work entail?

18 A. I worked with a number of vendors. I brought vendors  
19 into the service of Liberty Counsel in order to do mailings,  
20 in order to do electronic communications, in order to do  
21 different kinds of outreaches to individuals.

22 Q. Now, these mailings and electronic communication  
23 outreaching, what was the goal, from Liberty Counsel's view,  
24 of doing these kind of mailings?

25 A. Well, the number one goal in the mailings for Liberty

1 Counsel has always been education, to share the activities of  
2 Liberty Counsel, make them known to a broad base of people.

3 A secondary purpose, of course, is to interest and recruit  
4 people to become donors or supporters of Liberty Counsel.

5 Q. So, do the mailings include requests for donations?

6 A. They do.

7 Q. And where did you work when you had this position? Where  
8 were you located? Where was your office located?

9 A. My office has been in my home through my association with  
10 Liberty Counsel.

11 Q. What is Liberty Counsel?

12 A. Liberty Counsel is a public interest law firm that  
13 advances liberty, life and family. Those are the principal  
14 causes. There are currently about 50 employees and spread  
15 out in two major locations.

16 Q. What are those two locations?

17 A. The founding office is in Orlando, Florida and Lynchburg,  
18 Virginia is the second office.

19 Q. When you worked at Liberty Counsel, who was the head of  
20 Liberty Counsel?

21 A. That would be Matthew D. Staver, S-T-A-V-E-R.

22 Q. Now, did Liberty Counsel have a relationship with Liberty  
23 University?

24 A. Yes, there is a relationship. It's a complex one, but it  
25 centers on the fact that Liberty Counsel is the laboratory

1 school for Liberty University School of Law.

2 Q. And you said there was an office of Liberty Counsel in  
3 Lynchburg. Is that connected to Liberty University School of  
4 Law?

5 A. It has been actually co-located in the actual building in  
6 the past. Due to rapid expansion at Liberty University,  
7 they're now in an adjunct building that's off campus.

8 Q. Liberty Counsel got kicked out of the building?

9 A. Yeah. Liberty Counsel left and went to the expansion.

10 Q. Back in 2009, when you were working there, was it at the  
11 Liberty School of Law building?

12 A. Yes, during that period of time, it was.

13 Q. Now, you said you live in Forest. Is that right near  
14 Lynchburg?

15 A. It is. Forest is a western kind of bedroom community.  
16 It's really more of a suburb to Lynchburg and I think it's  
17 about halfway between downtown Lynchburg and Bedford,  
18 Virginia, which is a small town further west.

19 Q. When did you move to Forest?

20 A. I believe that we moved in 2008.

21 Q. Now, you mentioned that Liberty Counsel's focus is  
22 liberty --

23 A. Life --

24 Q. Life and family?

25 A. Right.

1 Q. How does Liberty Counsel select clients to represent?

2 Can they represent anybody that wants them?

3 A. Well, there's a process with the litigation department.

4 There's clerks to evaluate the nature of cases and whether

5 Liberty Counsel could actually be of real service. And then,

6 that is passed on to a committee, inside Liberty Counsel,

7 that determines which clients they're going to take.

8 Q. So, they can't take everybody that wants to be

9 represented?

10 A. No, they certainly couldn't.

11 Q. And when Liberty Counsel chooses to represent somebody,

12 do they charge the client?

13 A. They do not.

14 Q. So, is that -- that's what you mean by public interest

15 for those of us who have never heard that term?

16 A. Yes. They serve clients pro bono, for no charge.

17 Q. You're not an attorney yourself?

18 A. I am not an attorney, no.

19 Q. Back in 2009, if you remember, how many attorneys worked

20 directly at Liberty Counsel or for Liberty Counsel?

21 A. This is going to be an estimate, but I believe there was

22 probably nine attorneys located in several different places;

23 several in Orlando, several in Lynchburg, a couple that work

24 remotely.

25 Q. And do you know a woman named Rena Lindavaldsen?

1 A. I do.

2 Q. And was -- who's she?

3 A. Well, Rena Linval -- Lindavaldsen, it's a kind of a  
4 mouthful Scandinavian name. Rena, at this time, was an  
5 associate professor and I believe she may have been the  
6 Academic Dean at Liberty University School of Law, but she  
7 was also counsel of record at Liberty Counsel.

8 Q. If I could, you said that Liberty Counsel represented  
9 liberty, life and family. Can you give us a kind of example  
10 of cases about liberty? What -- when you say liberty, what  
11 did Liberty Counsel mean?

12 A. That's going to be typically freedom of speech, First  
13 Amendment related issues, certain amount of Second Amendment  
14 types of issues, but it has to do with the freedom to freely  
15 express one's self and also to have religious freedom, which  
16 is also part of that amendment as well.

17 Q. And the second one, which is life; what did Liberty  
18 Counsel sort of mean by life there?

19 A. Liberty Counsel is very committed to a pro-life position  
20 and that would represent the interests of the pro-life  
21 community, particularly in issues of being able to express  
22 the pro-life viewpoint in such situations as picketing or  
23 other things and also, the availability of crisis pregnancy  
24 centers and those kinds of issues.

25 Q. And the last one, I think, was family?

1 A. Family.

2 Q. Can you give me a description what was within that  
3 umbrella?

4 A. Generally, Liberty Counsel's cases in family  
5 representation would have to do with the sanctity of  
6 marriage; from Liberty Counsel's perspective that marriage is  
7 between one man and one woman and they would advocate laws  
8 that would comport with that.

9 Q. While you were at Liberty Counsel, did Liberty Counsel  
10 represent Lisa Miller?

11 A. Yes. I believe that Liberty Counsel began representing  
12 Lisa Miller prior to my arrival by at least a year or two.

13 Q. Did you know about Lisa Miller's case before you came to  
14 Liberty Counsel or is that when you first heard about it?

15 A. That's when I first heard about it.

16 Q. Do you know Philip Zodhiates?

17 A. I do know Philip Zodhiates.

18 Q. How did you first get to know him?

19 A. Well, I first met Philip, I believe it was in 1986. And  
20 I was just out of -- completing my graduate work in Public  
21 Policy and Public Affairs Communications and I decided that I  
22 would do that as a self-employed person. So, I was trading  
23 as William G. Sidebottom and Associates and I was operating  
24 out of my home in Virginia Beach.

25 And one day, during 1986, amazingly, a catalog from

1 Philip's company, Response Unlimited, showed up in the  
2 mailbox. And it was one of those opportune things because I  
3 had need of lists of people that would be likely supporters  
4 for my very first client, which was the National Legal  
5 Foundation, a public interest law firm in Virginia Beach.

6 Q. Now, let's talk a little bit about this catalog. Now, is  
7 this some kind of catalog we might get -- a regular person  
8 might get in the mail, right?

9 A. No. It would be highly selective. And I'm thinking that  
10 when I registered my business in Virginia, you have to state  
11 what your business was going to be. And I was a writer and  
12 creative designer of direct mail packages. That probably got  
13 it up into Philip's knowledge, because he would probably  
14 target people that were in that business with his catalog.  
15 So, that's probably how I got it.

16 Q. Now, you say that it was lists. Can you be a little  
17 more -- explain for us that don't know anything about this  
18 business; what do you mean by a list?

19 A. Each organization has a number of people who support  
20 them, either take action with them or do something positive  
21 for the mission of that organization. And they often will  
22 make certain parts of their file of constituents available to  
23 other non-profits to rent and to have an opportunity to  
24 attract attention to the other organization's cause.

25 Q. So, can you give -- well, I'll ask more about it in a

1 second. Did there come a point in time that you, yourself,  
2 worked at Response Unlimited?

3 A. There did come that time. It was some years later and I  
4 believe it was in 1990.

5 Q. How long did you work at Response Unlimited?

6 A. My memory is it was between four and six months.

7 Q. Where was Response Unlimited located at that point in  
8 time?

9 A. Response Unlimited was in Waynesboro, Virginia; not in  
10 the same building they operate in now, but rather renting  
11 space in downtown Waynesboro in a city block area.

12 Q. After you worked for Response Unlimited -- and did you  
13 work with Mr. Zodiates?

14 A. I did.

15 Q. How big was Response Unlimited at the time, in terms of  
16 number of employees?

17 A. I'm thinking there was probably four to five employees  
18 and that would depend if you counted his wife, Kathie, as  
19 being an employee. She was always involved in the business  
20 at some level.

