

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, *et al.*,
Plaintiffs

v.

KENNETH L. MILLER, *et al.*,
Defendants

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Docket No. 2:12-cv-184

ANSWER AND AFFIRMATIVE DEFENSES OF
PHILIP ZODHIATES, INDIVIDUALLY, TO
PLAINTIFFS' REVISED SECOND AMENDED COMPLAINT

Philip Zodhiates, through his counsel, Gravel & Shea, responds to Plaintiffs' Revised Second Amended Complaint as follows:

General Preservation of Rights

Defendant Philip Zodhiates preserves, to the fullest extent possible, and does not, by filing this answer, waive, each of his Constitutional rights, including the right against self-incrimination extended to him through the Fifth Amendment of the United States Constitution.

Jurisdiction

1. Denied. The allegations set forth in paragraph 1 of the Revised Second Amended Complaint ("RSAC") state conclusions of law to which no response is required. To the extent any response may be deemed necessary, Defendant has previously raised through motions to dismiss, objections to both jurisdiction and venue. All such objections are repeated and incorporated as if restated here.

2. Denied. The allegations set forth in paragraph 2 of the RSAC state conclusions of law to which no response is required. To the extent any response may be deemed necessary, Defendant has previously raised through motions to dismiss, objections to personal jurisdiction. All such objections are repeated and incorporated as if restated here.

3. The allegations set forth in paragraph 3 of the RSAC state conclusions of law to which no response is required. To the extent any response may be deemed necessary, the allegations set forth in the RSAC speak for themselves; otherwise, denied.

4. The allegations set forth in paragraph 4 of the RSAC state conclusions of law to which no response is required. To the extent any response may be deemed necessary, the allegations are denied.

Parties

5. Admitted, upon information and belief.

6. Admitted that Isabella is a minor child and daughter of Lisa Miller and that there is a court order of the Vermont Family Court directing that she be placed in Plaintiff Jenkins' custody, admits that Vermont Family Court orders state that Jenkins is a parent of Isabella, which he considers to be a conclusion of law to which no response is required. He is without knowledge or information sufficient to form a belief as to the current whereabouts of Isabella.

7. To the extent the allegations set forth in paragraph 7 of the RSAC state conclusions of law, no response is required. He is without knowledge or information sufficient to form a belief as to the current whereabouts or circumstances of Lisa Miller.

8. To the extent the allegations set forth in paragraph 8 of the RSAC state conclusions of law, no response is required. He is without knowledge or information sufficient to form a belief as to the current whereabouts or circumstances of Kenneth Miller.

9. To the extent the allegations set forth in paragraph 9 of the RSAC state conclusions of law, no response is required. He is without knowledge or information sufficient to form a belief as to the current whereabouts or circumstances of Timothy Miller.

10. To the extent the allegations set forth in paragraph 10 of the RSAC state conclusions of law, no response is required. All previous objections to personal jurisdiction are incorporated as if restated herein. Admitted that he resides in Waynesboro Virginia, and is the President and sole owner of Response Unlimited, Inc.

11. To the extent the allegations set forth in paragraph 11 of the RSAC state conclusions of law, no response is required. Admitted that Victoria Hyden was formerly known as Victoria Zodhates, that she resides in Lynchburg, Virginia, and has been an employee of Response Unlimited, Inc. and Liberty University. All previous objections to personal jurisdiction are incorporated as if restated herein.

12. To the extent the allegations set forth in paragraph 12 of the RSAC state conclusions of law, no response is required. Admitted that Response Unlimited, Inc. is a Delaware corporation. All previous objections to personal jurisdiction are incorporated as if restated herein.

13. To the extent the allegations set forth in paragraph 13 of the RSAC state conclusions of law, no response is required. Lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 13 of the RSAC.

14. To the extent the allegations set forth in paragraph 14 of the RSAC state conclusions of law, no response is required. Lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 14 of the RSAC.

15. To the extent the allegations set forth in paragraph 15 of the RSAC state conclusions of law, no response is required. Lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 15 of the RSAC.

16. To the extent the allegations set forth in paragraph 16 of the RSAC state conclusions of law, no response is required. Lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 16 of the RSAC.

17. To the extent the allegations set forth in paragraph 14 of the RSAC state conclusions of law, no response is required. Lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 15 of the RSAC except admits on information and belief that Liberty University is an educational institution located in Lynchburg, Virginia.

Common Allegations of Fact

18. Admitted that Isabella was born in 2002 while Lisa Miller and Janet Jenkins were in a Vermont civil union. Whose daughter she is presents a legal question as to which no response is required. Admitted that Lisa filed a petition with the Rutland Vermont Family Court to dissolve the union, and that courts in Vermont and Virginia have issued numerous rulings, which speak for themselves, and are subject to legal interpretation.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the RSAC, except to say that he is aware of articles in the public domain on various subjects relating to Lisa Miller, and that court orders were issued, which speak for themselves, and are subject to legal interpretation.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the RSAC, except to say that various court

orders have been issued which address questions of visitation and custody, which speak for themselves, and are subject to legal interpretation.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the RSAC.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the RSAC, except to say that various court orders have been issued which address questions of visitation and custody, which speak for themselves, and are subject to legal interpretation.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the RSAC.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the RSAC.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the RSAC, except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the RSAC.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of the RSAC.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of paragraph 28 of the RSAC, except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation. As to the allegations set forth in the third sentence of paragraph

28 of the RSAC, pursuant to the Court's order in this case dated March 20, 2017, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 29 or the RSAC. As to the allegations set forth in the second sentence of paragraph 29 of the RSAC, pursuant to the Court's order in this case dated March 20, 2017, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of the RSAC, except to say that docket entries in the Rutland Family Court reflect events scheduled and speak for themselves.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of the RSAC, except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 of the RSAC, except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the RSAC, except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in 34 of the RSAC. To the extent that the allegations set forth in that paragraph identify him as a co-conspirator, Defendant asserts that is a legal conclusion as to which no response is required. To the extent any response may be deemed to be required, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time.

35. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in 35 of the RSAC.

36. Defendant is without knowledge or information sufficient to form a belief as to what was known by Janet Jenkins. He further is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last sentence of paragraph 36 of the RSAC, , except to say that various court orders have been issued, which speak for themselves, and are subject to legal interpretation. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time.

37. Defendant admits he exchanged e-mails with Bill Dolack, who was a Response Unlimited employee, which e-mails speak for themselves.

38. The allegation set forth in paragraph 38 of the RSAC that Defendant “conspired” with anyone states a conclusion of law as to which no response is required. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 38 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

39. Defendant admits, upon information and belief, that Kenneth Miller was a pastor at the Pilgrim Christian Fellowship in Stuart’s Draft, VA at some time, and was employed at Millmont Greenhouses, Inc. in Stuart’s Draft, VA at some time. He lacks knowledge or information sufficient to form a belief as to the truth of the other allegations set forth in paragraph 39 of the RSAC.

40. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 40 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

41. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41 of the RSAC.

42. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 42 of the RSAC.

43. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 43 of the RSAC.

44. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 44 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

45. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 45 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

46. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of the RSAC.

47. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of the RSAC, except that he admits that courts in Vermont and Virginia have issued numerous rulings, which speak for themselves, and are subject to legal interpretation.

48. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 48 of the RSAC.

49. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 49 of the RSAC, except that he admits that courts in Vermont and Virginia have issued numerous rulings, which speak for themselves, and are subject to legal interpretation.

50. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 50 of the RSAC.

51. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 of the RSAC.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of the RSAC.

53. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the RSAC.

54. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of the RSAC.

55. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the RSAC.

56. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 56 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

57. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of the RSAC.

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the RSAC.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 59 of the RSAC, except he admits that in 2011 Kenneth Miller was indicted by a grand jury sitting in the United States for the District of Vermont.

60. As to allegations of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 60 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 61 of the RSAC.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62 of the RSAC.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of the RSAC.

COUNT ONE
Intentional Tort of Kidnapping

Defendant repeats his responses to paragraphs 1 through 63.

64. To the extent the allegations set forth in paragraph 64 of the RSAC state conclusions of law, no response is required. To the extent the allegations are of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 64 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth. Otherwise, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 of the RSAC.

65. To the extent the allegations set forth in paragraph 65 of the RSAC state conclusions of law, no response is required. To the extent the allegations are of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which

could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 65 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth. Otherwise, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 65 of the RSAC.

COUNT TWO
Conspiracy to Violate Civil Rights

Defendant repeats his responses to paragraphs 1 - 65

66. The allegations set forth in paragraph 66 of the RSAC state a conclusion of law as to which no response is required.

67. To the extent the allegations set forth in paragraph 67 of the RSAC state a conclusion of law, no response is required. To the extent the allegations are of his conduct, in light of the continued pendency in the Court of Appeals of *United States v. Zodhiates*, Docket No. 17-839, and the presentation of what have been characterized as substantial issues, which could result in the reversal of his conviction or a new trial (Decision 3/24/17 of Judge Arcara in WDNY at p. 6), Defendant asserts his Constitutional right and declines to respond at this time. As to other allegations set forth in paragraph 67 of the RSAC, Defendant is without knowledge or information sufficient to form a belief as to their truth. Otherwise, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the RSAC.

Damages

68-72. To the extent the allegations set forth in paragraphs 68 through 72 of the RSAC state a conclusion of law, no response is required. Defendant is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 68 through 72 of the RSAC.

Affirmative Defenses

1. Defendant repeats as affirmative defenses each argument presented in his earlier filed motions to dismiss.
2. Lack of personal jurisdiction.
3. Improper venue.
4. Statute of limitations.
5. Lack of standing.
6. Failure to state a claim.
7. Mr. Zodiates reserves the right to plead, to the extent applicable and justified by the facts of this case, the affirmative defenses of contributory negligence, estoppel, release, res judicata, collateral estoppel, laches, unclean hands, equitable estoppel and waiver.
8. Lack of duty.
9. Mr. Zodiates' conduct was protected by the United States and Vermont Constitutions.
10. Rights available pursuant to 12 V.S.A. § 1041.
11. The claim for punitive damages is barred by the United States and Vermont Constitutions.

WHEREFORE, Defendant prays that judgment be entered in his behalf, awarding him costs, attorneys' fees, and such other relief as may seem fitting and proper.

Dated: Burlington, Vermont
November 3, 2017

/s/ Robert B. Hemley

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Dated: Burlington, Vermont
November 3, 2017

/s/ Robert B. Hemley

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