NO. _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

***IN RE LIBERTY COUNSEL, INC. AND RENA M. LINDEVALDSEN*,**
Individually and as Alleged Agent of Liberty Counsel, Inc.

PETITION FOR WRIT OF MANDAMUS
to the United States District Court for the District of Vermont
Honorable William K. Sessions, III
Case No. 2:12-cv-000184-wks

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Petitioners Liberty Counsel, Inc. and Rena M. Lindevaldsen state that Liberty Counsel, Inc. has no parent corporation, is not publicly traded, and no publicly held corporation owns ten (10) percent or more of its stock.

RELIEF SOUGHT

Pursuant to 28 U.S.C. §1651 and Fed. R. App. P. 21, Petitioners Liberty Counsel, Inc. ("Liberty Counsel") and Rena M. Lindevaldsen ("Lindevaldsen") petition for a writ of mandamus directing Honorable Judge William K. Sessions III of the United States District Court for the District of Vermont, to vacate his Order (Exhibit A, dkt. 277) denying Petitioners' Motion to Dismiss the Revised Second Amended Complaint (Exhibit B, dkt. 223, "RSAC") filed by Plaintiff Janet Jenkins ("Plaintiff" or "Jenkins"), and to dismiss the RSAC against Petitioners for lack of personal jurisdiction and for failure bring such claims within the applicable statutes of limitations. The district court also denied Petitioners' request to certify its Order for interlocutory appeal (Exhibit C, dkt. 302), making mandamus relief the only adequate means to protect Petitioners' due process rights and prevent irreparable harm. The district court usurped its authority, reached patently erroneous conclusions on personal jurisdiction and timeliness, and exceeded the lawful bounds of its prescribed jurisdiction.

ISSUES PRESENTED

(1) Whether the district court usurped its authority and exceeded the lawful bounds of its proscribed jurisdiction by ignoring Supreme Court precedent and exercising jurisdiction over Petitioners having no constitutionally sufficient contacts with Vermont?

(2) Whether the district court usurped its authority and exceeded the lawful bounds of its proscribed jurisdiction by ignoring binding precedent concerning the accrual of Jenkins' claims and requiring Petitioners to defend against a lawsuit where the allegations of the RSAC make it abundantly clear that such claims are untimely?

INTRODUCTION

In this litigation commenced in Vermont federal court in 2012, Plaintiff Jenkins alleges a widespread conspiracy between eleven or more defendants, spanning over fourteen years, four states and five countries, to assist Jenkins' former same-sex partner – Lisa Miller ("Miller") – to kidnap Miller's biological daughter, Isabella, so as to deprive Jenkins of custodial rights. After litigating this action for four years against only Miller and other defendants, in 2016 Jenkins sought permission to sue and join as additional defendants Petitioner Lindevaldsen – Miller's attorney from 2004 until Miller's disappearance in 2009 – as well as Petitioner Liberty Counsel, for whom attorney Lindevaldsen worked. Without any evidence of wrongdoing, Jenkins alleges that Lindevaldsen's and Liberty Counsel's zealous advocacy and legal representation of Miller somehow illegally assisted Miller's alleged abduction of Isabella. Critically, essentially **the same allegations Jenkins asserts against Petitioners in her 2016 Complaint appeared in Jenkins' original, 2012 Complaint**. But Jenkins strategically chose not to sue Petitioners

until 2016. Neither Lindevaldsen nor Liberty Counsel has any contacts with Vermont.

Petitioners sought dismissal of Jenkins' claims because they have no contacts with Vermont and because the statute of limitations had long expired. In a grand total of two sentences out of a 109-page order, the district court Judge William K. Sessions, III rejected Petitioners' personal jurisdiction claims. The court also concluded that Jenkins' claims were not time barred.

In 2014, this Court issued a writ of mandamus against Judge Sessions, finding that he "clearly and indisputably abused his discretion" by exercising personal jurisdiction over a petitioner whose "scant contacts with Vermont d[id] not come close" to the constitutional requisite minimum, which this Court held was a "judicial usurpation of power." *See In re Roman Catholic Diocese of Albany*, 745 F.3d 30, 37 (2d Cir. 2014). Judge Sessions committed the same errors here. The district court refused to dismiss Petitioners despite their lack of contacts with Vermont. Moreover, in denying interlocutory review (Exhibit C), the district court specifically noted that Petitioners were "correct that a finding that the court lacks [personal jurisdiction] as to them would terminate their direct involvement in the litigation," but refused to certify the order because Petitioners would likely receive third party discovery requests. (Ex. C at 5). Mandamus is the only available means to correct this patently erroneous conclusion and protect Petitioners' due process liberties.

FACTS NECESSARY TO UNDERSTAND ISSUES PRESENTED

I. LIBERTY COUNSEL'S LACK OF CONTACTS WITH VERMONT.

Jenkins alleged that Liberty Counsel is "affiliated with Liberty University with principal places of business in the City of Lynchburg, Commonwealth of Virginia and in the City of Orlando, State of Florida, having sufficient contacts with the State of Vermont to subject it to jurisdiction in this Court." (RSAC ¶16).[1] In fact, Liberty Counsel is a Florida non-profit corporation, headquartered in Florida, with its principal place of business in Orlando, Florida (Exhibit D, dkt. 238-2, Staver Aff., ¶4), and is not a law firm of Liberty University. (*Id.* ¶9). Liberty Counsel began in 1989 in Florida, has always been headquartered in Florida, and has always been governed by a separate and independent board of directors in Florida. (*Id.*). Liberty Counsel does not transact any business in Vermont (Exhibit E, dkt. 213-1, ¶11), and has no contacts in Vermont. (*Id.*). Liberty Counsel has never had an office in Vermont, and does not solicit business in Vermont. (*Id.*).

The RSAC only mentions Liberty Counsel seven times, and virtually all of those references relate to Liberty Counsel's attorneys representing one client –

[1] In considering whether Jenkins made a prima facie showing of personal jurisdiction over Petitioners, the district court was prohibited from "drawing argumentative inferences in the plaintiff's favor," nor should it have "accept[ed] as true [the] legal conclusion[s] couched as [] factual allegation[s]." *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 59 (2d Cir. 2012).

Miller – in one child custody litigation partially taking place in Vermont courts. (RSAC ¶16) (naming Liberty Counsel as a party); (*id.* ¶21) (alleging that Liberty Counsel attorneys represented Miller in a previous Vermont proceeding); (*id.* ¶29) (alleging that unidentified attorneys for Liberty Counsel raised money, not specifically in Vermont, to support their pro bono representation of Miller in the previous proceeding); (*id.* ¶41) (alleging that Miller received advice from Liberty Counsel); (*id.* ¶49) (alleging that unidentified Liberty Counsel attorneys filed an appeal for Miller in 2009); (*id.* ¶57) (alleging that unidentified Liberty Counsel attorneys misled courts); (*id.* ¶60) (alleging that Liberty Counsel had a landline and cell phone number registered to it, and that co-defendant Zodhiates allegedly attempted to place multiple calls to these numbers within the span of only two minutes while Zodhiates was allegedly driving back from "depositing Lisa Miller and Isabella near the Canadian border," but not alleging that anyone received any of the calls or that any conversation ensued). The RSAC allegations concerning Liberty Counsel are primarily alleged to have occurred **outside Vermont**, and all of the allegations stem from Liberty Counsel's legal representation of Miller.

II. LINDEVALDSEN'S LACK OF CONTACTS WITH VERMONT.

Jenkins alleged that Lindevaldsen has sufficient contacts with Vermont to subject her to jurisdiction. (RSAC ¶14). Lindevaldsen is an attorney licensed to practice law in New York, Florida, and Virginia. (Exhibit F, dkt. 238-3,

Lindevaldsen Aff., ¶2). She was a resident of Florida from January 2003 until March 2005, at which time she moved to Virginia and has remained a resident of Virginia. (*Id.*). Lindevaldsen has never been a resident of Vermont. (*Id.*). Lindevaldsen's only connections with Vermont are two trips to the state to argue before the Vermont Supreme Court on behalf of Miller, a limited number of telephone appearances in Vermont courts for Miller, and submissions made to Vermont courts for Miller, all of which occurred in the previous custody litigation. (*Id.*).

Lindevaldsen began working at Liberty Counsel in January 2003 in Florida, and later became an independent contractor in August 2006, while working in Virginia. (*Id.* ¶3). Lindevaldsen does not transact any business in Vermont, has no contacts whatsoever in Vermont, has never had an office in Vermont, and has never solicited business in Vermont. (Exhibit G, dkt. 66-5, ¶7). Lindevaldsen only represented this one client in Vermont. (*Id.*).

The RSAC mentions Lindevaldsen only six times, most of which deal entirely with Lindevaldsen's alleged conduct **outside of Vermont**, and her representation of Miller in the custody litigation. (RSAC ¶14) (naming Lindevaldsen as a party); (*id.*¶21) (alleging that Lindevaldsen became an attorney **in Virginia** for her **Virginia** client); (*id.*¶31) (alleging that Lindevaldsen attended a press conference **in Virginia**); (*id.*¶¶44, 46) (alleging that co-defendants exchanged emails to give to Lindevaldsen **in Virginia**); (*id.*¶45) (alleging that Lindevaldsen packed bags at

client's apartment **in Virginia** in November 2009); (*id.*¶¶50, 61) (alleging that Lindevaldsen has maintained she has no information concerning Miller's whereabouts); (*id.*¶62) (alleging that Lindevaldsen wrote a book about her representation).

III. ALLEGATIONS DEMONSTRATING EXPIRATION OF THE STATUTE OF LIMITATIONS.

The many iterations of Jenkins' claims against Petitioners demonstrate that she had actual knowledge of their alleged "involvement" since the first version of her complaint **in 2012**. The RSAC includes numerous allegations concerning Jenkins' knowledge of the alleged kidnapping dating back to **December 30, 2009**. (RSAC ¶¶51-52) (noting that Jenkins became aware that Miller and Isabella were missing, that she saw an Internet post about it, and that she brought that post to the police). The RSAC's allegations make evident that Jenkins had actual knowledge of (and not mere reason to suspect) her alleged injuries in June 2010. (*Id.* ¶43). But, even if these two allegations did not cause her claims to accrue, other allegations demonstrate that she unquestionably had actual knowledge of her alleged injuries, and the cause of her alleged injuries, in April 2011. (*Id.* ¶34) (noting that Jenkins knew of Miller's and Isabella's whereabouts, and knew of the supposed involvement of alleged co-conspirators in April 2011).

Jenkins filed the first iteration of her complaint in 2012, but chose not to name Liberty Counsel or Lindevaldsen as defendants. (Exhibit H, dkt. 59, Amended

Complaint). Though Jenkins did not name Petitioners as defendants, her allegations reference their alleged involvement identically throughout all iterations of the complaint, going back to 2012. *Compare* (RSAC ¶¶21, 26, 49, 59) (alleging in 2016 that Liberty Counsel attorneys represented Miller, established a Facebook page, filed appeals, and that Zodhiates called a cell phone registered to Liberty Counsel and a landline with an Orlando area code), *with* (Ex. H, dkt. 59, ¶¶22, 27, 57, 59) (**alleging exactly the same things in 2012**). *Compare* (RSAC ¶¶21, 26, 31, 32, 44, 45, 50, 61, 62) (alleging in 2016 that Lindevaldsen was counsel for Miller, appeared in courts via telephone and in person on behalf of Miller, received emails from Hyden concerning Miller, wrote a book, and appeared on radio and television to support the book), *with* (Ex. H, dkt. 59 ¶¶22, 27, 31, 32, 41, 42, 58, 59, 60) (**alleging the exact same things in 2012**). Jenkins finally sought to add Liberty Counsel and Lindevaldsen as defendants on October 7, 2016 (Exhibit I, Motion to Lift Stay and Join Additional Defendants, dkt. 204), almost **four years** after her original Complaint filed on August 14, 2012 (dkt. 1).

REASONS WHY THE PETITION SHOULD BE GRANTED

This Court is authorized to grant writs of mandamus pursuant to 28 U.S.C. §1651(a). The "traditional use" of mandamus is "to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *Cheney v. U.S. Dist. Court.*, 542 U.S. 367, 380 (2004). To obtain mandamus relief, Petitioners

must establish that (1) they "have no other adequate means to attain the relief desire[d]," (2) their "right to issuance of the writ is clear and indisputable," and (3) "that the writ is appropriate under the circumstances." *Id.* "These hurdles, however demanding, are not insuperable." *Id.* at 381. Mandamus relief is especially appropriate where, as here, the district court's decision "amount[s] to a judicial usurpation of power or clear abuse of discretion." *In re City of New York.*, 607 F.3d 923, 932 (2d Cir. 2010). Petitioners satisfy these requirements.

I. LIBERTY COUNSEL AND LINDEVALDSEN HAVE A CLEAR AND INDISPUTABLE RIGHT TO MANDAMUS RELIEF.

The "right to a writ of mandamus is clear and indisputable [when] the district court's exercise of [personal] jurisdiction amounted to a clear abuse of discretion, if not a judicial usurpation of power." *In re Roman Catholic Diocese of Albany, N.Y., Inc.*, 745 F.3d 30, 41 (2d Cir. 2014). A clear abuse of discretion or judicial usurpation of power occurs when the court's decision is "based on an erroneous view of the law . . . or if it has rendered a decision that cannot be located within the range of permissible decisions." *Linde v. Arab Bank, PLC*, 706 F.3d 92, 107 (2d Cir. 2013).

A. The District Court's Jurisdictional Findings Are Clearly Erroneous And Constitute A Judicial Usurpation Of Power.

Because the *sine qua non* of the mandamus power is confining a lower court to the lawful exercise of its prescribed jurisdiction, this Court and numerous other circuit courts have recognized the propriety of issuing writs in matters involving

threshold questions of personal jurisdiction. *See, e.g.*, *Catholic Diocese*, 745 F.3d at 41 (issuing writ of mandamus **to Judge Sessions** (**the same judge presiding over this case**) because his "personal jurisdiction determination [was] patently erroneous" and represented a "misapplication of the personal jurisdiction standard set forth" by Supreme Court precedent); *Abelesz v. OTP Bank*, 692 F.3d 638 (7th Cir. 2012) (same); *In re Impact Absorbent Tech, Inc.*, 1-6 F.3d 400 (6th Cir. 1996) (same); *Sunbelt Corp. v. Noble, Denton & Assoc., Inc.*, 5 F.3d 28 (3d Cir. 1993) (same); *Holub Indus., Inc. v. Wyche*, 290 F.2d 852, 855 (4th Cir. 1961) (mandamus is appropriate where "the trial court has failed to exercise its functions or has sought to exercise jurisdiction which it does not possess"). Mandamus relief is appropriate here because, as happened in *Catholic Diocese*, Judge Sessions' order is again patently erroneous and fails to abide by binding precedent.

1. The District Court's Superficial Treatment of Liberty Counsel and Lindevaldsen's Fundamental Due Process Rights Reflects a Usurpation of Power.

The district court devoted a total of **two sentences** out of a **109-page order** to whether Petitioners were subject to jurisdiction in Vermont. (Order at 91). Such indifference to whether the constitutional requisite contacts are sufficiently alleged is patently erroneous and cannot be located within the bounds of permissible decisions. The court justified its superficial treatment of Petitioners' bedrock due process rights because it erroneously thought that Petitioners "reiterate[d] many of

the arguments they previously made." (*Id.*). But, prior to their motion to dismiss, Liberty Counsel and Lindevaldsen never presented **any arguments whatsoever** to the district court. Indeed, until four years into the litigation and Jenkins' fourth iteration of her complaint, Petitioners were not parties and could not respond to anything. Petitioners' motion to dismiss was therefore the first opportunity they had to raise any defense in this action, including the substantial constitutional questions concerning the exercise of jurisdiction over them. Petitioners' substantial arguments concerning such fundamental protections enshrined in the Constitution demand more than the district court's two-sentence consideration.

Asserting jurisdiction over Petitioners based on an incomplete analysis violates due process. Indeed, regardless of the substance of any proceedings that occurred in this matter before Petitioners were joined as defendants, Petitioners have a fundamental right to appear and be heard on their defenses. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The district court's previous findings concerning jurisdiction did not and could not bind new defendants having no previous opportunity to present any defense. *See, e.g.*, *Griffin v. Griffin*, 327 U.S. 220, 227 (1946) ("to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him . . . there was a want of judicial due process

and hence a want of jurisdiction over the person"); *United States v. Casciano*, 124 F.3d 106, 112 (2d Cir. 1997) (before a court can make any findings concerning a defendant, due process requires that defendant be given notice and an opportunity to be heard). The district court's conclusion to the contrary is therefore patently erroneous and a usurpation of power.

2. The District Court's Jurisdictional Findings over Lindevaldsen are Patently Erroneous and Misapply Unequivocal Precedent from the Supreme Court and this Court.

a. The vast majority of allegations against Lindevaldsen allegedly occurred entirely outside the forum state.

If the court had engaged even in a cursory analysis – let alone the thorough examination befitting fundamental due process considerations – it would have been evident that the RSAC did not and could not allege that Lindevaldsen had constitutionally sufficient contacts with Vermont. Relying on a previous order entered prior to Lindevaldsen being joined as a party, the district court erroneously found that Lindevaldsen was subject to jurisdiction in Vermont based on the "effects test" of *Calder v. Jones*, 465 U.S. 783 (1984). (Exhibit J, dkt. 220, at 26). However, the district court misapplied the Supreme Court's substantial circumscription of that test in *Walden v. Fiore*, 134 S. Ct. 1115 (2014).

As the Supreme Court recognized in *Calder*, "[t]he Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal

jurisdiction over a defendant in any State with which the defendant has certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." 465 U.S. at 788. "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Id.* (quoting *Shaffer v Heitner*, 433 U.S. 186, 204 (1977)). In *Calder*, the Court held that a state could exercise jurisdiction over a defendant when the forum state was "the focal point both of the [tort] and of the harm suffered." *Id.* at 789. Notably, the Court highlighted the fact that the defendants were also the "**primary participants** in an alleged wrongdoing intentionally directed at a California resident." *Id.* at 790 (emphasis added). Because the primary effect of the alleged tort occurred in California, the Court held that jurisdiction was proper under the circumstances. *Id.*

However, in *Walden*, the Supreme Court revisited the so-called "effects test" of *Calder*. *Walden*, 134 S. Ct. at 1121-22. There, it reemphasized that "[f]or a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection **with the forum State**." *Id.* at 1121 (emphasis added). In determining the proper scope of a tort-related effects theory of jurisdiction, the Court substantially limited any basis for the exercise of jurisdiction over Lindevaldsen.

First, the primary focus must be on the contacts that **Lindevaldsen herself** created with Vermont. *Id.* at 1122 ("the relationship must arise out of contacts that the defendant *himself* creates with the forum State" (emphasis original)). Jenkins' contacts with Vermont are irrelevant. *Id*. Indeed, "[w]e have consistently rejected attempts to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

Second, the minimum contacts analysis "looks to the defendant's contacts **with the forum State**, **not defendant's contacts with persons who reside there**." *Id.* (emphasis added).

> But **the plaintiff cannot be the only link between the defendant and the forum**. Rather it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him. . . . a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. . . . **Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State**.

Id. at 1122-23 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (emphasis added).

The "proper lens" through which to view the jurisdictional inquiry is "whether the *defendant's* actions connect him to the *forum*," not to plaintiff or plaintiff's alleged injury. *Id.* at 1124 (emphasis original). Indeed, "**mere injury to a forum resident is not a sufficient connection to the forum**." *Id.* at 1125 (emphasis added). The critical inquiry is the same even for intentional torts. *See id.* at 1123; *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 335 (2d Cir. 2016).

Even though Lindevaldsen's operative conduct alleged by Jenkins plainly occurred, if at all, **outside Vermont** and does not create sufficient connection with the forum, the district court ignored *Walden* and held that Lindevaldsen was subject to jurisdiction in Vermont because **the alleged harm was felt** in Vermont. (Ex. I, dkt. 220, at 28-31). This determination is patently erroneous in the face of *Walden* and this Court's binding adjudication in *Waldman*. In *Waldman*, this Court noted that *Walden* resulted in a substantial circumscription of the effects test, and rejected the analysis put forward by the district court here. 835 F.3d at 335 (defendant's suit-related conduct allegedly occurring outside the forum not sufficient for jurisdiction under *Walden*). The other circuits to address this issue post-*Walden* have reached the same conclusion. *See, e.g.*, *Advanced Tactical Ordinance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 802 (7th Cir. 2014) ("after *Walden*, there can be no doubt that 'the plaintiff cannot be the only link between the defendant and the forum'" (quoting *Walden*, 134 S. Ct. at 1122)); *id.* (noting that *Walden* "shows the

error of [the] approach" focusing on a defendant's ability to foresee injury to a particular plaintiff in the jurisdiction); *Rockwood Select Assert Fund XI(6)-1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178, 1180 (10th Cir. 2014) ("*Walden* teaches that personal jurisdiction cannot be based on interactions with a plaintiff known to bear a strong connection to the forum state.").

Numerous district courts have also recognized the significant ramifications of *Walden*. *See, e.g.*, *Control Solutions, Inc. v. MicroDAQ.com, Inc.*, 126 F. Supp. 3d 1182, 1191 (D. Ore. 2015) ("*post-Walden*, express aiming at a forum resident is jurisdictionally relevant only insofar as it constitutes a single contact with the forum state, and is insufficient without more to satisfy the express aiming requirement, which requires contacts created by the defendant directly with the forum state, and not merely with a forum-state resident"); *Younique, LLC v. Youseff*, No. 2:150cv000783-JNP-DBP, 2016 WL 6998569, *7 (D. Utah Nov. 30, 2016) (*Walden* "significantly narrow[ed] otherwise broad readings of *Calder*'s effects test"); *id.* ("After *Walden*, the mere fact that a defendant's conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction. . . . Instead, a defendant's suit-related conduct **must have a broader effect on the forum itself—something *beyond* the effect felt by the plaintiff alone**." (bold emphasis added; italics original)); *Dillon v. Murphy & Hourihane*, No. 14-cv-01908-BLF, 2014 WL 5408416 (N.D. Cal. Oct. 22, 2014) ("The Supreme Court's unanimous

ruling in *Walden,* however, removed any doubt as to the standard courts should apply when engaging in a personal jurisdiction analysis—that the effects test employed by courts must be "forum-focused," and that a plaintiff or third-party's actions cannot drive the jurisdiction inquiry.").

Therefore, under *Walden* the district court had no basis upon which to exercise jurisdiction over Lindevaldsen. Jenkins' allegations against Lindevaldsen focus entirely on events which occurred, if at all, **outside Vermont** and have no connection to Vermont. (RSAC ¶21) (alleging that Lindevaldsen contacted **Virginia resident** Wall to request "screening" of Miller, **a Virginia resident**, for legal representation); (*id.* ¶31) (alleging that Lindevaldsen attended a hearing **in Virginia** on Miller's behalf and attended a press conference **in Virginia** after that hearing); (*id.* ¶44) (alleging that Defendant Hyden delivered emails to Lindevaldsen at Liberty University **in Virginia**); (*id.* ¶45) (alleging that Lindevaldsen packed up belongings of Miller **in Virginia**); (*id.* ¶46) (alleging that Hyden delivered communications to Lindevaldsen at Liberty University **in Virginia**); (*id.* ¶62) (alleging that Lindevaldsen wrote a book about the litigation published by New Revolution Publications **outside of Vermont**).

None of these allegations have any connection to Vermont. Not one of these allegations was aimed at or occurred in Vermont. Not one of these allegations connects Lindevaldsen to Vermont. All of these allegations are irrelevant for

purposes of establishing jurisdiction over Lindevaldsen in Vermont. To the extent the district court could find that the alleged conduct might have had effects in the forum, the only possible effect that could be asserted is one allegedly felt **by Plaintiff** in Vermont. But, post-*Walden*, the effects felt by Plaintiff are insufficient as a matter of law. The district court's order to the contrary is patently erroneous, contrary to the binding precedent of the Supreme Court and this Court, and cannot fall within the range of permissible decisions.

b. Lindevaldsen's representation of one client is insufficient to create constitutionally sufficient contacts.

Jenkins' only allegations concerning Lindevaldsen's conduct that actually occurred, if at all, in Vermont arise from Lindevaldsen's representation of a single client – Miller – in the custody litigation. (RSAC ¶21) (alleging Lindevaldsen became Miller's attorney); (*id.* ¶32) (alleging that Miller's attorneys, but not specifically Lindevaldsen, participated in a Vermont hearing via telephone from outside of Vermont); (*id.* ¶49) (alleging that Liberty Counsel attorneys filed an appeal in Vermont); (*id.* ¶¶50, 61) (alleging Lindevaldsen made statements to Vermont courts in the course of her representation of Miller). As the sworn testimony before the district court showed, Lindevaldsen's representation of Miller in Vermont only resulted in two actual visits to the state, years prior to the instant litigation. (Ex. G, dkt. 66-5, ¶7) ("I have twice appeared in person in Vermont on

behalf of Lisa Miller. Both of those appearances were at the Vermont Supreme Court, where I was admitted *pro hac vice* to argue on behalf of Lisa Miller."); (*id.*) (noting that all other appearances in Vermont courts were via telephone). The district court was required to consider and credit these unrebutted evidentiary showings by Lindevaldsen, and was not limited to the unadorned allegations of Jenkins in her unverified complaint. (*See supra* note 1).

Post-*Walden*, Lindevaldsen's representation of **one** client in **one** matter in Vermont, with only two personal appearances, cannot justify exercising jurisdiction over her. In the only case to address this precise issue post-*Walden*, the Tenth Circuit held that a law firm could not be subject to jurisdiction based solely on its isolated representation of a single client in the forum. *See Rockwood*, 750 F.3d 1178. There, the only relevant jurisdictional contacts were (1) plaintiff's formation in Utah and transaction of business there, (2) the law firm's sending its opinion letter to plaintiff's Utah address, and (3) the firm's representation of its client in one Utah transaction. *Id.* at 1180. The Tenth Circuit held these contacts, **including the actual representation of the client while physically present in Utah**, were insufficient under *Walden* to subject the firm to jurisdiction. *Id.* at 1180-82.

This post-*Walden* conclusion is also consistent with the universal conclusions of every circuit, including this Court, to decide the issue prior to *Walden*. *See, e.g.*, *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriquez*, 305 F.3d 120 (2d Cir.

2002) (more than mere representation of a client in a forum is required for a court to exercise jurisdiction over the firm); *Mayes v. Leipziger*, 674 F.2d 178 (2d Cir. 1982) (out-of-state attorney not subject to jurisdiction by virtue of attorney-client relationship, particularly when majority of representation occurred outside jurisdiction); *Newsome v. Gallacher*, 722 F.3d 1257, 1280-81 (10th Cir. 2013) (out-of-state attorney not subject to jurisdiction in client's state, even if litigation arises from representation of that client out-of-state, unless further contacts are established); *Sawtelle v. Ferrell*, 70 F.3d 1381, 1392 (1st Cir. 1995) ("The mere existence of an attorney-client relationship, unaccompanied by other sufficient contacts with the forum, does not confer personal jurisdiction over the non-resident in the forum state; **more is required**." (emphasis added)); *Trinity Indus., Inc. v. Myers & Assoc., Ltd.*, 41 F.3d 229, 231 n.5 (5th Cir. 1995) (no jurisdiction over foreign attorney when representation of single client in one matter is sole basis); *Sher v. Johnson*, 911 F.2d 1357 (9th Cir. 1990) (mere representation of client in forum by attorneys licensed in foreign jurisdiction is not sufficient, **even when attorney travels to forum during the representation**); *Austad Co. v. Pennie & Edmonds*, 823 F.2d 223 (8th Cir. 1987) (representation of client in jurisdiction insufficient to confer jurisdiction over attorney).

That Lindevaldsen's representation of a Virginia client in one case in Vermont involved her seeking admission *pro hac vice* in Vermont courts does not alter this

conclusion. *See, e.g.*, *E-Z Bowz, LLC v. Prof'l Prod. Research Co., Inc.*, No. 00 CUV 8670, 2003 WL 22064259 (E.D.N.Y. Sept. 5, 2003) (*pro hac vice* representation of a client is insufficient to confer jurisdiction, even when attorney made numerous personal appearances in the forum for hearings, depositions, and other matters); *Medina v. Medina*, 260 F.3d 622 (5th Cir. 1999) (*pro hac vice* representation of client does not confer jurisdiction over attorney); *Wolk v. Teledyne Indus., Inc.*, 475 F. Supp. 2d 491 (E.D. Pa. 2007) (same).

Lindevaldsen does not have sufficient contacts with Vermont to subject her to jurisdiction. Lindevaldsen's only contact with Vermont is her representation of one client in Vermont. (RSAC ¶¶21, 32, 49, 50, 61). The district court's exercise of jurisdiction over Lindevaldsen violates *Walden* and this Court's binding precedent of *Waldman*, *Bank Brussels Lambert*, and *Mayes*. The district court's decision was thus patently erroneous.

3. The District Court's Jurisdictional Findings over Liberty Counsel are Patently Erroneous and Cannot Be Located within the Range of Permissible Decisions.

a. The district court cannot point to any alleged contacts Liberty Counsel has with Vermont.

The district court did not and could not articulate any allegations sufficient to establish any connection between Liberty Counsel and Vermont, much less the constitutionally requisite minimum contacts. Liberty Counsel is not and cannot be alleged to have any business presence in Vermont. Liberty Counsel was founded as

a Florida nonprofit public interest law firm. (Ex. D, dkt. 238-2, ¶4). Liberty Counsel has always been headquartered in Florida and its principal place of business has always been Florida. (*Id.*).

When Liberty Counsel agreed to represent Miller in 2004, Miller was a resident of Virginia. (*Id.* ¶7). At that time, Lindevaldsen worked full-time with Liberty Counsel in Florida. (*Id.*). Liberty Counsel did not solicit the representation of Miller in Vermont. (*Id.* ¶17). Liberty Counsel does not transact business in Vermont, has no clients in Vermont, has never had an office in Vermont, and owns no property in Vermont. (*Id.*). Aside from its attorneys' representation of one client, which is insufficient, Liberty Counsel has no contacts with Vermont to be subject to jurisdiction there. *See Bank Brussels Lambert*, 305 F.3d 120 (more than mere representation of client is required to subject firm to jurisdiction); *Newsome*, 722 F.3d at 1280-81 (defendant not subject to jurisdiction "without some evidence that the attorney reached out to the client's home forum to solicit the client's business"); *Austad*, 823 F.2d 223 (law firm not subject to jurisdiction based solely on its isolated representation of client there, particularly when firm does not maintain an office, have any attorneys licensed or residing, and never solicited business in forum).

The district court could point to no contacts at all except for those specifically related to Liberty Counsel's representation of one client in Vermont, and most of those allegations unquestionably relate to alleged conduct outside Vermont. In fact,

there are only five factual allegations even mentioning Liberty Counsel. (RSAC ¶21) (noting that Liberty Counsel attorneys agreed to represent Miller, **a Virginia resident**); (*id.* ¶26) (alleging that Miller's attorneys established a Facebook page concerning the representation of Miller); (*id.* ¶29) (alleging that Liberty Counsel worked with RU, **a Delaware corporation** with offices **in Virginia**, to raise money to support its representation of Miller, and that Liberty Counsel was supposedly offered a "personal option" for Miller); (*id.* ¶49) (alleging that Liberty Counsel filed an appeal during the course of its attorneys' representation of Miller); (*id.* ¶60) (alleging that a phone number registered to Liberty Counsel **in Florida** was allegedly called by co-defendant Zodhiates while he was allegedly driving back from taking Miller to the Canadian border **in New York**, but not alleging that the call was received or that any conversation ensued). As these minimal allegations make abundantly clear, Liberty Counsel does not have sufficient contacts with Vermont to be subject to jurisdiction. Of the five allegations even mentioning Liberty Counsel, four of them all admittedly occurred, if at all, **outside of Vermont**. (*Id.* ¶¶21, 26, 29, 60). The one allegation that allegedly occurred in Vermont was Liberty Counsel filing an appeal in its representation of Miller. (*Id.* ¶49). These "contacts" cannot and do not support the exercise of jurisdiction over Liberty Counsel in Vermont. The district court's contrary conclusion is patently erroneous.

b. Lindevaldsen's alleged contacts with Vermont are constitutionally insufficient to confer jurisdiction over Liberty Counsel.

The district court's decision to impute to Liberty Counsel the alleged contacts of Lindevaldsen, its alleged agent, is patently erroneous. While a corporation's agent's contacts with a forum can be imputed to a corporation in some circumstances, *Carreras v. PMG Collins, LLC*, 660 F.3d 549, 556 (1st Cir. 2011), those contacts must still meet the constitutionally requisite minimum to subject the corporation to jurisdiction in a forum where it has no independent contacts. *Walden*, 134 S. Ct. at 1121 ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a **substantial connection** to the forum State." (emphasis added)).

The district court could not point to any sufficient contacts with Vermont on the part of Liberty Counsel's alleged agent. Liberty Counsel cannot be subject to jurisdiction based upon Lindevaldsen's alleged contacts with Vermont because, as demonstrated above, her contacts are constitutionally insufficient.

B. The District Court's Findings Regarding The Accrual Of The Statute Of Limitations Are Clearly Erroneous And Directly Contradict Binding Precedent.

This Court has determined that mandamus is also an appropriate remedy for district court orders violating statutes of limitations. *Catholic Diocese*, 745 F.3d at 36; *see also Richardsen Greenshields Sec., Inc. v. Lau*, 825 F.2d 647 (2d Cir. 1987)

(noting that when a district court's decision on timeliness represents a usurpation of power, mandamus is appropriate remedy). The district court's Order on timeliness is patently erroneous.

1. The District Court's Timeliness Decision on Plaintiff's State Law Claims is Patently Erroneous.

The statute of limitations on Jenkins' state law claim for custodial interference is three years. 12 Vt. Stat. Ann. §512(4); *Eaton v. Prior*, 58 A.3d 200, 204 (Vt. 2012).

The district court explicitly found that Plaintiff had knowledge of her alleged injuries in December 2009, but concluded that knowledge of alleged injuries is not sufficient for claims to accrue. (Ex. A, Order at 73). The court held that claims do not accrue when Plaintiff discovers the injury, but when she has knowledge of the injury **and** obtains knowledge of the potential **liability** of **all** alleged tortfeasors. (*Id.* at 74). This decision is patently erroneous and directly contrary to binding Vermont precedent on the issue. *See, e.g.*, *Eaton*, 58 A.3d at 204 ("An action accrues so as to trigger the statute of limitations 'when a plaintiff discovers or reasonably should discover the injury, its cause, and the existence of a cause of action.") (quoting *Lillicrap v. Martin*, 591 A.2d 41, 47 (1989)). "**The law does not require absolute certainty for the statute to run**." *Id.* at 255 (emphasis added). Indeed, the statute begins to run as soon as a reasonable plaintiff should have discovered the alleged injury and its purported cause. *See, e.g.*, *id.* (noting that the statute of limitations

begins to run under Section 512(4) as soon as plaintiff should have "suspected" that injury occurred); *Bull v. Pinkham Eng'g Assocs.*, 752 A.2d 26, 31 (Vt. 2000) (same).