21 Q. And what did you do when you were there at Response  
22 Unlimited?

23 A. Well, I was learning the list business, so I was  
24 studying. I was observing. I was helping categorize some of  
25 the lists of lists, getting to understand the order process

1 and so forth. And then, I was generating contacts with  
2 organizations or individuals, that could be ad agencies, that  
3 could be independent consultants, they could be the  
4 organizations themselves that would have need of those lists.

5 Q. After you worked there for -- I think you said six months  
6 or so, what did you do next?

7 A. Well, I felt I had a lot of contacts in the kinds of  
8 organizations and cause-related things that would be  
9 interested in my help, writing letters, designing programs to  
10 acquire new donors, other types of services, really being a  
11 broker of direct marketing services. And so, I decided that  
12 I could do a broader work by doing it self-employed and still  
13 benefit Response Unlimited and that I would use them as my  
14 list broker.

15 Q. And did you do that? Did you go out on your own?

16 A. I did do that.

17 Q. And did you use Response Unlimited for your list broker  
18 after you went out on your own?

19 A. I did, for many years.

20 Q. Now, I'd like to talk a little bit more about this list  
21 business. What makes a good list?

22 A. Well, a good list is one that would be valued, would  
23 produce a certain percentage of people that would respond to  
24 the typical appeal that a non-profit organization or some  
25 other entity would rent the list to do. So, there's a number

1 of different metrics that you look at and that. And a good  
2 list would tend to get used frequently. A not-so-good list  
3 might be tested but not rented in full or rolled out.

4 Q. Now, these lists sound like they're like different  
5 flavors or sort of different things you can choose from,  
6 right? What makes -- can you give the jury a sense of some  
7 different kinds of lists you remember?

8 A. There were many lists that supported mission groups, for  
9 instance. And people there, on those lists, would tend to be  
10 supportive of spreading the Gospel in foreign lands and doing  
11 mission-related type of work. And those mission lists would  
12 tend to respond better for another mission organization.  
13 That's one example.

14 Response Unlimited is probably the leading brokerage  
15 in the nation in terms of Christian and conservative lists.  
16 So, there's all manner of categories they could be subdivided  
17 into. Some of the lists might deal with public interest law  
18 firms and legal issues. Others might deal with certain  
19 issues that would be dealt with by legislatures or by  
20 Congress. So, there's a very wide array of lists that were  
21 available.

22 Q. So, Response Unlimited, based on your working there and  
23 your dealing with them, did this renting of the lists. What  
24 does it mean to rent the list?

25 A. Well, Response Unlimited actually did a great deal more

1 than just renting the lists, but there are standard charges  
2 for each list, determined by their expected productivity, how  
3 they were obtained, how they were built. I don't want to be  
4 too technical.

5 Q. And I don't want you to be but just, why renting? I  
6 mean, could you only use it for a particular mailing? I  
7 mean, what did renting mean, I guess?

8 A. Well, that's exactly right. It could be used for one  
9 agreed-upon usage, either in the mail or telemarketing even.  
10 And then the responders, those that took action, based on the  
11 contents of the mail package or the telemarketing call,  
12 responders were able to be kept by the renting organization  
13 as part of their file.

14 Q. Now, you said that Response Unlimited did things other  
15 than just rent lists?

16 A. That's correct.

17 Q. Could you give us some examples of what you mean?

18 A. Well, Philip and others in his organization have strong  
19 writing and creative backgrounds. So, Response Unlimited  
20 might create the letter itself and do the writing --  
21 technical kind of writing that needs to be done in order for  
22 a direct mailing package to be successful.

23 Q. And what is that -- what kind of writing is that? You  
24 say it's a particular skill of writing that kind of letter?

25 A. Very much so. And there's a lot of persuasion involved.

1 It's writing that appeals and gets people interested. A lot  
2 of times, it's writing that is compelling and it lists a need  
3 that simply must be met. So that writing has to move people  
4 towards taking some sort of an action.

5 Q. So, the -- there's -- trying get people to part with  
6 their money, so to speak, right? One of the goals is to get  
7 people to open their checkbook and write a check, right?

8 A. Yes.

9 Q. And that kind of persuasion, convincing of a cause, can  
10 be effective for that, based on your experience?

11 A. Oh, very much so.

12 Q. Now, when you were at Liberty Counsel, did you choose to  
13 work or help convince Liberty Counsel to do work with  
14 Response Unlimited?

15 A. I did.

16 Q. Had they done work with Response Unlimited before you  
17 were there, if you know?

18 A. I'm really not certain on that, but I know that we began  
19 working together in my second year.

20 Q. Mr. Sidebottom, I have what's marked as Government  
21 Exhibit 57.

22 MR. VAN DE GRAAF: Your Honor, this is also part of  
23 a stipulation, I believe, between the parties about the  
24 admissibility of certain emails. If I could read that  
25 stipulation, Your Honor?

1           Your Honor, I'd like to read the stipulation which is  
2 marked as Government Exhibit 125, which reads: The United  
3 States of America, by and through its Attorney, William J.  
4 Hochul, Jr., United States Attorney for the Western District  
5 of New York and Paul J. Van De Graaf, Special Assistant United  
6 States Attorney of counsel and Philip Zodhiates and his  
7 counsel, Robert B. Hemley, Esquire, hereby stipulate and agree  
8 as follows:

9           Response Unlimited is a corporation headquartered in  
10 Waynesboro, Virginia. Response Unlimited operated and managed  
11 email for its employees. Emails sent and received through  
12 email accounts were stored on Response Unlimited's server.

13           Philip Zodhiates is the owner of Response Unlimited.  
14 Between 2008, up to at least 2010, Philip Zodhiates had an  
15 email account through Response Unlimited,  
16 philipz@responseunlimited.com.

17           Response Unlimited produced emails in response to a  
18 Grand Jury subpoena. Government's Exhibit 26 through 37; 38A  
19 through 38J, 40 through 48, 49A, 49B, 50A, 50B, 52 through 54,  
20 55A and 56 through 58 were provided by Response Unlimited and  
21 contain true and correct copies of emails stored on the  
22 server, along with attachments to the emails.

23           Defense Exhibits 3 through 51 were provided by  
24 Response Unlimited and contain true and accurate copies of the  
25 emails stored on the server, along with the attachments for

1 those emails.

2           Finally, Your Honor, Exhibit 38A through 38J contain  
3 all emails stored on the server and retrieved from the sent  
4 messages folder for email account  
5 philipz@responseunlimited.com between September 18, 2009 at  
6 10:46 a.m. and September 23rd, 2009 at 12:03 p.m.

7           Mr. Hemley, have you had a chance to look at that?

8           MR. HEMLEY: Yes. No, no objection at all.

9 (Government Exhibit 125 was received in evidence.)

10 (There was an off-the-record discussion.)

11           MR. VAN DE GRAAF: So, Your Honor, the government  
12 moves Exhibit 57, which is one of the emails covered in the  
13 stipulation.

14           THE COURT: It will be received.

15 (Government Exhibit 57 was received in evidence.)

16           MR. VAN DE GRAAF: If I could ask, Ms. Whalen, to do  
17 the last page of this exhibit, which is page number 014662?  
18 If you could highlight it.

19 (There was an off-the-record discussion.)

20           MR. VAN DE GRAAF: Now, the last page of the exhibit,  
21 I believe, is the email cover for this attachment, so if we  
22 could start there.

23 BY MR. VAN DE GRAAF:

24 Q. Do you see that there's a from on that email? Do you  
25 recognize that from?

1 A. I do recognize that.

2 Q. Who is that?

3 A. That's XL Communications, which is the way I was trading  
4 during that period of time.

5 Q. So, is this email from you?

6 A. That is from me.

7 Q. And you sent it to Mr. Zodhiates, is that correct?

8 A. I did.

9 Q. Now, what are you -- what is this email about and its  
10 attachment? Can you give us an overview of what is happening  
11 in Exhibit 57?

12 A. What's happening is that Liberty Counsel is entering into  
13 a relationship with Response Unlimited for the purpose of  
14 Response Unlimited helping Liberty Counsel build a list of  
15 supporters for Liberty Counsel by prospecting, sometimes  
16 called name acquisition program into lists that Response  
17 Unlimited would provide.

18 THE COURT: What's the date of this email?

19 MR. VAN DE GRAAF: Your Honor, it's May 14th, 2007.

20 THE COURT: You didn't work there at that time, did  
21 you?

22 THE WITNESS: No, I began working in 2006.

23 THE COURT: In '06?

24 THE WITNESS: Mm-hmm.

25 THE COURT: I thought if you were there --

1 THE WITNESS: Well, I've always had my own company.

2 THE COURT: So, you worked with Liberty Counsel 2008,  
3 2009?

4 THE WITNESS: Right, but I've always had my own  
5 company, even when I was working for Liberty Counsel.

6 THE COURT: Okay. So, this is -- at this time, you  
7 weren't working for Liberty Counsel?

8 THE WITNESS: At this time, I was working for Liberty  
9 Counsel, but I also had my own company. And apparently, I  
10 chose to send this to Philip from my computer.

11 MR. VAN DE GRAAF: If it's -- sorry, Your Honor.

12 THE COURT: I'm confused. Because you indicated you  
13 worked for Liberty Counsel in 2008, 2009. That's what you  
14 testified to in the beginning of your testimony, unless I got  
15 my notes wrong.

16 MR. VAN DE GRAAF: I may have misspoke, Your Honor.  
17 I may have said, during that period, did you work at liberty  
18 Counsel? I didn't mean to cover the whole period. Maybe I  
19 didn't ask that question yet.

20 BY MR. VAN DE GRAAF:

21 Q. Mr. Sidebottom, what was the entire range of time that  
22 you served as an employee of Liberty Counsel; what's that  
23 entire time?

24 A. I began in 2006 until May of 2015.

25 THE COURT: All right. Now I understand.

1 MR. VAN DE GRAAF: I apologize, Your Honor.

2 BY MR. VAN DE GRAAF:

3 Q. So, you were saying this is a contract to do certain  
4 kinds of work?

5 A. Yes.

6 MR. VAN DE GRAAF: And if we could, the first page,  
7 Ms. Whalen.

8 BY MR. VAN DE GRAAF:

9 Q. Is that the first page of the agreement?

10 A. That is the first page of the agreement.

11 Q. And it does show here that there's -- it's called a list  
12 of brokerage agreements between Liberty Counsel and Response  
13 Unlimited, is that right?

14 A. That's correct.

15 Q. And I don't want to go through the terms of this  
16 contract, it's business language, but just could you give the  
17 members of the jury an understanding of what this agreement  
18 is about, sort of for a layperson?

19 A. Well, this agreement is engaging Response Unlimited  
20 because of their particular knowledge and expertise in the  
21 specific area of lists and in the general area of writing and  
22 designing packages that would be effective when they are sent  
23 to those lists. So, this engages Response Unlimited to come  
24 up with concepts and then do the writing and create that  
25 direct mail package that we all get in our mail, from time to

1 time, to promote a source that we hadn't anticipated or that  
2 we don't have a relationship with. And that the product that  
3 Response Unlimited would create would be persuasive and  
4 compelling and would attract new donors and supporters for  
5 Liberty Counsel.

6 Q. Now, how does Response Unlimited make money in this kind  
7 of transaction? How are they paid?

8 A. Well, Response Unlimited is a list brokerage. And as a  
9 list brokerage -- and I believe that in this contract it's  
10 agreed that there would be a 35 percent of the lists that are  
11 purchased will remain with Response Unlimited. Typically,  
12 there's a hard cost for the package. Like, it might cost  
13 \$2,000 to write, design, provide the art and graphics and so  
14 forth for the package itself. And some of the lists that are  
15 going to be prospected are actually owned or managed by  
16 Response Unlimited and so, there's income in that case, also.

17 Q. Well, when you talk about this percentage, if people make  
18 donations pursuant to the mailings, where does that money go  
19 first?

20 A. Well, that money, money that comes from donors, goes  
21 nowhere except to Liberty Counsel.

22 Q. Okay. So, then you said something about -- does Response  
23 Unlimited make any money from the fact of the donors -- or  
24 how are they -- what was the 35 percent?

25 MR. HEMLEY: Excuse me, Your Honor. I'm going to

1 object and ask for an offer. I'm not understanding the  
2 relevance of this to anything in this case. There's no  
3 business dispute between Liberty Counsel and Response  
4 Unlimited. Frankly, none of this is in dispute, so I don't  
5 understand the relevance. I'd like an offer from the  
6 government at some point.

7 THE COURT: Ladies and gentlemen, we'll take a recess  
8 at this time. We'll take a brief recess.

9 (The jury left the room at 3:03 p.m.)

10 THE COURT: All right.

11 MR. VAN DE GRAAF: Your Honor, I was just trying --  
12 I'm sorry, I probably wasn't doing it very artfully, but I was  
13 trying to explain, based on this witness's knowledge with  
14 Response Unlimited, doing business with Response Unlimited,  
15 how they benefitted financially from the work that they did.  
16 I think that's just sort of relevant for the jury to  
17 understand how Response Unlimited works. I was not doing it  
18 very well, though. I will move on.

19 THE COURT: Well, we'll take a 15-minute break.

20 THE CLERK: All rise.

21 (Brief recess).

22 (The jury entered the room at 3:42 p.m.)

23 THE CLERK: All rise. You may be seated.

24 THE COURT: Good afternoon again, folks. Believe me,  
25 we were not out having coffee. We had some issues that I had

1 to resolve. In the long run, we'll save time, okay? It may  
2 not seem that way now, but this happens in a trial. It's a  
3 normal process. But it's the judge's fault, not the lawyers.  
4 Believe me, it's not the lawyers, but I'm working on it.  
5 Okay.

6 (There was an off-the-record discussion.)

7 THE COURT: You may continue.

8 MR. VAN DE GRAAF: Thank you, Your Honor.

9 BY MR. VAN DE GRAAF:

10 Q. Mr. Sidebottom, I put in front you what's marked as  
11 Government Exhibit 59. Do you recognize that document?

12 A. I do.

13 Q. What is it?

14 A. This is a report on a direct mail prospecting drop of  
15 21,196 pieces and it was specifically called the Lisa Miller  
16 prospecting package.

17 Q. Now, let me stop you. Before I go into this document,  
18 did Response Unlimited do work for different projects that  
19 Liberty Counsel had during the contract that we talked about  
20 a little while ago?

21 A. They did.

22 Q. And was one of them associated with Lisa Miller's case?

23 A. One was.

24 Q. And is that reflected in Exhibit 59?

25 A. It is.

1 Q. Is this a document that you, yourself, produced to the  
2 government?

3 A. I did.

4 MR. VAN DE GRAAF: Your Honor, we'd move the  
5 admission of Exhibit 59.

6 MR. HEMLEY: That's another one I didn't get. So, if  
7 I could just take a look at it? Your Honor, I'm going to  
8 object to the relevance of it. I don't understand the  
9 relevance of showing the business consequence of various  
10 mailings to Liberty Counsel in this case, so I will object on  
11 relevance grounds.

12 MR. VAN DE GRAAF: Your Honor, it's related directly  
13 to the relationship between Response Unlimited, the defendant  
14 and Liberty Counsel associated with Lisa Miller. I think it's  
15 very relevant.

16 THE COURT: Objection overruled. It will be  
17 admitted.

18 (Government Exhibit 59 was received in evidence.)

19 MR. VAN DE GRAAF: Ms. Whalen, if you could put on  
20 Exhibit 59, please, for the jury?

21 BY MR. VAN DE GRAAF:

22 Q. Now, what is a --

23 MR. VAN DE GRAAF: Maybe you should start at the top  
24 there, Bluebook by date or package report. Just at the top of  
25 the document.

1 THE WITNESS: Bluebook is a common reference to a  
2 statistical analysis of how a package is.

3 BY MR. VAN DE GRAAF:

4 Q. And you called it a prospecting package. Can you  
5 describe what a prospecting package is?

6 MR. VAN DE GRAAF: Can you highlight the caption, so-  
7 to-speak?

8 BY MR. VAN DE GRAAF:

9 Q. What's a prospecting package?

10 A. This is a series of lists that Liberty Counsel rented  
11 from Response Unlimited and they're listed and they have a  
12 specific drop code in the far left column. And these are  
13 lists that Liberty Counsel does not have the names in this  
14 list on their house files, what's called their house file, a  
15 group of supporters for Liberty Counsel. So, in this case,  
16 you're prospecting with a letter to get response on a Liberty  
17 Counsel cause.