Plaintiff's own allegations make it abundantly clear that she had essentially the same information in **2012** regarding Liberty Counsel and Lindevaldsen that she had when she finally attempted to sue them in **2016**. Her knowledge that Isabella was allegedly kidnapped admittedly goes back to December 30, 2009. (RSAC ¶¶51-52). If this allegation was insufficient to establish that Jenkins had reason to suspect her alleged injuries had occurred by **December 30, 2009**, there can be no dispute that Jenkins had actual knowledge of (and not mere reason to suspect) her alleged injuries in **June 2010**. (*Id.* ¶43) (Jenkins admitting actual knowledge of Miller and Isabella's whereabouts in June 2010). Finally, assuming arguendo that these two allegations do not evidence enough information known to Jenkins to start the clock on her limitations period, Jenkins admitted having actual knowledge of her alleged injuries **and their cause** in **April 2011**. (*Id.* ¶34) (noting that Jenkins knew of Miller's and Isabella's whereabouts, and knew of the involvement of alleged co-conspirators in April 2011).

Even using the most generous date in the string of allegations establishing her reason to suspect her injuries, Jenkins' cause of action accrued in **April 2011, at the latest**. Yet, despite having more than sufficient information concerning all

allegations against Liberty Counsel and Lindevaldsen, Jenkins chose to bring her claims in 2012 **without naming them as defendants.**

Clearly, by the time Jenkins filed her lawsuit in 2012, she knew of the supposed involvement she alleges of Lindevaldsen and Liberty Counsel, because she included in her 2012 Complaint essentially the same allegations she subsequently included in 2016, when she first sought to sue them. *Compare* (RSAC ¶¶21, 26, 49, 59) (alleging in 2016 that Liberty Counsel attorneys represented Miller, established a Facebook page, filed appeals, and that Zodhiates called a cell phone registered to Liberty Counsel and a landline with an Orlando area code), *with* (Ex. H, dkt. 59, Amended Complaint, ¶¶22, 27, 57, 59) (**alleging exactly the same things in 2012**). *Compare* (RSAC ¶¶21, 26, 31, 32, 44, 45, 50, 61, 62) (alleging in 2016 that Lindevaldsen was counsel for Miller, appeared in courts via telephone and in person on behalf of Miller, received emails from Hyden concerning Miller, wrote a book, and appeared on radio and television to support the book), *with* (Ex. H, dkt. 59 ¶¶22, 27, 31, 32, 41, 42, 58, 59, 60) (**alleging the exact same things in 2012**). Therefore, even if Jenkins' claims against Petitioners somehow did not accrue by December 2009, June 2010, or April 2011, they certainly accrued by August 14, 2012, when Jenkins filed her original Complaint in this action. Yet, even under that most lenient accrual, Jenkins' first attempt to sue Petitioners four years later, in 2016, was still one year too late.

Jenkins need not have had absolute certainty that Petitioners were allegedly involved, only reason to suspect. *Eaton*, 58 A.3d at 255. Jenkins' own allegations in 2012 and her admitted knowledge are fatal to her claims. The statute of limitations had run on her custodial interference claim, and the district court's decision to the contrary is patently erroneous.

2. The District Court's Timeliness Decision on Jenkins' Federal Law Claims is Patently Erroneous.

The statute of limitations on Jenkins' federal claims under 42 U.S.C. §1985 mirrors Vermont's three-year limitations period. *Meyer v. Frank*, 550 F.2d 726, 728 (2d Cir. 1967).

Section 1985 claims accrue when the "plaintiff knows or has reason to know of the injury which is the basis of his action." *Morse v. Univ. of Vt.*, 973 F.2d 122, 125 (2d Cir. 1992). "In analyzing the time of accrual in the context of discrimination claims, the Supreme Court has instructed that 'the proper focus is on the time of the *discriminatory act*, **not the point at which the *consequences* of the act become painful**.'" *Id.* at 125 (quoting *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (bold emphasis added; italic emphasis original)). Therefore, the timeliness of Jenkins' conspiracy claim is measured from the date at which she obtained notice of the alleged act giving rise to the claim, not when she understood the full extent of the alleged conspiracy and liability of all alleged participants. *See O'Malley v. GTE Serv. Corp.*, 758 F.2d 818, 820 (2d Cir. 1985).

Contrary to this binding precedent, the district court concluded that the alleged discriminatory **act** is irrelevant for purposes of accrual, holding instead that it is the recognition of the **effect** of the alleged conduct that matters. (Ex. A, Order at 77). This remarkable contention flies in the face of the Supreme Court and this Court's unequivocal precedent. *See Morse*, 973 F.2d at 125. If the discriminatory act means nothing, as the district court erroneously concluded, then a cause of action will only accrue when a plaintiff feels all of the consequences of the alleged act. This would flip this Court's binding holding of *Morse* on its head. The district court is without authority to make such a determination.

For much the same reason as her custodial interference claim, Jenkins' conspiracy claim is untimely. As the RSAC admits, she had actual knowledge of the alleged discriminatory act by December 30, 2009, or no later than April 2011. (RSAC ¶¶34, 43, 51-52). Her cause of action under Section 1985 thus accrued by April 2011, at the latest. Moreover, Jenkins certainly had knowledge of any supposed involvement by Petitioners as of the filing of her original Complaint, in August 2012. Every which way, the three-year statute of limitations had clearly run by 2016, when Jenkins first sought to sue Petitioners. The district court's contrary holding is patently erroneous.

II. LIBERTY COUNSEL AND LINDEVALDSEN HAVE NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF THEY SEEK.

A. Liberty Counsel and Lindevaldsen Have Exhausted All Other Available Alternatives.

Where, as here, a petitioner cannot obtain adequate relief by means of interlocutory appeal or under the collateral order doctrine, and the district court has denied a request to certify an interlocutory appeal, mandamus is the only alternative. *In re Roman Catholic Dicoese of Albany, N.Y., Inc.*, 745 F.3d 30, 35-36 (2d Cir. 2014). Additionally, "an appeal after final judgment (albeit available) is not, under these circumstances, an 'adequate means' for [Petitioners] to obtain the relief [they] seek." *Id.* at 26. Petitioners have exhausted all means available, and mandamus is their only remaining alternative.

B. Liberty Counsel and Lindevaldsen Will Suffer Irreparable Harm Absent Mandamus Relief.

"In reviewing whether a petition meets the no-adequate-alternative requirement, we have examined whether issuing the writ would prevent an otherwise irreparable harm." *Linde v. Arab Bank, PLC*, 706 F.3d 92, 107 (2d Cir. 2013). Post-judgment appeals are particularly unsuited to preventing irreparable harm, where, as here, fundamental constitutional protections would be forever lost absent mandamus relief. Indeed, "timing matters: 'Once the cat is out of the bag,' the right against disclosure cannot later be vindicated." *Catholic Diocese*, 745 F.3d at 36 (quoting *S.E.C. v. Rajaratnam*, 622 F.3d 159, 170 (2d Cir. 2010)).

Petitioners' due process rights cannot later be vindicated. It is axiomatic that Petitioners cannot be forced to litigate in a forum in which they lack constitutionally requisite contacts. *Fox v. Boucher*, 794 F.2d 34, 37 (2d Cir. 1986). Forcing Petitioners to litigate and submit to discovery in the forum without personal jurisdiction violates this basic principle of due process, and cannot be remedied through a regular appeal, after **the right not to be subjected to litigation has already been infringed**. Absent mandamus relief, Petitioners' due process rights not to be subjected to litigation in Vermont will have been thrust out of the bag, never to be recaptured. Such a loss of constitutional rights "for even minimal periods of time, unquestionably constitute irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Moreover, where litigation and discovery would unquestionably involve matters of sensitive attorney-client and work product privileges, "a remedy after final judgment cannot unsay the confidential information that has been revealed." *In re City of New York*, 607 F.3d 923, 934 (2d Cir. 2010). This is why this Court has often deployed the mandamus power in situations, like here, where it is necessary to prevent the disclosure of confidential or privileged information. *Catholic Diocese*, 745 F.3d at 36; *City of New York*, 607 F.3d at 934; *Rajaratnam*, 622 F.3d at 170; *Linde*, 706 F.3d at 117 ("we have issued writs of mandamus in cases where district

courts have incorrectly determined that highly sensitive privileges materials are discoverable").

Jenkins has sued Liberty Counsel, a law firm, and Lindevaldsen, an attorney, based on nothing more than the actions they allegedly took during their representation of a client. Any discovery propounded in such an action will undoubtedly reveal information unquestionably covered by attorney-client and work product privileges. Permitting intrusive discovery on Jenkins' defective and time-barred complaint when jurisdiction is lacking works an irreparable injury on Petitioners. This is precisely "the type of harm that is deemed irreparable for mandamus purposes [because] it involves an interest that is both important to and distinct from the resolution of the merits of the case." *Linde*, 706 F.3d at 117. Mandamus is therefore appropriate and should be issued to prevent irreparable harm.

III. MANDAMUS RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES.

This Court has noted that mandamus relief is appropriate where (1) "a district court ruling flagrantly misapplies a well-settled principle of law," *Linde v. Arab Bank, PLC*, 706 F.3d 92, 108 (2d Cir. 2013); *In re Roman Catholic Diocese*, 745 F.3d 30, 27 (2d Cir. 2014); *In re City of New York*, 607 F.3d 923, 940 n.17 (2d Cir. 2010), (2) "the district court's personal jurisdiction determination is patently erroneous," *Catholic Diocese*, 745 F.3d at 37, (3) there are "particularly serious harms preventable only through the issuance of a writ of mandamus," *id.*, and (4)

the petition includes "the presence of a legal issue whose resolution will aid in the administration of justice." *City of New York*, 607 F.3d at 939.

Here, there can be no doubt that mandamus is appropriate. The district court's decision was patently erroneous, *supra* Section I, its determination represents a judicial usurpation of power, *id.*, and it misapplied Supreme Court and Second Circuit precedent. *Id.* Under such circumstances, "[t]he Supreme Court has recognized . . . the ability of mandamus to 'serve as a useful safety valve for promptly correcting serious errors' [and] particularly injurious rulings." *City of New York*, 607 F.3d at 939 (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009)). The district court's order committed serious error and works a manifestly unjust injury on Petitioners. Moreover, mandamus in this situation is appropriate because it will aid in the administration of justice. Securing Petitioners' due process rights protects "one of the most important personal rights guaranteed by the Constitution of the United States." *United States v. Broncheau*, 759 F. Supp. 2d 694, 697 (E.D.N.C. 2010).

CONCLUSION

For the foregoing reasons, this Court should issue the writ of mandamus directing the district court to dismiss the claims against Petitioners.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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/s/ Daniel J. Schmid
Daniel J. Schmid
Attorney for Petitioners Liberty Counsel, Inc. and Rena M. Lindevaldsen

Dated: March 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2018, I served true and correct copies of the foregoing Petition for Writ of Mandamus and accompanying exhibits via Federal Express, standard overnight on the following parties:

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District Court
Hon. Judge William K. Sessions, III
United States District Court for the District of Vermont
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Burlington, VT 05401
Phone: (802) 951-6301

I also served true and correct copies of the foregoing petition on the same date, via electronic mail, upon all defendants in the district court action.

/s/ Daniel J. Schmid
Daniel J. Schmid
Attorney for Petitioners Liberty Counsel, Inc. and Rena M. Lindevaldsen

Dated: March 29, 2018

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER	:	
Plaintiffs,	:	
v.	:	Case No. 2:12-cv-184
KENNETH L. MILLER, LISA ANN MILLER f/k/a LISA MILLER-JENKINS, TIMOTHY D. MILLER, RESPONSE UNLIMITED, INC. for itself and as an agent of LIBERTY COUNSEL, LLC and LIBERTY UNIVERSITY, PHILIP ZODHIATES, individually and as an agent for RESPONSE UNLIMITED, INC., VICTORIA HYDEN, f/k/a VICTORIA ZODHIATES, individually and as an Agent for RESPONSE UNLIMITED, INC., And LIBERTY UNIVERSITY, LINDA M. WALL, RENA M. LINDEVALDSEN, Individually and as an agent of LIBERTY COUNSEL, LLC AND LIBERTY UNIVERSITY, MATHEW D. STAVER, Individually and as an agent of LIBERTY COUNSEL, LLC AND LIBERTY UNIVERSITY, LIBERTY COUNSEL, LLC, AND LIBERTY UNIVERSITY	:	
Defendants.	:	

OPINION AND ORDER

I. Background

Plaintiff Janet Jenkins ("Jenkins"), for herself and as next friend of her daughter Isabella Miller-Jenkins

("Isabella"), brings this action against individuals and organizations that she alleges conspired with her former same-sex partner, Lisa Miller ("Miller") to kidnap and transport her daughter outside of the United States. After Philip Zodhiates, a Defendant in this civil case, was indicted in the Western District of New York on the basis of facts closely related to the claims at issue here, this Court granted Defendants' motion to stay this civil case pending the resolution of that criminal proceeding. ECF 192. On March 20, 2017, after Zodhiates was tried and convicted, the Court issued an order granting Plaintiffs' motion to lift the stay of the civil case on the date of Zodhiates' sentencing or March 23, 2017, whichever occurred later. ECF 220. Zodhiates was sentenced at a hearing on March 22, 2017, and judgment was entered in his criminal case the following day. *See United States v. Philip Zodhiates*, Case No. 1:14-cr-175-rja-jjm, ECF 183. Plaintiffs filed a revised second amended complaint ("amended complaint") in this case on May 4, 2017, bringing two claims against all Defendants. ECF 223.

Count One of Plaintiffs' complaint, entitled "intentional tort of kidnapping," alleges that Lisa Miller intentionally kidnapped Isabella in order to interfere with Jenkins' lawful custody of her between the dates of September 25, 2009 and September 27, 2009. In addition, Plaintiffs allege in that count

that Miller held Isabella in Nicaragua to interfere with Jenkins' lawful custody of Isabella between January 1, 2010 and the present, and to thwart the equal protection afforded Plaintiffs under Vermont law. Finally, Count One alleges that Miller conspired with, and was aided and abetted by, Philip Zodhiates ("Zodhiates") and Victoria Hyden ("Hyden"),[1] both individually and as agents or officers of Response Unlimited, Inc. ("RUL"), as well as RUL, Liberty Counsel, LLC, Liberty University, Kenneth Miller, Timothy Miller, Linda Wall ("Wall"), and (both individually and as agents of both Liberty University and Liberty Counsel) Rena Lindevaldsen ("Lindevaldsen") and Mathew Staver ("Staver").

Count Two of the complaint, entitled "Conspiracy to Violate Civil Rights," alleges that Lisa Miller conspired with Liberty University, Liberty Counsel, RUL, Zodhiates, individually and as an agent or officer of RUL, Hyden, individually and as an agent or officer of RUL and Liberty University, Kenneth Miller, Timothy Miller, Wall, Lindevaldsen and Staver, individually and as agents of Liberty Counsel and Liberty University, to violate Plaintiffs' civil rights based on discriminatory animus against same-sex couples and against Jenkins due to sexual orientation,

[1] Victoria Hyden, Zodhiates' daughter, was formerly known as Victoria Zodhiates. The complaint refers to her by both names interchangeably. The Court will refer to her as Hyden and to her father as Zodhiates throughout this order.

to prevent the courts of Vermont and Virginia from securing to them equal protection of the law, and to prevent or hinder state authorities from securing equal protection of the law to same-sex couples. Plaintiffs seek damages for Jenkins' alleged extreme emotional distress and loss of her daughter's companionship, legal fees and lost business resulting from the obligations that arose in pursuing a legal remedy for the loss of her daughter. They also seek damages for Isabella's emotional distress arising from her abduction, her loss of emotional and financial support from her mother, as well as the loss of child support payments, educational, medical and dental care, and the support of her extended family, all of which is alleged to result in an injury to Isabella's property and future business and employment.

Defendants Wall, as well as Liberty Counsel, Staver and Lindevaldsen, subsequently filed two, separate special motions to strike Plaintiffs' claims on the basis of 12 V.S.A. § 1041, Vermont's "anti-SLAPP" statute. ECF 239, 243.[2] In addition, Wall, Liberty Counsel, Staver and Lindevaldsen, Liberty University, and Zodhiates, Hyden and RUL filed four, separate motions to

[2] That statute creates a mechanism whereby individuals who are sued for conduct "arising from [their] 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 U.S. or Vermont Constitution" may bring an early motion to strike that action. These types of lawsuits have been labeled "strategic lawsuits against public participation," or "SLAPP."

dismiss Plaintiffs' amended complaint. ECF 227, 228, 237, 238, 240, 242. Defendants assert that Plaintiffs' amended complaint fails because: (1) this Court lacks personal jurisdiction over some or all of them, (2) venue is improper in Vermont; (3) the complaint fails to state a claim upon which relief can be granted, since Plaintiffs have not sufficiently pled the elements of a claim for custodial interference, conspiracy or aiding and abetting under Vermont law, the elements of a Section 1985 conspiracy claim or, where relevant, facts establishing vicarious liability; (4) as applied to some Defendants in this case, Section 1985 violates the First Amendment of the U.S. Constitution; and (5) Plaintiffs' claims against some Defendants are time-barred by the relevant statutes of limitation. *Id.* For the foregoing reasons, the Court grants Defendants' motions only with respect to Isabella's claim under Count One, Liberty University's vicarious liability under both counts for Staver's acts, and for lack of personal jurisdiction over Staver. The Court otherwise denies Defendants' motions to dismiss and motions to strike.

II. Factual allegations

i. Allegations in the amended complaint

Isabella Miller-Jenkins is the daughter of Lisa Miller and Janet Jenkins. Although Lisa Miller moved to Virginia with

Isabella when she was seventeen months old, courts in Virginia and Vermont ruled that the family court of Rutland, Vermont has exclusive and continuing jurisdiction over custody determinations regarding Isabella. After petitioning for the dissolution of her civil union with Jenkins in 2004, Miller "asserted the belief that homosexuality was sinful and that Isabella should be shielded from exposure to the 'lifestyle.'" ECF 223, p. 4. She began to deny court-ordered parent-child contact between Isabella and Jenkins in 2004, and was found in contempt that year. In 2004, Lisa Miller was accepted for representation by "lawyers working at Liberty University and its related law firm, Liberty Counsel, LLC." *Id.* at 5.

In 2007, the Rutland family court awarded Lisa Miller legal and physical parental rights and responsibilities over Isabella, and ordered that Jenkins be entitled to custody during holidays, vacations and some weekends. Lisa Miller initially complied with these orders in 2007. However, in 2008, after Virginia and Vermont courts affirmed Jenkins' parental rights, she defied the visitation orders and began to threaten future acts of custodial interference. By June 2008, Lisa Miller "decided and agreed" with her friend Linda Wall, a member of her church, that she should flee with Isabella. In May of 2009, Jenkins filed a Motion to Modify Parental Rights and Responsibilities in the

Vermont family court, requesting that the court transfer custody of Isabella to her due to Lisa's continued interference with court ordered visitation. By late summer of 2009, Lisa Miller and her "co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood ("Brotherhood") to enable her abduction of Isabella." *Id.* at 6. On September 4, 2009, after Lisa Miller was held in contempt of the Vermont court's orders by a Virginia court, the Vermont family court issued an interim order requiring contact between Jenkins and Isabella from September 25 to 27 of that year. On September 21, 2009, however, Philip Zodhiates and at least one other RUL employee transported Lisa Miller and Isabella to the Canadian border. The day before, Zodhiates and his daughter had communicated with Lisa's father to assist in arranging for her transportation. Disguised as Amish-Mennonites, Miller and her daughter crossed the border at the Rainbow Bridge in a taxi on September 22, 2009. There, at Kenneth Miller's request, a member of the Brotherhood transported Lisa Miller and Isabella to the Toronto airport, where they boarded a flight to Nicaragua.

Timothy Miller, another member of the Brotherhood who had purchased Lisa and Isabella's plane tickets, met Lisa and her child in Nicaragua. Isabella and Lisa Miller lived among the

Beachy Amish-Mennonite community in Nicaragua thereafter in order to avoid detection by United States authorities. In November of 2009, Rena Lindevaldsen and Linda Wall packed up Lisa Miller's personal belongings in two bags. Zodhiates picked these up and arranged to send them to Nicaragua through his son's school teacher, who was traveling there and who delivered the bags to Timothy Miller. Victoria Hyden also facilitated Lisa Miller's communication with Rena Lindevaldsen after that point "in an attempt to help her duck service of contempt and enforcement pleadings filed by Janet Jenkins." *Id.* at 8.

Needless to say, Lisa Miller did not return Isabella for the court-ordered visitation between September 25 and 27, 2009. On November 20, 2009, the Vermont family court issued an order transferring legal and physical parental rights and responsibilities for Isabella to Jenkins beginning on January 1, 2010. When Jenkins arranged for a welfare check in December of that year, police found that nobody was home. Jenkins informed the Vermont family court that Lisa Miller seemed to be missing on December 18, 2009.

The amended complaint alleges that certain defendants took action to assist Lisa Miller even after she left the country. For example, on the day that the Vermont court ordered a transfer of custody, Kenneth Miller called Lisa Miller's pastor

in Virginia to seek assistance in disposing of Lisa Miller's belongings. Moreover, since December 2009, Staver and Lindevaldsen have maintained that they did not know of their client's location after she allegedly stopped communicating with them and disappeared, making representations to this effect to courts in Vermont and Virginia. The amended complaint asserts that these statements were "demonstrably false" and that the lawyers "misled courts in two states to delay contempt proceedings aimed at locating Isabella." *Id.* at 10-11. The pleading also states that Staver and Lindevaldsen "knew the identities of certain co-conspirators and solicited donations and retrieved items to support the crime." *Id.* at 11. Furthermore, in 2010, Zodhiates allegedly transferred cash through Kenneth Miller to Andrew Yoder, who would in turn deliver it to Timothy Miller. Likewise, Wall sought donations for Lisa Miller after January 2010. Finally, Lisa Miller received additional assistance, including employment, from Timothy Miller since she began living with the Brotherhood in 2009.

In addition to this course of events, the amended complaint alleges facts tending to show that the co-defendants in this case agreed with and supported Lisa Miller's conduct, as well as the ethical and religious motivations behind her decisions. As

noted above, the complaint makes conclusory statements that "Wall and Lisa Miller decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella," and that "Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood ... to enable her abduction of Isabella." *Id.* at 5-6. Moreover, Lindevaldsen allegedly wrote a book about Lisa Miller's legal battle, which was required reading for Liberty University School of Law's incoming students. Staver and Lindevaldsen held press conferences with Lisa after the Virginia court held her in contempt and fined her for missed contact between Jenkins and Isabella. Wall organized a coalition with an online social media presence to endorse Lisa's objectives and provide support for her cause both before and after she left the United States. Wall endorsed Miller's decision to flee with Isabella on television in 2010, and suggested that she would take similar actions with regard to other children from same-sex families. She also instructed law enforcement via phone that they should not search for Lisa Miller, and advised the public on Facebook that they should not disclose Lisa and Isabella's whereabouts if they found them. Finally, the complaint alleges that Lisa Miller stated in the months following her flight to Nicaragua that Liberty Counsel

had advised her that it would be in her best interests to disappear.

ii. Factual representations in Defendants' affidavits

Defendants Lindevaldsen, Staver and Liberty Counsel's motion to strike makes extensive cross-references to the arguments raised in their motions to dismiss, which in turn rely on factual representations set forth in these defendants' affidavits. ECF 238-1. Likewise, Defendant Wall's motion to strike references publically available, online sources to further detail the nature of Wall's advocacy for Lisa Miller, as well as her own affidavit.

In her affidavit, Wall denied ever telling or suggesting to Lisa Miller that she disobey any court orders, or that Lisa Miller ever told her that she was intending to or would leave the United States in order to avoid enforcement of court orders. ECF 109-1. Instead, Wall represented that she solicited donations during the 2008-2009 school year to help Lisa Miller "defray her travel costs to Vermont related to child custody issues concerning Isabella." *Id.* at 3. However, Wall stated that she has not communicated with Lisa Miller since September of 2009, and that she has not asked people to donate money to Lisa Miller subsequent to June 2009. *Id.* Nor, according to Wall, did she herself give or ask others to give money or anything else of

value to Lisa Miller for the purpose of aiding Lisa Miller to leave the United States. Likewise, Wall asserts that she has not given money or anything of value to anyone other than Lisa Miller for the benefit of Lisa or Isabella since the two left the United States.

In addition, Wall denied any associations with the Thomas Road Baptist Church in Lynchburg, Virginia alleged in the complaint, and denied knowing or having contact with Timothy Miller, Andrew Yoder, Philip Zodhiates, or Victoria Hyden. She denied knowing or communicating with Kenneth Miller, except to send him a card of encouragement when he was in jail in Vermont awaiting trial on criminal charges. Finally, Wall stated that she was never the administrator or webmaster of the Protect Isabella Coalition website and never added content to that website.

Lindevaldsen denied many facts asserted in the amended complaint in her affidavits. ECF 213-2, 54-5. In particular, Lindevaldsen stated that she never encouraged Lisa Miller or any of the other named defendants to not allow Isabella to have contact with Janet Jenkins, and that she never counseled Lisa Miller to disobey court orders or to flee from the state, the country or beyond the reach of any court or law enforcement. Nor did she have knowledge of anyone else that counseled, encouraged

or assisted her in fleeing, or have prior knowledge that Lisa Miller would flee. Rather, according to Lindevaldsen, Lisa Miller stopped all communication with her in September 2009. Lindevaldsen also denied receiving any email from Victoria Hyden or discussing Lisa Miller with Hyden. Likewise, she asserted that she did not receive a call from Zodhiates on September 22, 2009, after he allegedly drove Lisa Miller and Isabella to the Canadian border, or speak to him about the legality of removing Isabella from the country. Finally, Lindevaldsen denied speaking with Wall by telephone on November 12, 2009 about removing Lisa Miller's belongings from her apartment, and represented that she never visited Lisa Miller's apartment and never packed up her personal belongings in November 2009 or at any other time.

Similarly, Staver submitted an affidavit denying most of the facts concerning his involvement in Isabella's alleged kidnapping in the amended complaint. ECF 213-1. Staver asserted that he had no prior knowledge of Lisa Miller's intent or plan to leave the country or knowledge of anyone who may have assisted or participated in her departure, and that he did not counsel or suggest to Lisa Miller or others that she should "disappear." Rather, he asserted that he always counseled her to obey all court orders. In this sense, he argued that he never "misled courts" to "delay contempt proceedings aimed at locating

Isabella," as the amended complaint states. Staver stated that he was not aware of any email or other communication in which Zodhiates mentioned a "personal option" for Lisa Miller to Mr. Sidebottom, who was then employed by Liberty Counsel. He also represented that he never received a call from Zodhiates or anyone associated with him on September 22, 2009, and that he does not know of anyone who received such a call. Nor did he ever discuss disobeying any court order or the legality of removing Isabella from the country with Zodhiates. Finally, he denies ever having any communications with Victoria Hyden regarding Lisa Miller or anything relating to her.

III. Standard of Review

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (internal quotation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Thus, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has

alleged—but it has not shown—that the pleader is entitled to relief." *Id.* at 679.

Defendants in this case have challenged the facts alleged in the amended complaint through signed affidavits. Although these may be considered for purposes of a motion to strike and motions to dismiss pursuant to other provisions of Rule 12 of the Federal Rules of Civil Procedure, the Court may not consider them for purposes of Defendants' motions to dismiss for failure to state a claim. *See* 12 V.S.A. § 1041 (for purposes of a motion to strike, "the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based."); *Seemann v. U.S. Postal Serv.*, No. 2:11-CV-206, 2012 WL 1999847, at *1 (D. Vt. June 4, 2012) ("In deciding a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), however, the Court **may** resolve disputed factual issues by reference to evidence outside the pleadings, including affidavits.") (emphasis in original) (citation omitted); *Orkins v. Dumas*, No. 1:09-CV-00237-JGM, 2010 WL 4063167, at *1 (D. Vt. Oct. 15, 2010) ("When deciding a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Court's function is not to weigh the evidence that might be presented at trial but merely to determine whether the [pleading] itself is legally sufficient.") (internal citation omitted).

However, "a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 566 U.S. at 678 (internal quotation omitted). Thus, in considering a motion to dismiss, a court may proceed by first "identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth," and then determining whether the remaining, well-pleaded factual allegations, would plausibly give rise to an entitlement to relief. *Id.*[3]

IV. Discussion

A. Motion to Dismiss Count One

i. Introduction

In three separate motions, Defendants Zodhiates, Hyden and RUL, Linda Wall, and Liberty Counsel, Staver and Lindevaldsen (hereinafter "Liberty Counsel Defendants," because of their joint motion) move to dismiss Count One of Plaintiffs' amended complaint, which alleges "the intentional tort of kidnapping," as well as conspiracy and aiding and abetting in the tort. This Court previously addressed the validity of the same claim, concluding that although the Vermont Supreme Court had not yet

[3] "In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010) (internal quotation omitted).

had occasion to determine whether an intentional tort of kidnapping would be recognized in the state, that court would likely agree that a claim of custodial interference consistent with Section 700 of the Restatement (Second) of Torts would be viable here.

As with their other challenges, Defendants' arguments against Plaintiffs' kidnapping count overlap. First, Defendants Liberty Counsel, Staver and Lindevaldsen contend that "this Court's previous prediction that Vermont courts would adopt a Section 700 claim was and remains incorrect." ECF 240, p. 80. Linda Wall sets forth a similar argument, alleging that "at a minimum, given the uncertainty of Vermont's willingness to recognize such a cause of action, this Court should certify the question to the Vermont Supreme Court rather than hastily prognosticate its validity." ECF 242-1, p. 4. Next, the Liberty Counsel Defendants argue that even if such a claim existed, Jenkins cannot bring that claim against a custodial parent with superior custodial rights, and as such cannot recover for conduct occurring prior to January 1, 2010. They contend that Jenkins failed to plead that any of them engaged in wrongful conduct after that time, an omission which they claim "irreparably destroys her custodial interference claim against these defendants." ECF 240, p. 90. Wall sets forth an identical

argument, citing her own affidavit for the notion that she, also, was innocent of wrongful conduct occurring after January 1, 2010. Zodhiates, Hyden and RUL reiterate this argument in their motion, although they do not limit their assertion in time.

Moreover, Wall argues that Jenkins' kidnapping claim on behalf of Isabella fails because that action would attach only to a parent, not a minor child. Likewise, the Liberty Counsel Defendants contend that Isabella has no standing to pursue a custodial interference claim.

In addition, Defendants assert that the pleadings fail to sufficiently satisfy the elements of conspiracy or aiding and abetting, independently of whether Plaintiffs could make out a claim for custodial interference. Zodhiates, Hyden and RUL argue that while this Court previously determined that Plaintiffs could raise a claim for custodial interference under Vermont law, it "did not address the issue of whether it was possible to have a conspiracy to interfere with custodial rights." ECF 227, p. 10. They contend that such a claim, to the extent it exists in Vermont, requires Defendants to have done something causing damage to Plaintiffs which is "unlawful in itself," and that, since Lisa Miller's actions were not unlawful, the conspiracy claim cannot stand. ECF 227, p. 10. The Liberty Counsel

Defendants make the same argument as applied to their own conduct, and also assert that Jenkins has failed to plead the existence of an agreement that involves them. Finally, they argue that Jenkins has failed to state a claim for aiding and abetting, because she failed to plead that (1) these Defendants committed any tortious act as part of a common design or agreement; (2) they knew of Lisa Miller's alleged actions or provided substantial assistance to Lisa Miller for her alleged actions; and (3) these Defendants' actions separately constituted tortious activity. The Court will address each of these arguments in turn.

ii. Analysis

1. *Existence of custodial interference claim*

In ruling upon the validity of Plaintiffs' kidnapping claim in October of 2013, this Court previously stated that "it has long been the law in Vermont ... that a parent may maintain an action for wrongful interference with 'the custody, control, and services of [a] minor child.'" *See* ECF 115, p. 40-41 (citing *Biondi v. Haselton,* 134 A. 606 (Vt. 1926); *Schuppin v. Unification Church*, 435 F. Supp. 603, 608 (D. Vt. 1977)). In this sense, the Court found that Section 700 of the Restatement merely tracked settled Vermont law, and predicted that the

Vermont Supreme Court would agree were it presented with the same question.

To challenge the continued validity of this holding, Liberty Counsel Defendants point to three out-of-state cases in which other states' courts declined to recognize a custodial interference claim. *See* ECF 240, pp. 81-83 (citing *Zaharias v. Gammill*, 844 P.2d 137 (Okl. 1992); *Larson v. Dunn*, 460 N.W.2d 39 (Minn. 1990); *Whitehorse v. Critchfield*, 494 N.E.2d 743 (Ill. App. Ct. 1986)). In each of these cases, state courts highlighted the need to reduce litigation between parents with unequal custody over their children in order to protect those children's best interests. Defendants argue that since Vermont law also recognizes that "the best interest of the children should be paramount," and have noted that hostile custody battles could harm children, "it is more likely that Vermont Courts would reject creation of such a new tort based on the same premises as Illinois, Minnesota and Oklahoma." *Id.* at 84. However, Defendants' argument ignores the line of state court decisions that have adopted the tort by pointing to the very same policy considerations as those that were upheld in *Zaharias, Larson* and *Whitehorse*. For example, in the more recent case of *Stone v. Wall*, 734 So. 2d 1038, 1046–47 (Fla. 1999), the Florida Supreme Court examined the best interests of the child

as a competing policy consideration, ultimately holding that this factor weighed in favor of recognizing the tort. The Court found that "[i]t is obviously in the best interests of children to be returned promptly to their legal custodians," and that child kidnapping "has the potential for causing far greater harm to the children than litigation." *Id.* Given the directly opposite interpretations of how the best interest of the child standard would weigh on this determination, the mere fact that Vermont has upheld this standard in other contexts does not in itself counsel against recognizing the tort of interference with parental rights.

Next, Defendants also argue that Vermont's recognition of certain causes of action for custodial parents in these circumstances militates against the expansion of that legal arsenal. As in other states, Vermont's criminal statutes proscribe kidnapping and custodial interference. *See* 13 V.S.A. §§ 2405; 2451. The existence of alternative legal remedies, however, could weigh either against or in favor of recognizing the tort. In the three cases Defendants point to, state courts took note of alternative remedies, both civil and criminal, which might be available to parents in these circumstances as reason not to adopt the tort. *See Zaharias v. Gammill,* 844 P.2d at 138-140 (noting that "Oklahoma already recognizes a cause of

action in the parent or legal guardian of a child for the abduction or enticement of that child," and thus that "the tort of interference with custodial relations would not enhance the scheme of family law in Oklahoma."); *Larson v. Dunn*, 460 N.W.2d at 46 (Minn. 1990) ("The law in Minnesota already provides redress for a custodial parent in such a situation.").

However, other states have embraced a contrary logic. In *Stone v. Wall*, for example, the Supreme Court of Florida reasoned that since the tort of intentional interference did not conflict with alternative legal remedies, such remedies did not preclude the court from recognizing the tort. *See Stone v. Wall*, 734 So.2d at 1044-1045. Similarly, in *Kessel v. Leavitt*, the Supreme Court of West Virginia found that the criminal proscription against interfering with custodial rights provided a rationale to recognize that tort, implying that the criminal provision embodied an expression of the state's public policy against such conduct. 511 S.E.2d 720, 764 (W. Va. 1998) (citing *In D & D Fuller CATV Construction, Inc. v. Pace*, 780 P.2d 520 (Colo. 1989) (en banc) as an example of a state basing its adoption of the tort of interference with parental or custodial relationships, in part, upon the fact that it had also criminalized custodial interference). Thus, while under one line of cases the criminal proscription of this conduct in Vermont

would undercut the need to create a separate civil cause of action, another line of jurisprudence suggests that the criminal provisions create policy rationale for the interference tort. In short, the relevance of alternative legal remedies, if any, is far from clear-cut. As such, the Court finds no reason to alter its prior conclusion on this question.