18 MR. VAN DE GRAAF: Ms. Whalen, if you could do just  
19 the first couple of columns there on the left.

20 THE COURT: Just one second. All right. Go ahead.

21 BY MR. VAN DE GRAAF:

22 Q. What does -- you said there was some material on the left  
23 side of the list here on Exhibit 59. What's that?

24 A. On the far left, there's a code which designates that  
25 list and which drop number it is. And then the second column

1 has the name of the lists that were rented, starting at the  
2 top with Defense of Family Center and so forth, through those  
3 rented lists.

4 Q. Those are the names of the lists?

5 A. Those are the names of the lists.

6 MR. VAN DE GRAAF: If you can move over a little bit,  
7 Ms. Whalen?

8 BY MR. VAN DE GRAAF:

9 Q. There's a package date mail date. What does that refer  
10 to?

11 A. On that date, February 1st, 2008, these 21,198 pieces  
12 entered the mail.

13 Q. So, the mailing went out the beginning of February 2008?

14 A. That's correct.

15 Q. And did Liberty Counsel assess the success of the  
16 prospecting as part of this prospecting package?

17 A. Yes, we assessed it and Response Unlimited would assess  
18 it.

19 Q. And what was Liberty Counsel's assessment of the success  
20 of this prospecting package?

21 A. This did not perform as well as some other prospecting  
22 packages that Response Unlimited had produced for us. It was  
23 below the average that we would expect to be productive.

24 Q. Did Liberty Counsel, during the time you were working  
25 there, do any other mailings or packages associated with the

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. Zodiates. 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. Zodiates 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. Zodiates?

12 A. I do.

13 Q. And can you tell, in this email to you, what would you  
14 understand Mr. Zodiates 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. Zodhiates 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

1 that in a second. And Philip writes: Bill, does this  
2 statement -- see highlighted below -- mean we can go back in  
3 the mail for her? Can we use a first-person letter? Philip.  
4 Do you see that?

5 A. Yes, I do.

6 Q. Do you remember getting this email?

7 A. I don't really have a memory of it, but it's obviously to  
8 me. It's in 2009, so it's some time ago.

9 Q. What does -- based on your knowledge of Mr. Zodiates and  
10 your experience at Liberty Counsel -- what does go back in  
11 the mail for her mean?

12 A. That means that he is asking should we prepare another  
13 letter that's updated, takes advantage of new knowledge of  
14 new facts or something different than in the first package.  
15 When he says go back out in the mail, it means should we  
16 produce another package.

17 Q. And do you know whether you did produce another package  
18 or not?

19 A. I believe we did not.

20 Q. And when it says, can we use a first-person letter, what  
21 do you understand by a first-person letter?

22 A. First-person letter would be written by Lisa herself, so  
23 there would either be a letter explaining the situation, as  
24 written by Lisa, or it could be a note written by Lisa that  
25 was in support of another letter.

1 MR. VAN DE GRAAF: Now, if we could go down,  
2 Ms. Whalen.

3 BY MR. VAN DE GRAAF:

4 Q. There's a Liberty Alert below in this email that this is  
5 sort of forwarded from, is that correct? Do you remember the  
6 subject said forward update?

7 MR. VAN DE GRAAF: Kate, if you could make that a  
8 little bigger here. And if you could go to just the previous  
9 email address first.

10 BY MR. VAN DE GRAAF:

11 Q. So, you see there that there's an email received that  
12 same day, January 29th, 2009 at 10 o'clock in the morning to  
13 Mr. Zodhiates from Liberty Counsel, is that right?

14 A. That is correct.

15 Q. And it says: Subject. Update on the hearing in Lisa's  
16 case. Were you familiar with Liberty Alerts?

17 A. I am familiar with Liberty Alerts.

18 Q. What were Liberty Alerts?

19 A. These are alerts that are sent out to a very specific  
20 list, my email from Liberty Counsel, giving details of  
21 current cases or information about what's happening.  
22 Oftentimes, they'd ask for prayer, as this one does. This  
23 goes to a very specific list that's only about 19,000 names.  
24 These are people that are either specifically requesting it.  
25 There's an awful lot of news media and news outlets that are

1 on the list for the Liberty Alerts. This is in distinction  
2 to a very much larger email list that we used and that I  
3 managed that has more like 550,000 people on it, but this is  
4 for people that are interested and have asked to be a part of  
5 this.

6 Q. Was the Liberty Alert process something you helped draft?

7 A. It was not. This Liberty Alert is drafted in Matt's  
8 office either with the assistance of a public relations  
9 director or, in many cases, Matt wrote them himself and  
10 somebody else edited it and proofread it.

11 Q. Now, between January of 2009, when these emails came to  
12 you -- though you don't remember them -- up until the end of  
13 2009, did you have any conversations with Philip Zodhates  
14 about Lisa Miller?

15 A. Absolutely none that I can remember.

16 MR. VAN DE GRAAF: Nothing further for  
17 Mr. Sidebottom, Your Honor.

18 MR. HEMLEY: May I inquire, Your Honor?

19 THE COURT: I have another matter or two that I put  
20 off a little earlier today so we could move on with the trial.  
21 This might be a better time to conclude for the day.

22 Ladies and gentlemen, we're going to adjourn until  
23 10 o'clock tomorrow morning. Unfortunately, I have a lot of  
24 other matters on and I have been delaying some of them so we  
25 could move forward in this case and I feel I have really put a

1 couple matters off earlier today and it being the end of the  
2 day, I want to get those matters resolved. So, we're going to  
3 adjourn today until tomorrow morning at 10. We'll let you  
4 sleep in another hour or a half hour or whatever.

5           Again, please do not discuss the case with anyone.  
6 Do not discuss it among yourselves. Do not read anything  
7 about the case, as I indicated earlier. Do not do any  
8 research or conduct any investigation. You are reminded not  
9 to mingle with the lawyers, the parties or the witnesses.  
10 Keep an open mind throughout the trial and do not form any  
11 opinion, judgment or conclusion and wait until you have heard  
12 all the evidence in this case.

13           Have a nice evening, folks. Drive carefully and  
14 we'll see you tomorrow morning at 10 o'clock.

15 (The jury left the room at 4:02 p.m.)

16           THE COURT: All right, counsel. I'd like to have you  
17 back here at 9:30. I think you want a further discussion  
18 about your cross-examination, more specifically about your  
19 character witnesses. I think it's your intention to ask some  
20 questions regarding Mr. Zodhiates's character?

21           MR. HEMLEY: Yes, Your Honor. I don't think that  
22 will affect this witness.

23           THE COURT: Oh, it isn't? Oh, I thought it was.

24           MR. HEMLEY: Well, I'm going to ask this witness  
25 questions only as to the general opinion, nothing specific, so

1 it will be well within your order.

2 THE COURT: Okay. So, we don't have an issue at all?

3 MR. HEMLEY: Not with this witness.

4 THE COURT: Okay. Well, all right. Let's take them  
5 one at a time.

6 MR. HEMLEY: I understand that. Thank you, Your  
7 Honor. And I'm sure Mr. Sidebottom understands, but I get to  
8 ask questions next.

9 THE COURT: Absolutely. Yeah.

10 MR. HEMLEY: I just don't want him to go home.

11 THE COURT: No. No. You stay here, sir.

12 (An off-the-record discussion was held.)

13 THE COURT: Have a nice evening, gentlemen, and we'll  
14 see you tomorrow at 10 o'clock.

15 MR. VAN DE GRAAF: Thank you, Your Honor.

16 (Proceedings concluded.)

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I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,

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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**

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I N D E X

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## 1 CROSS-EXAMINATION

2

3 BY MR. HEMLEY:

4 Q. Good morning, Mr. Sidebottom.

5 A. Good morning.

6 Q. This is cross-examination, following your examination by  
7 Mr. Van De Graaf yesterday. Yesterday, you spoke about a  
8 number of topics. I'll try to identify the topic, so that  
9 you have your mind ready to respond.

10 A. All right.

11 Q. The first topic is Liberty Counsel and the kinds of cases  
12 that Liberty Counsel undertakes. Mr. Van De Graaf asked you  
13 and you responded to a series of questions about that?

14 A. Yes.

15 Q. I want to just explore with you a little bit further on  
16 that. You said, if I recall, that among the topics that  
17 Liberty Counsel became interested in was the exercise of the  
18 First Amendment to the United States Constitution.

19 A. That's correct.

20 Q. Can you give us some examples of the kinds of cases that  
21 Liberty Counsel got into in that category?

22 A. Of course, there are many. And at any given time, there  
23 can be 100 different actions or litigation situations that  
24 Liberty Counsel addresses, but many of them that come to mind  
25 are free expression of religious speech. Other things under

1 the First Amendment include access to public facilities for  
2 things like Bible clubs and other religious activities. In  
3 the First Amendment, free speech is typically the most common  
4 kind of case that they would handle.

5 Q. Among the First Amendment freedom of speech category, are  
6 there public displays of symbols?

7 A. Yes. As a matter of fact, Matt Staver, the founder and  
8 chairman of Liberty Counsel, has actually argued at the  
9 U.S. Supreme Court on a public display of the Ten  
10 Commandments in the courthouses in the State of Kentucky.

11 Q. Thank you. And I think you also mentioned that among the  
12 kinds of cases that Liberty Counsel gets involved in are  
13 those that relate to the Second Amendment, the right to bear  
14 arms?

15 A. That's correct. This summer, for instance, Liberty  
16 Counsel has a major campaign under way with the theme, "We  
17 Support the Thin Blue Line." This was in reaction to things  
18 that were happening around the country, especially in Dallas.

19 Q. Does Liberty Counsel make a distinction in the selection  
20 of its cases, based on the race of a particular potential  
21 client? For example, does it undertake the representation of  
22 Hispanics?

23 A. Oh, absolutely. And there's no distinction, by race, of  
24 course. I'm not involved in the selection process of cases  
25 that will be undertaken, being a non-attorney, but, for

1 instance, Liberty Counsel's founder, Matt Staver, serves as  
2 counsel for the largest Hispanic Christian organization in  
3 America.

4 Q. Does Liberty Counsel undertake cases in which the clients  
5 are African-Americans?

6 A. Absolutely.

7 Q. Do they undertake cases in which the clients are not  
8 Christian, but believers of other faiths?

9 A. I don't have specific memory of such a case, but I'm sure  
10 there would be no tendency not to take such a case.

11 Q. Are they supporters, for example, of the State of Israel?

12 A. Very supportive of the State of Israel and very  
13 supportive of American relations with Israel.

14 Q. I'm not going to visit with you about all of the subject  
15 areas that Mr. Van De Graaf spoke of -- spoke with you about  
16 yesterday. I do want to ask you, though, about some of the  
17 Liberty Alerts. Mr. Van De Graaf offered into evidence as --  
18 I believe it was Government Exhibit -- I forget the number,  
19 28, I think, which was a Liberty Alert. Do you remember,  
20 there was an email exchange?

21 A. I do remember that.

22 Q. All right. So, that's one of them.

23 MR. HEMLEY: And I'm going to offer, without  
24 objection, Your Honor, the following additional Liberty  
25 Alerts, which are the same character. I'm going to give them

1 all to you at once, Mr. Sidebottom. They are exhibits --  
2 Defendant's Exhibits, Your Honor, 4, 8, 9, 14, 26 and 41 and  
3 I'll just hand these to you as a package. And as I say, Your  
4 Honor, we're offering these. I understand that there is no  
5 objection.

6 MR. VAN DE GRAAF: Correct, Your Honor, no objection.

7 THE COURT: All right.

8 (Defendant's Exhibits 4, 8, 9, 14, 26, 41 were received in  
9 evidence.)

10 BY MR. HEMLEY:

11 Q. Turning first to Exhibit 4, this is another, like the  
12 Defendant's -- like the Government's Exhibit 28 from  
13 yesterday. This is another Liberty Alert, correct?

14 A. Mm-hmm.

15 Q. And as I think you explained yesterday, this is a way in  
16 which Liberty Counsel informed people who were interested of  
17 the developments in a variety of cases?

18 A. That's correct.

19 Q. And as of 2008, one of the cases in which Liberty Counsel  
20 was involved, which they provided information about, was the  
21 Lisa Miller case?

22 A. That's correct.

23 MR. HEMLEY: So, if we can just highlight the first  
24 paragraph and I should -- we don't need to change the  
25 highlighting. Thank you.

1 BY MR. HEMLEY:

2 Q. You can just verify for us, that that Exhibit 4 is dated  
3 April 15th of 2008 and it went, among others, to Philip  
4 Zodhiates?

5 A. That's correct.

6 Q. Now, just so the jury understands, it says Liberty@lc.org  
7 and it's addressed to Philip Zodhiates?

8 A. Yes.

9 Q. How many other people, at the same exact time, received  
10 the same exact email?

11 A. That's approximately 18,000 recipients on the Liberty  
12 Alert list.

13 Q. So, the program is just set up to make it look like it's  
14 sent to an individual, but it actually is going out to a  
15 complete list?

16 A. Yes, it's a large list of mostly organizations and  
17 individuals that are interested in these matters.

18 Q. And who prepares -- you may have told Mr. Van De Graaf  
19 yesterday, but I don't remember -- who actually prepares the  
20 contents of these Liberty Alerts?

21 A. Liberty Alerts are drafted -- or the subject matter is  
22 determined by Matt Staver, the chairman and founder.  
23 Sometimes, he'll receive help from a public relations  
24 assistant for editing and grammar and that sort of thing.

25 Q. And Mr. Staver is an attorney, I think you've made that

1 clear?

2 A. Yes, he is an attorney.

3 Q. So, here it states on Thursday, April 17th at 9 a.m.

4 Matt Staver is scheduled to present oral argument in defense  
5 of Lisa Miller and her five-year-old daughter in the Virginia  
6 Supreme Court in Richmond, Virginia. This is a precedent-  
7 setting legal battle between Virginia and Vermont over same-  
8 sex unions and the rights of fit biological parents against  
9 unrelated third parties.

10 MR. HEMLEY: And then, if we can skip down to the  
11 third paragraph, please, the one that starts with: Lisa  
12 Miller is. Thank you. Skipping some other language -- not to  
13 conceal it in any way, but only because this is what I want  
14 the jury to see now.

15 Lisa Miller is a fit biological mother of a daughter  
16 with whom Janet Jenkins has neither a biological nor an  
17 adoptive relationship. In 2000, while living in Virginia,  
18 Lisa and Janet entered into a Vermont civil union. Lisa gave  
19 birth to her child in Virginia through artificial insemination  
20 from an anonymous donor and her daughter was born in Virginia,  
21 but the relationship ended when Janet became abusive and Lisa  
22 became a Christian. Janet wants to have custody of Lisa's  
23 daughter while continuing in her own lesbian lifestyle.

24 And then, if we can just skip down to the last  
25 paragraph on the page, the one that starts: The argument

1 will. Thank you.

2 The argument will focus on Virginia's Marriage  
3 Affirmation Act and the state's marriage amendment, which both  
4 declare that marriage is the union of one man and one woman  
5 and that Virginia does not recognize civil unions or domestic  
6 partnerships. The Federal Defense of Marriage Act will also  
7 be used, as it is designed to protect one state from being  
8 forced to recognize another state's same-sex union.

9 And now, I'd like to call your attention to  
10 Exhibit -- Defendant's Exhibit 8 in evidence and if we can  
11 just highlight that paragraph that's under that large caption,  
12 Today on Liberty Live.

13 BY MR. HEMLEY:

14 Q. Tell the jury, if you would, what Liberty Live is?

15 A. Liberty Counsel has various outreaches in the media and  
16 it has a regular television program that is produced. I  
17 believe that it is broadcast weekly and it typically, I  
18 believe, it lasts about five minutes. It's a very topical  
19 television program.

20 Q. And from time to time, people with whom Liberty Counsel  
21 is involved will come and appear, if that's the right word,  
22 on Liberty Live?