In addition, Wall requests that, should the Court decline to find that no such tort exists in the state of Vermont, it should at least certify this question to the Vermont Supreme Court. She points out that the Supreme Court *may* answer a question of Vermont law certified to it by a federal court if the answer might determine an issue in pending litigation and there is no clear and controlling Vermont precedent. *See* Vt. R. App. 14. Although that is the standard the Vermont Supreme Court would deploy to determine whether it would accept the request to answer a question certified to it, this Court's decision to certify in the first place is guided by Second Circuit precedent. In *State Farm Mut. Auto. Ins. Co. v. Mallela*, 372 F.3d 500, 505 (2d Cir. 2004), the court explained that it has "deemed certification appropriate where state law is not clear and state courts have had little opportunity to interpret it, where an unsettled question of state law raises important issues of public policy, where the question is likely to recur, and

where the result may significantly impact a highly regulated industry." Here, a significant number of state courts have interpreted this question, and the tort draws on common law roots that have been recognized in this state for some time. *See Stone v. Wall*, 734 So. 2d 1038, 1041–43 (Fla. 1999) (noting that the tort "has its roots in English common law, descended from a writ giving the father an action for the abduction of his heir," and that the "majority of states considering the question have recognized a cause of action for intentional interference with the custodial parent-child relationship."); *Wood v.* Wood, 338 N.W. 123, 124-25 (Iowa 1983) (en banc) ("The claim for interference with custody rights appears to have been recognized in every jurisdiction which has addressed the issue."); *Bioni v. Haselton,* 134 A. 606, 607 (Vt. 1926) (treating custody of a child as a form of property right). Moreover, while the tort certainly raises an important issue, the public policy of the state of Vermont on this matter has been expressed through its criminal statutes. Finally, although custody conflicts are common, the particular facts of this case are rare and egregious. Thus, the question of whether a tort remedy would apply to circumstances such as these is unlikely to recur. In light of these factors, certification is not warranted here. As such, the Court will not disturb its prior holding that tortious

interference with parental rights constitutes a cause of action cognizable in this state.

2. *Temporal Scope of Custodial Interference Claim*

Next, Defendants argue that even if the tort is recognized, Plaintiffs have failed to allege facts that satisfy its elements in this case. The comments to Section 700 of the Restatement (Second) of Torts, on which the custodial interference tort is based, provides that "[w]hen the parents are by law jointly entitled to the custody and earnings of the child, no action can be brought against one of the parents who abducts or induces the child to leave the other." Restatement (Second) of Torts § 700, cmt. c. Defendants cite to numerous state court decisions from outside of Vermont in which parents were required to demonstrate superior custody rights in order to establish a claim for tortious interference. *See* ECF 240, pp. 67-69; *see, e.g., Stone*, 734 So.2d at 1042 ("[t]he elements of the cause of action include that the plaintiff had superior custody rights to the child and that the defendant intentionally interfered with those rights."); *Wolf v. Wolf*, 690 N.W.2d 887, 892 (Iowa 2005) (finding that "primary physical care" was sufficient to

establish superior custody rights within the meaning of Section 700, even where parents had joint legal custody of the child).[4]

Here, Plaintiffs have alleged that Lisa Miller interfered with Jenkins' parental rights on two occasions: between September 25 and 27, 2009, and between January 1, 2010 and the present time. During the first interval, the amended complaint alleges that Jenkins was entitled to contact with Isabella pursuant to an Interim Order issued by the Vermont Family Court on September 4, 2009, while Jenkins' motion to transfer custody was pending. Thus, the contact that Isabella and Jenkins missed on those dates was not part of a regular visitation schedule, but rather a temporary decision made before the Family Court rendered its ultimate custody determination. During the second interval, the amended complaint alleges that Jenkins was entitled to legal and physical parental rights and responsibilities for Isabella.

The Court need not decide, at this stage, whether the Interim Order granting Jenkins contact between September 25 and 27, 2009 is sufficient to establish her superior custody rights

[4] However, only two cases cited by Defendants specifically held that interference with a parent's visitation rights was insufficient to establish superior custody rights for purposes of the tort during the time that that parent should have had physical custody of the child. *See Cosner v. Ridinger,* 882 P.2d 1243 (Wyo. 1994); *McGrady v. Rosenbaum*, 62 Misc. 2d 182, 188 (N.Y. Sup. Ct. 1970).

on those dates.[5] Even if the Court were to assume, for the sake of argument, that Jenkins could not assert a claim of tortious interference against Lisa Miller for her deprivation of contact with Isabella in September of 2009, there is no basis to hold that the remaining defendants' acts cannot have taken place during this time. Plaintiffs have not alleged a claim of tortious interference directly against these Defendants, but rather assert claims of aiding and abetting Lisa Miller in the commission of that tort and conspiracy to commit that tort. Thus, so long as Defendants took actions in furtherance of interfering with Jenkins' parental rights after she was granted full custody, there is no per se rule requiring the overt acts or assistance to have taken place during or after the commission of the actual tort.

In this case, the amended complaint alleges facts supporting the inference that the Defendants' acts in furtherance of the abduction of Isabella were undertaken with the expectation that Jenkins would soon have superior custody

[5] Nevertheless, it is worth noting that, where a parent has abducted a child and removed her from the country so as to prevent the other parent from having equal contact with the child, some courts have recognized a claim for interference against a third party who conspires with the parent. *See Rosefield v. Rosefield*, 34 Cal. Rptr. 479, 482–83 (Ct. App. 1963) ("If, however, one parent makes away with the offspring, removes it effectually from judicial control, conceals it, and leaves the other parent utterly bereft of the means of enjoying any of the privileges of parenthood, it is folly to say that the decamping parent is merely exercising his 'equal right' to the custody of the child. There is no equality about it.").

rights over Isabella. In fact, all of the alleged assistance took place after Jenkins filed her Motion to Modify Parental Rights and Responsibilities on May 27, 2009. The plan to "kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood ... to enable [Lisa Miller's] abduction of Isabella" was allegedly devised thereafter, by the late summer of 2009. ECF 223, p. 6. Additional facts permit the Court to infer that this plan was devised in order to avoid the consequences of Jenkins' pending motion. For example, Zodhiates sent an email implying that he and the Liberty lawyers were aware that Lisa Miller would soon lose custody of Isabella, and Lisa Miller held a press conference when she was fined for contempt of the family court orders along with her conspirators. Thus, the facts alleged sufficiently establish that Defendants participated in a conspiracy, and aided and abetted Lisa Miller, to interfere with Jenkins' superior custody rights after January 1, 2010.

Even if Defendants had only taken acts to deprive Jenkins of her custodial rights while Lisa Miller also had custody of Isabella, the case law Defendants cite does not clearly establish that this conduct would be permissible. First, Defendants' rely on *Marshak v. Marshak*, 629 A.2d 964 (Ct. 1993), in which the Connecticut Supreme Court determined that third

parties who had supported a father in abducting his four children to a different country while the father and mother had equal custody over the children could not be held liable for the tort of child abduction. That conclusion, however, was subsequently questioned in the context of a criminal case of child abduction. *See State v. Vakilzaden*, 742 A.2d 767, 771 (1999) ("Quite simply, the legal premise underlying our holding in *Marshak* was faulty. We were wrong to conclude that a joint custodian could never, under any scenario, be liable for custodial interference."). Moreover, in assessing the civil claim against the third party who assisted the father prior to his losing custody, the Court in *Marshak* relied on the fact that no claim for civil conspiracy existed in Connecticut. Thus, "the cause of action is for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself." *Marshak*, 628 A.2d at 972 (citing *Cole v. Associated Construction Co.*, 141 Conn. 49, 54 (1954)). The requirement that the third party's act have occurred at a time when the abduction would have been unlawful, therefore, stemmed from the law concerning civil conspiracies in Connecticut. *Id.* ("Without an independent basis for finding illegality in the defendant's actions in allegedly conspiring with and aiding [the father] prior to … the date of the order awarding custody to the [mother], and in the absence of a specific finding that the defendant conspired with

or aided [the father] subsequent to that date, the [mother] cannot prevail on her claim against this defendant."). Thus, *Marshak* does not provide a basis to require that all of Defendants' acts in this case have occurred after full custody was transferred to Jenkins. Nor do Defendants' other references provide authority for such a claim. *See Finn v. Lipman*, 526 A.2d 1380, 1381-82 (Me. 1987) (holding that no action for tortious interference lay where third party did not have direct contact with children, so as to interfere with their father's rights while serving as an attorney for the children's mother in the relevant divorce proceeding); *D & D Fuller CATV Const. Inc. v. Pace*, 780 P.2d 520 (Colo. 1989) (holding that court could exercise jurisdiction over custodial interference claim against third parties). Accordingly, the mere fact that some of Defendants' alleged actions to assist Lisa Miller may have taken place before January 1, 2010 does not provide a basis for dismissing Plaintiffs' claim.

3. *Isabella's claim for kidnapping*

Next, Defendants also argue that Jenkins' claim as next friend of Isabella must fail as a matter of law because the claim for custodial interference attaches only to a parent with custody. On this question, Defendants are correct. Vermont Rule of Civil Procedure 17(b) provides that a representative (or a

next friend or guardian ad litem, in the event that no representative has been appointed) may sue on behalf of an infant. The real party in interest in these circumstances would therefore be the infant. *See* Vt. R. Civ. P. 17(a) ("Every action shall be prosecuted in the name of the real party in interest."). However, § 700 of the Restatement (Second) of Torts provides that an individual who interferes with a parent's custody "is subject to liability to the parent." Since Isabella was not a parent, and did not have custody, she cannot make out this claim herself.[6] Accordingly, the Court must dismiss Jenkins' claim on behalf of Isabella under count one of the amended complaint.

4. *Conspiracy*

Aside from challenging the elements of the underlying tort of interference with Jenkins' custody, which Plaintiffs have alleged only against Lisa Miller, Defendants also assert that Jenkins has failed to state a claim for conspiracy against them. In a non-precedential order issued by a three-judge panel, the Vermont Supreme Court has called into question whether such a cause of action should continue to exist in this state. *See Davis v. Vile*, No. 2002-465, 2003 WL 25746021, at *3 (Vt. Mar.

[6] Plaintiffs' reference to the Vermont Supreme Court's discussion of the victims of the crime of custodial interference is unpersuasive, since it does not address who the real party in interest would be in a civil context.

2003) (deciding whether superior court properly dismissed a civil conspiracy claim by "[a]ssuming that there continues to be an independent cause of action for the tort of civil conspiracy," but collecting cases from other jurisdictions in which civil conspiracy is only considered as a basis for imposing damages rather than a separate cause of action). However, numerous cases from this Court have recognized such a cause of action nonetheless. *See, e.g., Saunders v. Morton*, No. 5:09-CV-125, 2011 WL 1135132, at *9–11 (D. Vt. Feb. 17, 2011); *Mansfield Heliflight, Inc. v. Freestream Aircraft USA, Ltd.*, No. 2:16-CV-28, 2016 WL 7176586, at *15–16 (D. Vt. Dec. 7, 2016); *Dernier v. U.S. Bank Nat'l Ass'n for CSMC Mortg.-Backed Pass-Through Certificates, Series 2006-3*, No. 2:16-CV-000230, 2017 WL 2483799, at *6 (D. Vt. June 8, 2017). Following these decisions, the Court predicts that in certain circumstances, a cause of action for civil conspiracy may be recognized in Vermont.

Under Vermont law, "the crime of conspiracy consists in a combination of two or more persons to effect an illegal purpose, either by legal or illegal means, or to effect a legal purpose by illegal means. For a civil action, the plaintiff must be damaged by something done in furtherance of the agreement, and the thing done must be something unlawful in itself. There can be no recovery unless illegal means were employed." *Akerley v.*

N. Country Stone, Inc., 620 F. Supp. 2d 591, 600 (D. Vt. 2009) (internal quotations and alterations omitted). Thus, at a minimum, Defendants must have reached an agreement. In this case, the amended complaint alleges that this agreement was for the purpose of interfering with Jenkins' parental rights between September 25 and 27, 2009 and as of January 1, 2010. In addition, the act done in furtherance of that end by each defendant held liable for the conspiracy must be "unlawful in itself."

Liberty Counsel Defendants first argue that Plaintiffs have failed to allege the requisite agreement in the amended complaint. They contend that any allegations of agreement are vague and conclusory, and do not involve them.[7] However, the complaint sets forth facts that, taken together, establish that Defendants agreed to this common goal. For example, paragraph 29 states that RUL "was working in conjunction with the lawyers at Liberty Counsel to raise funds in support of the effort to terminate [Jenkins'] contact with her daughter, Isabella," and states that as part of this work, Zodhiates offered Liberty Counsel a "personal option" for Lisa Miller in the event that her legal fight failed. ECF 223, p. 6. The allegation that Liberty Counsel lawyers were "working in conjunction" with

[7] Defendants also include extensive citations to their own affidavits denying the facts in the complaint. For purposes of determining whether the complaint fails to state a claim, the Court must ignore those affidavits at this stage.

others to interfere with Jenkins' custody by legal or illegal means would itself suffice to establish the requisite agreement. Moreover, paragraph 34 alleges, in a more conclusive fashion, that by "late summer of 2009, Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood ("Brotherhood") to enable her abduction of Isabella." *Id.* Although that paragraph does not clearly delineate who those co-conspirators were, Plaintiffs' later claims make clear that these co-conspirators include the Liberty Counsel Defendants. Given these specific and conclusory factual claims, Plaintiffs have satisfied their burden of alleging agreement with respect to the Liberty Counsel Defendants.

Next, Liberty Counsel Defendants also assert that the conspiracy claim must fail because there is no underlying act liability: that is, no liability for the alleged underlying tort. However, as noted above, Defendants cannot show that Plaintiffs have failed to state an underlying claim for tortious interference.[8] Even if the Court were to construe this challenge as asserting that the means that Defendants employed in furtherance of the agreement were not unlawful, that argument would also fail. Plaintiffs have alleged that Lindevaldsen aided

[8] For this reason, Defendants Zodhiates, Hyden and RUL's challenge to the sufficiency of the conspiracy claim must fail as well.

Lisa Miller by packing her belongings after she fled, as part of a scheme to abduct Isabella "in such a way as to avoid detection by United States authorities." *Id.* at 7. They have also alleged that Lindevaldsen and Staver lied to state courts about their knowledge of Isabella and Lisa Miller's whereabouts. Aside from whether these actions could themselves constitute a component of the tort of intentional interference with Jenkins' custody, there is no question that they would also violate other provisions of Vermont law if proven to be true. *See, e.g.,* 13 V.S.A. § 2904 (false swearing). Accordingly, Plaintiffs have pleaded sufficient facts to allege a conspiracy claim against the Liberty Counsel Defendants.

Separately, Wall also asserts that Plaintiffs have failed to state a claim of conspiracy against her. She does not, however, lay out a specific argument as to why the facts alleged in the amended complaint about her conduct fail to meet the elements of that claim. In fact, the amended complaint plainly alleges an agreement, stating that Linda Wall discussed Lisa Miller's plans for preventing Jenkins' contact with Isabella and agreed to support her in fleeing the country with Isabella. It also alleges that Linda Wall raised funds to support the kidnapping and packed Lisa Miller's belongings as part of a scheme to allow Miller to flee without being detected by U.S.

authorities. Given the criminal nature of Lisa Miller and Zodhiates' conduct, the Court has no trouble finding that Wall's conduct constituted an unlawful means in furtherance of that agreement. Accordingly, Plantiffs have sufficiently pleaded a claim of conspiracy against Wall, as well.

5. *Aiding and abetting*

Finally, Defendants assert that Plaintiffs have failed to state a claim for aiding and abetting. However, Liberty Counsel Defendants identify an incorrect standard to determine whether a party can be held liable for aiding and abetting in the commission of a tort. According to the very case they cite, *Montgomery v. Devoid*, 915 A.2d 270 (Vt. 2006), aiding and abetting another in the commission of a tort requires a plaintiff to show "(1) the existence of a primary violation; (2) knowledge of this violation on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in the achievement of the primary violation." *Id.* at 278 (citing *Calcutti v. SBU, Inc.,* 273 F.Supp.2d 488, 493 (S.D.N.Y.2003)). "Closely intertwined with the concept of 'substantial assistance' is the principle of proximate cause." *Id.* In that case, the Vermont Supreme Court cited the standard discussed by Defendants, drawing from the Restatement (Second) of Torts § 876, in addressing whether a joint tortfeasor should be held

liable for the entirety of harm caused to a plaintiff or only for a portion of it. Thus, the court noted that "[a] person is subject to liability for harm resulting to a third person from the tortious conduct of another if the person: (1) commits a tortious act as part of a common design with the other; (2) gives substantial assistance to the other knowing that the other's conduct is a breach of duty; or (3) gives substantial assistance to the other to accomplish a tortious result while also acting in a manner that is a breach of duty to the third person. " *Id.* at 281 (citing Restatement (Second) of Torts § 876 (1979)).

Regardless of which standard one applies, Defendants' argument in this case is unavailing. Defendants contend that Plaintiffs have failed to plead that they provided substantial assistance to Miller. However, the amended complaint alleges that Defendants made misrepresentations to state courts in order to delay contempt proceedings aimed at locating Isabella. If, as the amended complaint alleges, Liberty Counsel's lawyers in fact knew of Lisa Miller's plan to flee with Isabella, a truthful statement would have likely aided law enforcement in preventing the kidnapping. As such, the misrepresentation constitutes substantial assistance. Moreover, the assistance the lawyers provided by lying about their knowledge of Lisa Miller's

whereabouts was done with knowledge of Lisa Miller's duty to turn over physical custody of Isabella pursuant to the family court's Interim Order, as well as Jenkins' pending motion to transfer custody of Isabella. Moreover, as discussed above, Plaintiffs have alleged that Liberty Counsel lawyers acted pursuant to an agreement to prevent Jenkins' contact with Isabella. Thus, whether one applies the standard in *Calcutti* or the first prong of § 876 of the Restatement (Second) of Torts, Plaintiffs have sufficiently plead a claim for aiding and abetting Lisa Miller's tortious interference with Jenkins' custody. As such, the Court denies Defendants' motions challenging Count One of Plaintiffs' amended complaint for failure to state a claim.

B. Motions to Dismiss Count Two

i. Introduction

In four separate motions, Defendants also move to dismiss the Plaintiffs' claim of conspiracy to violate civil rights (Count Two) for failure to state a claim. *See* ECF 242, pgs. 5-6; ECF 237, pgs. 15-17; ECF 227, pgs. 11-20; ECF 240, pgs. 100-114. Wall asserts that, as applied to her, Plaintiffs' claim fails to allege facts concerning her state of mind with sufficient specificity, fails to assert that she committed a tort, and fails to sufficiently allege that Defendants acted with the

force required to make out a claim under 42 U.S.C. § 1985. ECF 242, pgs. 5-6. Liberty University claims that this count fails as applied to it because Plaintiffs have failed to allege that the harm they suffered was caused by a policy or custom of the University, and that as such, they cannot be held liable under a theory of vicarious liability. ECF 237, pgs. 15-17. Defendants Zodhiates, Hyden and RUL also argue that Plaintiffs have failed to establish that they acted with such a degree of force as would interfere with the capabilities of state law enforcement, which they contend is required under § 1985. Moreover, they argue that that the Plaintiffs have failed to allege facts that they acted with animus, or even that go to their states of mind.

Finally, these Defendants argue that because sexual orientation and same-sex couples were not a protected class at the time that the events at issue took place, applying § 1985 to penalize their conduct would violate retroactivity norms. Defendants Liberty Counsel, Staver and Lindevaldsen rely on their own affidavits to argue that, as a result, Plaintiffs cannot allege facts that establish a meeting of minds sufficient to support a conspiracy claim. Moreover, they assert that Jenkins cannot prevail on her § 1985 claim because she is not a member of a protected class, since she is not in a same-sex marriage. Likewise, they argue that Jenkins, on behalf of

Isabella, cannot prevail on her § 1985 claim because the complaint does not allege that Defendants acted with discriminatory animus against Isabella, either on the basis of sexual orientation or membership in a same-sex couple. Finally, they argue that since Plaintiffs claim that their equal protection rights have been infringed upon, and since the right to equal protection is protected only against state encroachment, Plaintiffs must allege state action. Having failed to allege participation by the state in the alleged wrongdoing, Defendants contend, Plaintiffs cannot prevail on this claim. The Court reviews these arguments in turn. For the reasons discussed below, Defendants' challenges to Count Two of Plaintiffs' amended complaint are denied.

ii. Analysis

Plaintiffs bring Count Two of their amended complaint pursuant to Section 2 of the Civil Rights Act of 1871, also known as the Klu Klux Klan Act. That provision, codified at 42 U.S.C. § 1985(3), permits a civil suit for damages against "two or more persons" who conspire "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State ... from

giving or securing to all persons within such State ... the equal protection of the laws." *Id.* The first section is known as the "deprivation" clause, while the second is known as the "hindrance" clause. *See Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 278–79, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993). Plaintiffs bring their claim pursuant to the latter clause.

1. Force requirement

Defendants Zodhiates, Hyden and RUL, along with Linda Wall and Liberty Counsel, Staver and Lindevaldsen by reference argue that Plaintiffs have failed to allege that they acted with the force required under Section 1985. They review the Supreme Court's construction of the Ku Klux Klan Act's legislative history in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 300 (1993) to argue that, in order to be actionable, a conspiracy must entail action "with enough force, of whatever sort, to overwhelm the capacity of legal authority to act evenhandedly in administering the law." Here, these Defendants claim, "the allegations suggest, at best, that some of the Defendants sought to evade law enforcement," but that the law enforcement system was equipped to handle the type of wrongdoing at issue by issuing sanctions. Holding otherwise, they argue,

"will turn routine non-compliance with state custody orders into federal cases." ECF 227, p. 16.

Even if this Court assumes, for the sake of discussion, that *Bray* requires such a showing of force, however, Plaintiffs have not failed to allege it in this case. Contrary to Defendants' suggestion, this is precisely the type of case where the forceful nature of the action at issue –kidnapping of a child and assisting in her physical transportation overseas in order to escape the jurisdiction of state courts- overwhelmed law enforcement capacity. Moreover, the particular defendants who raised this claim –especially Zodhiates and Hyden –were directly involved in Isabella's removal to Canada and then to Nicaragua. Accordingly, to the extent that § 1985 requires a Plaintiff to allege force, Plaintiffs have clearly done so in this case.

2. State action requirement

Defendants Liberty Counsel, Staver and Lindevaldsen also contend that Plaintiffs have failed to allege the requisite state action to support her claim under either the hindrance clause or the deprivation clause of § 1985. In this Court's first order on a number of defendants' motions to dismiss, the Court addressed whether the deprivation clause required state action. *See* ECF 115, p. 64. In particular, the Court noted that

the Supreme Court had recognized only two rights protected against private as well as official encroachment under the deprivation clause: the right to be free form involuntary servitude and the right to interstate travel. ECF 115, p. 65 (citing *Bray*, 506 U.S. at 278). The first of these rights is clearly not implicated by the facts alleged in this case. And since Plaintiffs had failed to allege a conspiracy that was aimed primarily at impeding or preventing the exercise of interstate travel, the Court found that neither right was implicated. Accordingly, the Court concluded that Plaintiffs had failed to state a claim under the deprivation clause of Section 1985. Since Plaintiffs' amended complaint does not now allege facts to suggest that the purpose of the conspiracy was to interfere with their right to interstate travel, it does not substantially alter the facts relevant to this analysis. Accordingly, if the Plaintiffs had only alleged a claim under the deprivation clause of § 1985, the § 1985 count would fail.

However, Plaintiffs have brought a claim under the hindrance clause of § 1985, asserting that the Defendants conspired "to prevent the courts of Vermont and Virginia from securing to them the equal protection of the law, and to prevent or hinder State authorities from securing the equal protection of the law to same-sex couples." ECF 223, p. 13. In addressing a

hindrance clause claim in its earlier order, this Court declined to decide whether a hindrance clause claim is limited to rights protected only against official encroachment, or whether interfering with state officials necessarily implicates the state action that would be required to make out a hindrance clause claim. Rather, this Court concluded that a claim that private citizens have conspired against a protected class with invidiously discriminatory animus for the purpose of preventing State authorities from securing equal protection of the law states a valid cause of action under either of these standards. *See* ECF 115, p. 69.

Once again, Defendants now challenge this Court's conclusion on that question. The argue that the Supreme Court in *Bray* decided this question to the contrary, and that "the majority of circuits to address this issue have concluded ... that the Hindrance Clause requires state action for rights whose infringement is protected only against official encroachment." ECF 240, p. 128. However, a renewed look at *Bray* and the authorities cited by the parties contrasts bluntly with Defendants' conclusion.

In *Bray*, a majority of the Supreme Court declined to address whether Plaintiffs had established a claim under the "hindrance" clause. *Bray,* 506 U.S. at 279 ("The 'hindrance'-

clause issue is not fairly included within the questions on which petitioners sought certiorari."). Rather, Justice Scalia, writing for the majority, noted that the question of whether a hindrance clause claim would be viable in the context of that case was "far from" an easy one. *Id.* at 281. In dicta, Scalia concluded that, on the facts of that case, the claim would fail "unless the 'hindrance' clause applies to a private conspiracy aimed at the rights that are constitutionally protected only against official (as opposed to private) encroachment." *Id*. at 282-83. Although he expressed disagreement with Justice Souter's analysis of this question in dissent, and with Justice O'Connor's contrary conclusion on the matter without analysis, he did not provide an independent interpretation of whether the hindrance clause would apply in those circumstances. Justice Souter, in contrast, would have resolved that issue in favor of Plaintiffs alleging a private conspiracy aimed at depriving them of their constitutionally-protected rights. *Id.* at 340 ("A conspiracy that seeks to interfere with law enforcement officers' performance of their duties entails sufficient involvement with the State to implicate the federally protected right ... and to give rise to a cause of action under § 1985(3).").

Moreover, contrary to what Defendants allege, circuit authority does not weigh in favor of finding that state actors must actually be involved in a conspiracy in order for that party to state a claim under the hindrance clause. In fact, in a pre-*Bray* decision, the Second Circuit reached the opposite conclusion, holding that plaintiffs could state a claim under the hindrance clause for a conspiracy by private actors to hinder the state's ability to enforce their Fourteenth Amendment rights through the means chosen by the state to do so. *See People by Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 43 (2d Cir. 1982), *vacated sub nom. People of State of N.Y. by Abrams v. 11 Cornwell Co.,* 718 F.2d 22 (2d Cir. 1983) ("In short, we think that both the nature of 11 Cornwell's conduct and the class basis of the discrimination complained of are sufficient to make out a colorable claim that 11 Cornwell prevented or hindered the State from providing the mentally retarded with "equal protection of the laws" within the meaning of section 1985(3)."). Although Scalia's opinion in *Bray* called this holding into question, it did not overrule it. Nor has the Second Circuit subsequently overturned that basic conclusion in *Abrams.* Accordingly, the Court will apply this rule of decision to the matter at hand.

Moreover, Defendants' references to other Courts of Appeals' decisions and District Court authorities in this circuit are unavailing because these cases either dealt with claims brought under the deprivation clause or did not distinguish between the requirements of the hindrance and deprivation clauses. For example, the Tenth Circuit in *Tilton v. Richardson*, 6 F.3d 683, 687 (10th Cir. 1993) rejected the plaintiff's argument that he could state a valid cause of action because his complaint alleged a "private conspiracy aimed at influencing State conduct." It did so, however, in the context of discussing a deprivation clause claim, and never held, as Defendants contend, that "the Hindrance Clause also requires state action." ECF 240, p. 129. Likewise, *Brown v. Phillip Morris, Inc.* and *Ramirez v. City of Wichita* also dealt with a deprivation clause claim. *See Brown v. Phillip,* 250 F.3d 789, 805 (3d Cir. 2001) ("[Plaintiffs] assert the deprivation of a different type of rights: those of property and contract."); *Ramirez v. City of Wichita*, 78 F.3d 597 (10th Cir. 1996) ("Mr. Ramirez has failed to demonstrate any deprivation of his equal protection or equal privileges and immunities."). Finally, the Third Circuit in *Magnum v. Archdiocese of Philadelphia*, 253 F. App'x 224, 229-31 (3rd Cir. 2007) upheld the dismissal of the plaintiffs' § 1985 claim on the ground that they had not pleaded a violation of any right protected against private encroachment,

but did not acknowledge a distinction between the hindrance clause and the deprivation clause, or specifically address the state action requirement.

Moreover, some of the authorities Defendants cite acknowledge that state action is not always required to state a claim under § 1985. For example, in *Sanders v. Prentice-Hall,* the Sixth Circuit expressly acknowledged that "Section 1985 does not explicitly require state action," that it "can reach private conduct designed to interfere with certain civil rights," and that a conspiracy may violate § 1985 if "the aim of the conspiracy is to influence the activity of the state." 178 F.3d 1296 (6th Cir. 1999). Likewise, in *Stevens v. Tillman*, the Seventh Circuit recognized that § 1985(3) would reach "racially-motivated conspiracies to deprive persons of rights secured only against governmental action ... provided the defendants are either state actors *or* seeking to influence the state to act in a prohibited way." 855 F.2d 394, 405 (7th Cir. 1988) (emphasis added). Ultimately, however, the court ruled that the claim failed because state actors were not, in fact, influenced as the plaintiff alleged, and therefore the plaintiff "did not suffer injury at official hands." *Id.*[9]

[9] Finally, Defendants reference one Ninth Circuit case that relied on an outdated citation of the elements of a § 1985(3) cause of action. *Hoffman v. Halden*, 268 F.2d 280 (9th Cir. 1959), *overruled by Cohen v. Norris*, 300 F.2d

Finally, those authorities that have recognized a hindrance clause claim without requiring actual state involvement in a conspiracy have provided a compelling rationale for doing so. For example, the Second Circuit acknowledged in *Abrams* that "there would almost never be a situation in which the State would be involved in hindering its own efforts to secure equal protection to its citizens." *Abrams*, 695 F.2d at 43. As a result, requiring such state action would undercut the hindrance clause altogether. Moreover, as the First Circuit reasoned in *Libertad*, hindering a state effort to provide equal protection itself clearly implicates state action. *Libertad v. Welch*, 53 F.3d 428 (1st Cir. 1995). Therefore, eliminating the state action requirement in the hindrance clause context would not unreasonably expand the scope of liability under § 1985(3). In light of these reasons, and given the dearth of compelling authority to the contrary, the Court finds that the participation of state actors is unnecessary to state a claim under the hindrance clause.

3. Discriminatory animus

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24 (9th Cir. 1962). Even there, where the court required a showing that "the acts complained of were done under color of state law or authority," the court acknowledged that "private discrimination is not inequality before the law *unless* there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so." *Id.* at 291.

To state a claim under § 1985(3), Plaintiffs must also allege "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge,* 403 U.S. 88, 102 (1971). In *Bray*, the majority noted that "the 'hindrance' clause would seem to require the same ... animus that the 'deprivation' clause requires." 506 U.S. at 281. Justice Souter similarly agreed that an animus requirement would apply, but concluded that "class-based animus can be inferred if the conspirators' conduct burdens an activity engaged in predominantly by members of the class." *Id.* at 342. Thus, the parties in this case do not dispute that Plaintiffs must allege animus in order to make out a claim, and this Court has previously held that such animus may be based on a protected status other than race. ECF 115, pp. 56-58.

The Liberty Defendants contend, however, that Plaintiffs' claim must fail because "any alleged discrimination on the basis of [Jenkins'] purported sexual orientation is not protected under Section 1985." ECF 240, p. 123. In particular, they argue that the Supreme Court's two most recent cases addressing the rights of gays and lesbians –*United States v. Windsor*, 133 S. Ct. 2675 (2013) and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) –did not recognize homosexuals as a suspect or quasi-suspect

class, or apply strict or intermediate scrutiny to their equal protection claims. As such, they argue, this Court should follow authorities pre-dating these cases (some by more than thirty years), which refused to recognize homosexuals as a class for purposes of § 1985. Plaintiffs respond that Defendants' citations to pre-*Windsor* case law is either completely misleading (in that the cases do not hold what Defendants claim they do) or have been called into question by the Supreme Court's recent jurisprudence.

The Court agrees, and will focus its analysis on the state of the law as it stands after *Windsor* and *Obergefell.* First, although the animus required to state a claim under Section 1985 is connected to the scope of constitutional protection a group is afforded, the two are far from synonymous. Rather than require that, to be protected by § 1985(3), a group be recognized as a suspect or quasi-suspect class for constitutional purposes, or that discrimination against that class be subject to strict or intermediate scrutiny, the Second Circuit has merely asked whether conspiracies against that class would be "inherently invidious, and repugnant to the notion of equality of rights for all citizens." *New York State Nat. Org. for Women v. Terry*, 886 F.2d 1339, 1359 (2d Cir. 1989).[10] In

[10] Defendants' citation to authorities from other circuits in reply does not override the approach enunciated by the Second Circuit.

doing so, it held that "§ 1985(3) is necessarily tied to evolving notions of equality and citizenship." *Id.* Thus, the mere fact that the Supreme Court in *Windsor* and *Obergefell* did not specify which level of scrutiny it would use, or expressly categorize gays and lesbians as members of a suspect or quasi-suspect class, does not itself preclude a finding that gays and lesbians constitute a class for purposes of § 1985(3).

Rather, more significant to this Court's understanding of the scope of § 1985(3) protection is the Supreme Court's thorough, recent discussion of the forms of discrimination to which gays, lesbians and members of their family have been subjected in the past. *See Obergefell,* 135 S. Ct. at 2598. The Court found that historically, "many persons did not deem homosexuals to have dignity in their own distinct identity. A truthful declaration by same-sex couples of what was in their hearts had to remain unspoken." *Id.* The "legal question of same-sex marriage" therefore arose against this backdrop of discrimination against gays and lesbians on the basis of their sexual orientation. *Id.* The Court ultimately grounded its ruling, holding that states could not deny homosexuals the right to marry, on both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Both the protection of fundamental rights and of equal protection inhere

in the individual person. Thus, in its discussion of the fundamental right to marry, the Court first emphasized that "the right to personal choice regarding marriage is inherent in the concept of individual autonomy." *Id.* at 2599. Moreover, denying that right to personal choice on the basis of sexual orientation "has the effect of teaching that gays and lesbians are unequal in important respects. It demeans gays and lesbians for the State to lock them out of a central institution of the Nation's society." *Id.* at 2602. The resulting subordination of individuals on the basis of their sexual orientation was thus central to the Court's equal protection analysis. *Id.* at 2604 ("Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them."). In short, while this Court previously acknowledged the protection that *Windsor* provides to same sex couples, the Supreme Court's decision in *Obergefell* clearly establishes that the constitutional protection afforded to gays and lesbians arises from their historic subordination as a class, and that it attaches to them as individuals. As such, Jenkins' allegation that Defendants conspired to violate her civil rights based on discriminatory animus due to her sexual orientation states a valid claim under § 1985(3).

Defendants also contend that because Jenkins and Lisa Miller never married, Jenkins cannot allege that Defendants acted against her with discriminatory animus against same-sex couples. In their view, *Obergefell* "only addressed protections related to a class of individuals joined in same-sex marriages." ECF 240, p. 125. As explained above, however, membership in a same-sex marriage was not, in fact, the basis of protection the Court afforded this historically subordinated group. Rather, it was the long history of discrimination against homosexuals due to their sexual orientation, along with the particular infringement of their dignity that exclusion from marriage would impose, that motivated the Court's holding. Moreover, even if formalistic membership in a same-sex couple were the source of the Court's constitutional protection, Jenkins has alleged that the animus against her arose as a consequence of her same-sex partnership. Had Jenkins not been partnered with Lisa Miller, and had that coupling not been between members of the same sex, the animus Jenkins alleges here would not have arisen. Accordingly, the Court is not persuaded that the mere fact that Jenkins and Lisa Miller were never married strips Jenkins of protection under § 1985(3).

Finally, Defendants also contend that Jenkins' claim as next friend of Isabella fails because Jenkins has not alleged

animus directed at Isabella. Once again, Defendants incorporate a lengthy string-cite without substantive discussion of the relevant authorities. And yet again, Defendants' references are largely off base.[11] The only case that is directly pertinent to the argument Defendants attempt to make, non-precedential authority from the Eastern District of Pennsylvania, is readily distinguishable from the case at hand. *See Hardmon v. Lehigh County*, 613 F. Supp. 649, 653 (E.D. Pa. 1985). To be sure, the court in that case explained that "[a]s presently worded, this allegation does not state a cause of action pursuant to §§ 1985

[11] For example, in *Magnum v. Archdiocese of Philadelphia*, 253 F. App'x 224 (3d Cir. 2007), the Court of Appeals found that minority itself was not a basis of invidious discrimination, and animus on that basis could not give rise to a § 1985 claim. But Plaintiffs here make no such claim to begin with, and instead argue that Isabella was injured by a conspiracy motivated by animus against same-sex couples and on the basis of sexual orientation. Similarly, in *Nieves-Ramos v. Gonzalez-De-Rodriguez*, 737 F. Supp. 727, 729 (D.P.R. 1990), plaintiffs "made no allegation which even inferentially indicate[d] that any defendant was motivated by any class-based, invidiously discriminatory animus." The status of one plaintiff as a minor was entirely beside the point. Likewise, the Court in *Koenig v. Snead*, 757 F. Supp. 41, 44 (D. Ore. 1991) dismissed the plaintiffs' § 1985 claims in a short paragraph, noting simply that "nowhere in his complaint does [the plaintiff] allege that the acts of the defendants were motivated by the kind of invidiously discriminatory animus required to state a claim under 42 U.S.C. § 1985(3)." The same is true of the decision in *L.Q.A. By & Through Arrington v. Eberhart*. 920 F. Supp. 1208, 1229 (M.D. Ala. 1996) (noting that "the plaintiff has not only failed to present any evidence of a racial or class based 'individual discriminatory animus behind the conspirator's actions,' but the plaintiff has even failed to allege such."). Likewise, the Court in *Allison v. Shabazz*, No. C 14-04813 JSW, 2016 WL 2957121, at *6 (N.D. Cal. May 23, 2016) found that Plaintiff could not base her claim of animus on the two social categories she raised (female protective parents and victims of domestic violence). Although these cases did involve children, the Courts did not rely on either the children's minor status or the fact that the children were not the direct targets of animus that otherwise motivated the conspiracy. They are thus inapposite to the point Defendants attempt to make in their brief.

... because it does not allege a conspiracy directed at plaintiff's minor." *Id.* at 653. It clarified, however, that "a necessary element of a conspiracy for purposes of a § 1985 action is that the conspirator act knowingly and willfully and with the intent to deprive the plaintiff of equal protection of the laws." *Id.* Since the defendants in that case did not know of the existence of the minor, they could not have acted knowingly and willfully to deprive her of those rights. Here, Plaintiffs allege that Defendants acted knowingly and willfully to deprive Isabella of contact with her mother, out of animus against same-sex couples.

Regardless of the lack of support in the authorities Defendants reference, Plaintiffs contend that their argument fails for two additional reasons. First, they argue that Isabella need not allege membership in a protected class to claim that she was injured by a conspiracy motivated by class-based animus, citing the plain language of the statute and a single decision from the District of Minnesota. In fact, § 1985 does not expressly require that the person injured by a conspiracy be a member of the class suffering the animus that motivated a conspiracy. For all practical purposes, however, the cases in which the identity of the person injured and the form of discrimination motivating the conspiracy differ are likely to

be rare. The hindrance clause itself applies to conspiracies that aim to hinder authorities from "giving or securing to *all persons* within such State or Territory the equal protection of the laws." 42 U.S.C. § 1985(3). Thus, it is not limited to those that infringe only on the rights of a certain class of people. In addition, the provision allowing an individual to bring suit is not limited to those individuals who are members of the class against which defendants have targeted their animus. Rather, any "party so injured or deprived" may bring an action against those who do or cause to be done "any act in furtherance of the object of such conspiracy." *Id.* However, the authorities extending liability in this manner are limited, and not binding on this Court. Despite Plaintiffs' argument to the contrary, *Arias* allowed the § 1985 claim to proceed without any substantive discussion of whether the object of animus must match the plaintiffs' identity, and without citing any authority for the notion that it need not. *See Arias v. U.S. Immigration & Customs Enf't Div. of Dep't of Homeland Sec.,* No. CIV. 07-1959 ADMJSM, 2008 WL 1827604, at *15 (D. Minn. Apr. 23, 2008) (finding that allegation that "conspirators were motivated by the fact that almost all Plaintiffs are Latinos" was sufficient to defeat a motion to dismiss the § 1985(3) claim).

Instead, Isabella's claim survives because she, too, was directly targeted by the alleged "inherently invidious" conduct of Defendants. *New York State Nat. Org. for Women,* 886 F.2d at 1359. In *Obergefell*, the Supreme Court recognized that children of gays and lesbians also suffer the brunt of discrimination that deprives their families of equal recognition, security and respect. 135 S. Ct. at 2600 (same-sex couples' "children suffer the stigma of knowing their families are somehow lesser."). Although the posture of that case did not prompt the question of whether their rights, also, would be infringed by virtue of their parents being denied the right to marry, the Court's discussion clearly included these children among the victims of anti-homosexual bias. In this sense, Isabella, too, is a member of a subordinated group deserving of protection under § 1985(3). As such, both Plaintiffs have properly alleged the animus required to state a claim under that provision.

4. Retroactivity

Defendants Zodhiates, Hyden and RUL also argue that "the recent advances in the law concerning sexual orientation and same-sex couples make enforcing Section 1985 against Defendants unfair." ECF 227, p. 17. While their argument is difficult to decipher fully, they first appear to contend that "the rules for legislative retroactivity should govern this case" because

Congress made a "definitive statement in passing [the Defense of Marriage Act ("DOMA")]" that Defendants apparently relied upon. *Id.* at 19. Second, they suggest that the Court should recognize a type of protection from conspiracy claims under § 1985 similar to the qualified immunity doctrine applicable to 42 U.S.C. § 1983 claims. They provide no support for this argument other than to suggest that holding otherwise would chill the right to freedom of association.

Defendants' argument is unavailing. First, the Supreme Court's interpretation of federal law is applicable in all cases open on direct review, as in this one. *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993). Even if this case were not open, the change in law at issue here concerned constitutional rights, and as such should be given retroactive effect. *Id.* Finally, the Supreme Court has limited the reach of qualified immunity because the "set of special federal policy considerations" it reflects are specific to Section 1983 litigation. *See Reynoldsville Casket Co v. Hyde*, 514 U.S. 749, 758 (1995). Accordingly, the Court must apply the Supreme Court's current understanding of the Constitutional protections afforded to gays, lesbians and their families to this case.

5. *Agreement/ meeting of the minds*

Liberty Counsel Defendants also argue that Plaintiffs failed to plead specific facts that demonstrate they reached an agreement to engage in the conspiracy at issue. According to them, these alleged deficiencies are "incurable" because they did not engage in such conduct. ECF 240, p. 120-21 (citing Defendant's factual affidavits). They also generally claim that Plaintiffs have failed to plead specific facts to allege a conspiracy, but do not specify which elements of conspiracy, beyond agreement, Plaintiffs have failed to adequately plead.

To make out a claim of conspiracy under Section 1985, Plaintiffs must plead "an agreement between two or more individuals where one acts in further[ance] of the objection [sic] of the conspiracy and each member has knowledge of the nature and scope of the agreement." *Morpurgo v. Inc. Vill. of Sag Harbor*, 697 F. Supp. 2d 309, 339 (E.D.N.Y. 2010), *aff'd,* 417 F. App'x 96 (2d Cir. 2011); *Dove v. Fordham Univ.*, 56 F. Supp. 2d 330, 337–38 (S.D.N.Y. 1999), *aff'd sub nom. Dove v. O'Hare*, 210 F.3d 354 (2d Cir. 2000). A conspiracy "need not be shown by proof of an explicit agreement but can be established by showing that the 'parties have a tacit understanding to carry out the prohibited conduct.' " *LeBlanc–Sternberg v. Fletcher,* 67 F.3d 412, 427 (2d Cir.1995) (quoting *United States v. Rubin,* 844 F.2d 979, 984 (2d Cir.1988)). In the context of a Section 1985 claim,

the Seventh Circuit has noted that "[t]he very nature of a conspiracy obscures most, if not all, information about the alleged conspirators' agreement; circumstantial evidence of the conspiracy, particularly regarding the overt acts performed in furtherance of the conspiracy, is all that is ordinarily obtainable before discovery and trial. This is particularly true where, as here, much of the information regarding ... the formation of the conspiracy [is] in the hands of the defendant." *Quinones v. Szorc*, 771 F.2d 289, 291 (7th Cir. 1985).

Here, Plaintiffs have pled sufficient facts that the all Defendants had such a "tacit understanding" to carry out the kidnapping of Isabella, and that each one committed acts in furtherance of that purpose. In particular, this Court has already held that the prior complaint, which contained less specific facts than those at hand, "adequately allege[d] that Defendants Lisa Miller, Timothy Miller, Kenneth Miller, Philip Zodhiates, Victoria Hyden and Linda Wall agreed, tacitly or explicitly, to further" the purpose of the conspiracy. ECF 115, p. 55. The new allegations in the amended complaint, which incorporate evidence obtained from Zodhiates' criminal trial, further supports this conclusion. For example, based on this evidence, Plaintiffs now allege that Victoria Hyden delivered emails from her father so as to coordinate the removal of items

from Lisa Miller's apartment in order to assist her in secretively leaving the country with Isabella. Wall allegedly packed those items. Thereafter, Hyden allegedly used her position at Liberty University to facilitate Lisa Miller's communication with her lawyer. These additional facts provide circumstantial evidence that these Defendants agreed to facilitate Lisa Miller's kidnapping of Isabella, and took overt acts to do so.

Similarly, the amended complaint sufficiently alleges that Defendants Lindevaldsen and Staver reached either a tacit or explicit agreement with Lisa Miller to support her in leaving the country with Isabella, and committed overt acts to do so. In particular, the amended complaint alleges that Lindevaldsen packed Lisa Miller's belongings, that she continued to communicate with Lisa Miller after she left the country through Victoria Hyden, and that she misled the Vermont family court by stating that she did not have reason to believe that Lisa Miller was not home. Staver, Lindavaldsen's employer, also allegedly misled courts to delay contempt proceedings. In addition, both Staver and Lindevaldsen allegedly advised Lisa Miller that "it would be in her best interests to disappear." ECF 223, p. 8.[12]

[12] Since Plaintiffs' claims against Liberty Counsel and Liberty University rest on theories of vicarious liability or agency, Lindevaldsen and Staver's actions and mental state constitute the relevant conduct for purposes of establishing their liability under Section 1985.

Thus, the extent and severity of the alleged misconduct allow the Court to infer that Liberty Counsel Defendants also reached a tacit or explicit agreement to support Lisa Miller in kidnapping Isabella, and that they committed overt acts in furtherance of that goal. Thus, Plaintiffs have adequately alleged that Defendants engaged in a conspiracy to violate their rights under § 1985.

6. Applicability of Monnell to Liberty University

In addition to arguing that Liberty University cannot generally be held liable for the alleged tortious acts of its employees, Liberty University contends that the *Monell* doctrine, applicable to municipal corporations in the context of Section 1983 claims, should also apply to bar the claim against it under Section 1985. *See Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). However, Liberty University cites no binding authority applying the *Monell* doctrine to private institutional defendants. In fact, the District Court decisions from this Circuit cited in Liberty University's brief have expressly refrained from deciding this question. For example, in *Litras v. PVM Int'l Corp.,* No. 11-CV-5695 JFB AKT, 2013 WL 4118482, at *9 (E.D.N.Y. Aug. 15, 2013), the Eastern District of New York rejected the defendants' argument that the plaintiff had failed to sufficiently allege a

meeting of the minds to make out a conspiracy claim under Section 1985. The liability of the corporate defendant was not raised at this stage, and the court merely noted in a footnote that "courts within this Circuit have used the standard to evaluate the sufficiency of a Section 1985 claim brought against a private corporation for purposes of surviving a motion to dismiss." *Id.* However, the case the *Litras* court cited for that proposition also expressly failed to reach that question. *See Bowen v. Rubin,* 385 F. Supp. 2d 168, 181, n. 8 (E.D.N.Y. 2005)("[E]ven if applying *Monell* to private entities is warranted with respect to Section 1983 claims, which require action under color of state law, it is unclear that the same holds true for claims brought under Section 1985(3), which encompasses wholly *private* conspiracies to engage in invidiously discriminatory conduct. However, since both plaintiffs and defendants argue within the framework of the *Monell* "official policy or custom" standard, and since, as shown below, there are genuine issues of material fact with respect to whether defendants had a policy or custom that subjects them to liability under the *Monell* standard, I decline to reach this issue.") (internal quotation omitted).

Moreover, although Defendant is correct that the Second Circuit has extended the *Monell* doctrine to claims brought

against municipalities under § 1985, and that the *Monell* doctrine applies to Section 1983 claims against private employers, the Court is not persuaded that this doctrine would apply to claims against private employers. *See Zherka v. City of New York,* 459 F. App'x 10, 12 (2d Cir. 2012) ("municipal liability under § 1985(3) must also be predicated on an "official custom or policy" of the municipality") (citing *Owens v. Haas,* 601 F.2d 1242, 1247 (2d Cir. 1979)); *Rojas v. Alexander's Dep't Store, Inc.*, 924 F.2d 406, 408–09 (2d Cir. 1990) ("Private employers are not liable under § 1983 for the constitutional torts of their employees, unless the plaintiff proves that action pursuant to official policy of some nature caused a constitutional tort.") (internal quotations omitted). In extending the *Monell* doctrine to private employers under § 1983, the Second Circuit relied on a Fourth Circuit case that held the same. *Rojas*, 924 F.2d at 408 (citing *Powell v. Shopco Laurel Co.,* 678 F.2d 504, 506 (4th Cir.1982)). The Fourth Circuit based its conclusion on the applicability of *Monell*'s underlying rationale to a private employer. *Powell,* 678 F.2d at 506 ("No element of the Court's ratio decidendi lends support for distinguishing the case of a private corporation."). That rationale was two-fold: first, it was premised on the language of the section 1983 statute itself, and second, it was based on the particular policy considerations that must be taken into

account with public actors. However, while policy considerations specific to public action might be equally applicable in the context of § 1983, where even private actors must be acting under color of state law, they are not applicable in the context of § 1985, where private actors are not subject to that additional requirement. The Ninth Circuit underscored this difference in concluding that *Monell* should not extend to § 1985 claims against private employers. *See Scott v.* Ross, 140 F.3d 1275 (9th Cir. 1998). Thus, the reasoning of the very decisions Liberty University cites does not support extending the *Monell* doctrine in the manner that Defendant advocates. Accordingly, the Court declines to stretch the law in this manner, and will apply traditional principles of respondeat superior to the private conspiracy at issue in Plaintiffs' § 1985 claim.

C. Liberty University's Vicarious Liability

i. Introduction

Liberty University raises two additional challenges to Plaintiffs' claims of vicarious liability for the acts of its employees. ECF 237. In particular, it contends that (1) it cannot be held vicariously liable for its employees' actions in connection with the events Plaintiffs allege because the complaint "neither alleges nor allows any plausible inference that any of these employees acted within the scope of their

employment with the University in the alleged events," and (2) Plaintiffs may not hold Liberty University liable for the acts of those with whom its employees conspired because "such an attenuated chain of responsibility does not comport with the purpose underlying vicarious liability." *Id.* at 3. Plaintiffs contend that Liberty University employees committed tortious acts during or incidental to the scope of their employment, such that the University can be held liable for those acts.

ii. Analysis

The Vermont Supreme Court has held that "[u]nder the settled doctrine of respondeat superior, an employer or master is held vicariously liable for the tortious acts of an employee or servant committed during, or incidental to, the scope of employment." *See Brueckner v. Norwich Univ.*, 169 Vt. 118, 122–23 (1999) (citing *Anderson v. Toombs,* 119 Vt. 40, 44–45 (1955); *Poplaski v. Lamphere,* 152 Vt. 251, 257 (1989)). "To be within the scope of employment, conduct must be of the same general nature as, or incidental to, the authorized conduct. Conduct of the servant falls within the scope of employment if: (a) it is of the kind the servant is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master; and (d) in a case in which the force is intentionally

used by the servant against another, it is not unexpectable by the master. Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time and space limits, or too little actuated by a purpose to serve the master." *Id.* at 123 (citing Restatement (Second) of Agency §§ 228(1), 228(2), 229(1) (1958)).

Here, Plaintiffs have shown that some of Lindevaldsen's allegedly tortious conduct was committed within the scope of her employment. First, although Lindevaldsen was not employed primarily to litigate family court cases for the University, the Court can reasonably infer from the facts alleged that her work in representing Lisa Miller was at least incidental to her job at Liberty University. She allegedly wrote a book about this representation and used that book as a teaching tool, assigning the book as required reading for all incoming students at the law school. In this sense, her overall representation furthered the purpose of the law school. Moreover, she allegedly communicated with her client while her client was abroad through a Liberty University employee, who delivered messages to her while she was at Liberty University. Thus, at least some of this representation was within the time and space limits of Lindevaldsen's employment at the University. Finally, the

tortious conduct (especially her misrepresentations to courts and her alleged advice to Lisa Miller to flee the country) was not unexpectable by the University because it was part and parcel of her representation of Lisa Miller. Given these facts, Plaintiffs have sufficiently alleged that Lindevaldsen's tortious conduct was within the scope of her employment at Liberty University.

In addition, the Vermont Supreme Court has "expressly adopt[ed] [§ 219(2)(d) of the Restatement (Second) of Agency] as applicable in assessing whether an employer has vicarious liability for the tortious conduct of an employee when that conduct falls outside the scope of his or her employment." *Doe v. Forrest*, 176 Vt. 476, 486 (2004). Section 219(2) provides that "a master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless: ...(d) *the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.*" *Id.* at 485.[13] In interpreting the last clause of this section, the Vermont Supreme Court has highlighted the

[13] Although neither party raises this potential basis for vicarious liability, the Court finds that the second provision –permitting vicarious liability for acts outside of an employee's scope of employment where the employee was aided in accomplishing the tort by the existence of the agency relationship with his employer –may also be at issue here, and therefore considers the issue of its own initiative.

importance of analyzing the power that a particular employment relationship bestows on a defendant with respect to the injured party, as well as the need to create an "incentive for vigilance by those in a position to prevent" the injury from happening. *Id.*

Here, the amended complaint alleges that some of Lindevaldsen's tortious conduct was committed with the help of Victoria Hyden, and vice versa. Each acted using the authority and resources she had as an employee of Liberty University. Thus, even if each woman's tortious conduct were considered to be outside of the scope of each one's employment, the employment relationship certainly aided in their accomplishment of the tortious acts in question. As such, Liberty University can still be held vicariously liable for this conduct.

Staver's alleged acts, on the other hand, are insufficient to give rise to vicarious liability under either of the theories outlined above. First, the Plaintiffs have not alleged specific facts that Staver's role in representing Lisa Miller was as intertwined with his teaching and administrative roles at the University as it was in Lindevaldsen's case. Therefore, even if he also committed tortious acts as part of his representation of Lisa Miller, that representation is not clearly incidental to his work at the University. Nor is it clear that his

representation of Lisa Miller furthered the University's educational goals as much as Lindevaldsen's, who wrote a book on the basis of that representation that served to educate Liberty University students. Moreover, the complaint does not allege that Staver abused his position at Liberty University to further the goals of the conspiracy by, for example, using Liberty University resources to communicate with Lisa Miller in an undetected manner. For these reasons, Liberty University cannot be held vicariously liable for Staver's acts.

Finally, Liberty University's concern that it may be held liable for the torts of unaffiliated third parties is not warranted in this case. It argues that "[w]here the employee's liability is itself based on the actions of a third party in which the employee did not directly participate, the employer cannot be made the insurer of the third party's conduct through vicarious liability." ECF 237, p. 13. Here, however, Liberty University's liability for Lindevaldsen and Hyden's tortious conduct in furtherance of the conspiracy will attach only insofar as they directly participated in that unlawful endeavor. While the Court appreciates the University's concern for protecting the principles that underlie vicarious liability, the preoccupation is unnecessary in the case at hand. Accordingly,

Liberty University's motion to dismiss due to lack of vicarious liability cannot succeed.

D. *Timeliness*

i. Custodial interference claim

Liberty Counsel Defendants also challenge Plaintiffs' claim for custodial interference and § 1985(3) claim as untimely. In particular, they contend that Plaintiffs' custodial interference claim is subject to Vermont's three-year statute of limitations for personal injury actions, and that Jenkins' action accrued when she gained knowledge that Isabella was kidnapped in December of 2009. Since Plaintiffs' first complaint, filed in 2012, did not name Liberty Counsel, Staver and Lindevaldsen as Defendants, Defendants contend that Plaintiffs missed the deadline to bring an action against them. Plaintiffs argue that their custodial interference claim is timely because (1) the relation back doctrine applies to Liberty Counsel defendants, because they knew or should have known that they were proper defendants at the time of initial filing; (2) the interference with Jenkins' custody of Isabella is a continuing tort.

The parties do not dispute that Plaintiffs' custodial interference claims are governed by Vermont's three-year statute of limitations for personal injury actions. *See Eaton v. Prior*,

58 A.3d 200, 204 (Vt. 2012) (applying three-year statute of limitations to emotional distress claim); 12 V.S.A. § 512 ("Actions for the following causes shall be commenced within three years after the cause of action accrues, and not after: ... (4) Except as otherwise provided in this chapter, injuries to the person suffered by the act or default of another person, provided that the cause of action shall be deemed to accrue as of the date of the discovery of the injury"). Rather, they dispute when it accrued. The Vermont Supreme Court has held that "[a]n action accrues so as to trigger the statute of limitations 'when a plaintiff discovers or reasonably should discover the injury, its cause, and the existence of a cause of action.'" *Eaton*, 58 A.3d at 204 (citing *Lillicrap v. Martin,* 591 A.2d 41, 47 (1989); *Earle v. State,* 743 A.2d 1101, 1108 (1999) (observing that limitation period "begins to run when a plaintiff had information, or should have obtained information, sufficient to put a reasonable person on notice that a particular defendant may have been liable for the plaintiff's injuries" (quotation omitted)).

However, even if Jenkins effectively discovered that Lisa Miller had fled with Isabella in December 2009, a reasonable person in her position would *not* have been on notice that the Liberty Counsel Defendants played the role that they did at that

time. In fact, both Staver and Lindevaldsen sought to withdraw their representation of Lisa Miller on grounds that they did not know where she was, and Lindevaldsen directly represented to the Vermont courts that she was unaware of Lisa Miller's whereabouts. If Plaintiffs' allegations are assumed to be true, these deliberate attempts to mislead the courts would also have misled a reasonable person about the cause of Jenkins' injury, as well as Staver and Lindevaldsen's potential liability for Plaintiffs' injuries. Indeed, this Court initially found that Plaintiffs had not set forth sufficiently credible facts that Lisa Miller's attorneys had engaged in tortious conduct at all. *See* ECF 115, p. 29. Moreover, Staver and Lindevaldsen submitted affidavits at earlier stages of this litigation representing that they did not engage in tortious conduct. It was only after Zodhiates' criminal trial for Isabella's kidnapping in 2016 that the basis for the specific facts of Lindevaldsen's tortious conduct became known to Jenkins. In particular, they became aware that Hyden and Zodhiates exchanged emails that implied Lindevaldsen's direct engagement in assisting Lisa Miller in fleeing the country. They also heard testimony from a witness suggesting that Liberty Counsel lawyers had advised Lisa Miller to flee with Isabella. Thus, only after acquiring these facts would a reasonable person have been put on notice that the Liberty Counsel Defendants may have been liable for the

conspiracy to intentionally interfere with Jenkins' parental rights. Since the amended complaint was filed less than three years after that point, Plaintiffs' claim is not time-barred. In light of this conclusion, the Court need not address whether custodial interference is a continuing tort, or whether the relation-back doctrine applies to this claim.[14]

ii. § 1985 claim

In addition, Defendants argue that Plaintiffs' § 1985 claims are likewise time barred. They argue that because § 1985 claims are subject to the statute of limitations that state courts would apply in an analogous state action, the statute of limitations for personal injury actions should apply to this claim, as well. Moreover, the cause of action accrued, they argue, at the time of the discriminatory act, which they then

[14] While the Court need not reach this issue, it is not persuaded that the Supreme Court's holding in *Krupski v. Costa Crociere S.P.A.,* 560 U.S. 538, 549 (2010) would apply to the instant case, since it does not merely change "the party or the naming of the party against whom a claim is asserted," or involve "a mistake concerning the proper party's identity." Fed. R. Civ. P. 15(c)(1)(C). Nevertheless, the claims against the new defendants clearly arise out of the same occurrence set out in the original pleading –that is, the removal of Isabella from the country in order to preclude Jenkins from having contact with her. Thus, the relation-back doctrine may apply pursuant to Fed. R. Civ. P. 15(c)(1)(B). The Second Circuit has noted that, as in claims brought under Rule 15(c)(1)(C), "the central inquiry is whether adequate notice of the matters raised in the amended pleading has been given to the opposing party within the statute of limitations by the general fact situation alleged in the original pleading." *Slayton v. Am. Exp. Co.,* 460 F.3d 215, 228 (2d Cir. 2006), *as amended* (Oct. 3, 2006) (internal quotation omitted). Given that Lindevaldsen, Staver, Liberty Counsel and Liberty University were all closely connected to Lisa Miller's case prior to this point, and that Lindevaldsen and Staver submitted affidavits concerning their conduct in relation to this case when Liberty University was initially named a defendant, Defendants are hard-pressed to show that they failed to get adequate notice of this matter.

equate to "the date at which [Jenkins] obtained notice of the alleged act." ECF 240, p. 17.

Even under Defendants' own understanding of the law, however, this argument fails. First, it is true that a Section 1985 action "is subject to the statute of limitations the state courts would apply in an analogous state action." *Meyer v. Frank*, 550 F.2d 726, 728 (2d Cir. 1977). Likewise, Defendants are correct that for claims brought under Section 1983, "accrual is a matter of federal law." *Pearl v. City of Long Beach*, 296 F.3d 76, 80 n.2 (2d Cir. 2002). In transferring this rule to the context of Section 1985, however, Defendants face an obstacle that their logic fails to overcome. Specifically, under federal law, a cause of action arises when a plaintiff knows or has reason to know of his or her injury. *See Keating v. Carey,* 706 F.2d 377, 382 (2d Cir. 1983). However, Defendants contend that "[i]n analyzing the timing of accrual in the context of discrimination claims, the Supreme Court has instructed that the proper focus is on the time of the *discriminatory act,* not the point at which the *consequences* of the act become painful." *Morse v. Univ. of Vermont*, 973 F.2d 122, 125 (2d Cir. 1992).[15] In *Chardon v. Fernandez,* the decision upon which *Morse* relied, the Court concluded that a Section 1983 action accrued at the moment

[15] *Morse* dealt with a claim brought by a "handicapped person" for violation of the Rehabilitation Act of 1973, but relied on precedent involving Section 1983 claims. *Id.* at 122.

employees were notified of an allegedly discriminatory decision to terminate them at a future point, even though time elapsed before they actually lost their jobs. In the context of Section 1985, however, it is less clear exactly what constitutes the "discriminatory" act. It is quite possible that a defendant could commit an overt act as part of a conspiracy that bears fruit much later, hindering the state's ability to provide equal protection under the law at some point down the road. Thus, holding that each overt act committed by a defendant in furtherance of a conspiracy constitutes the relevant discriminatory act would run contrary to the more general principle that a cause of action accrues only when a plaintiff knows or has reason to know of his or her injury. *See Keating,* 706 F.2dat 382. Instead, because the similarity between Section 1983 and 1985 arises from the potential violation of an individual's constitutional rights, it is the hindrance of the state's ability to "giv[e] or secur[e] to all persons ... the equal protection of the law" that constitutes the relevant discriminatory act triggering accrual of the cause of action. 42 U.S.C. § 1985. Here, that hindrance came in the form of removing Isabella from the state's jurisdiction, and continuing to hold her abroad to prevent the state from enforcing Jenkins' rights under the law. Thus, although the Court need not reach the question of whether custodial interference is a continuing tort,

the continuing nature of the hindrance of equal protection by the state extends the accrual date in this case to the present moment. Accordingly, Plaintiffs' Section 1985 claim is not time-barred, either.

E. Venue

Defendants Lindevaldsen, Staver, Liberty Counsel, Liberty University and Wall also move to dismiss due to improper venue under Federal Rule of Civil Procedure 12(b)(3). This Court has already ruled, on the basis of allegations made in an earlier complaint, that venue is proper in Vermont. ECF 115, p. 70-73. Wall nevertheless incorporates by reference the arguments she made in the earlier motion this Court rejected. ECF 242-1 (citing ECF 109). Liberty University contends that venue is improper here because "no events or omissions *material* to Plaintiffs' claims took place in Vermont." ECF 237. It moves to dismiss on this ground or, in the alternative, to transfer this case to the Western District of Virginia, but provides no argument in support of this latter request. Lindevaldsen, Staver and Liberty Counsel also sustain that venue does not lie here because "the only connection between Vermont and this case is Plaintiff's residence," "most of the witnesses, documents and other information necessary to litigate Jenkins' claims are located outside of Vermont," Vermont is an inconvenient venue

for all parties except Jenkins, the operative events are alleged to have occurred "entirely outside of Vermont," and the relative means of the parties does not weigh in favor of finding venue in Vermont. ECF 240, pp. 72-79. Although these factors are relevant to whether the Court should transfer venue, these Defendants do not expressly move for such a transfer.

In its prior order, this Court explicitly addressed whether significant events or omissions material to Plaintiffs' claims occurred in this District. ECF 115, pp. 72-74. It found that such events or omissions had occurred here because the rulings of the Vermont courts were deliberately and repeatedly flouted, and the interference with visitation orders and Jenkins' custodial rights occurred in Vermont. *Id.* 73-74. In doing so, the Court implicitly found that the relevant acts and omissions, for purposes of Plaintiffs' claims, constitute not only the particular tortious conduct of each Defendant, but also the interaction between that conduct and the orders of the Vermont court, whose ability to protect Jenkins' parental rights was hindered or interfered with as a result of the conspiracy. Defendants agree that 28 U.S.C. § 1391 permits a civil action to be brought "in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." However, they argue for a different interpretation of what

constitutes the relevant "events or omissions" in this case, suggesting that only the overt acts each defendant took to participate in the conspiracy should be evaluated. Moreover, Liberty University argues that, "neither the Second Circuit nor any other federal appellate court has found that extra-territorial acts intended to have a tortious effect within a district can be the basis for a venue selection." ECF 237, p. 44 (citing *Steen v. Murray,* 770 F.3d 698, 703 (8th Cir. 2014) (court's focus in a venue analysis "must be on relevant activities of the defendant in the forum state, not on the effect of those activities on the plaintiff in the forum state.")).[16]

However, as Defendant itself implicitly acknowledges, that analysis is incorrect in the context of civil rights cases, where a potential deprivation of a party's constitutional rights is involved. *See, e.g. Farmland Dairies v. McGuire,* 771 F. Supp. 80, 82 (S.D.N.Y. 1991) (finding that a substantial part of the events occurred where state law was actually applied to the plaintiff's conduct). In this case, Plaintiffs' Section 1985 claim requires a showing that the conspiracy aimed to hinder the state from providing equal protection, and that some injury

[16] Because Defendants challenge the basic logic of the Court's legal analysis on this question, the Court will simply address Defendants' argument rather than rely on the law of the case, as Plaintiffs suggest. *See* ECF 261, p. 45-46.

occurred because of that hindrance. Therefore, since the inhibition of Vermont's ability to protect Jenkins' rights is a key component of the § 1985 claim, that effect *on the state of Vermont* must be part of the "events" considered for purposes of establishing proper venue. Thus, the Court does not rest its analysis on the effect of Defendants' conduct on the Plaintiff, as Defendants suggest, but rather on the repercussions of their acts on the state's ability to protect Jenkins' rights. Accordingly, since the hindrance of the equal protection guaranty occurred primarily in Vermont, venue is proper in this District.

Next, Defendants' poorly-supported motions to transfer venue (to the extent that they have made such motions) fail for similar reasons. In considering a motion to transfer venue, Courts are guided by "(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, [and] (7) the relative means of the parties." *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106-07 (2d Cir. 2006). "District courts have broad discretion in making determinations of convenience" in this context. *Id.* at 106. This

Court has already considered and rejected a motion to transfer venue to the Western District of Virginia, analyzing precisely the factors outlined above. The only aspect of this Court's analysis that has been called into question by Defendants' motions concerns the impact of this choice of venue on potential witnesses under the third and sixth factors. This Court previously found that "defendants have not identified any witnesses located in Virginia who would be inconvenienced in Vermont." ECF 115, p. 74. At this stage, Defendants contend that "Jenkins' [complaint] reveals the names of many prospective witnesses and further reveals that, other than Jenkins herself, none of those individuals reside in Vermont." ECF 240, p. 75. In particular, they list Ruth and Claude Jenkins, Deborah Thurman, members of Lisa Miller's church in Virginia, individuals who were targeted by Hyden's fundraising efforts, and Lindevaldsen, all of whom are allegedly located in Virginia. It is equally plausible, however, that witnesses with knowledge of the family court proceeding, Lisa Miller's noncompliance with visitation and the damages Jenkins suffered will be located in Vermont. Therefore, while this factor does weigh slightly more heavily in favor of transferring venue, it is not wholly one-sided.

Moreover, in the Court's earlier order on venue, it also dismissed Plaintiffs' Section 1985 claim. As explained above,

the inclusion of this newly pleaded claim at this stage makes the events in Vermont all the more central to this matter. Thus, even if the convenience of the witnesses tips the scale slightly in favor of transferring venue to Virginia, the shift in the locus of operative facts for purposes of the newly pleaded claim rebuts this effect. Accordingly, the Court adheres to its earlier conclusion on this question, and denies Defendants' motions to transfer venue to the Western District of Virginia.

F. Jurisdiction

In addition, Defendants Liberty University, Liberty Counsel, Lindevaldsen, Staver and Wall also move to dismiss the complaint for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). They challenge the underlying rationale of this Court's earlier determination that the Plaintiffs' proposed amendment to the complaint would not be futile because the Court may exercise personal jurisdiction over Defendants. ECF 220. In addition, Linda Wall requests that the Court revisit its 2013 decision holding that the Court may exercise personal jurisdiction over her. ECF 115.

Plaintiffs first contend that this Court should deny these motions because the law of the case "commands that when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case unless

cogent and compelling reasons militate otherwise." ECF 261, p. 31 (citing *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009)). A court "may depart from the law of the case for "cogent" or "compelling" reasons including an intervening change in law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Johnson*, 564 F.3d at 99–100. Importantly, however, the Second Circuit has noted that, "the law of the case doctrine does not rigidly bind a court to its former decisions, but is only addressed to its good sense." *Id.* at 99 (internal quotation omitted).