23 A. That's correct.

24 Q. All right. So, we don't need to read this into the  
25 record. The jury, I'm sure, can take a look at that.

1 MR. HEMLEY: Let's move on to Exhibit 14, please.

2 BY MR. HEMLEY:

3 Q. This is another Liberty Alert, correct? This one dated  
4 January 29, 2009?

5 A. Correct.

6 MR. HEMLEY: And if we can highlight the first  
7 paragraph, please?

8 BY MR. HEMLEY:

9 Q. This is an update of what's going on in the court  
10 systems, correct?

11 A. Yes.

12 Q. And here it says: Thank you for your prayers for Lisa  
13 Miller. Yesterday, Liberty Counsel presented oral argument  
14 in Lisa's case in a Vermont court. At the hearing, an  
15 individual who was appointed by the judge to make  
16 recommendations in the case gave her opinion that changing  
17 custody would be harmful to Isabella. The judge allowed Lisa  
18 to retain custody, but ordered supervised (sic) visitation  
19 for four days in March, over the Memorial Day holiday and for  
20 five weeks in the summer.

21 MR. HEMLEY: And if we could now proceed to  
22 Exhibit --

23 THE COURT: Did you say supervised or unsupervised?

24 MR. HEMLEY: I beg your pardon?

25 THE COURT: When you read that, did you say

1 supervised or unsupervised?

2 MR. HEMLEY: It doesn't say, Your Honor. I just read  
3 the --

4 THE COURT: Put it back up on there, will you,  
5 please?

6 MR. HEMLEY: You would like to see exhibit --

7 THE COURT: What was just read.

8 MR. HEMLEY: That was Exhibit 14. Unsupervised, it  
9 says.

10 THE COURT: Okay. I thought you said supervised.

11 MR. HEMLEY: If I did, I misspoke, Your Honor. I'm  
12 trying to read it as accurately as I can, but I may not be  
13 clear. I thought I said unsupervised. It's clearly what the  
14 document says.

15 THE COURT: All right.

16 MR. HEMLEY: All right. Proceeding now to Exhibit  
17 Number 14. This is dated January 29 of 2009. And if we can  
18 go down to the paragraph that starts: We will continue. We  
19 will continue to pursue legal action in Virginia for Lisa and  
20 Isabella. This battle illustrates how the laws of one state  
21 can negatively impact families in other states. The federal  
22 Defense of Marriage Act is a key component of our arguments to  
23 keep Virginia from forcing Lisa to recognize Janet as another  
24 mother of Isabella.

25 And if we could now proceed to 26. This is dated

1 August of 2009. The very first sentence -- excuse me. Right  
2 at the -- the bold language, please, in the first paragraph.  
3 Thank you.

4 BY MR. HEMLEY:

5 Q. This one is dated August. ACLU's request to jail Lisa  
6 Miller fails in the Virginia Court/Freedom Federation press  
7 conference notice. We were very pleased to report an answer  
8 to prayer. Earlier today, Liberty Counsel appeared in a  
9 Winchester, Virginia court to defend Lisa Miller from a  
10 complaint filed by the ACLU.

11 And can you just, so we're not just talking  
12 acronyms, tell the jury what ACLU stands for? Is that the  
13 American Civil Liberties Union?

14 A. That's the American Civil Liberties Union.

15 Q. Is that a cause-oriented organization, as well as Liberty  
16 Counsel, but just --

17 A. Yes, it is.

18 Q. -- different views?

19 A. Different views and substantially greater funding.

20 MR. HEMLEY: And then, if we can go down to the  
21 paragraph that says: The ACLU vigorously argued. Thank you.

22 The ACLU vigorously argued against Liberty Counsel's  
23 request to change venue to Bedford County, where Lisa lives  
24 and Isabella attends school. However, the Court ruled that  
25 future disputes in this case will be heard in Bedford County.

1           And then if we can just go ahead to the last of  
2 these, which is Exhibit 41. This is dated December 10 of  
3 2009. And if we can just highlight the first -- the caption  
4 and the first paragraph at this point. Thank you.

5           So, this is now in December of 2009. Lisa Miller  
6 case with conflict between states over same-sex union at  
7 appeals court. Yesterday, we appeared before an appeals court  
8 in Alexandria, Virginia to defend Lisa Miller. The ACLU and  
9 the Lambda Legal Defense Fund are seeking to transfer custody  
10 of Lisa's biological mother -- excuse me -- biological  
11 daughter, Isabella, to Janet Jenkins, a lesbian living in  
12 Vermont.

13 BY MR. HEMLEY:

14 Q. Do you know what the Lambda Legal Defense Fund is?

15 A. I believe that's a public interest law firm or a legal  
16 organization that specializes in pro bono sexual activities  
17 and representation.

18           MR. HEMLEY: And if we can just go to the second  
19 paragraph now, please, of that Liberty order.

20           The Virginia Court of Appeals heard oral argument on  
21 the issues of whether Virginia must enforce a custody order  
22 and visitation order arising from a Vermont same-sex civil  
23 union. Virginia State law and Constitution expressly ban  
24 enforcement of any right or order arising from same-sex  
25 marriage, civil unions or domestic partnerships.

1 And then the next paragraph, please. Thank you.

2 This is not the first time this case has been on  
3 appeal, but the prior litigation focused only on whether  
4 Virginia had to register the Vermont order. This case  
5 presents, for the first time, whether Virginia must enforce  
6 the terms of the civil union order, which Virginia law  
7 declares to be void in all respects.

8 And then, if we can go down to the paragraph that  
9 starts: Unrefuted testimony.

10 Unrefuted testimony has shown that for the last five  
11 years, Janet has neither attempted to phone or write Isabella.  
12 She has never sent Isabella a card of any kind for any  
13 occasion. Janet has refused to attend Isabella's Christmas  
14 plays because she does not want to be around a Christian  
15 environment. She has also said that it is not in Isabella's  
16 best interest to be raised in a Christian home.

17 And then, if we can go to the last paragraph, please.  
18 Thank you.

19 Please pray for victory in this appeal. The future  
20 of Isabella is literally being weighed in a balance between  
21 two states. Same-sex unions affect children. Such unions  
22 deprive children of the opportunity for both a mother and a  
23 father. Thank you. Thank you for that.

24 BY MR. HEMLEY:

25 Q. Going to switch gears a little bit now and I'm going to

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.

1 MR. HEMLEY: Is that okay?

2 THE COURT: Yes.

3 MR. HEMLEY: Thank you.

4

5 DIRECT EXAMINATION

6

7 BY MR. HEMLEY:

8 Q. Mr. Sidebottom, this is now direct examination, which  
9 means I will ask you direct questions, not anything that  
10 suggests any kind of an answer to you.

11 A. All right.

12 Q. How long have you known Philip Zodhiates?

13 A. Almost exactly 30 years this month.

14 Q. When did you -- when you first met him -- and you told  
15 Mr. Van De Graaf some of this, I'm not asking you to repeat a  
16 lot of the history -- did you, when you met Mr. Zodhiates  
17 some 30 years ago, what was his family circumstances as you  
18 observed it?

19 A. I drove from Virginia Beach to Waynesboro, where  
20 Mr. Zodhiates and his family lived and we had a business  
21 discussion about lists and about my renting lists on behalf  
22 of a client.

23 And the Zodhiates family, at that point, lived in a  
24 residential area inside Waynesboro, Virginia in a colonial  
25 house and they had recently received -- I believe it would

1 have been Victoria, as an adopted daughter. And I do  
2 remember that the house was full of the sounds of a young  
3 child. At that point, Philip's office was actually on a  
4 porch area that he had enclosed. So, I was well aware of  
5 what was happening inside the home with the young toddler.

6 Q. And do you know Victoria, where she came from?

7 A. I believe she came from Guatemala, if I'm not mistaken.

8 Q. And was there another young child who came along?

9 A. Philip and Kathie's son, William, was also present in the  
10 home when I first met Philip.

11 Q. And when was his -- what is his country of origin?

12 A. I believe, Guatemala.

13 Q. Now, you see in the courtroom here this morning, behind  
14 the defense table, a woman and two young men?

15 A. I do.

16 Q. And do you know who those people are?

17 A. Yes. That's Kathie Zodiates, Philip's wife and two of  
18 their additional children, beyond -- beyond Victoria and  
19 William.

20 Q. And do you know where -- not specifically, but do you  
21 know where those two young men originated?

22 A. I believe that they're from Nicaragua originally, is that  
23 right?

24 Q. Over the years, have you stayed in touch with  
25 Mr. Zodiates?

1 A. I have. I lived in Waynesboro, Virginia, which is a very  
2 small town on the side of the Blue Ridge. It's Virginia's  
3 smallest independent city with about 20,000 residents --

4 THE COURT: Why don't you just answer the question,  
5 without making a speech. The answer to the question is yes.  
6 All right. Just answer the question, sir.