This Court has clearly already ruled on whether it has personal jurisdiction over Wall. ECF 115. Wall does not dispute the substance of this Court's prior analysis in any way, but merely reincorporates by reference the arguments she already made, and which this Court already rejected. As such, the Court has no trouble rejecting her arguments for the same reasons as it articulated previously.

The application of the law of the case doctrine to the issues raised by the remaining defendants is less clear-cut. In particular, this Court framed its earlier ruling on personal jurisdiction in light of the question presented at that stage: namely, whether allowing Plaintiffs to amend the complaint in the manner they proposed would be futile. That question is no

longer before the Court. However, the substance of the analysis in relation to that question largely overlaps with the issue raised by Defendants here: whether the Court has personal jurisdiction over them. Thus, given the extensive consideration it has already given to that issue, the Court will center this discussion on the Defendants' assertions that aspects of the Court's prior analysis were in error.

First, Defendants contend that the Court erred by failing to give greater consideration to Hyden, Lindevaldsen and Staver's factual affidavits. In particular, Liberty University asserts that allegations in the complaint must only be taken as true in the context of a Rule 12(b)(2) motion to the extent they are uncontroverted by the defendants' affidavits. Since Defendants' affidavits flatly deny all the tortious conduct Plaintiffs allege, Defendants contend that the Court should have weighed that evidence in undertaking its jurisdictional analysis. Liberty University relies on a misleading excerpt from *Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993), *as amended* (May 25, 1993), in which the Second Circuit noted that "[t]he allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits." However, Defendants omit the legal

rule the circuit court enunciated immediately following that statement, holding that "[i]f the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party." *Id.* This Court previously articulated a parallel standard, finding that in ruling on a motion to dismiss under Rule 12(b)(2) on the basis of affidavits, the court "assumes the truth of the plaintiffs' factual allegations for purposes of the motion and 'construe[s] the pleadings and affidavits in the light most favorable to plaintiffs, resolving all doubts in their favor.'" ECF 115, p. 16 (citing *Dorcester Fin. Sec., Inc. v. Banco BRJ, S.A.,* 722 F.3d 81, 85 (2d Cir. 2013)); *see also Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 167 (2d Cir. 2013) ("In evaluating whether the requisite showing has been made, we construe the pleadings and any supporting materials in the light most favorable to the plaintiffs."). Here, the Court correctly resolved the direct conflict between Plaintiffs' allegations and supporting materials and Defendants' affidavits in Plaintiffs' favor, refusing to give weight to Defendants' denials. Thus, the Court is satisfied that it relied on the appropriate factual basis in its prior analysis of specific jurisdiction.

In addition, Liberty University challenges this Court's reliance on *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.,* 290 F.3d 42 (1st Cir. 2002) and *Mansfield Heliflight, Inc. v. Heli-One Canada Inc.,* No 2:12-CV-46, 2012 WL 4479851 (D. Vt. Sept. 28, 2012) to establish personal jurisdiction over Liberty University due to its close connection to Liberty Counsel with respect to the Lisa Miller case. It argues that *Daynard* and *Mansfield Heliflight* are distinguishable because these cases "effectively rested on principles of estoppel" and "involved an element of reliance by the plaintiffs." *Id.* at 39. In sharp language, they also accuse the Court of improperly relying on the Christian character of both organizations to casually overlook their separate corporate forms.[17][18]

First, in reaching its conclusion on personal jurisdiction, this Court did not intend to resolve whether Liberty Counsel and Liberty University would be considered a joint venture under state law, or whether they acted as one unified entity for all purposes. Rather, the goal of the Court's analysis was to

[17] Defendants also suggest that the use of the word "Liberty" in each institution's name may have confused the court's jurisdictional analysis. It did not, as the Court did not rely on the linguistic similarity in the organizations' names in reaching its conclusion.
[18] In addition, Liberty University asserts that the Court cannot exercise personal jurisdiction over it based on the tortious conduct of its employees in this matter. However, the Court did not rely on this theory of jurisdiction in its earlier order, and need not do so here. *See* ECF 220.

address whether the jurisdictional contacts arising from Lindevaldsen and Staver's tortious conduct directed at Vermont could be imputed to Liberty University because of the intertwined nature of Liberty University and Liberty Counsel's engagement on this matter in particular. *See, e.g., Mansfield Heliflight, Inc. v. Heli-One Canada Inc.*, 2012 WL 4479851, at *8, n. 9 ("The question presented, precisely stated, is whether the actions of Heli–One Norway *in this case* can be attributed to Heli–One Canada, not whether the two companies are effectively one (and thus merged) for the purposes of jurisdictional analysis."). Moreover, the Court explicitly noted that the question of attribution of contacts for jurisdictional purposes was subject to "a less stringent test than that for liability" under a joint venture theory. *See Mansfield Heliflight, Inc.*, 2012 WL 4479851, at *6. It is in this context that the shared mission and views of the organizations' employees with respect to same-sex couples' rights, as well as those employees' use Liberty University resources for purposes of litigating Lisa Miller's case in Vermont, become relevant.

In addition, contrary to Liberty University's suggestion, *Mansfield Heliflight* and *Daynard* did not establish that the jurisdictional contacts of two organizations that are closely connected with respect to particular, tortious conduct at issue

in a case would be attributed to both only if the plaintiff actually relied on the shared nature of that conduct. Rather, the gravamen of those decisions was the connection between the two entities with respect to the wrongdoing at issue in those cases. In *Mansfield Heliflight*, a breach of contract and torts case, this Court emphasized that the plaintiff engaged with representatives from both entities at issue when it negotiated the relevant contract. 2012 WL 4479851, at *8. It did not suggest or require that the plaintiff rely on both companies' participation when it agreed to the contract, or that the plaintiff's understanding that both companies were involved was somehow detrimental. Likewise, in *Daynard*, the First Circuit reviewed the elements of joint venture and agency by estoppel, but clarified that "[e]ven if the defendants' relationship were to fall slightly outside of the confines of these specific doctrines, the question before us is whether a sufficient relationship exists under the Due Process Clause to permit the exercise of jurisdiction, not whether a partnership, joint venture, or other particular agency relationship between the two defendants exists." *Daynard*, 290 F.3d at 56–57. Although the Court in that case did take note of the fact that the Plaintiff had relied on his communications with both organizations, it ultimately rested its conclusion on the fact that an officer of one organization ratified the others' representation that the

plaintiff would be hired on behalf of both firms. *Id.* at 60. Thus, true to its word, the Court's analysis fell outside the confines of the estoppel doctrine, relying principally on the joint conduct of the defendant organizations.

In this case, Defendant Liberty University has moved to dismiss without the benefit of discovery. Thus, Plaintiffs need only make out a prima facie case of personal jurisdiction, and it is plausible that further development of the record could clarify that, in fact, Liberty University and Liberty Counsel did not act in tandem for purposes of this case at all. However, at this point, Plaintiffs have set forth sufficient facts to permit the Court to infer that these two entities were operating in a closely connected manner with regard to the representation of Lisa Miller, that the representation furthered the University's educational ends and was used for educational purposes, and that third parties (including Jenkins and her counsel) understood Liberty University to be providing support to the litigation.[19] Although the Court may revisit this question

[19] In its prior order, the Court pointed to the following facts in this regard: Liberty University and Liberty Counsel "shared common leadership, were located in the same building, and Lindevaldsen, when acting as an attorney for Liberty Counsel, used the resources of Liberty University to carry out the business of her representation of Miller. The Plaintiffs allege that Liberty Counsel acted as a "laboratory school" to train Liberty University students, essentially serving as a law school clinical program. Furthermore, Lindevaldsen and Staver's representation of Miller, ostensibly solely on behalf of Liberty Counsel, was critical to carrying out their roles as professors at Liberty University. Lindevaldsen wrote a book about her representation of Miller which Plaintiffs allege was required reading for

if a different factual showing is made at a later stage, these facts are sufficient to attribute Liberty Counsel's contacts to Liberty University with regard to the matter at issue in this case.

Finally, Liberty Counsel, Lindevaldsen and Staver re-iterate many of the arguments they previously made, without specifically engaging with the Court's prior analysis of these issues. By and large, the Court has already considered and rejected these arguments. However, these Defendants make an additional contention that provides reason to reverse the Court's prior conclusion concerning its jurisdiction over Staver. Specifically, Defendants argue that this Court cannot exercise personal jurisdiction over Staver as a consequence of his agency relationship with Lindevaldsen, which arose from his position as her boss at Liberty Counsel and Liberty University. Lindevaldsen's alleged contacts with this forum, they contend, must be imputed to Liberty Counsel only, rather than to Staver.

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students at the law school, and, as noted above, designed exam questions based on this case. In addition, Plaintiffs allege that the entities held themselves out to the student body and the public as being closely connected. For example, when RUL was in the process of negotiating an agreement with Liberty Counsel to fundraise for Miller's legal representation, Staver gave Zodhiates a tour of the Law School building. Ms. Lindevaldsen communicated from a Liberty University email address and used a Liberty University phone when she served as counsel in the Miller litigation on behalf of Liberty Counsel."

As Defendants note, the Restatement (Third) of Agency § 1.01 establishes that, generally, supervisors should be considered co-agents, rather than principles, of the employees they supervise. No court appears to have considered whether a co-agency relationship is sufficient to attribute an employee's jurisdictional contacts, and Defendants' suggestion to the contrary is misleading.[20] Nevertheless, general agency principles may be applied to establish personal jurisdiction. *See, e.g., Myers v. Bennett Law Offices,* 238 F.3d 1068, 1073 (9th Cir. 2001). Moreover, the Second Circuit has relied on the Restatement of Agency to establish those principles in other contexts. *See, e.g., Johnson v. Priceline.com, Inc.*, 711 F.3d 271, 277 (2d Cir. 2013). Under the Restatement's guidance, then,

[20] The authorities Defendants cite in this regard do not support this proposition, but rather apply general agency principles to the personal jurisdiction analysis. *See Carreras v. PMG Collins, LLC*, 660 F.3d 549, 556 (1st Cir. 2011)(analyzing whether individual was an agent of a corporation but holding that "the record is hopelessly murky on the matter of agency," without addressing whether that individual would be an agent of a higher officer in the corporation); *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1090 (1st Cir. 1992) (assuming, for the sake of argument, that employee's conduct was attributable to one corporation, but primarily discussing the attribution of contacts from that corporation to another); *Doe v. Forrest*, 853 A. 2d 48 (Vt. 2004) (failing to discuss either liability of an individual supervisor for an employee's acts or sufficiency of contacts for personal jurisdiction); *Brueckner v. Norwich Univ.*, 730 A.2d 1086 (Vt. 1999) (same); *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1073 (9th Cir. 2001) (failing to discuss whether supervisor could have an agency relationship with subordinate employee); *Mason v. Sallyport Glob. Holdings, Inc.*, 987 F. Supp. 2d 707, 711 (E.D. Va. 2013) (failing to discuss supervisory status, but concluding merely that a company's "contacts cannot be imputed to [an employee with supervisory status] simply because he is an employee of" the company); *Grynberg v. BP P.L.C.*, 855 F. Supp. 2d 625, 645 (S.D. Tex. 2012), *aff'd,* 527 F. App'x 278 (5th Cir. 2013) (same); *Corbo v. Laessig*, No. 2:10-CV-316-GMN-LRL, 2012 WL 1068271, at *5 (D. Nev. Mar. 28, 2012) (same, discussing fiduciary shield doctrine); *Siegel v. Holson Co.*, 768 F. Supp. 444, 446 (S.D.N.Y. 1991) (same).

Staver must be considered Lindevaldsen's co-agent rather than principle, and her tortious acts therefore cannot be imputed to him for jurisdictional purposes.

This Court determined previously that the "allegations against Staver alone are admittedly weaker than those against Lindevaldsen," and that Plaintiffs' allegations "do not demonstrate that Staver himself participated in efforts to assist Miller in fleeing the country." ECF 220, pp. 31, 32. The Court was also "not persuaded by Plaintiffs' argument that Staver's mere representation of Miller in the Vermont proceedings permits us to find personal jurisdiction over him here." *Id.*, pp. 32-33. The Court nonetheless granted leave to amend to add Staver as a party based upon agency principles. In light of Defendants' more thorough briefing of this question at the instant stage, the Court is now persuaded that it cannot exercise jurisdiction over Staver.

G. First Amendment challenges

i. Introduction

Defendants Zodhiates, Hyden and RUL, as well as Wall, also moved to dismiss Plaintiffs' Section 1985(3) and intentional interference claims on grounds that they violate the First Amendment. In particular, Defendants Zodhiates, Hyden and RUL

contend that these claims are unconstitutionally overbroad and vague, and punish speech without a demonstration that it poses a clear and present danger.[21] Defendant Linda Wall references her special motion to strike, which contends generally that her requests for donations and her advocacy on behalf of Lisa Miller were protected by the First Amendment. ECF 242; 243-1.

Defendants raise their free speech arguments in the context of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)[22]. ECF 227. Thus, the Court must apply the standard of review discussed above for such motions. In particular, the Court must accept as true all of Plaintiffs' well-pleaded factual allegations and draw inferences from those allegations in the light most favorable to the Plaintiffs. *Starr ex rel. Estate of Sampson v. Georgeson S'holder, Inc.*, 412 F.3d 103, 109 (2d Cir. 2005). Therefore, the Court must disregard Defendants' citations to their own affidavits for purposes of these motions, as well.

ii. Analysis

[21] These Defendants' arguments are directed primarily at the Section 1983 claim. They merely allege, in passing, that the same overbreadth, vagueness and "clear and present danger" challenges arise with respect to Plaintiffs' state law claims. Given the lack of an argument on the latter claim, the Court will center its discussion of these issues on Defendants' arguments concerning Section 1985.

[22] Although Defendants Zodhiates, Hyden and RUL do not identify the grounds for their motion, the Court will interpret their argument that Section 1985 violates the First Amendment as raising a defense that the complaint fails to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6).

1. *Overbreadth*

Defendants first assert that Section 1983 is unconstitutionally overbroad because the amended complaint "imputes to all Defendants a variety of activities *protected* by the First Amendment." ECF 227, p. 4 (emphasis added). This argument, however, severely distorts the overbreadth doctrine. In *Broadrick v. Oklahoma*, the Supreme Court permitted individuals whose own conduct was *not* protected by the First Amendment to bring a facial challenge to a statute where "the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." 413 U.S. 601, 611 (1973). The Court announced that, since the overbreadth doctrine is a departure from the traditional rules of standing, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep," "particularly where conduct and not merely speech is involved." *Id.* at 616. Thus, "[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." *Id.* at 613. Later, the Court clarified that "where, despite some possibly impermissible application, the remainder of the statute covers a whole range of easily identifiable and constitutionally proscribable conduct, ... the

Court has required a litigant to demonstrate that the statute "as applied" to him is unconstitutional." *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 964–65 (1984); *see also Bordell v. Gen. Elec. Co.*, 922 F.2d 1057, 1061 (2d Cir. 1991) (The overbreadth doctrine "only allows those who have suffered some cognizable injury, but whose conduct is *not* protected under the First Amendment, to assert the constitutional rights of others." (emphasis added)).

Here, however, Defendants neither demonstrate that the statute as applied to them is unconstitutional, nor show that, although it is constitutional as applied to them, a substantial amount of protected speech would be prohibited or chilled. Rather, they point to a laundry list of facts alleged in the amended complaint that entail speech, without explaining how or why that speech would be proscribed by the statute at issue. In fact, none of these facts fully encompasses the predicate conduct for a Section 1985 claim, which requires that Defendants engage in overt acts to hinder the authorities from providing equal protection of the law to Plaintiffs, and cause injury to Plaintiffs in doing so. The key predicate conduct, therefore, entailed assisting Lisa Miller in physically removing Isabella from the country so as to avoid the jurisdiction of U.S. authorities –conduct which, clearly, does not merely constitute

protected speech. Moreover, even Defendants' argument that the statute would have a chilling effect on attorneys who seek to represent their clients fails. Clearly, a limiting construction can and has been placed on Section 1985's hindrance clause to ensure that attorneys will not be punished under the law for merely representing a client. That construction is evident in the language of the statute itself, which requires an individual to actually aim to hinder state authorities from providing equal protection under the law. Here, Defendants created such an obstacle by physically and materially assisting Lisa Miller in kidnapping a child, and her attorneys did so by providing similar physical assistance and allegedly committing fraud to assist Lisa Miller in removing Isabella from the country. As such, the Court finds that Defendants have failed to show that the statute as applied to them is unconstitutional, or that statute is facially overbroad.

2. Vagueness

Next, Defendants also contend that Section 1985 is unconstitutional because the term "hinder" is impermissibly vague, especially "when it is the person's role to 'hinder' the operation of the system." ECF 227, p. 7. To be sure, "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned*

v. City of Rockford, 408 U.S. 104, 108–09 (1972). The Supreme Court in *Grayned* found that a statute is impermissibly vague when it offends several values. First, statutes must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," thereby providing "fair warning." *Id.* Second, laws must not "impermissibly delegate[] basic policy matters" to those who enforce them, as this would constitute a "broad invitation to subjective or discriminatory enforcement." *Id.* at 108-09, 113. Third, "where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms." *Id.* at 109 (internal quotations omitted). Therefore, laws that permit "persons to be punished for merely expressing unpopular views" may also be unconstitutionally vague for this reason. *Id.* at 113.

None of these considerations make Section 1985 unconstitutionally vague in this case. First, the statute provides sufficient fair warning to reasonably intelligent people about the scope of the conduct it prohibits. Defendants cite two cases in which the Supreme Court struck down statutes (or interpretations of statutes) that included the word "hinder." *See* ECF 227, p. 7 (citing *Cox v. Louisiana,* 379 U.S. 536, 551 (1964); *Thornhill v. Alabama*, 310 U.S. 88 (1940)). In *Cox,* however, the Court did not single out the word "hinder" as

the cause of the constitutional defect, and instead relied on the overbreadth of the statute to reach its conclusion about vagueness. 379 at 552 ("A statute which ... is so vague and indefinite as to permit the punishment of the fair use of this opportunity [for free political discussion] is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."). Likewise, *Thornhill* neither singled out the term "hinder" as a reason for holding that the statute at issue was unconstitutional, nor engaged in a vagueness analysis at all. 310 U.S. at 100.

In fact, the Supreme Court has warned that, "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." *Grayned*, 408 U.S. at 110. Rather, the vagueness of particular words in a statute is circumscribed by their "particular context." *Id.* Thus, for example, in *Grayned*, the Supreme Court found that a law prohibiting certain disturbances was not vague even though the "prohibited quantum of disturbance is not specified in the ordinance," since "the prohibited disturbances are easily measured by their impact" on particular activities. *Id.*

Likewise, in this case, the term "hinder" is given a precise meaning by the context in which it appears. In particular, the hindrance clause prohibits conspiracies "for the

purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws." 42 U.S.C. § 1985(3). Thus, as explained above, the defendant must have acted with discriminatory animus against the plaintiff, and his or her conduct must have had a measurable impact on the capacity of the state to provide equal protection. In this sense, whether a defendant's hindrance is prohibited under § 1985 will be measured both by its intent and its impact. Thus, pursuant to *Grayned*'s rationale, the statute is sufficiently specific to provide fair notice. Moreover, these limitations ensure that the statute will not constitute a broad invitation to discriminatory enforcement.[23] Finally, the statute is not vague as a consequence of punishing people "for merely expressing unpopular views," because, as explained above, significantly more than an unpopular view is required to make out a claim under § 1985. Accordingly, Defendants' motion to dismiss on this ground cannot prevail.

[23] Defendants also rely on *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051 (1991), arguing that careful review is required because "[t]he statute necessarily implicates the rights of lawyers and others who have a professional mission to challenge the actions of the State." ECF 227, p. 8. However, the Court in *Gentile* focused its inquiry on whether the regulation of lawyers would be subject to *less* stringent First Amendment scrutiny, not more so. Moreover, the *Gentile* Court ultimately determined that the statute "raise[d] concerns of vagueness and selective enforcement" because a particular safeguard provision of the statute had led the defendant in that case to believe that his conduct was *not* prohibited. *Gentile,* 501 U.S. at 1034. This case presents no such provision, and Defendants do not argue that they believed their conduct was permissible because of the terms of the § 1985 statute itself. Accordingly, *Gentile* is inapposite to this case.

3. Advocacy of illegality

Finally, Defendants contend that § 1985(3) violates the First Amendment's protection of advocacy of illegality. In particular, they allege that Victoria Hyden's relevant conduct for purposes of this claim amounted only to fundraising and advocacy of civil disobedience. Therefore, they claim, § 1985 directly punishes her protected speech.

To be sure, the First Amendment does protect advocacy of illegality. *See Bradenburg v. Ohio,* 395 U.S. 444 (1969). However, that conduct by Hyden is not, in fact, the source of her potential liability under § 1985. Rather, Hyden committed overt acts to further the conspiracy by allegedly facilitating communication between her father, who has been convicted of the kidnapping, and Lindevaldsen, who allegedly lied to Vermont courts, in order to facilitate Lisa Miller's and Isabella's travel. That conduct is clearly distinct from merely advocating for civil disobedience without providing direct assistance in the commission of legal violations. Thus, Hyden's conduct does not fall within the category of speech protected by *Bradenburg*, which applies to "the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence." *Brandenburg*, 395 U.S. at 448 (1969). Accordingly, the

Court denies Defendants' motion to dismiss on First Amendment grounds altogether.

H. Motions to Strike

i. Introduction

Along with their motions to dismiss, Defendant Wall and Defendants Liberty Counsel, Lindevaldsen and Staver filed two special motions to strike Plaintiffs' amended complaint. *See* ECF 239, 243. Defendants contend that Vermont law allows them to move to strike the complaint in its entirety because Plaintiffs' claims arise out of protected First Amendment activity. In response, Plaintiffs argue that these motions must be denied because (1) the anti-SLAPP statute does not apply in federal court; and (2) even if it did, Defendants have failed to meet their burden of showing that the anti-SLAPP statute should apply to the circumstances of this particular case. For the reasons outlined below, the Court agrees that the anti-SLAPP statute is inapplicable to the facts of this case, and therefore denies Defendants' motions to strike on this ground.

ii. Analysis

Like other states, Vermont has enacted a statute to prevent so-called strategic lawsuits against public participation ("SLAPP") from advancing at an early stage. "The statute is

based upon two legislative findings: (1) There has been a disturbing increase in lawsuits 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[; and] (2) It is in the public interest to encourage continued participation in matters of public significance, and this participation should not be chilled through abuse of the judicial process." *Felis v. Downs Rachlin Martin PLLC,* 133 A.3d 836, 847 (Vt. 2015). Although Defendants do not raise the issue, Plaintiffs first challenge whether the statute applies at all in federal court under *Erie* and its progeny.

This Court has already held that the automatic stay provision of Vermont's anti-SLAPP statute cannot apply to Plaintiffs' federal claim. ECF 220. ("[S]uch a state norm cannot apply to a federal cause of action, since doing so would frustrate substantive federal rights and violate the Supremacy Clause.") (citing *Hillton v. Hallmark Cards,* 599 F.3d 894, 900-01 (9th Cir. 2010); *Doctor's Data, Inc. v. Barrett,* No. 10-cv-03795, 2011 WL 5903508, at *2 (N.D. Ill. Nov. 22, 2011)). Nevertheless, as the Court previously noted, the fact that this Court has federal question jurisdiction over Count Two of the amended complaint does not alone preclude the anti-SLAPP statute's potential applicability to the state law claim in

Count One. *See Wright & Miller,* 19 Fed. Prac. & Proc. Juris. § 4520 (3d ed.) ("It frequently is said that the doctrine of *Erie Railroad Company v. Tompkins* applies only in diversity of citizenship cases; this statement simply is wrong."); *Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 541 (2d Cir. 1956)("[I]t is the source of the right sued upon, and not the ground on which federal jurisdiction over the case is founded, which determines the governing law. Thus, the Erie doctrine applies, whatever the ground for federal jurisdiction, to any issue or claim which has its source in state law.") (internal citation omitted).

In three prior cases, this Court has applied the anti-SLAPP statute's procedural scheme to state law claims brought in federal court. *See, e.g., Ernst v. Kauffman*, 50 F. Supp. 3d 553, 559 (D. Vt. 2014), *on reconsideration,* No. 5:14-CV-59, 2016 WL 1610608 (D. Vt. Apr. 20, 2016); *Haywood v. St. Michael's Coll.,* No. 2:12-CV-164, 2012 WL 6552361, at * 13-16 (D. Vt. Dec. 14, 2012), *aff'd,* 536 F. App'x 123 (2d Cir. 2013), *as corrected* (Oct. 23, 2013). Plaintiff provides persuasive arguments for reconsidering that tradition in this District. The Court need not depart from that precedent to resolve the question at issue, however. Even if the Court were to consider the applicability of the anti-SLAPP statute with respect to Plaintiffs' state claim,

Defendants have failed to demonstrate that this is the type of case to which that procedural device would apply.

The state's anti-SLAPP claim is subject to a two-part burden shifting standard: first, "the defendant must show that the case arises from defendant's exercise of "the right to freedom of speech or to petition the government" and that the speech or petition is "in connection with a public issue." *Ernst v. Carrigan*, 814 F.3d 116, 119 (2d Cir. 2016). If the defendant meets that burden, then the motion must be granted unless 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. *Felis v. Downs Rachlin Martin PLLC*, 200 Vt. 465, 479-81 (2015). "At the very least, to meet the first prong of this test, Plaintiff must demonstrate that his claim is legally sufficient." *Haywood v. St. Michael's Coll.*, Case No. 2:12-cv-164, 2012 WL 6552361, at *15 (D.Vt. Dec. 14, 2012).

Thus, this Court has recently identified three elements of a defendant's anti-SLAPP claim:

> 1. The defendant asserting the SLAPP motion to strike must be sued "in an action arising from the defendant's exercise ... of the right to freedom of speech or to petition the government for redress of grievances." 12 V.S.A. § 1041(a).

2. Such statements are protected only if they are made "in connection with a public issue." *Id.*

3. The requirement that the content of a protected statement concern issues of public interest applies to statements made before a governmental body.

Ernst v. Kauffman, Case No. 5:14-cv-59, 2016 WL 1610608, at *4-6 (D. Vt. Apr. 20, 2016). A defendant meets his or her burden of showing that that a particular activity constitutes "the 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 U.S. or Vermont Constitution," 12 V.S.A. § 1041(a), "by demonstrating that the act ... fits one of the categories spelled out in subsection (i) of the anti-SLAPP statute." *Haywood v. St. Michael's Coll.*, Case No. 2:12-cv-164, 2012 WL 6552361, at *13 (D.Vt. Dec. 14, 2012).

Here, however, Plaintiffs' state law claim for intentional interference with Jenkins' custody does not arise from protected speech. Rather, it arises from Lisa Miller's furtive departure from the United States immediately before she would have been obligated to surrender Isabella to Jenkins pursuant to a court order, first temporarily and later, on a full-time basis. The claims which Plaintiffs assert against the remaining defendants center on the support that they allegedly provided to Lisa Miller to carry out this wrongful conduct. The fact that some of the activities that Defendants engaged in –including the Liberty

Counsel attorneys' representations to state courts, and Wall's fundraising support –might constitute protected speech in some contexts does not salvage the anti-SLAPP claim. Rather, it is the combination of these acts along with Defendants' alleged agreement with Lisa Miller to support her in unlawfully interfering with Jenkins' custody over Isabella, and Lisa Miller's actions in doing so, which give rise to the claim. Thus, while the amended complaint does include allegations that Defendants engaged in speech, the Court concludes that Plaintiffs' state law claim does not "arise from" that protected speech.

Admittedly, Wall, Staver and Lindevaldsen's affidavits deny that they provided any assistance to Lisa Miller to enable her to flee the country with Isabella or to disobey any court orders.[24] However, this evidence goes to show that Plaintiff's

[24] In general, in ruling on a special motion to strike under Vermont's anti-SLAPP statute, the Court may consider a broader range of evidence than it would in ruling on a motion to dismiss. In particular, the state anti-SLAPP statute provides that "[i]n making its determination, the court *shall* consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based." 12 V.S.A. § 1041(e)(2); *see also Ernst v. Carrigan,* 814 F.3d 116, 119 (2d Cir. 2016) ("To decide such motions, courts look to the pleadings and supporting and opposing affidavits.") (internal quotation omitted). The Vermont Supreme Court has not yet determined how a plaintiff's allegations in pleadings should be weighed against supporting or opposing affidavits, and the wording of the statute does not evince what forms of evidence hold greater weight when affidavits conflict. In fact, states with similar anti-SLAPP statutes have reached different conclusions concerning whether plaintiffs must submit affidavits at all in responding to anti-SLAPP motions, or whether courts can simply rely on the allegations in a complaint. *See* Robert T. Sherwin, *Evidence? We Don't Need No Stinkin' Evidence!: How Ambiguity in Some States' Anti-SLAPP Laws Threatens to De-Fang A Popular and Powerful Weapon Against Frivolous Litigation*, 40 Colum. J.L. & Arts 431, 434–35 (2017) (explaining that

underlying claim is meritless, and therefore is relevant to the second prong of the anti-SLAPP test. *See Haywood,* 2012 WL 6552361, at *15 (To show that defendants' exercise of their right to freedom of speech was devoid of any reasonable factual support or arguable basis in law Plaintiff must demonstrate, at the very least, "that his claim is legally sufficient."). In determining whether or not claims "arise from" the protected speech, this Court must assess the nature of the allegations themselves. Here, the nature of the claim entails far more than speech. Accordingly, Defendants' special motions to strike the amended complaint are denied.

IV. Conclusion

For the foregoing reasons, the Court **denies** Defendants' motions to dismiss and motions to strike the amended complaint in part. It **grants** these motions only to hold that Plaintiffs have failed to allege that Liberty University can be held vicariously liable for the acts of Staver, that the Court cannot exercise personal jurisdiction over Staver, and to dismiss Isabella Miller-Jenkins' claim under Count One.

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although California and Texas' anti-SLAPP statutes use nearly identical language, courts in each state have reached opposite conclusions on the question of whether pleadings are sufficient evidence to establish a plaintiff's burden to defeat an anti-SLAPP motion).

Dated at Burlington, in the District of Vermont, this 29th day of September, 2017.

/s/ William K. Sessions III
William K. Sessions III, Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, FOR HERSELF AND AS NEXT FRIEND OF ISABELLA MILLER-JENKINS, A/K/A ISABELLA MILLER,

Plaintiffs,

v.

KENNETH L. MILLER, LISA ANN MILLER F/K/A LISA MILLER-JENKINS, TIMOTHY D. MILLER, RESPONSE UNLIMITED, INC., FOR ITSELF AND AS AN AGENT OF LIBERTY COUNSEL, LLC AND LIBERTY UNIVERSITY, PHILIP ZODHIATES, INDIVIDUALLY AND AS AN AGENT FOR RESPONSE UNLIMITED, INC., VICTORIA HYDEN, F/K/A VICTORIA ZODHIATES INDIVIDUALLY AND AS AN AGENT FOR RESPONSE UNLIMITED, INC., AND LIBERTY UNIVERSITY, LINDA M. WALL, RENA M. LINDEVALDSEN, INDIVIDUALLY AND AS AN AGENT OF LIBERTY COUNSEL AND LIBERTY UNIVERSITY, MATHEW D. STAVER, INDIVIDUALLY AND AS AN AGENT OF LIBERTY COUNSEL, LLC AND LIBERTY UNIVERSITY, LIBERTY COUNSEL, LLC, AND LIBERTY UNIVERSITY

Defendants.

Docket No. 2:12-cv-184-wks

REVISED SECOND AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs herein, by and through their attorneys, Sarah R. Star, Esq., Attorney and Counselor at Law, P.C., and Langrock Sperry & Wool, LLP, and complain against Defendants for intentionally kidnapping and conspiring to kidnap Isabella Miller-Jenkins on or about September 21, 2009, and intentionally causing her continued detention outside the State of Vermont to the present day. Plaintiffs further complain against Defendants for conspiring to violate their civil rights in violation of 42 U.S.C. §1985(3).

This case is brought because the Defendants, through their actions, sought to thwart entirely the orders of the trial and appellate courts of the State of Vermont and the Commonwealth of Virginia after all of their apparent legal options had been exhausted in both states. When it was clear, after six years of state court litigation, that there was no legal justification for the continuing and repeated contemptuous conduct of Lisa Miller and the continued obstruction of the parent child relationship between Isabella Miller-Jenkins and Janet Jenkins, the parties conspired to kidnap Isabella Miller-Jenkins and ensure her detention outside of the United States, beyond the reach of either the Vermont or the Virginia Courts.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, and/or 1367. Venue is proper in this forum pursuant to 28 U.S.C. § 1391(a) & (b). Venue is proper under § 1391(a) & (b) in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Venue is also proper under principles of pendent venue because all claims arise out of the same nucleus of operative facts.

2. Personal jurisdiction. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a), as a substantial part of the events giving rise to the claims occurred in this district, and Defendants are subject to personal jurisdiction in this district, having had more than minimum contacts with Vermont, as their conduct and connection with Vermont are such that they should reasonably anticipate being haled into Court here.

3. Diversity Jurisdiction: With respect to the intentional tort of kidnapping/parental abduction this is an action brought pursuant to 28 U.S.C. § 1332 between citizens of different states. The amount in controversy exceeds $75,000. Venue is proper in this district as jurisdiction is founded on diversity of citizenship, and a substantial part of the events giving rise to the claim occurred within the State of Vermont.

4. Violation of Civil Rights: This Court has original jurisdiction over actions arising under 42 U.S.C. §1985 pursuant to 28 U.S.C. §1343, and a substantial part of the events underlying the claim, including the equal protection afforded to the Plaintiffs under Vermont's Civil Union Statute, arose in Vermont.

PARTIES

5. Janet Jenkins: Plaintiff Janet Jenkins is an individual and resident of the Town of Fair Haven, County of Rutland, State of Vermont.

6. Isabella Miller-Jenkins: Plaintiff Isabella Miller-Jenkins, a/k/a/ Isabella Miller, is a minor child and daughter of Plaintiff Janet Jenkins and Defendant Lisa Miller. By order of the Vermont Family Court, she is currently supposed to reside in Fair Haven, County of Rutland, State of Vermont, but is currently outside the United States as the victim of kidnapping.

7. Lisa Ann Miller f/k/a Lisa Miller-Jenkins: Defendant Lisa Miller is living "in hiding" amongst the Nicaragua Beachy Amish-Mennonite Christian Brethren, while she continues to abduct Plaintiff Isabella Miller-Jenkins in knowing violation of the orders of the Vermont Family Court, but she has sufficient ties to the State of Vermont, including obtaining a civil union and the dissolution of same in Vermont and longstanding participation in litigation in the State of Vermont regarding parental rights of Plaintiff Isabella Miller-Jenkins, to subject her to the personal jurisdiction of this Court.

8. Kenneth L. Miller: Defendant Kenneth Miller is a resident of the State of Virginia, City of Stuart's Draft. Kenneth Miller has sufficient contacts with the State of Vermont to subject him to the personal jurisdiction of this Court, including his personal appearance for criminal charges in Vermont arising from his participation in the kidnapping of Isabella Miller-Jenkins.

9. Timothy Miller: Defendant Timothy Miller is a resident of Managua, Nicaragua and Crossville, Tennessee. He has sufficient ties to Vermont, including personal appearance in Vermont for criminal charges related to the kidnapping of Isabella Miller-Jenkins to subject him to the jurisdiction of this Court.

10. Philip Zodhiates: Defendant Philip Zodhiates is a resident of the Commonwealth of Virginia, City of Waynesboro and the President and sole owner of Response Unlimited, Inc., a Delaware corporation with sufficient contacts with the State of Vermont to subject it to personal jurisdiction in this Court, including providing direct mail and marketing services nationally and internationally, including in Vermont.

11. Victoria Hyden f/k/a Victoria Zodhiates: Defendant Victoria Hyden is a resident of the Commonwealth of Virginia, City of Lynchburg, and is or has been an employee of Response Unlimited, Inc. and Liberty University in relation to the claims set forth herein, giving her sufficient contacts with the State of Vermont to subject her to the jurisdiction of this Court.

12. Response Unlimited, Inc.: Defendant Response Unlimited, Inc., is a Delaware corporation with sufficient contacts with the State of Vermont to subject it to jurisdiction in this Court, including providing Christian direct mail and marketing services nationally and internationally, including in Vermont.

13. Linda Marie Wall: Defendant Linda Wall is a resident of the City of Concord, Commonwealth of Virginia, with sufficient contacts with the State of Vermont to subject her to the jurisdiction of this court.

14. Rena M. Lindevaldsen is a resident of the City of Lynchburg, Commonwealth of Virginia and is an employee of Liberty Counsel and Liberty University in relation to the claims set forth herein, giving her sufficient contacts with the State of Vermont to subject her to the jurisdiction of this Court.

15. Mathew D. Staver is a resident of the City of Orlando, State of Florida and is or has been an employee and officer of Liberty Counsel and Liberty University in relation to

the claims set forth herein with sufficient contacts with the State of Vermont to subject him to the jurisdiction of this Court.

16. Liberty Counsel, LLC is a non-profit law firm affiliated with Liberty University with principal places of business in the City of Lynchburg, Commonwealth of Virginia and in the City of Orlando, State of Florida, having sufficient contacts with the State of Vermont to subject it to the jurisdiction of this Court.

17. Liberty University is a purported educational institution located online and in the City of Lynchburg, Commonwealth of Virginia, having sufficient contacts with the State of Vermont to subject it to the jurisdiction of this Court.

COMMON ALLEGATIONS OF FACT

18. Isabella Miller-Jenkins is the daughter of Lisa Miller and Janet Jenkins. She was born in 2002 while the two mothers were united in a Vermont civil union. When Isabella was seventeen months old, Lisa Miller moved with Isabella to Virginia and petitioned the Rutland Vermont Family Court to dissolve the union. The Family, Appellate and Supreme Courts of both Vermont and Virginia have since ruled that the Rutland Family Court has continuing and exclusive jurisdiction over custody determinations regarding Isabella Miller-Jenkins, that she has a right to a relationship with both of her parents, and that it is in her best interests to have contact with both of her parents on a schedule ordered by the Court.

19. At or about the time she petitioned for dissolution of the civil union in 2004, Defendant Lisa Miller was purportedly or actually "born again," that is, converted to fundamental Christianity and asserted the belief that homosexuality was sinful and that Isabella should be shielded from exposure to the "lifestyle." At or about this time, Lisa Miller joined the Keystone Baptist Church in Winchester, Virginia. There, she formed a friendship with Pastor Douglas Wright. While she was a member of Keystone Baptist, Lisa Miller began to deny the Court ordered parent child contact between Isabella and Janet Jenkins. Lisa Miller was found in contempt of the Vermont Court orders starting in 2004.

20. Since 2004, there have been numerous instances when Janet Jenkins was entitled to lawful custody of Isabella in the State of Vermont, including during vacations, holidays and weekends and continuously since January 1, 2010 when full physical and legal responsibilities for Isabella were transferred to Jenkins from Defendant Lisa Miller. However, since 2008, Jenkins and Isabella have only seen each other on two occasions. Both the Rutland, Vermont Family Court, and the juvenile courts in Virginia which registered and enforced the Vermont orders, have found Lisa Miller in contempt and imposed sanctions for her conduct. Despite these sanctions, Lisa Miller continued to ignore the Court's orders with the assistance and encouragement of the Co-Defendants. Since January 2010 Isabella has been listed as missing by the National Center for Missing and Exploited Children, the victim of a family abduction.

2004-2008

21. Defendant Linda Wall, a Virginia anti-gay activist and Thomas Road Baptist Church ("TRBC") member, stated that in 2004 she 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 there.

22. At the time of the final contested hearing to dissolve the civil union, which due to numerous appeals did not occur until April 2007, Lisa Miller testified that in the future she would comply with court orders regarding such contact despite her failure to do so in the past and on June 15, 2007 the Rutland Family Court issued a Final Order awarding legal and physical parental rights and responsibilities to Lisa Miller subject to the time that Janet Jenkins was entitled to lawful custody during holidays, vacations and some weekends.

23. Between June 2007 and Christmas 2007 Lisa Miller did in fact comply with the orders of the Rutland Family Court on a number of occasions. Isabella spent a week in Vermont with Plaintiff Jenkins, and had several overnight visits in Virginia at the home of Jenkins' parents, Isabella's grandparents Ruth and Claude Jenkins. The relationship between Isabella and Janet Jenkins was in the process of being repaired. However, this compliance was short lived.

24. In the spring of 2008, Lisa Miller, with the encouragement and support of the Defendants named herein, moved with Isabella from her home in Winchester, Virginia to the Lynchburg area, where she was provided with housing, a job and a vehicle by TRBC. Lisa Miller began to associate more openly with the Co-Defendants. In Lynchburg, Lisa Miller joined Thomas Road Baptist Church and was hired as a teacher at TRBC's elementary school, Liberty Christian Academy, where Isabella also became enrolled. Upon information and belief, at Liberty Christian Academy, Lisa Miller would also give assemblies to students to discuss her legal battle.

25. Also in the spring of 2008, Lisa Miller and Defendant Wall met to discuss what Lisa Miller should do "knowing that Virginia" law was not going to prevent Isabella from having contact with Plaintiff Jenkins. At this time, Appellate Courts in Vermont and Virginia had affirmed Janet Jenkins' parental rights. Upon information and belief, Defendant Wall and Lisa Miller decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella.

26. The Protect Isabella Coalition was organized in the spring of 2008 in Lynchburg by Wall and Lisa Miller and other church agents, including Deborah Thurman, who ran a woman's group at TRBC. The purpose of the Protect Isabella Coalition ("PIC") was to prevent court ordered contact between Isabella Miller-Jenkins and Janet Jenkins. Lisa Miller's attorneys had established a Facebook site and other social media to solicit donations to their organization on behalf of Lisa Miller, and the Facebook site was also used to promote the activities of Lisa Miller and the PIC.

2009

27. During her employment at TRBC and participation in the PIC, Lisa Miller continued to be in contempt during court ordered visitation time, and threatened future acts of custodial interference. Lisa Miller appeared on a radio program called "Janet Parshall's America" and threatened that she would not comply with a court's order to transfer legal and physical rights and responsibilities to Janet Jenkins.

28. On May 27, 2009, Janet Jenkins filed a Motion to Modify Parental Rights and Responsibilities in the Vermont Family Court. This Motion requested a transfer of custody to Plaintiff Jenkins due to Lisa Miller's continued interference with court ordered visitation. On May 29, 2009 Lisa Miller made contact with Philip Zodhiates, a resident of Waynesboro, Virginia and the President of Response Unlimited, Inc. a Christian direct mail marketing company.

29. Unbeknownst to Jenkins, Response Unlimited, Inc. was working in conjunction with the lawyers at Liberty Counsel to raise funds in support of the effort to terminate her contact with her daughter, Isabella. This work began in 2008 and in early 2009, Philip Zodhiates offered Liberty Counsel a "personal option" for Lisa Miller in the event that her legal fight failed.

30. On August 21, 2009, the Rutland Family Court held a full day hearing on Janet Jenkins' request to transfer custody of Isabella to her in light of Lisa Miller's ongoing violation of court orders and her disregard of Isabella's best interests. Lisa Miller did not appear for the hearing.

31. On August 25, 2009, the Family and Juvenile Court of Fredrick County, Virginia held a hearing on Janet Jenkins' request to hold Lisa Miller in contempt of the Vermont Family Court Orders, and her request to enforce the orders in the Commonwealth of Virginia. The Virginia Court held Lisa Miller in contempt and fined her $100 per day for any future days of missed contact between Janet Jenkins and Isabella Miller-Jenkins. Lisa Miller did appear at this hearing and held a press conference, flanked by her attorneys Mathew Staver and Rena Lindevaldsen from Liberty University. Members of the PIC were also present.

32. On September 4, 2009 the Rutland Family Court held a hearing at which it issued an Interim Order while Janet Jenkins' Motion to transfer custody (which had been heard on August 21, 2009) was under consideration. The Rutland Family Court ordered contact between Janet Jenkins and Isabella from September 25, 2009 until September 27, 2009. Lisa Miller did not appear at that hearing, and her attorneys participated via telephone.

33. On or about September 5, 2009, Lisa Miller emailed Debbie Thurman and stated that she knew of the September order. Debbie Thurman posted this email on Facebook. Lisa Miller also granted an interview to an online publication called Lifesitenews.com, discussing the order, and what she thought would happen if she did not follow it – that she would lose custody.

34. By the late summer of 2009, Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood ("Brotherhood") to enable her abduction of Isabella. Lisa

Miller's involvement with the Brotherhood was not known to Janet Jenkins until April of 2011, when Timothy Miller, a Beachy Amish-Mennonite pastor in the Nicaragua Brotherhood was arrested for Aiding and Abetting Isabella's abduction.

35. Before her departure for Nicaragua, Lisa Miller and Isabella travelled back to Winchester, VA. During this trip, Lisa arranged to meet Pastor Wright in a parking lot so that she and Isabella could say "good-bye" to him.

36. Unbeknownst to Plaintiff Janet Jenkins, on September 21, 2009, Lisa Miller and Isabella were transported, in disguise as Amish-Mennonites, to the Canadian border by Philip Zodhiates and at least one other Response Unlimited, Inc. employee. Lisa Miller and Isabella crossed the border at the Rainbow Bridge in a taxi in the early morning hours of September 22, 2009, just days prior to the contact ordered by the Rutland Family Court in its September 2009 Interim Order.

37. On September 24, 2009, a Response Unlimited employee named Bill Dolack sent Zodhiates an online news story about Lisa Miller being menaced with loss of custody if she did not comply with the September 25, 2009, visitation. Zodhiates replied to that email stating: "Thanks, this is really old news though. The lawyers were pretty adamant about yesterday morning being the hearing."

38. In the days prior to September 22, 2009, Lisa Miller and Philip Zodhiates conspired with Kenneth Miller, a member of the Virginia Brotherhood with whom both Victoria and Philip Zodhiates were acquainted, to arrange the purchase of plane tickets from Canada to Nicaragua for Lisa Miller and Isabella Miller-Jenkins. Kenneth Miller also arranged for a Canadian member of the Brotherhood to transport Lisa Miller from an Ontario Hotel to the Toronto airport. Lisa Miller and Isabella Miller-Jenkins flew to Mexico, then El Salvador, and then met Timothy Miller in Nicaragua. Timothy Miller was instructed by Kenneth Miller to purchase plane tickets for Lisa Miller and Isabella, and used his mother-in-law's credit card to do so. Several days later, Kenneth Miller used cash to send a money order to reimburse Timothy Miller's mother-in-law. This was done anonymously, and in such a way as to avoid detection in a clear effort to avoid the September visit, and the anticipated transfer of custody.

39. Kenneth Miller was a pastor at the Pilgrim Christian Fellowship in Stuart's Draft, VA and a leader within the Beachy Amish-Mennonite community. He was also employed at his family's garden center, Millmont Greenhouses, Inc., in Stuart's Draft, VA.

40. Starting in September 2009, Lisa Miller and Isabella lived near or among the Beachy Amish-Mennonite Community in Nicaragua ("Nicaragua Brethren"). This was all done in secret and in such a way as to avoid detection by United States authorities and Janet Jenkins. Lisa Miller would eventually go into "hiding" with Isabella among the Nicaragua Brethren, but would continue to communicate with members of TRBC with the assistance of Philip Zodhiates, Kenneth Miller and members of the Nicaragua Brethren. Lisa Miller went by the name "Sarah" and Isabella was called "Lydia" while in Nicaragua.

41. In Nicaragua in the fall of 2009 Lisa Miller spoke with Andrew Yoder, who worked for a Mennonite Charity called Christian Aid Ministries. She told Andrew Yoder that Liberty Counsel had advised her that it would be in her best interests to disappear.

42. Lisa Miller did not return Isabella for the September 2009 visit, and Janet Jenkins has not seen or heard from Lisa Miller or Isabella since that time. Janet Jenkins arranged for a welfare check at Lisa Miller's last known address in Forest, Virginia in December of 2009, but no one was home. The police reported that the curtains were drawn and the lights were off.

43. Janet Jenkins did not learn of Lisa Miller and Isabella Miller-Jenkins' whereabouts until June of 2010.

44. Unbeknownst to Plaintiff Janet Jenkins, in 2009, Victoria Zodhiates (now Hyden) was an employee of Response Unlimited, Inc., and also a "student worker" at Liberty University. Victoria Zodhiates delivered emails from her father during this time period to Rena Lindevaldsen at the Liberty University law school 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. On September 20, 2009, both Philip Zodhiates and Victoria Hyden communicated with Lisa Miller's father, Terry Miller, in Tennessee to assist in arranging her and Isabella's transportation from a Walmart parking lot in Lynchburg, Virginia, to Waynesboro, Virginia, from whence they would depart for Canada and Nicaragua the next day.

45. In early November, 2009, elders of the Thomas Road Baptist Church, specifically Rena Lindevaldsen and Linda Wall packed up the personal belongings of Lisa Miller in two bags. These bags were picked up from Lynchburg, Virginia by Philip Zodhiates who arranged to have the bags transported to Nicaragua by sending them with his son's school teacher who was taking some children on a mission trip to Managua. Philip Zodhiates arranged for the teacher, John Collmus, to deliver the bags at the airport to Timothy Miller. The bags also contained some supplies for Lisa Miller, such as peanut butter.

46. In addition to retrieving Lisa Miller's items from her apartment, Victoria Hyden used her employment at Liberty University to facilitate Lisa Miller's communication with her lawyer, Rena Lindevaldsen during the time that Lindevaldsen claimed she was unable to communicate with Lisa Miller in an attempt to help her duck service of contempt and enforcement pleadings filed by Janet Jenkins to help locate Isabella.

47. On November 20, 2009, after numerous contempt findings against Lisa Miller, the Rutland Family Court issued its Order that legal and physical parental rights and responsibilities for Isabella to be transferred to Plaintiff Janet Jenkins, effective January 1, 2010 at 1:00 p.m. Deborah Thurman, a member of Thomas Road Baptist Church and the PIC posted a note from Lisa Miller on Facebook on December 5, 2009, acknowledging the ruling.

48. On November 20, 2009, the day that the order was issued transferring custody, Kenneth Miller made a phone call to Timothy Miller in Nicaragua. Kenneth Miller

also contacted Douglas Wright of Keystone Baptist Church. He asked Pastor Wright to assist in disposing of Lisa Miller's belongings from her apartment in Virginia.

49. At a December 18, 2009, status conference, Plaintiff informed the Rutland Family Court that Isabella and Lisa seemed to be missing. Liberty Counsel persisted in filing an appeal in the Vermont Supreme Court on Lisa Miller's behalf, and requested a stay of the order transferring custody of Isabella to Janet Jenkins.

50. A hearing on the motion for a stay was held on December 22, 2009 and Rena Lindevaldsen stated to the Rutland Family Court: "I had no reason to believe until this last conference when Ms. Star indicated that, apparently, there's been no coming and going at her house, that she wasn't at her home. I've left -- you know, again, I've left her messages."

51. On December 30, 2009 after the news of Lisa Miller and Isabella's disappearance broke, Deborah Thurman made a statement on her internet blog, which she linked to the Only One Mommy site. She stated, inter alia:

> *So, the blogosphere and the mainstream media are now abuzz with the news that - gasp! - Lisa and Isabella Miller are nowhere to be found, just days before the court-mandated transfer of custody of 7-year-old Isabella to Janet Jenkins. Ya reckon?*

And in conclusion, she wrote:

> *The majority of Americans overwhelmingly support traditional marriage. If the tyrannical minority wants to push against that, it can and will be met with civil disobedience. There is no other way.*

52. This threat was removed from the internet after Plaintiff Jenkins printed it out and brought it to the police.

2010

53. Lisa Miller did not return Isabella for the January 1, 2010 transfer of custody but held her outside the United States, despite her knowledge of the ruling.

54. In January 2010, Linda Wall appeared on television with several members of the PIC to endorse the kidnapping. In discussing her role, Wall compared herself to Harriet Tubman, and suggested she would take similar actions with regard to more children from same-sex families.

55. Defendant Wall also wrote on Facebook that if anyone knew of Lisa Miller and Isabella's whereabouts, they should not tell anyone. She also made several phone calls to law enforcement to instruct them that they should not look for Lisa Miller and Isabella.

56. In May of 2010, Philip Zodhiates contacted Kenneth Miller purportedly to arrange the purchase of hydrangea plants from Millmont Greenhouses, Inc., for his daughter

Victoria Zodhiates' wedding. Upon information and belief, this transaction with Philip Zodhiates was never recorded in the normal course of business, but instead, was fraudulently transferred through a payroll account into a check to Andrew Yoder, for $500. Andrew Yoder was never an employee of Millmont Greenhouses, Inc. On August 10, 2012, Andrew Yoder testified under oath that he received a check to cash from Kenneth Miller to enable him to bring cash to Nicaragua to transfer to Timothy Miller. Yoder testified that he believed this cash was related to Lisa Miller. Yoder also testified that he had met Lisa Miller and Isabella through Timothy Miller in 2009, and that he knew of her custody case.

57. With the assistance of Thomas Road Baptist Church members, including Linda Wall and Rena Lindevaldsen, as well as Kenneth Miller, Timothy Miller, Philip Zodhiates, and Victoria Zodhiates, in their individual capacities and as agents of Response Unlimited and Liberty University Lisa Miller was able to leave the United States in advance of September 25, 2009 and remain there past January 1, 2010. Linda Wall sought donations for Lisa Miller after January 2010, and the Liberty Counsel lawyers misled courts in two states to delay contempt proceedings aimed at locating Isabella. Since the fall of 2009, Lisa Miller has received aid from the Brotherhood, to continue her abduction of Isabella. Lisa Miller worked in the Managua home of Pastor Timothy Miller. Timothy Miller was arrested for aiding and abetting the kidnapping of Isabella Miller-Jenkins in April of 2011. In November, 2011, charges were dismissed when he agreed to provide truthful testimony for the United States Government. However, Timothy failed to give truthful testimony and failed to return to the United States for trial. He was subsequently deported to the United States to stand trial.

58. At the time of Timothy Miller's arrest Isabella was living with Lisa in Jinotega, Nicaragua, where Lisa Miller was teaching in a school. After the arrest, when her location was discovered, Isabella was uprooted again to an unknown location. It is not known if Isabella is still with Lisa Miller since this time, or with others who are keeping her in hiding.

2011

59. In November 2011, following the dismissal of the charges against Timothy Miller, Kenneth Miller was indicted for aiding and abetting the international parental kidnapping of Isabella Miller-Jenkins. Kenneth Miller, who was living in Ireland at the time of his arrest, had been a pastor and member of the Pilgrim Christian Fellowship in Stuart's Draft, VA, where Victoria Hyden had previously attended grade school. Through his employment at the church, he was acquainted with Defendants Victoria and Philip Zodhiates.

60. At the trial of Kenneth Miller in August 2012, the government introduced phone records that showed phone calls made from Philip Zodhiates's cell phone between 1:28 pm and 1:30 pm on September 22, 2009, to a cell phone with an Orlando area code that is registered to Liberty Counsel, a landline registered to Liberty Counsel, and a landline registered to Liberty University. Mathew Staver, Dean of Liberty University, splits his time between Lynchburg, Virginia and Orlando, Florida. At the time that the calls were made, Philip Zodhiates was still en route back to Virginia after depositing Lisa Miller and Isabella near the Canadian border.

61. Lisa Miller's attorneys, Matthew Staver and Rena Lindevaldsen have at all times maintained that they did not know their client's location to various courts in Vermont (including in sworn testimony of Rena Lindevaldsen) and Virginia, and to the press that Lisa Miller simply stopped communicating with them and disappeared. This was demonstrably false. Rather, they knew of Lisa Miller's whereabouts, knew the identies of certain co-conspirators and solicited donations and retrieved items to support the crime. Also, while Lisa Miller and Isabella were missing, Lisa Miller's attorneys continued to mislead the Vermont and Virginia Courts, and press appeals on Lisa Miller's behalf until the last appeals were exhausted in November 2010 (more than a year after she was missing), stating that they had advance instructions from Lisa Miller as to her wishes for the ongoing litigation.

62. Rena Lindevaldsen published a book with New Revolution Press about Lisa Miller in 2011, citing portions of Lisa Miller's personal diaries which Lindevaldsen has stated were entrusted to her before Lisa Miller disappeared. Lindevaldsen and Staver have appeared on radio and television to promote the book, entitled Only One Mommy: A Woman's Battle for Her Life, Her Daughter, and Her Freedom: The Lisa Miller Story. Rena Lindevaldsen's book was required reading for all incoming Liberty University School of Law students.

2012

63. On February 2, 2012, the Nicaragua Brethren released an official statement detailing how Lisa Miller had, from their perspective, infiltrated the Brethren, and was now in hiding among them, stating in part:

> *Lisa Miller left the US free with full custody of her child and lived in Nicaragua as a free person. She had her own money and took care of herself. After a time of instruction, and of searching the Scriptures, she asked to become part of the church and was received into the brotherhood.*
>
> *To our knowledge neither Lisa nor any of the Nicaraguan brethren had heard that an arrest warrant had been issued for her until Timo Miller was arrested a year later. Then we discovered that the law was accusing the brethren of aiding in a kidnapping even though Lisa still had total and legal custody when she left the US. After Timo Miller's arrest the law started to pursue Lisa, so she decided to go into hiding.*
>
> *Several years have passed. At the time we did not know what all was going on. We only knew that the poor mother and the precious child needed help, so some of our people kindly extended them a helping hand. But now this case has grown and quite a few congregations have been affected.*[1]

[1] Available at http://www.lifesitenews.com/news/i-promised-god-that-if-he-would-save-my-baby-i-would-leave-the-homosexual-l/

COUNT ONE – INTENTIONAL TORT OF KIDNAPPING

Plaintiffs incorporate by reference paragraphs 1 through 63 as though fully set forth herein.

64. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins allege that on or about September 21, 2009 Lisa Miller did commit the intentional tort of kidnapping Isabella Miller-Jenkins and transporting her, under cover of night, while both disguised as Amish-Mennonites, outside of the United States in order to interfere with Janet Jenkins' lawful custody of Isabella between the dates of September 25, 2009 and September 27, 2009. Plaintiffs also allege that Lisa Miller intentionally held Isabella Miller-Jenkins outside of the United States, specifically, in Nicaragua, to interfere with Janet Jenkins' lawful custody of Isabella between the dates of January 1, 2010 and the present, and to thwart the equal protection afforded to Janet Jenkins and Isabella Miller-Jenkins under Vermont law. Such acts constitute the act or threat of kidnapping chargeable as a criminal offense under Vermont law and punishable by imprisonment for more than one year.

65. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins further allege that Lisa Miller did conspire with, and was aided and abetted by Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc. and Liberty University, Kenneth Miller, Timothy Miller Linda Wall, Rena Lindevaldsen, individually and as an agent of Liberty Counsel and Liberty University, Mathew Staver, individually and as an agent of Liberty Counsel and Liberty University, and Liberty Counsel, LLC and Liberty University.

COUNT TWO: CONSPIRACY TO VIOLATE CIVIL RIGHTS

Plaintiffs incorporate by reference paragraphs 1 through 645 as though fully set forth herein.

66. 42 U.S.C. § 1985 (3) provides a civil cause of action for any person who is injured in his person or property by reason of "two or more persons in any State or Territory conspir[ing] or go[ing] in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws."

67. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins allege that Lisa Miller conspired with Liberty Counsel, LLC, Liberty University, Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc. and Liberty University, Kenneth Miller, Timothy Miller, Linda Wall, Rena Lindevaldsen, Mathew Staver, individually and as agents of Liberty Counsel and

Liberty University to violate the civil rights of Janet Jenkins and Isabella Miller-Jenkins, based on discriminatory animus against same-sex couples and against Janet Jenkins due to sexual orientation, and to prevent the courts of Vermont and Virginia from securing to them equal protection of the law, and to prevent or hinder State authorities from securing equal protection of the law to same-sex couples.

DAMAGES

68. As a result of Isabella's kidnapping, Janet Jenkins has suffered extreme emotional distress and the loss of her daughter's companionship.

69. Janet Jenkins has incurred legal fees and lost business as a result of having to close her daycare center in order to attend contempt and other court hearings, and meetings with law enforcement necessary to locate her daughter. These losses constitute a damage and injury to her business and property. Janet Jenkins has also been unable to collect court ordered fines, which constitute a property interest. These fines have been accruing in the amount of $100 per day from September 25 to 27, 2009 and since January 1, 2010 and are expected to continue indefinitely while Isabella is abducted.

70. Plaintiff Isabella Miller-Jenkins has suffered emotional distress as a result of the abduction. According to Timothy Miller, at one point, Isabella was living in isolation and having a difficult time. In the most recent report about Isabella's whereabouts, it seems that her freedom of movement is severely restricted by the Nicaragua Brethren and Lisa Miller and that her standard of living is far below what even the poorest children in the United States experience.

71. Plaintiff Isabella Miller-Jenkins has also suffered the loss of emotional and financial support from her mother, Janet Jenkins. Isabella has a property interest in child support from one or both parents based on her needs and best interests. The child support previously due to the custodial parent for Isabella's care was approximately $250 per month. This deprivation continues today and is expected to continue indefinitely into the future. In addition to the property right of child support, on information and belief, Isabella is currently being deprived of an education, medical and dental care and the support of her extended family, including grandparents Ruth and Claude Jenkins. All of these factors currently and will in the future result in an injury to Isabella's property and future business and employment.

72. Plaintiffs request compensatory and punitive damages against Defendants for the intentional tort of kidnapping Isabella and for violations of the Plaintiff's civil rights.

JURY DEMAND

Plaintiffs request a jury trial on factual issues and the required fee has been or will be paid.

PRAYER

For the above reasons, Plaintiffs request that the named Defendants be made to appear herein and be held liable as alleged herein and that judgment be entered in the Plaintiffs favor against the Defendants in the following particulars:

1. An order that the Defendants cease their unlawful activities immediately and return Isabella Miller-Jenkins to the United States.
2. Actual and punitive damages as requested herein.
3. Attorney's fees and expert witness fees.
4. Costs of court and any other relief to which the Plaintiffs are justly entitled.

DATED AT MIDDLEBURY, VERMONT this 6th day of April, 2017

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 2:12-CV-184
	)	
KENNETH L. MILLER, ET AL.	)	
	)	
Defendants.	)	

OPINION AND ORDER

Defendants Liberty Counsel and Rena M. Lindevaldsen ("Defendants") have filed a Motion to Certify Interlocutory Appeal and to Stay Proceedings Pending Resolution of Interlocutory Appeal. *See* ECF 280. Pursuant to 28 U.S.C. § 1292(b), Defendants are seeking review of this Court's September 29, 2017 Opinion and Order (ECF 277). For the reasons stated below, Defendants' motion for interlocutory appeal and stay of proceedings (ECF 280) is **denied**.

BACKGROUND

Plaintiff Janet Jenkins ("Jenkins"), for herself and as next friend of her daughter Isabella Miller-Jenkins, brings this action against individuals and organizations that she alleges conspired with her former same-sex partner, Lisa Miller, to kidnap and transport her daughter outside of the United States.

After extensive briefing by the parties, the Court ruled on Defendants' motions to dismiss and motions to strike in a 109-

page opinion on September 29, 2017. ECF 277. Defendants Liberty Counsel and Lindevaldsen filed their motion to certify interlocutory appeal on October 13, 2017. ECF 280. Liberty Counsel and Lindevaldsen argue that the "Court's Order involves many novel, pivotal, and controlling questions of law as to which there is a substantial difference of opinion" and that the "resolution of these seminal questions on interlocutory appeal will terminate this litigation as to Liberty Counsel and Lindevaldsen, or at minimum, dramatically alter its scope." ECF 280-1, p. 2. Specifically, Liberty Counsel and Lindevaldsen want the Second Circuit to review this Court's conclusions:

> (1) that Vermont would recognize a predicted tort for custodial interference, (2) that the custodial interference claim survives despite Jenkins not having superior custodial rights during the period in which Liberty Counsel and Lindevaldsen are alleged to have committed certain acts, (3) that this Court has personal jurisdiction over Lindevaldsen and Liberty Counsel, (4) that Jenkins' claims are not time barred and relate back to the original pleading, (5) that Jenkins' conclusory allegations of conspiracy state a claim, (6) that, despite not alleging the requisite substantial assistance, Jenkins' aiding and abetting claim survives dismissal, (7) that Section 1985 does not require state action, (8) that Section 1985 covers claims brought based on sexual orientation, and (9) that Section 1985 does not require that Jenkins allege discriminatory animus directed at her individually.

ECF 280-1, p. 1-2.

DISCUSSION

I. Legal Standard

The Court has previously ruled on a motion for interlocutory appeal in this case. *See* ECF 125. There, the Court explained the strict standards, which it will explain again here.

A district court may certify an order for interlocutory appeal when it believes that the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the termination of the litigation." 28 U.S.C. § 1292(b); *see Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 921 F.2d 21, 23 (2d Cir. 1990). Section 1292(b) is intended to provide a "rare exception to the final judgment rule that generally prohibits piecemeal appeals." *Koehler v. The Bank of Bermuda Ltd.*, 101 F.3d 863, 865 (2d Cir. 1996); *see also Klinghoffer*, 921 F.2d at 25 (holding that "it continues to be true that only 'exceptional circumstances [will] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment.'") (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978)). The district courts are therefore admonished "to exercise great care" in assessing whether the standard for making a § 1292(b)

certification has been met. *Westwood Pharms., Inc. v. Nat'l Fuel Gas Distrib. Corp.*, 964 F.2d 85, 88 (2d Cir. 1992).

II. Defendants' Motion to Certify the Court's September 29, 2017 Order for Interlocutory Appeal is Denied

A court may certify an order for interlocutory appeal when it believes that it (1) involves a controlling question of law, (2) as to which there is substantial ground for difference of opinion, and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). The Court believes that the interlocutory appeal sought here would have no effect but to materially delay the ultimate termination of this litigation. Thus, Defendants have not met the standard for interlocutory appeal, and their motion is denied.

Defendants assert that controlling questions exist regarding both subject matter jurisdiction and personal jurisdiction. Defendants argue that "there can be no dispute that the questions of law are controlling" because a "finding that Jenkins' claims are all time barred and do not satisfy the requirements for relation back would entirely terminate the litigation as to Liberty Counsel and Lindevaldsen [], as this Court would have no jurisdiction to entertain such claims." ECF 280-1, p. 3. Defendants contend that "such questions concerning the Court's subject matter jurisdiction are appropriate for

interlocutory review." ECF 280-1, p. 4. Defendants further argue that "a finding that this Court lacks personal jurisdiction over Liberty Counsel and Lindevaldsen would also terminate the litigation as to these Defendants." ECF 280-1, p. 4.

Defendants Liberty Counsel and Lindevaldsen are correct that a finding that the Court lacks subject matter jurisdiction or personal jurisdiction as to them would terminate their direct involvement in the litigation; however, the litigation would continue as there are many other defendants involved in this case. *See Shovah v. Mercure*, No. 2:11-cv-00201-wks, 2013 WL 5934310, at *2 (D. Vt. Nov. 5, 2014) (explaining that "because the case involves more than one defendant, an immediate appeal will not material advance but substantially delay the termination of the litigation."). Further, given their closeness to the other defendants, Liberty Counsel and Lindevaldsen would likely be actively involved in discovery even if they are dismissed from the case. Thus, the Court does not believe that there are necessarily controlling issues of law at this stage of the litigation.

In their motion for interlocutory appeal, Defendants argue that several of the Court's decisions in its September 29, 2017 Opinion and Order are novel and that "questions of first impression are the quintessential matters in which there can be substantial grounds for difference of opinion." ECF 280-1, p. 4.

Specifically, Defendants contend that there is substantial ground for disagreement on (1) the Court's findings on Jenkins' custodial interference claim, (2) the Court's findings of personal jurisdiction, (3) the Court's Section 1985 findings, and (4) the Court's findings on timeliness. However, Defendants are essentially rehashing their arguments that the Court has already considered and ruled on in its September 29, 2017 Opinion and Order. While some of these issues may be subject to reasonable debate, the Court does not believe that any of them justify departing from the standard course of litigation--i.e., reserving appellate review of these arguments until the Court enters final judgment. It is clear that Defendants disagree with many aspects of the Court's ruling. It is also clear that certain issues in the Court's ruling constituted questions of first impression. However, Defendants have failed to put forward any "exceptional circumstances" that would justify a time-consuming interlocutory appeal.

There are many other defendants in this case besides Liberty Counsel and Lindevaldsen. The fact of the matter is that even if Liberty Counsel and Lindevaldsen were completely dismissed, the case would continue on and Liberty Counsel and Lindevaldsen would likely be actively involved as third parties. Granting Defendants' motion for interlocutory appeal would

simply delay things even further in this case which has already been going on for five years and is still not in discovery.

CONCLUSION

For the foregoing reasons, Defendants motion to certify interlocutory appeal is **denied**. Obviously, since the Court is not granting the motion for interlocutory appeal, Defendants motion to stay proceedings pending resolution of the interlocutory appeal is **denied**.

Dated at Burlington, in the District of Vermont, this 26th day of March, 2018.

/s/William K. Sessions III

William K. Sessions III
U.S. District Court Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 2:12-CV-184
	)	
KENNETH L. MILLER, ET AL.	)	
	)	
Defendants.	)	

OPINION AND ORDER

Defendants Liberty Counsel and Rena M. Lindevaldsen ("Defendants") have filed a Motion to Certify Interlocutory Appeal and to Stay Proceedings Pending Resolution of Interlocutory Appeal. *See* ECF 280. Pursuant to 28 U.S.C. § 1292(b), Defendants are seeking review of this Court's September 29, 2017 Opinion and Order (ECF 277). For the reasons stated below, Defendants' motion for interlocutory appeal and stay of proceedings (ECF 280) is **denied**.

BACKGROUND

Plaintiff Janet Jenkins ("Jenkins"), for herself and as next friend of her daughter Isabella Miller-Jenkins, brings this action against individuals and organizations that she alleges conspired with her former same-sex partner, Lisa Miller, to kidnap and transport her daughter outside of the United States.

After extensive briefing by the parties, the Court ruled on Defendants' motions to dismiss and motions to strike in a 109-

page opinion on September 29, 2017. ECF 277. Defendants Liberty Counsel and Lindevaldsen filed their motion to certify interlocutory appeal on October 13, 2017. ECF 280. Liberty Counsel and Lindevaldsen argue that the "Court's Order involves many novel, pivotal, and controlling questions of law as to which there is a substantial difference of opinion" and that the "resolution of these seminal questions on interlocutory appeal will terminate this litigation as to Liberty Counsel and Lindevaldsen, or at minimum, dramatically alter its scope." ECF 280-1, p. 2. Specifically, Liberty Counsel and Lindevaldsen want the Second Circuit to review this Court's conclusions:

> (1) that Vermont would recognize a predicted tort for custodial interference, (2) that the custodial interference claim survives despite Jenkins not having superior custodial rights during the period in which Liberty Counsel and Lindevaldsen are alleged to have committed certain acts, (3) that this Court has personal jurisdiction over Lindevaldsen and Liberty Counsel, (4) that Jenkins' claims are not time barred and relate back to the original pleading, (5) that Jenkins' conclusory allegations of conspiracy state a claim, (6) that, despite not alleging the requisite substantial assistance, Jenkins' aiding and abetting claim survives dismissal, (7) that Section 1985 does not require state action, (8) that Section 1985 covers claims brought based on sexual orientation, and (9) that Section 1985 does not require that Jenkins allege discriminatory animus directed at her individually.