7 THE WITNESS: Thank you, Your Honor. I will.

8 BY MR. HEMLEY:

9 Q. Do you believe that you have -- that you know Philip  
10 Zodhiates well enough to have formed an opinion as to his  
11 character?

12 A. Yes.

13 Q. Can you provide the jury with your opinion as to his  
14 character with regard to the character trait of generosity?

15 A. Yes. I've seen Philip's generosity over many years, in  
16 which he's shared resources from his business with others  
17 that needed resources.

18 Q. Can you share with us or with the jury, Mr. Zodhiates' --  
19 your opinion of Mr. Zodhiates with regard to the character  
20 trait of law-abidingness?

21 A. I have always found Philip Zodhiates to be a law-abiding  
22 citizen and I would hold him in very high regard as an  
23 exemplary citizen.

24 Q. With regard to generosity, has it been your observation  
25 that Mr. Zodhiates gives his material possessions to others

1 who are in need?

2 A. I have observed that in the past, yes.

3 Q. Does he do so without regard to whether he agrees or  
4 disagrees with the beneficiary's lifestyle or personal  
5 beliefs?

6 MR. DiGIACOMO: Objection, Your Honor.

7 THE COURT: Sustained.

8 MR. HEMLEY: May I make an offer?

9 THE COURT: No. We've already discussed this. This  
10 is specific acts. Objection is sustained.

11 MR. HEMLEY: Okay. Thank you, Your Honor. I would  
12 like an opportunity to address the Court on that at an  
13 appropriate time. Thank you. Hang on just one second,  
14 please.

15 I'll switch back now, if I may, Your Honor, to the  
16 topic of cross-examination. Leaving the direct examination, I  
17 know this gets to be a little confusing, but it's a legal  
18 process that we have to follow.

19

20 CROSS-EXAMINATION, CONTINUED

21

22 BY MR. HEMLEY:

23 Q. I want to go back to asking you questions about the  
24 options that were available between January of 2009 -- we saw  
25 Liberty Alerts then -- and December of 2009, which we saw

1 reflected in Exhibit 41.

2 A. Yes.

3 Q. Given the options that Liberty pursued -- Liberty Counsel  
4 pursued on behalf of Mr. Zoghiates, would it be correct to  
5 say that if you had answered Mr. Zoghiates' email of  
6 January 21st, 2009, the correct answer would be, there are  
7 plenty of legal options left?

8 MR. VAN DE GRAAF: Objection. Speculation.

9 THE COURT: Sustained.

10 BY MR. HEMLEY:

11 Q. Were there options left after January of '09?

12 MR. VAN DE GRAAF: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. HEMLEY: Again, I'd like an opportunity at the  
15 appropriate time, Your Honor, to make an offer on that. Thank  
16 you. I have no further questions.

17 MR. VAN DE GRAAF: Your Honor, I guess I'd first like  
18 to do some redirect of Mr. Sidebottom, if I could.

19 THE COURT: All right.

20

21 REDIRECT EXAMINATION

22

23 BY MR. VAN DE GRAAF:

24 Q. On cross-examination, Mr. Hemley asked you some questions  
25 about some Liberty Alerts, as well as some further questions

1 about Exhibit 26. Do you remember that?

2 A. I do.

3 MR. VAN DE GRAAF: Ms. Steblein, if you could call up  
4 Exhibit 26? Thank you, Denise.

5 BY MR. VAN DE GRAAF:

6 Q. The jury has seen this several times. This is Exhibit 26  
7 that you were speaking with me about and then Mr. Hemley  
8 about?

9 A. Right.

10 Q. I'd like to, if we could now, turn to the attached  
11 article from WND, which I didn't have a chance to show you  
12 yesterday.

13 MR. VAN DE GRAAF: So, if you could, if you turn to  
14 the next page, which is Bates Number 012049. If we could have  
15 the first part of the first paragraph and the title, would be  
16 good.

17 BY MR. VAN DE GRAAF:

18 Q. So, the title of the article that Mr. Zoghiates sent you  
19 was "Court, Christian Mom's Child Must Visit Lesbian." Is  
20 that the title?

21 A. That is the title.

22 Q. And the first paragraph reads: A Christian mother has  
23 been told by a Virginia court that her six-year-old daughter  
24 must now visit the mother's former lesbian partner in Vermont  
25 and if she refuses, the law will remove the girl by force, if

1 necessary. Correct?

2 A. That's what the paragraph says, yes.

3 MR. VAN DE GRAAF: If you could go down a few  
4 paragraphs to the paragraph: Earlier this month. Actually,  
5 can you do both that paragraph and the next paragraph?

6 BY MR. VAN DE GRAAF:

7 Q. Does the press article from World Net Daily say: Earlier  
8 this month, however, Judge William Sharp of the Shenandoah  
9 County Domestic Relations District Court in Virginia ordered  
10 Miller to allow Jenkins a three-day unsupervised visit with  
11 Isabella?

12 A. That's what it says.

13 Q. And it says Miller told Life Site News. What is Life  
14 Site News, by the way?

15 A. I'm not familiar with Life Site News, unless it's a pro-  
16 life internet --

17 Q. Well, if you're not familiar, don't guess.

18 A. Okay.

19 Q. That Sharp also rules that Vermont's civil union laws  
20 must be upheld in Virginia. That's what the article that  
21 Mr. Zodiates sent you said, is that correct?

22 A. That is correct.

23 MR. VAN DE GRAAF: I'd like to move now, if I could,  
24 to cross-examination on the direct examination of Mr. Hemley,  
25 Your Honor.

CROSS-EXAMINATION

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BY MR. VAN DE GRAAF:

Q. Mr. Hemley asked you about the character trait of generosity, did he not?

A. He did.

Q. I'd like to follow up on your understanding of that term, if I could.

A. You may.

Q. First of all, would you agree with me, Mr. Sidebottom, that part of generosity is helping others?

A. Yes.

Q. And would you agree with me that helping others often means helping people achieve something that they want to do; a goal that they have?

A. It could mean that, yes.

Q. And it could be true that a generous person helped a person, knowing what that person's purpose was?

MR. HEMLEY: Objection, Your Honor.

THE COURT: Well, let's see if he can answer it.

THE WITNESS: That could be part of understanding generosity.

BY MR. VAN DE GRAAF:

Q. Would you agree with me that no one can be generous to everyone?

1 MR. HEMLEY: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. VAN DE GRAAF:

4 Q. Mr. Hemley asked you one question about your opinion  
5 about Mr. Zodhiates' trait for law-abidingness?

6 A. Yes.

7 Q. Again, I want to ask you a little bit about your  
8 understanding of that term. Would you believe that someone  
9 is law-abiding if -- well, let me first step back. Would you  
10 agree that a court order is law?

11 A. Yes, I would consider that law.

12 Q. Would you believe that someone who violates court orders  
13 is not law-abiding?

14 A. I would consider breaking laws to be not law-abiding.

15 Q. Would you agree with me that helping someone violate  
16 court orders is not law-abiding?

17 A. I would generally say that's not abiding by the law.

18 Q. Would you agree with me that if a law-abiding person had  
19 a question about their conduct being law-abiding, they'd  
20 consult with somebody, like an attorney about that?

21 MR. HEMLEY: Objection, Your Honor.

22 THE COURT: Rephrase your question.

23 BY MR. VAN DE GRAAF:

24 Q. I'm trying to discuss your understanding of what law-  
25 abiding means.

1 A. Yes.

2 Q. Would you agree with me that a law-abiding person, if  
3 they had a question about the law, would try to get an answer  
4 to that question before acting?

5 MR. HEMLEY: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. VAN DE GRAAF:

8 Q. Sir, if you had a question about the legality of your  
9 conduct, would you consult with an attorney?

10 MR. HEMLEY: Objection, Your Honor.

11 THE COURT: Sustained.

12 MR. VAN DE GRAAF: Nothing further, Your Honor.

13 MR. HEMLEY: Excuse me just one moment, Your Honor.

14 If we could switch that over, please. Would you please call  
15 up the Government's Exhibit Number 26 and the attachment,  
16 first page of the attachment? I want to bring to the jury's  
17 attention the paragraph that Mr. Van De Graaf did not and that  
18 is the paragraph which he skipped over, which starts with, the  
19 case has. Thank you.