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certification has been met. *Westwood Pharms., Inc. v. Nat'l Fuel Gas Distrib. Corp.*, 964 F.2d 85, 88 (2d Cir. 1992).

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Defendants assert that controlling questions exist regarding both subject matter jurisdiction and personal jurisdiction. Defendants argue that "there can be no dispute that the questions of law are controlling" because a "finding that Jenkins' claims are all time barred and do not satisfy the requirements for relation back would entirely terminate the litigation as to Liberty Counsel and Lindevaldsen [], as this Court would have no jurisdiction to entertain such claims." ECF 280-1, p. 3. Defendants contend that "such questions concerning the Court's subject matter jurisdiction are appropriate for

interlocutory review." ECF 280-1, p. 4. Defendants further argue that "a finding that this Court lacks personal jurisdiction over Liberty Counsel and Lindevaldsen would also terminate the litigation as to these Defendants." ECF 280-1, p. 4.

Defendants Liberty Counsel and Lindevaldsen are correct that a finding that the Court lacks subject matter jurisdiction or personal jurisdiction as to them would terminate their direct involvement in the litigation; however, the litigation would continue as there are many other defendants involved in this case. *See Shovah v. Mercure*, No. 2:11-cv-00201-wks, 2013 WL 5934310, at *2 (D. Vt. Nov. 5, 2014) (explaining that "because the case involves more than one defendant, an immediate appeal will not material advance but substantially delay the termination of the litigation."). Further, given their closeness to the other defendants, Liberty Counsel and Lindevaldsen would likely be actively involved in discovery even if they are dismissed from the case. Thus, the Court does not believe that there are necessarily controlling issues of law at this stage of the litigation.

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There are many other defendants in this case besides Liberty Counsel and Lindevaldsen. The fact of the matter is that even if Liberty Counsel and Lindevaldsen were completely dismissed, the case would continue on and Liberty Counsel and Lindevaldsen would likely be actively involved as third parties. Granting Defendants' motion for interlocutory appeal would

simply delay things even further in this case which has already been going on for five years and is still not in discovery.

CONCLUSION

For the foregoing reasons, Defendants motion to certify interlocutory appeal is **denied**. Obviously, since the Court is not granting the motion for interlocutory appeal, Defendants motion to stay proceedings pending resolution of the interlocutory appeal is **denied**.

Dated at Burlington, in the District of Vermont, this 26th day of March, 2018.

/s/William K. Sessions III

William K. Sessions III
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

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

AFFIDAVIT OF 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 Zodhiates 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 Zodhiates 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. Lindevalsen 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 15th day of May, 2017.

Mathew D. Staver

STATE OF FLORIDA

At Maitland, Florida this 15th 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.

Notary Public State of Florida
Jessica Ann Carrillo
My Commission FF 993098
Expires 05/16/2020

Before me, _____

Notary Public

My Commission Expires: 5/16/2020

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL., Plaintiffs v. KENNETH L. MILLER, ET Al, LISA ANN MILLER f/k/a LISA MILLER-JENKINS, TIMOTHY D. MILLER, ANDREW YODER, individually and as an Agent for CHRISTIAN AID MINISTRIES, INC., CHRISTIAN AID MINISTRIES, INC., RESPONSE UNLIMITED, INC., PHILIP ZODHIATES, individually and as an agent for RESPONSE UNLIMITED, INC., VICTORIA HYDEN, f/k/a VICTORIA ZODHIATES individually and As an agent for both RESPONSE UNLIMITED, INC., LINDA M. WALL, individually and DOUGLAS WRIGHT, Defendants	Docket No.: 2:12-cv-184

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mathew D. Staver

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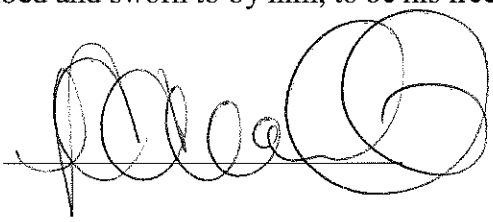
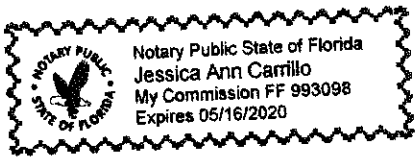
STATE OF FLORIDA

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

Before me, 

Notary Public

My Commission Expires: May 16, 2020



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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF VERMONT

JANET JENKINS, ET AL.,	)	
Plaintiffs,	)	
v.	)	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. Zodhiates 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. Zodhiates. 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. Zodhiates, 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. Zodhiates, 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 17th 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.

CAROL J. CORDLE NOTARY PUBLIC REG. #7095079 MY COMMISSION EXPIRES 07/31/2019 COMMONWEALTH OF VIRGINIA

Before me,

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

Exhibit Five

to

Motion To Dismiss for Lack of Personal Jurisdiction, Lack of Venue, and Failure to State a Claim

filed on behalf of Defendants Liberty University, Inc., Thomas Road Baptist Church, Inc., and Victoria Hyden

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER, Plaintiffs	
v.	Docket No.: 2:12-cv-184
KENNETH L. MILLER, LISA ANN MILLER f/k/a LISA MILLER-JENKINS, TIMOTHY D. MILLER, ANDREW YODER, individually and as an Agent for CHRISTIAN AID MINISTRIES, INC., CHRISTIAN AID MINISTRIES, INC., RESPONSE UNLIMITED, INC., PHILIP ZODHIATES, individually and as an agent for RESPONSE UNLIMITED, INC., VICTORIA HYDEN, f/k/a VICTORIA ZODHIATES individually and As an agent for both RESPONSE UNLIMITED, INC., and LIBERTY UNIVERSITY, INC. and its related ministry THOMAS ROAD BAPTIST CHURCH, INC., LINDA M. WALL, individually and As agent for THOMAS ROAD BAPTIST CHURCH, INC., and DOUGLAS WRIGHT, Defendants	

AFFIDAVIT OF RENA M. LINDEVALDSEN IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

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

1. I am an attorney licensed to practice law since 1996, have knowledge of the following facts, and if called upon to testify to them could and would do so competently. I am a member of the New York, Florida, and Virginia Bars, and have been admitted to practice before

the United States Supreme Court, all twelve circuits of the United States Court of Appeals, and other courts. I received my Juris Doctor degree from the Brooklyn Law School, graduating *Magna Cum Laude.*

2. I began in private practice in 1996 in New York and focused on commercial litigation matters. In January 2003, I moved to Orlando, Florida to join the legal staff of Liberty Counsel, Inc. (hereinafter "Liberty Counsel"). I remained in Orlando, Florida until March 2005, when I moved to Lynchburg, Virginia to open Liberty Counsel's branch office. From January 2003 until August 2005, I was solely employed by Liberty Counsel, serving as a Senior Litigation Counsel. As discussed below, it was in June 2004 that I first came in contact with Lisa Miller and that Liberty Counsel agreed to represent her.

3. In August 2005, as Liberty University School of Law matriculated its second entering class, I agreed to serve as an adjunct professor to teach a writing class in the fall semester and Family Law in the spring semester. After a couple of months teaching, I submitted an application for a full-time position at the law school. In December 2005, on behalf of the law school, the Founding Dean offered me a full-time contract, which would begin July 1, 2006. Since July 1, 2006, I have served as a full-time faculty member at Liberty University School of Law and remained in a Special Counsel role to Liberty Counsel. As Special Counsel, I have worked on select cases, including Lisa Miller's case. Last year, I was granted tenure by the Board of Trustees of Liberty University and was promoted to a position of full Professor. Since July 1, 2011, after the founding Associate Dean for Academic Affairs stepped down, I have served as the Associate Dean for Academic Affairs.

4. I first became aware of Lisa Miller while I was Senior Litigation Counsel at Liberty Counsel, working in the Orlando office. On or about June 2004, Lisa Miller contacted Liberty Counsel, requesting assistance with her case in Vermont and her soon-to-be filed case in Virginia. On or about January 2005, Liberty Counsel agreed to represent Lisa Miller. At that time, Lisa Miller lived in Virginia; I lived in Florida. At that time, I was solely employed by Liberty Counsel; I was not employed by Liberty University.

5. The Amended Complaint alleges in ¶22 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." These allegations are inaccurate. First, neither I nor Mathew Staver worked at Liberty University in 2004. In fact, I did not become a part-time (adjunct) instructor until more than a year later, when I taught my first class in August 2005. Second, Liberty Counsel, ***not*** Liberty University or Liberty University School of Law, represented Lisa Miller. All representation for Lisa Miller was provided through Liberty Counsel, separate and apart from Liberty University and Liberty University School of Law. All pleadings submitted in the Lisa Miller case contained the signature block for Liberty Counsel, ***not*** Liberty University or Liberty University School of Law.

6. Liberty Counsel is a separate entity from Liberty University. In fact, Liberty Counsel has separately paid me, as an independent contractor, for the work I have performed in my capacity as Special Counsel to Liberty Counsel. Liberty University has never had input on the cases I have worked on for Liberty Counsel. Consequently, contrary to the Amended Complaint ¶31, neither I nor Mathew Staver appeared with Lisa Miller on behalf of Liberty University or Liberty University School of Law. Our representation was never on behalf of Liberty University or Liberty University School of Law.

7. As best as I can recall, I have twice appeared in person in Vermont on behalf of Lisa Miller. Both of those appearances were at the Vermont Supreme Court, where I was admitted *pro hac vice* to argue on behalf of Lisa Miller. In addition, although I am not sure of the exact number, I know that I have appeared by telephone for a handful of hearings in the Vermont trial court on behalf of Lisa Miller. I believe all other trial court hearings were handled by other, full-time, Liberty Counsel attorneys. Other than these limited court appearances in Vermont and

making Vermont lodging and travel arrangements in the course of representing Lisa Miller, I have had no contacts with Vermont: I have not been involved in any other cases in Vermont, I have not vacationed in Vermont, and I have not conducted any business in Vermont.

8. Contrary to the Amended Complaint in ¶25, and elsewhere, I have never encouraged any of the named Defendants, including Lisa Miller, to not allow Isabella to have contact with Janet Jenkins. I have never counseled Lisa Miller to disobey court orders. I did not counsel or encourage Lisa Miller to flee from the state, the country, or beyond the reach of any court or law enforcement; nor have I counseled or encouraged anyone to assist her in fleeing from the state, country, or beyond the reach of court or law enforcement. Other than what I have read in news reports and publicly-available court filings, I have no knowledge of anyone who counseled, encouraged, or assisted her in fleeing from the state, country, or beyond the reach of court or law enforcement.

9. As set forth in ¶58 of the Amended Complaint, I have always maintained, and continue to maintain, that I had no knowledge that Lisa Miller would flee and continue to have no knowledge of her whereabouts. In September 2009, while the litigation was still continuing in Vermont and Virginia, Lisa Miller suddenly stopped all communication with me and Liberty Counsel. All communication ceased with absolutely no warning or hint from Lisa Miller or anyone else that she intended to flee. The Vermont trial court was informed that Lisa Miller stopped communicating and was unable to be located. I continued to try and communicate with her by email and voicemail as I remained under a continuing legal obligation to try and keep my client informed of the court proceedings. She never responded to any of those emails or voicemails. Eventually, her voicemail became full and I could no longer leave messages.

10. I am aware that Victoria Hyden was initially employed as a student worker in the law school and then, in or about May 2010, became a full-time employee. I cannot speak to Ms. Hyden's employment arrangement as I do not know the details. I do know that Ms. Hyden works in the Admissions Department, which has an office suite separate from that of the faculty. I have seen her in a shared kitchen area where I sometimes get coffee or in the hallways of the law

school. I have not spoken to her at length about any subject; nor have I spoken to her about Lisa Miller. Paragraph 41 of the Amended Complaint states that "On information and belief" Victoria Hyden sent an email to law school co-workers asking for donations for Lisa Miller. I never received such an email; nor did I hear anyone else mention anything concerning a request by Ms. Hyden for donations for Lisa Miller or for anyone else.

11. The Amended Complaint at ¶57 alleges that a cell phone allegedly belonging to Philip Zhodiates made three calls on September 22, 2009, between 1:28 pm and 1:30 pm to a cell phone with an Orlando area code registered to Liberty Counsel, to a landline registered to Liberty Counsel, and to a landline registered to "Liberty University School of Law" (as stated in the Complaint) or "Liberty University" (as statement in the Amended Complaint). If those calls were made, none were to me. I have never had a cell phone that was registered to Liberty Counsel. Since July 2006, I have not had a landline that is registered to Liberty Counsel. I do, however, have a landline that is registered to Liberty University and have had that line since July 2006. As I mentioned above, if Mr. Zhodiates made those calls on September 22, 2009, none were to me.

12. Other than reading their names in the indictment of Timothy Miller, in the Complaint and the Amended Complaint, 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. During all the years that I knew Lisa Miller, she was neither Amish nor Mennonite and did not mention either religious affiliation to me.

13. Other than what I read in news reports or in publicly-available court filings, I have no knowledge of anyone who was involved in Lisa Miller's plan or intent to leave Virginia with her child, or of anyone who aided, abetted, or conspired with Lisa Miller to leave with her child from Virginia.

14. Separately, contrary to the allegations contained in ¶47 of the Amended Complaint, I do not instruct law school students, or others, that the "correct course of action for a

person in Lisa Miller's situation would be to engage in 'civil disobedience' and defy court orders." As a law professor, I conduct class discussions on civil disobedience as it has developed throughout history in a course entitled Foundations of Law, but I have never instructed students on what they should or their future clients should do in a particular circumstance: no person is in a position to tell another person that he or she should engage in civil disobedience. Rather, we discuss civil disobedience from the perspective of the principles stated in the Declaration of Independence, Samuel Rutherford's Lex Rex, and Martin Luther King, Jr.'s "Letter from a Birmingham Jail." This is a topic contained in the curricula of other law schools and regularly discussed in law review articles. With respect to the allegation in the Amended Complaint – I never instructed students that anyone should engage in civil disobedience if they found themselves in a situation similar to Lisa Miller's.

15. In sum, at no time did I counsel Lisa Miller to disobey any court order, including the orders of the Vermont courts, and at no time did she, or anyone else, alert me to her plan or intent to leave Virginia with her child. I absolutely did not aid or assist Ms. Miller in fleeing this country.

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

Subscribed and sworn to under penalties of perjury this 2nd day of November, 2012.

Rena M. Lindevaldsen

COMMONWEALTH OF VIRGINIA

At Lynchburg, Virginia, this 2nd day of November, 2012, personally appeared RENA M. LINDEVALDSEN, and she acknowledged this instrument, subscribed and sworn to by her, to be her free act and deed.

BELINDA KAY WETHERINGTON
NOTARY PUBLIC
REG. #364926
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXP. OCTOBER 31, 2015

Before me, Belinda K. Wetherington

Notary Public

My Commission Expires: 10/31/15

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER,
Plaintiffs

Docket No. 2:12-cv-00184-wks

v.

KENNETH L. MILLER,
LISA ANN MILLER f/k/a LISA MILLER-JENKINS,
TIMOTHY D. MILLER, ANDREW YODER, individually and as an agent for CHRISTIAN AID MINISTRIES, INC., CHRISTIAN AID MINISTRIES, INC., RESPONSE UNLIMITED, INC., PHILIP ZODHIATES, individually and as an agent for RESPONSE UNLIMITED, INC., VICTORIA HYDEN, f/k/a VICTORIA ZODHIATES individually and as an agent for both RESPONSE UNLIMITED, INC., and LIBERTY UNIVERSITY, INC. and its related ministry THOMAS ROAD BAPTIST CHURCH, INC., LINDA M. WALL, individually and as agent for THOMAS ROAD BAPTIST CHURCH, INC., and DOUGLAS WRIGHT
Defendants

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COME Plaintiffs herein, by and through their attorneys, Sarah R. Star, Esq., of Sarah R. Star, Esq., Attorney and Counselor at Law, P.C., and Frank H. Langrock, Esq. of the law firm of Langrock Sperry & Wool, LLP, and complain against Defendants for intentionally kidnapping and conspiring to kidnap Isabella Miller-Jenkins on or about September 21, 2009, and intentionally causing her continued detention outside the State of Vermont to the present day. The Plaintiffs also complain against Defendants for violating the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (c) and (d) for participating and conspiring to participate in the affairs of the Beachy Amish-Mennonite Christian Brotherhood through a pattern of past and continuing acts and threats involving kidnapping, money laundering and mail fraud. Plaintiffs further complain against the above named Defendants for conspiring to violate their civil rights in violation of 42 U.S.C. §1985 (3) and 42 U.S.C. §1986.

This case is brought because the Defendants, through their actions, sought to thwart entirely the orders of the trial and appellate courts of the State of Vermont and the Commonwealth of Virginia after all of their apparent legal options had been exhausted in both states. When it was clear, after six years of state court litigation, that there was no legal justification for the continuing and repeated contemptuous conduct of Lisa Miller and the continued obstruction of the parent child relationship between Isabella Miller-Jenkins and Janet Jenkins, the parties conspired to kidnap Isabella Miller-Jenkins and ensure her

detention outside of the United States, beyond the reach of either the Vermont or the Virginia Courts.

JURISDICTION AND VENUE

1. Civil RICO This Court has jurisdiction over this matter pursuant to 18 U.S.C. § 1964(a) and 28 U.S.C. § 1331. Venue is proper in this forum pursuant to 18 U.S.C. § 1965(a) & (b), and 28 U.S.C. § 1391(a) & (b). Venue and personal jurisdiction is proper under section 1965(a) because Defendants reside, are found, have an agent, or transact their affairs in this District. Venue and personal jurisdiction is also proper under § 1965(b) in this forum because the ends of justice require that any defendant residing in another District be brought before this Court. Venue is proper under § 1391(a) & (b) in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Venue is also proper under principles of pendent venue because all claims arise out of the same nucleus of operative facts.

2. Personal jurisdiction. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a), as a substantial part of the events giving rise to the claims occurred in this district, and Defendants are subject to personal jurisdiction in this district, having had more than minimum contacts with Vermont, as their conduct and connection with Vermont are such that they should reasonably anticipate being haled into Court here.

3. Diversity Jurisdiction: With respect to the intentional tort of kidnapping/parental abduction this is an action brought pursuant to 28 U.S.C. §1332 between citizens of different states. The amount in controversy exceeds $75,000. Venue is proper in this district as jurisdiction is founded on diversity of citizenship, and a substantial part of the events giving rise to the claim occurred within the State of Vermont.

4. Violation of Civil Rights: This Court has original jurisdiction over actions arising under 42 U.S.C. §§1985 and 1986 pursuant to 28 U.S.C. §1343, and a substantial part of the events underlying the claim, including the equal protection afforded to the Plaintiffs under Vermont's Civil Union Statute, arose in Vermont.

PARTIES

5. Janet Jenkins: Plaintiff Janet Jenkins is an individual and resident of the Town of Fair Haven, County of Rutland, State of Vermont.

6. Isabella Miller-Jenkins: Plaintiff Isabella Miller-Jenkins, a/k/a/ Isabella Miller, is a minor child and daughter of Plaintiff Janet Jenkins and Defendant Lisa Miller. By order of the Vermont Family Court, she is currently supposed to reside in Fair Haven, County of Rutland, State of Vermont, but is currently outside the United States as the victim of kidnapping.

7. Lisa Ann Miller f/k/a Lisa Miller-Jenkins: Defendant Lisa Miller is living "in hiding" amongst the Nicaragua Beachy Amish-Mennonite Christian Brethren, while she continues to abduct Plaintiff Isabella Miller-Jenkins in knowing violation of the orders of the Vermont Family Court, but she has sufficient ties to the State of Vermont,

including obtaining a civil union and the dissolution of same in Vermont and longstanding participation in litigation in the State of Vermont regarding parental rights of Plaintiff Isabella Miller-Jenkins, to subject her to the personal jurisdiction of this Court.

8. Kenneth L. Miller: Defendant Kenneth Miller is a resident of the State of Virginia, City of Stuart's Draft. Kenneth Miller has sufficient contacts with the State of Vermont to subject him to the personal jurisdiction of this Court, including his personal appearance for criminal charges in Vermont arising from his participation in the kidnapping of Isabella Miller-Jenkins.

9. Timothy Miller: Defendant Timothy Miller is a resident of Managua, Nicaragua and Crossville, Tennessee. He has sufficient ties to Vermont, including personal appearance in Vermont for criminal charges related to the kidnapping of Isabella Miller-Jenkins to subject him to the jurisdiction of this Court.

10. Andrew Yoder: Defendant Andrew Yoder is a resident of the State of Ohio and is and employee/agent of Christian Aid Ministries, Inc., in relation to the claims set forth herein, with sufficient ties to the State of Vermont, including personal appearance for testimony in criminal proceedings, to subject him to the jurisdiction of this Court.

11. Christian Aid Ministries, Inc.: Defendant Christian Aid Ministries, Inc. ("CAM") is an Ohio corporation that employs pastors and relief workers around the world, including in the United States (including Vermont) and Nicaragua and whose activities include evangelizing, as well as providing material aid to people who are victims of natural disasters and other circumstances. CAM, through its agents and employees, including Andrew Yoder, has sufficient contacts with the State of Vermont to subject it to the jurisdiction of this Court.

12. Philip Zodhiates: Defendant Philip Zodhiates is a resident of the Commonwealth of Virginia, City of Waynesboro and the President and sole owner of Response Unlimited, Inc., a Delaware corporation with sufficient contacts with the State of Vermont to subject it to personal jurisdiction in this Court, including providing direct mail and marketing services nationally and internationally, including in Vermont.

13. Victoria Hyden f/k/a Victoria Zodhiates: Defendant Victoria Hyden is a resident of the Commonwealth of Virginia, City of Lynchburg, and is or has been an employee and agent of both Liberty University, Inc., and its related ministry Thomas Road Baptist Church, Inc., and Response Unlimited, Inc. in relation to the claims set forth herein, giving her sufficient contacts with the State of Vermont to subject her to the jurisdiction of this Court.

14. Response Unlimited, Inc.: Defendant Response Unlimited, Inc., is a Delaware corporation with sufficient contacts with the State of Vermont to subject it to jurisdiction in this Court, including providing Christian direct mail and marketing services nationally and internationally, including in Vermont.

15. Liberty University, Inc: Defendant Liberty University, Inc.(Liberty University) is a purported educational institution organized and existing pursuant to the laws of the

Commonwealth of Virginia and with a principal place of business in Lynchburg, Virginia, whose conduct has an impact on interstate commerce and whose contacts with Vermont include provision of advice, support and counsel to Defendant Lisa Miller in litigation in the Courts of Vermont, and solicitation of money and student applications within Vermont via the internet and other media, sufficient to submit itself to the jurisdiction of this Court. Liberty University, Inc. holds itself out as the world's largest Evangelical Christian University, and was founded by the late Jerry Falwell. Liberty University's current President is Jerry Falwell, Jr.

16. Thomas Road Baptist Church Inc.: Defendant Thomas Road Baptist Church, Inc. ("TRBC") is a corporation organized and existing pursuant to the laws of the Commonwealth of Virginia and with a principal place of business in Lynchburg, Virginia, with sufficient contacts with the State of Vermont to subject it to jurisdiction in this Court, including solicitation of donations from residents of Vermont, and organization of prayer meetings at the Vermont Family Courts. Liberty University is held out as a "related ministry" of Thomas Road Baptist Church. TRBC was founded by the late Jerry Falwell and its current head pastor his younger son, Jonathan Falwell.

17. Linda Marie Wall: Defendant Linda Wall is a resident of the City of Concord, Commonwealth of Virginia, and an agent of TRBC in relation to the claims set forth herein, giving her sufficient contacts with the State of Vermont to subject her to the jurisdiction of this court.

18. Douglas Wright: Douglas Wright is a resident of Winchester, Virginia, and an employee of Keystone Baptist Church, Inc. He has sufficient ties to the State of Vermont to subject him to the jurisdiction of this Court, including personal appearance in Vermont to give testimony in the criminal trial of Defendant Kenneth Miller.

COMMON ALLEGATIONS OF FACT

19. Isabella Miller-Jenkins is the daughter of Lisa Miller and Janet Jenkins. She was born in 2002 while the two mothers were united in a Vermont civil union. When Isabella was seventeen months old, Lisa Miller moved with Isabella to Virginia and petitioned the Rutland Vermont Family Court to dissolve the union. The Family, Appellate and Supreme Courts of both Vermont and Virginia have since ruled that the Rutland Family Court has continuing and exclusive jurisdiction over custody determinations regarding Isabella Miller-Jenkins, that she has a right to a relationship with both of her parents, and that it is in her best interests to have contact with both of her parents on a schedule ordered by the Court.

20. At or about the time she petitioned for dissolution of the civil union in 2004, Defendant Lisa Miller was purportedly or actually "born again", that is, converted to fundamental Christianity and asserted the belief that homosexuality was sinful and that Isabella should be shielded from exposure to the "lifestyle." At or about this time, Lisa Miller joined the Keystone Baptist Church in Winchester, Virginia. There, she formed a friendship with Pastor Douglas Wright. While she was a member of Keystone Baptist, Lisa Miller began to deny the Court ordered parent child contact between Isabella and Janet Jenkins. Lisa Miller was found in contempt of the Vermont Court

orders starting in 2004. Lisa Miller discussed her custody case with Defendant Wright on an ongoing basis between 2004 and 2009.

21. Since 2004, there have been numerous instances when Janet Jenkins was entitled to lawful custody of Isabella in the State of Vermont, including during vacations, holidays and weekends and continuously since January 1, 2010 when full physical and legal responsibilities for Isabella were transferred to Jenkins from Defendant Miller. However, since 2008, Jenkins and Isabella have only seen each other on two occasions. Both the Rutland, Vermont Family Court, and the juvenile courts in Virginia which registered and enforced the Vermont orders, have found Lisa Miller in contempt and imposed sanctions for her conduct. Despite these sanctions, Lisa Miller continued to ignore the Court's orders with the assistance and encouragement of the Co-Defendants. Since January 2010 Isabella has been listed as missing by the National Center for Missing and Exploited Children, the victim of a family abduction.

2004-2008

22. Defendant Linda Wall, a Virginia anti-gay activist and Thomas Road Baptist Church member, stated that in 2004 she 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 there.

23. At the time of the final contested hearing to dissolve the civil union, which due to numerous appeals did not occur until April 2007, Lisa Miller testified that in the future she would comply with court orders regarding such contact despite her failure to do so in the past and on June 15, 2007 the Rutland Family Court issued a Final Order awarding legal and physical parental rights and responsibilities to Lisa Miller subject to the time that Janet Jenkins was entitled to lawful custody during holidays, vacations and some weekends.

24. Between June 2007 and Christmas 2007 Lisa Miller did in fact comply with the orders of the Rutland Family Court on a number of occasions. Isabella spent a week in Vermont with Plaintiff Jenkins, and had several overnight visits in Virginia at the home of Jenkins' parents, Isabella's grandparents Ruth and Claude Jenkins. The relationship between Isabella and Janet Jenkins was in the process of being repaired. However, this compliance was short lived.

25. In the spring of 2008, Lisa Miller, with the encouragement and support of the Defendants named herein, moved with Isabella from her home in Winchester, Virginia to the Lynchburg area, where she was provided with housing, a job and a vehicle by TRBC. Lisa Miller began to associate more openly with the Co-Defendants and was counseled by church members and pastors not to allow contact between Isabella and Janet Jenkins. In Lynchburg, Lisa Miller joined Thomas Road Baptist Church and was hired as a teacher at TRBC's elementary school, Liberty Christian Academy, where Isabella also became enrolled. Upon information and belief, at Liberty Christian

Academy, Lisa Miller would also give assemblies to students to discuss her legal battle.

26. Also in the spring of 2008, Lisa Miller and Defendant Wall met to discuss what Lisa Miller should do "knowing that Virginia" law was not going to prevent Isabella from having contact with Plaintiff Jenkins. At this time, Appellate Courts in Vermont and Virginia had affirmed Janet Jenkins' parental rights. Upon information and belief, Wall and Miller decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella.

27. The Protect Isabella Coalition was organized in the spring of 2008 in Lynchburg by Wall and Miller and other church agents, including Deborah Thurman, who ran a woman's group at TRBC. The purpose of the Protect Isabella Coalition ("PIC") was to prevent court ordered contact between Isabella Miller-Jenkins and Janet Jenkins.. Upon information and belief, the President of Liberty University, Jerry Falwell, Jr. donated substantial sums to the PIC to enable it to produce television and radio commercials condemning the parent-child contact between Janet Jenkins and Isabella Miller-Jenkins as an act of tyranny. Lisa Miller's attorneys had established a Facebook site and other social media to solicit donations to their organization on behalf of Lisa Miller, and the Facebook site was also used to promote the activities of Lisa Miller and the PIC.

2009

28. During her employment at TRBC and participation in the PIC, Lisa Miller continued to be in contempt during court ordered visitation time, and threatened future acts of custodial interference. Lisa Miller appeared on a radio program called "Janet Parshall's America" and threatened that she would not comply with a court's order to transfer legal and physical rights and responsibilities to Janet Jenkins.

29. On May 27, 2009, Janet Jenkins filed a Motion to Modify Parental Rights and Responsibilities in the Vermont Family Court. This Motion requested a transfer of custody to Plaintiff Jenkins due to Lisa Miller's continued interference with court ordered visitation. On May 29, 2009 Lisa Miller made contact with Philip Zodhiates, a resident of Waynesboro, Virginia and the President of Response Unlimited, Inc. a Christian direct mail marketing company.

30. On August 21, 2009, the Rutland Family Court held a full day hearing on Janet Jenkins' request to transfer custody of Isabella to her in light of Lisa Miller's ongoing violation of court orders and her disregard of Isabella's best interests. Lisa Miller did not appear for the hearing.

31. On August 25, 2009, the Family and Juvenile Court of Fredrick County, Virginia held a hearing on Janet Jenkins' request to hold Lisa Miller in contempt of the Vermont Family Court Orders, and her request to enforce the orders in the Commonwealth of Virginia. The Virginia Court held Lisa Miller in contempt and fined her $100 per day for any future days of missed contact between Janet Jenkins and Isabella Miller-Jenkins. Lisa Miller did appear at this hearing and held a press conference, flanked by her attorneys Mathew Staver and Rena Lindevaldsen from Liberty University . Members of the PIC were also present.

32. On September 4, 2009 the Rutland Family Court held a hearing at which it issued an Interim Order while Janet Jenkins' Motion to transfer custody (which had been heard on August 21, 2009) was under consideration. The Rutland Family Court ordered contact between Janet Jenkins and Isabella from September 25, 2009 until September 27, 2009. Lisa Miller did not appear at that hearing, and her attorneys participated via telephone.

33. On or about September 5, 2009, Lisa Miller emailed Debbie Thurman and stated that she knew of the September order. Debbie Thurman posted this email on Facebook. Lisa Miller also granted an interview to an online publication called Lifesitenews.com, discussing the order, and what she thought would happen if she did not follow it – that she would lose custody.

34. By the late summer of 2009, Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood to enable her abduction of Isabella. Lisa Miller's involvement with the Brotherhood was not known to Janet Jenkins until April of 2011, when Timothy Miller, a Beachy Amish-Mennonite pastor in the Nicaragua Brotherhood was arrested for Aiding and Abetting Isabella's abduction.

35. On September 19, 2009, two days before her departure for Nicaragua, Lisa Miller and Isabella travelled back to Winchester, VA. During this trip, Lisa arranged to meet Defendant Wright in a parking lot so that she and Isabella could say "good-bye" to him. Defendant Wright testified under oath that by good-bye, he understood that Lisa and Isabella were leaving and he would not be seeing them again. At this meeting, Lisa Miller also asked Defendant Wright to help her dispose of some personal items. Pastor Wright understood that Lisa Miller would be taking Isabella away, and he did nothing to notify law enforcement of the situation

36. Unbeknownst to Plaintiff Janet Jenkins, on September 21, 2009, Lisa Miller and Isabella were transported, in disguise as Amish-Mennonites, to the Canadian border by Philip Zodhiates and at least one other Response Unlimited, Inc. employee. Lisa Miller and Isabella crossed the border at the Rainbow Bridge in a taxi in the early morning hours of September 22, 2009, just days prior to the contact ordered by the Rutland Family Court in its September 2009 Interim Order.

37. In the days prior to September 22, 2009, Lisa Miller and Philip Zodhiates conspired with Kenneth Miller, a member of the Virginia Beachy Amish-Mennonite Brotherhood with whom both Victoria and Philip Zodhiates were acquainted, to arrange the purchase of plane tickets from Canada to Nicaragua for Lisa Miller and Isabella Miller-Jenkins. Kenneth Miller also arranged for a Canadian member of the Brotherhood to transport Lisa Miller from an Ontario Hotel to the Toronto airport. Lisa Miller and Isabella Miller-Jenkins flew to Mexico, then El Salvador, and then met Timothy Miller in Nicaragua. Timothy Miller was instructed by Kenneth Miller to purchase plane tickets for Lisa Miller and Isabella, and used his mother-in-law's credit card to do so. Several days later, Kenneth Miller used cash to send a money order to reimburse Timothy Miller's mother-in-law. This was done anonymously, and in such a

way as to avoid detection in a clear effort to avoid the September visit, and the anticipated transfer of custody.

38. Kenneth Miller was a pastor at the Pilgrim Christian Fellowship in Stuart's Draft, VA and a leader within the Beachy Amish-Mennonite Community. He was also employed at his family's garden center, Millmont Greenhouses, Inc., in Stuart's Draft, VA.

39. Starting in September 2009, Lisa Miller and Isabella lived near or among the Beachy Amish-Mennonite Community in Nicaragua, hereinafter the ("Nicaragua Brethren"). This was all done in secret and in such a way as to avoid detection by United States authorities and Janet Jenkins. Lisa Miller would eventually go into "hiding" with Isabella among the Nicaragua Brethren, but would continue to communicate with members of Thomas Road Baptist Church with the assistance of Mr. Zodhiates, Kenneth Miller and members of the Nicaragua Brethren. Lisa Miller went by the name "Sarah" and Isabella was called "Lydia" while in Nicaragua.

40. Lisa Miller did not return Isabella for the September 2009 visit, and Janet Jenkins has not seen or heard from Lisa Miller or Isabella since that time. Janet Jenkins arranged for a welfare check at Lisa Miller's last known address in Forest, Virginia in December of 2009, but no one was home. Janet Jenkins did not learn of Lisa Miller and Isabella Miller-Jenkins' whereabouts until June of 2010.

41. Unbeknownst to Plaintiff Janet Jenkins, in 2009 Victoria Zodhiates (now Hyden) was an employee of Response Unlimited, Inc., and also a "student worker" at Liberty University . On information and belief, Victoria Zodhiates sent an email during this time period to her co-workers at the law school requesting donations for supplies to send to Lisa Miller to enable her to remain outside the country. Lisa Miller's attorney, Matthew Staver was the Dean of the Law School and Ms. Zodhiates's boss. Matthew Staver and Philip Zodhiates were also personal acquaintances at this time. On September 20, 2009, both Philip Zodhiates and Victoria Hyden called Lisa Miller's father, Terry Miller in Tennessee to assist in arranging her and Isabella's transportation from a Walmart parking lot in Lynchburg, Virginia, to Waynesboro, Virginia, from whence they would depart for Canada and Nicaragua the next day.