20

21 RECROSS EXAMINATION

22

23 BY MR. HEMLEY:

24 Q. In this World Net Daily article, it says: The case has  
25 been further tangled by the courts, as Jenkins and Miller

1 were joined in civil union in Vermont, but Miller and her  
2 daughter now live in Virginia, where the laws forbid  
3 recognition of civil unions. Have I read that correctly?

4 A. That's what it says.

5 MR. HEMLEY: Okay. And I want to also now call up  
6 Exhibit -- Defendant's Exhibit 41, if I may.

7 BY MR. HEMLEY:

8 Q. The date of this, again, is what?

9 A. This date is December 10th, 2009.

10 Q. And the very first paragraph indicates that there was a  
11 court proceeding the day before that, correct?

12 A. Yes --

13 MR. VAN DE GRAAF: Your Honor, I believe this is  
14 beyond the scope of my redirect examination.

15 MR. HEMLEY: I don't believe so. I think it  
16 specifically calls attention to --

17 THE COURT: He didn't make any mention of this.

18 MR. HEMLEY: He referenced Exhibit 41. He called it  
19 up, Your Honor.

20 MR. VAN DE GRAAF: I did not. I did not call up 41.

21 THE COURT: He didn't call it up. I don't remember  
22 that.

23 MR. HEMLEY: May I inquire about Exhibit 41, Your  
24 Honor, on recross or on direct, if I may redirect? It is one  
25 question.

1 THE COURT: All right. Go ahead. One question.

2 MR. HEMLEY: Thank you, Your Honor.

3

4

REDIRECT EXAMINATION

5

6 BY MR. HEMLEY:

7 Q. Mr. Sidebottom --

8 MR. HEMLEY: If we could just call up the first  
9 paragraph of that?

10 BY MR. HEMLEY:

11 Q. The date of this Liberty Alert is December 10, 2009.  
12 That's in evidence, correct?

13 A. That's correct.

14 Q. And there's a reference to a court proceeding the day  
15 before?

16 A. That is correct.

17 Q. Thank you.

18 MR. HEMLEY: Those are all the questions I have, Your  
19 Honor.

20 MR. VAN DE GRAAF: Nothing further, Your Honor.

21 THE COURT: All right. Thank you, sir.

22 THE WITNESS: Thank you, Your Honor.

23 (The witness was excused at 10:44 a.m.)

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\* \* \* \* \*

I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,

STATE OF VERMONT  
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT  
DOCKET NO. 454-11-03 Rddm

|                       |   |
|-----------------------|---|
| LISA MILLER-JENKINS,  | ) |
| Individually,         | ) |
|                       | ) |
| Plaintiff,            | ) |
|                       | ) |
| v.                    | ) |
|                       | ) |
| JANET MILLER-JENKINS, | ) |
| Individually,         | ) |
|                       | ) |
| Defendant.            | ) |
| _____                 | ) |

**AMENDED COMPLAINT**

If this Court has subject matter jurisdiction to dissolve the Vermont civil union which is the subject of these proceedings, Plaintiff, LISA MILLER-JENKINS, in her individual capacity, brings an action for declaratory judgment as to the validity of a Vermont civil union and for dissolution of a Vermont Civil union against Defendant, JANET MILLER-JENKINS, in her individual capacity, and states as follows:

1. Plaintiff is LISA MILLER-JENKINS, a natural born female person residing in the Commonwealth of Virginia.
2. For all times material to these proceedings, Plaintiff has continuously resided in Virginia except for a period between August 5, 2002 and September 13, 2003 where she temporarily resided in the State of Vermont.
3. Defendant, JANET MILLER-JENKINS, is a natural born female person who resides in Fair Haven, Vermont.

4. Defendant has resided in Vermont continuously from August 5, 2002, until the present day.

5. When Plaintiff and Defendant applied for and were granted a Vermont Certificate of civil union, both were continuously residing in the Commonwealth of Virginia as Virginia residents and had every intention to then reside in the Commonwealth of Virginia.

6. Plaintiff and Defendant received a Certificate of civil union on December 19, 2000, at Stowe, Vermont.

7. Plaintiff and Defendant immediately returned to their residence in Virginia following the granting of the Vermont Certificate of civil union.

8. The parties did not return to Vermont until August 5, 2002.

9. When Plaintiff and Defendant applied for and were granted a Vermont Certificate of civil union, such a union would have been void if contracted in the Commonwealth of Virginia.

10. A party to a marriage contracted in Vermont which would have been void if contracted in that party's state of residence would be entitled to a declaration that the marriage was null and void ab initio pursuant to 15 V.S.A. § 6.

11. Pursuant to 15 V.S.A. § 1204(a), parties to a civil union have virtually all the same benefits, protections and responsibilities under law as are granted to spouses in a marriage.

12. There are no biological or adopted children of said civil union.

13. The parties owned the following property singly or jointly at the time of the filing of the Complaint:

Home on 17 Cameron Street, Fair Haven, Vermont;

1995 Pontiac Transport van;

1995 truck; and

Time share with deed.

14. No action for divorce, annulment, dissolution, abuse prevention or separate support have been brought by either party against the other before the filing of the Complaint in this cause.

15. The parties separated on September 13, 2003, and had not lived separate and apart for six consecutive months prior to the filing of the Complaint.

16. It is not reasonably probable that the parties will undertake any civil union relationship with each other after the filing of the Complaint.

17. The parties have been recipients of public assistance from the Vermont Department of Social Welfare.

18. Because Plaintiff filed her original Complaint and accompanying forms pro se, without assistance of counsel and following the directions of personnel within the Clerk of Court's office, the information supplied and forms selected did not match Plaintiff's circumstances. Accordingly, the following changes must be made:

- a. Plaintiff hereby withdraws the Affidavit of Child Custody submitted with the pro se Complaint filed and served in this cause.
- b. Plaintiff hereby amends paragraph "C" under the Case Type heading on the Vermont Family Court Cover Sheet so as to select the "No" box and deselect the "Yes" box following the question "Minor Children?"
- c. Plaintiff hereby amends paragraph "D" under the Case Type heading on the Vermont Family Court Cover Sheet so as to select the "No" box and deselect the "Yes" box following the question "Are Parental Rights and

Responsibilities Contested?”

- d. Plaintiff hereby amends the selection of the boxes under the Grant Divorce heading on the Vermont Family Court Cover Sheet next to each of the following items, so as to deselect the boxes next to the following: “Grant Divorce”; “Establish”; “Child Support”; “Maintenance Supplement”; “Medical Support”; “Parental Rights & Responsibilities (Custody)”; and “Parent-Child Contact.”
- e. Plaintiff hereby amends the selection of the box under the Service of Process heading on the Vermont Family Court Cover Sheet next to the following item, so as to deselect the box next to the following: “Child Support Issues.”
- f. Plaintiff hereby withdraws any request for the Court to award or determine legal rights and responsibilities in favor of Defendant for any minor children; physical rights and responsibilities in favor of Defendant for any minor children; suitable parent/contact (supervised) in favor of Defendant; suitable child support money in favor of Plaintiff; and suitable maintenance support in favor of Plaintiff, as requested in the pro se Complaint filed in this cause.

19. Plaintiff and Defendant are in disagreement about their status vis-a-vis a Vermont civil union, specifically, whether there is a valid Vermont civil union creating legal relations with each other. Plaintiff has come to believe there is no valid civil union relationship and Defendant claims one to exist while seeking to determine and enforce rights allegedly arising therefrom.

20. A declaration of no valid civil union would end this controversy between Plaintiff and Defendant, clarify their legal relations and terminate uncertainty.

WHEREFORE, if the Court has subject matter jurisdiction, Plaintiff respectfully requests that this Court enter an order declaring that the alleged Vermont civil union between Plaintiff and Defendant is void ab initio or voided or, in the alternative, dissolve the Vermont civil union between Plaintiff and Defendant, award Plaintiff a suitable portion of the property of the civil union and, award Plaintiff's costs and attorneys' fees and such other relief as is just and equitable.

Dated this 6<sup>th</sup> day of March, 2007.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail delivery and via facsimile this 6<sup>th</sup> day of March, 2007, to the following:

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