42. In early November, 2009, elders of the Thomas Road Baptist Church packed up the personal belongings of Lisa Miller in two bags. These bags were picked up from Lynchburg, Virginia by Philip Zodhiates who arranged to have the bags transported to Nicaragua by sending them with his son's school teacher who was taking some children on a mission trip to Managua. Philip Zodhiates arranged for the teacher, John Collmus, to deliver the bags at the airport to Timothy Miller. The bags also contained some supplies for Lisa Miller, such as peanut butter.

43. On November 20, 2009, after numerous contempt findings against Miller, the Rutland Family Court issued its Order that legal and physical parental rights and responsibilities for Isabella to be transferred to Plaintiff Janet Jenkins, effective January 1, 2010 at 1:00 p.m. Deborah Thurman, a member of Thomas Road Baptist Church and the PIC posted a note from Lisa Miller on Facebook on December 5, 2009, acknowledging the ruling. By this time, Thurman had also joined Rena Lindevaldsen

as the administrator of the Facebook site called "Only One Mommy" founded by Lindevaldsen to solicit donations and support for the case.

44. On November 20, 2009, the day that the Order was issued transferring custody, Kenneth Miller made a phone call to Timothy Miller in Nicaragua. Kenneth Miller also contacted Defendant Douglas Wright of Keystone Baptist Church. He asked Defendant Wright to assist in disposing of Lisa Miller's belongings from her apartment in Virginia. Defendant Wright assisted Kenneth Miller, and did not notify the police that Lisa had departed several months previously.

45. On December 30, 2009 after the news of Lisa and Isabella's disappearance broke, Deborah Thurman made a statement on her internet blog, which she linked the to the Only One Mommy site. She stated, inter alia:

> *So, the blogosphere and the mainstream media are now abuzz with the news that - gasp! - Lisa and Isabella Miller are nowhere to be found, just days before the court-mandated transfer of custody of 7-year-old Isabella to Janet Jenkins. Ya reckon?*

And in conclusion, wrote:

> *The majority of Americans overwhelmingly support traditional marriage. If the tyrannical minority wants to push against that, it can and will be met with civil disobedience. There is no other way.*

46. This threat was removed from the internet after Plaintiff Jenkins printed it out and brought it to the police.

47. Lisa Miller's attorneys Mathew Staver and Rena Lindevaldsen also routinely instructed their Law School students that the correct course of action for a person in Lisa Miller's situation would be to engage in "civil disobedience" and defy court orders.

48. Also in 2009, TRBC Head Pastor Jonathan Falwell was among several religious leaders who made a call for "Christian civil disobedience" and published a public declaration, known as The Manhattan Declaration stating that they:

> *"will not comply with any edict that purports to compel our institutions to participate in abortions, embryo-destructive research, assisted suicide and euthanasia, or any other anti-life act; nor will we bend to any rule purporting to force us to bless immoral sexual partnerships, treat them as marriages or the equivalent, or refrain from proclaiming the truth, as we know it, about morality and immorality and marriage and the family."*[1]

49. Hence, Defendants TRBC and its related ministry Liberty University encouraged its agents to disregard state laws governing parental rights, particularly Vermont's law

[1]Available at http://manhattandeclaration.org/home.aspx

giving rights to members of same-sex families. The TRBC and Liberty University through its public declaration promoted, condoned and explicitly ratified its agent's tortious, racketeering activity. These agents and employees have followed this direction, making TRBC and Liberty University liable in *respondeat superior* for the consequences.

2010

50. Lisa Miller did not return Isabella for the January 1, 2010 transfer of custody but held her outside the United States, despite learning of the ruling.

51. In January 2010, Linda Wall appeared on television with several members of the PIC and TRBC, including TRBC's Pastor for Outreach and Assimilation Tipton Killingsworth, to endorse the kidnapping. In discussing her role, Wall compared herself to Harriet Tubman, and suggested she would take similar actions with regard to more children from same-sex families. Pastor Killingsworth also publically supported Lisa Miller's actions and threatened ongoing kidnapping activity. He wrote in an internet chat on February 22, 2010:

> *"No one has been "kidnapped." It may come to that as when the Pharoah tried to do the same thing to the Israelites in Egypt. Just as it was necessary for Moses to be in the basket, that might be necessary for Izzy but time will tell. As you've said, Lisa is certainly Izzy's refuge from the VT law."*

52. Defendant Wall also wrote on Facebook that if anyone knew of Lisa and Isabella's whereabouts, they should not tell anyone. She also made several phone calls to law enforcement to instruct them that they should not look for Lisa and Isabella.

53. In May of 2010, Philip Zodhiates contacted Kenneth Miller purportedly to arrange the purchase of hydrangea plants from Millmont Greenhouses, Inc., for his daughter Victoria's wedding. As stated above, Kenneth Miller was an employee of Millmont at that time. Upon information and belief, this transaction with Mr. Zodhiates was never recorded in the normal course of business, but instead, was fraudulently transferred through a payroll account into a check to Andrew Yoder, for $500. Andrew Yoder was never an employee of Millmont Greenhouses, Inc. On August 10, 2012, Andrew Yoder testified under oath that he received a check to cash from Kenneth Miller to enable him to bring cash to Nicaragua to transfer to Timothy Miller. Yoder testified that he believed this cash was related to Lisa Miller. Yoder also testified that he had met Lisa Miller and Isabella through Timothy Miller in 2009, that she was receiving aid from CAM in Nicaragua, and that he knew of her custody case. He testified that he notified his employer, CAM of this in November 2009. CAM did nothing to report this situation to the authorities, and expressed sympathy with Lisa Miller's decision to kidnap Isabella.

54. With the assistance of Thomas Road Baptist Church members, as well as Kenneth Miller, Timothy Miller, CAM, Philip Zodhiates, Victoria Zodhiates, in their individual capacities and as agents of Response Unlimited and Liberty University , Lisa Miller was able to leave the United States in advance of September 25, 2009 and remain there past January 1, 2010. Linda Wall sought donations for Lisa Miller after January 2010,

and other TRBC members maintained a post office box for donations to "Friends of Lisa Miller." Since the fall of 2009, Lisa Miller has received aid from the Beachy Amish-Mennonite Brethren, including through Christian Aid Ministries, Inc. to continue her abduction of Isabella. Lisa Miller worked in the Managua home of Pastor Timothy Miller. Timothy Miller was arrested for aiding and abetting the kidnapping of Isabella Miller-Jenkins in April of 2011. In November, 2011, charges were dismissed when he agreed to provide truthful testimony for the United States Government.

55. At the time of Timothy Miller's arrest Isabella was living with Lisa in Jinotega, Nicaragua, where Lisa was teaching in a school. After the arrest, when her location was discovered, Isabella was uprooted again to an unknown location. It is not known if Isabella is still with Lisa Miller since this time, or with others who are keeping her in hiding.

2011

56. In November 2011, following the dismissal of the charges against Timothy Miller, Kenneth Miller was indicted for aiding and abetting the international parental kidnapping of Isabella Miller-Jenkins. Kenneth Miller, who was living in Ireland at the time of his arrest, had been a pastor and member of the Pilgrim Christian Fellowship in Stuart's Draft, VA, where Victoria Hyden had previously attended grade school. Through his employment at the church, he was acquainted with Defendants Victoria and Philip Zodhiates.

57. At the trial of Kenneth Miller in August 2012, a number of Lisa Miller's friends and supporters testified, including Defendant Wright, and several members of the PIC. When asked if any of them had met or heard of Philip Zodhiates, the answer was no. At the trial, the government introduced phone records that showed phone calls made from Philip Zodhiates's cell phone between 1:28pm and 1:30pm on September 22, 2009, to a cell phone with an Orlando area code that is registered to Liberty Counsel, a landline registered to Liberty Counsel, and a landline registered to Liberty University . Mathew Staver, Dean of Liberty University , splits his time between Lynchburg, Virginia and Orlando, Florida. At the time that the calls were made, Philip Zodhiates was still en route back to Virginia after depositing Lisa Miller and Isabella near the Canadian border.

58. Lisa Miller's attorneys, Matthew Staver and Rena Lindevaldsen have at all times maintained that they did not know their client's location to various courts in Vermont (including in sworn testimony of Rena Lindevaldsen) and Virginia, and to the press that she simply stopped communicating with them and disappeared.

59. Meanwhile, Matthew Staver's acquaintance, Philip Zodhiates, and his daughter Victoria, an assistant in the Law School knew of Lisa Miller's whereabouts and solicited donations from other Law School employees for her aid. Upon information and belief, other law school employees who spoke to Victoria about Lisa Miller's whereabouts were too intimidated to come forward to law enforcement for fear of angering Dean Staver and losing their jobs. During the time that Lisa and Isabella were missing, Dean Staver fired several members of the admissions and financial aid

department who were under his supervision. To this day, Victoria Hyden is still an employee of the law school, even though her tortious conduct involving Isabella Miller-Jenkins has been in public court records for over a year. Also, while Lisa Miller and Isabella were missing, Lisa Miller's attorneys continued to press appeals on Lisa Miller's behalf until the last appeals were exhausted in November 2010 (more than a year after she was missing), stating that they had advance instructions from Lisa Miller as to her wishes for the ongoing litigation.

60. Rena Lindevaldsen published a book with New Revolution Press about Lisa Miller in 2011, citing portions of Lisa Miller's personal diaries which Lindevaldsen has stated were entrusted to her before Lisa Miller disappeared. Lindevaldsen and Staver have appeared on radio and television to promote the book, entitled *Only One Mommy: A Woman's Battle for Her Life, Her Daughter, and Her Freedom: The Lisa Miller Story.* Lindevaldsen has also publically criticized law enforcement for its efforts to find Lisa Miller and Isabella in an interview with Lifesitenews.com, stating:

I think certainly the current administration has obviously made a commitment that this is a high priority for them, that they are going to track down a biological mother and attempt to take this child away from her biological mother and I certainly think that there is some political pressure that could be taken.

I think the word needs to get out. Christians need to know that these things are happening, the idea that a woman apparently had to flee the country to protect her child, shouldn't be happening in America, and I don't think enough Christians know about that and don't realize that the people they vote for in an election year, who they vote for has direct consequences on things like this.

2012

61. On February 2, 2012 The Nicaragua Brethren released an official statement detailing how Lisa Miller had, from their perspective, infiltrated the Brethren, and was now in hiding among them, stating in part:

Lisa Miller left the US free with full custody of her child and lived in Nicaragua as a free person. She had her own money and took care of herself. After a time of instruction, and of searching the Scriptures, she asked to become part of the church and was received into the brotherhood.

To our knowledge neither Lisa nor any of the Nicaraguan brethren had heard that an arrest warrant had been issued for her until Timo Miller was arrested a year later. Then we discovered that the law was accusing the brethren of aiding in a kidnapping even though Lisa still had total and legal custody when she left the US. After Timo Miller's arrest the law started to pursue Lisa, so she decided to go into hiding.

Several years have passed. At the time we did not know what all was going on. We only knew that the poor mother and the precious child needed help, so some of our

people kindly extended them a helping hand. But now this case has grown and quite a few congregations have been affected.[2]

62. Based on the foregoing, all of the Defendants named herein, in both their individual capacities and as agents of TRBC, Liberty University, Response Unlimited, Inc., and CAM are liable for conspiring with Lisa Miller and with each other to kidnap Isabella Miller-Jenkins, assure her continued detention outside the State of Vermont, and for conspiring with Kenneth Miller to participate in the affairs of the Beachy Amish-Mennonite Brotherhood through a pattern of racketeering activity.. Defendants are also liable for conspiring to violate Janet Jenkins' and Isabella Miller-Jenkins' rights to a parent-child relationship on account of Isabella having two mothers instead of a mother and a father, and Defendant Wright is liable under 42 U.S.C. 1986 for failing to prevent the violation of Plaintiffs' civil rights.

COUNT ONE – INTENTIONAL TORT OF KIDNAPPING

Plaintiffs incorporate by reference paragraphs 1 through 62 as though fully set forth herein.

63. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins allege that on or about September 21, 2009 Lisa Miller did commit the intentional tort of kidnapping Isabella Miller-Jenkins and transporting her, under cover of night, while both disguised as Amish-Mennonites, outside of the United States in order to interfere with Janet Jenkins' lawful custody of Isabella between the dates of September 25, 2009 and September 27, 2009. Plaintiffs also allege that Lisa Miller intentionally held Isabella Miller-Jenkins outside of the United States, specifically, in Nicaragua, to interfere with Janet Jenkins' lawful custody of Isabella between the dates of January 1, 2010 and the present, and to thwart the equal protection afforded to Janet Jenkins and Isabella Miller-Jenkins under Vermont law. Such acts constitute the act or threat of kidnapping chargeable as a criminal offense under Vermont law and punishable by imprisonment for more than one year.

64. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins further allege that Lisa Miller did conspire with, and was aided and abetted by Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc,. and Liberty University , Kenneth Miller, Timothy Miller, Andrew Yoder, individually and as an agent of Christian Aid Ministries, Inc., Christian Aid Ministries, Inc., Linda Wall, individually and as an agent of Thomas Road Baptist Church, Thomas Road Baptist Church and its related ministry Liberty University .

[2] Available at http://www.lifesitenews.com/news/i-promised-god-that-if-he-would-save-my-baby-i-would-leave-the-homosexual-l/

COUNT TWO – VIOLATION OF THE RACKETEER INFLUENCE AND CORRUPT ORGANIZATIONS ACT
Violation of 18 U.S.C. § 1962(c)

Plaintiffs incorporate by reference paragraphs 1 through 64 as though fully set forth herein.

65. Defendant Kenneth Miller is a person within the meaning of 18 U.S.C. § 1961(3).

66. Defendant committed acts of racketeering within the meaning of 18 U.S.C. § 1961, as follows:

    a. Acts or threats involving kidnapping which are chargeable as such under Vermont law (13 V.S.A. 2451, 13 V.S.A. 2405(a)(2)) and many other state laws throughout the United States, including aiding and abetting kidnapping for the aforementioned purpose of violating the September 2009 custody order and the November 20, 2010 custody order.

    b. Violations of 18 U.S.C. § 1956, involving laundering of monetary instruments, including laundering money received from Philip Zodhiates under the guise of a hydrangea purchase, by converting it into a fraudulent payroll check from Millmont Greenhouses, Inc. to Andrew Yoder for transmission to Nicaragua to support Isabella Miller-Jenkins's kidnapping.

    c. Violations of 18 U.S.C § 1341 involving mail fraud, including, for placing the fraudulently obtained payroll check to Andrew Yoder in the mail to further this unlawful scheme.

67. The racketeering acts committed by the Defendant Kenneth Miller constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) in that they are related to one another and are continuous. These racketeering acts are continuous in that they have occurred over a period exceeding two years, will continue into the future, and pose the threat of continuing for years. The racketeering activities also pose of risk of continuation because Defendant Kenneth Miller and his co-conspirators have repeatedly used the Miller-Jenkins custody case and kidnapping as an example that other Christians should follow vis à vis the custody rights of same-sex parents.

68. The Beachy Amish-Mennonite Brotherhood is religious sect, whose activities include evangelizing, as well as providing material aid people who are victims of natural disasters and other circumstances. The Beachy Amish-Mennonite Brotherhood is a RICO enterprise within the meaning of 18 U.S.C. §1961(4), the activities of which affect interstate or foreign commerce, and is continuous and has an ongoing structure and organization sufficient to permit its associates to commit a pattern of racketeering activity.

69. The Defendant Kenneth Miller is employed by, or associated with the Brotherhood and he has conducted or participated in the affairs of the Brotherhood through the aforementioned pattern of racketeering activity, including serving as a leader and

pastor within two of the Brotherhood's churches, and within the Brotherhood in general.

70. As a direct and proximate result of Defendant's violation of 18 U.S.C. § 1962(c), Plaintiffs have suffered injury to their business or property, including legal fees, investigative fees, court costs, and unpaid child support obligations, and deprivation of personal property

COUNT THREE– VIOLATION OF THE RACKETEER INFLUENCE AND CORRUPT ORGANIZATIONS ACT
Violation of 18 U.S.C. § 1962(d)

Plaintiffs incorporate by reference paragraphs 1 through 70 as though fully set forth herein.

71. Defendant Kenneth Miller is a person within the meaning of 18 U.S.C. § 1961(3).

72. Defendant has conspired with others, including Lisa Miller, Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc. and Liberty University , and its related ministry TRBC, Liberty University , and its related ministry TRBC, Timothy Miller, Andrew Yoder, individually and as an agent of Christian Aid Ministries, and Christian Aid Ministries, Inc., for the commission of a violation of 18 U.S.C. § 1962(c) through the aforementioned pattern of racketeering.

73. As a direct and proximate result of Defendants' violation of 18 U.S.C. § 1962(d), Plaintiffs have suffered injury to their business or property, including legal fees, investigative fees, court costs, and unpaid child support obligations and deprivation of personal property.

COUNT FOUR: CONSPIRACY TO VIOLATE CIVIL RIGHTS

Plaintiffs incorporate by reference paragraphs 1 through 72 as though fully set forth herein.

74. 42 U.S.C. § 1985 (3) provides a civil cause of action for any person who is injured in his person or property by reason of "two or more persons in any State or Territory conspir[ing] or go[ing] in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws."

75. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins allege that Lisa Miller conspired with Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually

and as an agent of Response Unlimited, Inc. and Liberty University , Kenneth Miller, Timothy Miller, Andrew Yoder, individually and as an agent of Christian Aid Ministries, Inc. Christian Aid Ministries, Inc., Linda Wall, individually and as an agent of TRBC, TRBC and its related ministry Liberty University to violate the civil rights of Janet Jenkins and Isabella Miller-Jenkins, on account of gender, and to prevent the Courts of Vermont from securing Janet Jenkins and Isabella Miller-Jenkins equal protection of their rights to a parent-child relationship under the law.

COUNT FIVE: ACTION FOR NEGLECT TO PREVENT

Plaintiffs incorporate by reference paragraphs 1 through 75 as though fully set forth herein

76. 42 U.S.C. § 1986 provides that "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented."

77. Plaintiffs allege that Defendant Douglas Wright knew that Lisa Miller was planning to abduct Isabella in order to violate the Plaintiffs' right to equal protection, and did nothing to prevent the abduction or notify the authorities. Instead, he remained silent, and later assisted Defendant Kenneth Miller in disposing of Lisa and Isabella's personal property.

DAMAGES

78. As a result of Isabella's kidnapping, Janet Jenkins has suffered extreme emotional distress and the loss of her daughter's companionship.

79. Janet Jenkins has incurred legal fees and lost business as a result of having to close her daycare center in order to attend contempt and other Court hearings, an meetings with law enforcement necessary to locate her daughter. These losses constitute a damage and injury to her business and property, entitling her to standing under the Civil RICO statute. Janet Jenkins has also been unable to collect court ordered fines, which constitute a property interest. These fines have been accruing in the amount of $100 per day from September 25- 27, 2009 and since January 1, 2010 and are expected to continue indefinitely while Isabella is abducted.

80. Plaintiff Isabella Miller-Jenkins has suffered emotional distress as a result of the abduction. According to Timothy Miller, at one point, Isabella was living in isolation and having a difficult time. In the most recent report about Isabella's whereabouts, it seems that her freedom of movement is severely restricted by the Nicaragua Brethren and Lisa Miller and that her standard of living is far below what even the poorest children in the United States experience.

81. Plaintiff Isabella Miller-Jenkins has also suffered the loss of emotional and financial support from her mother, Janet Jenkins. Isabella has a property interest in child support

from one or both parents based on her needs and best interests. The child support previously due to the custodial parent for Isabella's care was approximately $250 per month. This deprivation continues today and is expected to continue indefinitely into the future. In addition to the property right of child support, on information and belief, Isabella is currently being deprived of an education, medical and dental care and the support of her extended family, including grandparents Ruth and Claude Jenkins. All of these factors currently and will in the future result in an injury to Isabella's property and future business and employment.

82. Plaintiffs request that treble damages be awarded, as permitted under the RICO Statute and based on the outrageous conduct of the Defendants.

83. Plaintiffs request compensatory and punitive damages against Defendants for the intentional tort of kidnapping Isabella and for violations of the Plaintiff's civil rights.

JURY DEMAND

Plaintiffs request a jury trial on factual issues and the required fee has or will be paid.

PRAYER

For the above reasons, Plaintiffs request that the named Defendants be made to appear herein and be held liable as alleged herein and that judgment be entered in the Plaintiffs favor against the Defendants in the following particulars:

1. An order that the Defendants cease their unlawful activities immediately and return Isabella Miller-Jenkins to the United States.
2. Actual and punitive damages as requested herein.
3. Attorney's fees and expert witness fees.
4. Costs of court and any other relief to which the Plaintiffs are justly entitled.

DATED AT MIDDLEBURY, VERMONT this 4th day of October, 2012

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL., Plaintiff, v. KENNETH L. MILLER, ET AL., Defendant.	Docket No. 2:12-cv-184

PLAINTIFFS' MOTION TO LIFT THE STAY AND JOIN ADDITIONAL DEFENDANTS
REQUEST FOR RULING ON SPECIFIC JURISDICTION FOR RESPONSE UNLIMITED, INC.

NOW COME Plaintiffs Janet Jenkins, et al., by and through undersigned counsel, Sarah R. Star, Esq., and Frank H. Langrock, Esq., and respectfully request that the Court lift the stay that was imposed in this matter on July 8, 2015, pending resolution of criminal charges against Defendant Philip Zodhiates. On September 29, 2016, Defendant Philip Zodhiates ("Zodhiates") was convicted by a federal jury in Buffalo, New York of international parental kidnapping and conspiracy to commit the same ("Zodhiates trial").

In the course of said trial, and in the jurisdictional discovery produced to Plaintiffs in this matter prior to the trial, additional information was uncovered about the role of other individuals and entities in the conspiracy alleged. Therefore, Plaintiffs ask this Court to permit joinder of Liberty University, Liberty Counsel, Rena Lindevaldsen, Esq. and Mathew Staver, Esq., individually and as agents of Liberty Counsel and Liberty University ("Liberty Defendants"). Plaintiffs also request a ruling on the issue of specific jurisdiction in Vermont for Response Unlimited, Inc. ("RUL"), which was acting on its own and as an agent for its client Liberty Counsel/Liberty University when it participated in kidnapping Isabella Miller-Jenkins. A redlined version of the proposed Third Amended Complaint is attached hereto.

MEMORANDUM IN SUPPORT OF JOINDER AND SPECIFIC JURISDICTION

As a result of jurisdictional discovery produced in this matter and evidence presented at the Zodhiates trial, Plaintiffs have become aware of new information pertinent to this case, which is outlined more fully below. Some previously known information is recited herein to provide context. Plaintiffs also reference, incorporate herein, and reassert all of the original and correct allegations against RUL and Liberty University that were ordered removed from the First Amended Complaint in this case.

FACTS

1. William Sidebottom ("Sidebottom") was the director of communications for Liberty Counsel in 2009. On September 23, 2016 at the Zodhiates trial, Sidebottom testified that in 2009, Liberty Counsel was the "laboratory school" of Liberty University School of Law, where students could gain practical experience and earn course credit.

2. In January of 2009, Liberty Counsel was a client of RUL. Sidebottom had previously worked for RUL, and had recommended RUL's services to Liberty. RUL authored a mailing and sent out a "prospecting package" about the Vermont Miller-Jenkins litigation that was aimed at generating donations and revenue for Liberty. *See* Pl. Exhibit 1.

3. Lisa Miller's lawyers were the Dean of the Law School Mathew Staver ("Staver"), and Professor Rena Lindevaldsen ("Lindevaldsen"). Lindevaldsen's book, *Only One Mommy: The Lisa Miller Story*, was required reading for all first year students at the Law School. Liberty Counsel worked directly with RUL and Zodhiates on the mailing. The mailing was intended to raise money to support the effort to eliminate Janet Jenkins' contact with Isabella.

4. On January 21, 2009, Zodhiates wrote to Sidebottom at his Liberty Counsel email address and suggested a "personal option" for Lisa Miller that the "lawyers should not or would not want to know about." *See* Pl. Exh. 2.

5. Matthew LaPorta, ("LaPorta") a 10 year employee of RUL and its registered agent, testified on September 27, 2016, at the Zodhiates trial, that as part of its work for Liberty Counsel, RUL hosted Lisa Miller and Isabella Miller-Jenkins at the offices of RUL in Waynesboro, VA, where Lisa and Isabella met all of the RUL employees. At that meeting, they all prayed that Janet Jenkins' contact with Isabella would be stopped.

6. On September 21, 2009, Zodhiates told his employees that he was "working from home on Liberty Counsel." *See* Pl. Exh. 3. Zodhiates did not come into the office that day, but as he admitted through counsel at his trial, he drove Lisa Miller and Isabella Miller-Jenkins to Buffalo, New York, and arranged for them to leave the country.

7. LaPorta testified at the Zodhiates trial that "Philip Zodhiates *is* Response Unlimited." It was not uncommon for Zodhiates to work for clients outside the office or travel for work as he saw fit.

8. During his journey to and from Buffalo on September 21 and 22, 2009, Zodhiates' cell phone was in contact with the cell phone of his daughter, Victoria Zodhiates ("Victoria"), and also with several phone numbers associated with his clients Liberty Counsel and Liberty University School of Law, including a cell phone known to be used by Staver. Victoria was an employee of the Liberty Law School and RUL at the time.

9. Pursuant to a Rutland Family Court Order dated September 11, 2009, Liberty Counsel was required to inform Plaintiff's Vermont counsel Sarah Star by 9am on September 23, 2009, if Lisa Miller intended to comply with a visitation that was scheduled to begin on

September 25, 2009. On that date, Lindevaldsen informed Plaintiff's Vermont counsel, via email, that she had notified Lisa Miller of the Order, but had not been able to confirm the visit. *See* Pl. Exh. 4.

10. On September 24, 2009, RUL employee Bill Dolack sent Zodhiates an online news story about Lisa Miller being menaced with loss of custody if she did not comply with the September 25, 2009, visitation. Zodhiates replied to that email stating: "Thanks, this is really old news though. The lawyers were pretty adamant about yesterday morning being the hearing." *See* Pl. Exh. 5.

11. The next visitation that Janet Jenkins was supposed to have with Isabella was over Thanksgiving of 2009. On October 23, 2009, Zodhiates sent an email to his daughter Victoria, asking her to print out a list of items that needed to be "rescued" from Lisa Miller's apartment in Forest, VA. The email advised Victoria to deliver the list to an unnamed female, and that "she knows who has the key." Attached to the email was a list handwritten by Lisa Miller. *See* Pl. Ex. 6.

12. As this was happening, Zodhiates was in touch with the leadership at Liberty Law School to try to get Victoria a full time position there. *See* Pl. Exh. 7.

13. On November 9, 2009, Victoria wrote to her father informing him that she had not been selected for the sought-after full time job at the Law School. She wrote: "I'm sure you'll either get an email or it will be assumed I'll tell you, but they are not going to hire me for that position." Zodhiates replied: "Bummer. Can you please ask Rena when we can pick up the stuff from the apartment. I need it by the weekend. Daddy." *See* Pl. Exh. 8.

14. On the morning of November 10, 2009, Zodhiates sent Victoria another email with an attachment, and instructions to "put this on Rena's desk**.** Tell her who it is from. She

sent it specifically for her." *See* Pl. Exh. 9. The email attachment was a series of verses from the bible that seemed to express thanks, and the first verse was from Phillipians.

15. Later that same day, Zodhiates sent Victoria another email stating: "Tell Rena she will pay this month's rent if that'll help, or reimburse someone for it." *See* Pl. Exh. 10.

16. The following day, on November 11, 2009, Zodhiates sent Victoria another email stating: "Something else to print and give to Rena. I need a status report as well." Attached to the email was a further list of items that Lisa Miller wanted to be sent to Nicaragua, including peanut butter. *See* Pl. Exh. 11.

17. At the Zodhiates trial, Lindevaldsen's cell phone records were admitted into evidence by the government. Lindevaldsen's records showed that on November 12, 2009, her cell phone made contact three times with the cell phone of Defendant Linda Wall. Lisa Miller's landlord, Anthony Phelps, testified at the Zodhiates trial that he knew Linda Wall, and observed her entering Lisa Miller's apartment. Also on November 12, 2009, Victoria's cell phone records show that her phone travelled from Lynchburg, VA, to the town of Forest, VA, the location of Lisa Miller's apartment.

18. On November 13, 2009, a friend of Zodhiates named John Collmus ("Collmus") took two suitcases to Nicaragua for Lisa Miller, who was now going by the alias "Sarah." Zodhiates wrote in an email to Collmus that the suitcases contained personal items and peanut butter for "Sarah." *See* Pl. Exh. 12. Zodhiates also wrote an email to Timothy Miller in Nicaragua, notifying him of the status of the removal of items from the apartment. *See* Pl. Ex. 13.

19. Just as this was happening, Plaintiff Janet Jenkins was becoming concerned after hearing nothing from her daughter or former spouse for some time. On November 20, 2009,

Plaintiff's attorney contacted Lindevaldsen and asked her if Lisa Miller's address had changed. Lindevaldsen replied that she'd left voicemails for Lisa Miller to see if her address had changed, but hadn't heard back from her yet. *See* Pl. Exh. 14.

20. On December 10, 2009, Plaintiff Janet Jenkins requested that the police in Forest, VA, conduct a welfare check at Lisa Miller's home. The police reported that the curtains were drawn and the lights were off.

21. At a December 18, 2009, status conference, Plaintiff's counsel informed the Rutland Family Court that Isabella and Lisa seemed to be missing. Liberty Counsel persisted in filing an appeal in the Vermont Supreme Court on Lisa Miller's behalf, and requested a stay of the order transferring custody of Isabella to Plaintiff.

22. A hearing on the motion for a stay was held on December 22, 2008, and Lindevaldsen stated to the Rutland Family Court: "I had no reason to believe until this last conference when Ms. Star indicated that, apparently, there's been no coming and going at her house, that she wasn't at her home. I've left -- you know, again, I've left her messages." *See* Exh. 15, at p. 11.

23. Liberty continued to press appeals on Lisa Miller's behalf in Vermont, and argued that venue for registration of Vermont orders for enforcement in Virginia should be in Bedford County, because of Lisa Miller's purported residence in the town of Forest, VA. *See* Pl. Exh. 16.

24. On September 26, 2016, Andrew Yoder testified at the Zodhiates trial. He stated that he spoke to Lisa Miller in Nicaragua in November of 2009 and she told him that Liberty Counsel had advised her it would be in her best interests "to disappear."

25. In November, 2012, Staver, Lindevaldsen and Victoria (now Hyden, formerly Zodhiates) swore in affidavits submitted to this Court, that they had never discussed and had no

knowledge of Lisa Miller's departure from the country. Dkt. Nos. 54-4, 54-5 and 54-6; copies attached hereto as Pl. Exh. 17.

26. After Zodhiates had been publically implicated in the kidnapping, Staver told the New York Times that he had never discussed Lisa Miller's case with Zodhiates. *See* Pl. Exh. 18.

27. On September 27, 2016, Zodhiates' lawyer David Boyd, Esq. suggested to the jury in the Zodhiates trial that their client believed that removing Isabella from the United States was lawful because he had consulted with Liberty Counsel prior to doing so.

28. Victoria, after being granted immunity by the United States, admitted to a grand jury in the Western District of New York that she did have some involvement in Lisa Miller's disappearance, after all.

29. Lindevaldsen appeared in Vermont courts on behalf of Lisa Miller well into 2010, and was subsequently granted tenure and promoted to the role of Dean of Academic Affairs at Liberty University School of Law. She also served as Interim Dean for a time, after Staver resigned two weeks following Zodhiates' indictment in New York.

30. Lindevaldsen has gone on book tours, including appearing on CNN's BookTV, to promote her book about Lisa Miller. She continues to profit financially and professionally from the book about her client, even discussing the mystery of her disappearance.

31. Liberty Counsel and Liberty University are still clients of Response Unlimited.

32. Victoria has been continuously employed at Liberty University School of Law, and has been promoted to "Director of Operations" in Admissions.

33. Plaintiff Janet Jenkins has not seen her daughter since January 2009. She has no idea where she is or how she is doing.

ARGUMENT

I. The Court Should Allow Amendment to Join Additional Defendants Under F.R.C.P. 21.

Rule 21 of the Federal Rules of Civil Procedure governs proposed amendments seeking to join new defendants. The rule provides that a party may be added "at any time, on just terms." Fed. R. Civ. P. 21. The rule is "intended to permit the bringing in of a person, who through inadvertence, mistake or for some other reason, had not been made a party and whose presence as a party is later found necessary or desirable." *United States v. Commercial Bank of N. Am.*, 31 F.R.D. 133, 135 (S.D.N.Y. 1962) (quotations omitted).

Until the documents produced in jurisdictional discovery in this matter and in the Zodhiates trial were revealed, Plaintiff Janet Jenkins was unaware of the business connection between Liberty and RUL. The Defendants went to great lengths to conceal that connection through delay, obfuscation and outright lies to this Court which prevented Plaintiff Jenkins from joining these parties sooner. The joinder of these Defendants is also desirable and necessary. The evidence pertaining to these additional Defendants at the Zodhiates trial was central to understanding his and RUL's role in the kidnapping conspiracy. Zodhiates' lawyers even suggested to the jury, on September 27, 2016, that Zodhiates thought removing Isabella from the United States was lawful because he had consulted with Liberty Counsel beforehand.

Under Rule 21, "courts must consider judicial economy and their ability to manage each particular case, as well as how the amendment would affect the use of judicial resources, the impact the amendment would have on the judicial system, and the impact [it] would have on each of the parties already named in the action." *Sly Magazine, LLC v. Weider Publ'ns L.L.C.*, 241 F.R.D. 527, 532 (S.D.N.Y. 2007). Joining the Liberty Defendants would support judicial economy and efficient use of judicial resources. This case is still in the preliminary stages due to

the delays in obtaining jurisdictional discovery stemming from RUL's long standing denial that any communications among its employees regarding Lisa Miller even existed. Given that each of the Defendants already involved in this action conspired with the additional Liberty Defendants, the impact on the rest of the Defendants should come as no surprise to them. As was the case during the Zodhiates trial, it is difficult to understand the role of RUL in Lisa Miller's flight without considering its business relationship and communications with the Liberty Defendants. Therefore, adding the Liberty Defendants to this action will avoid duplication at a later date or in a separate trial.

Motions pursuant to Rule 21 are treated with the "same standard of liberality afforded to motions to amend pleadings under Rule 15." *Soler v. G & U, Inc.*, 86 F.R.D. 524, 528 (S.D.N.Y. 1980). Rule 15 directs that leave to amend shall be freely given "when justice so requires." Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). A court has discretion to deny leave "only for such reasons as undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party." *Richardson Greenshields Sec., Inc. v. Lau*, 825 F.2d 647, 653 (2d Cir. 1987) (quotation marks omitted).

Justice clearly requires joining these additional Liberty Defendants. Prior to obtaining this new information, Plaintiff Jenkins previously alleged that Liberty University was liable in this matter based on vicarious liability for its employee, Victoria Hyden. Based on the information available, this Court rejected that claim, stating that "there was no suggestion that the attorneys committed a tort by representing their client" in the Vermont litigation. Dkt. 115 at 30. The evidence outlined above shows that the attorneys did, in fact, commit intentional torts directed at Janet Jenkins in their unethical and misleading representation of Lisa Miller in the

Vermont Family Court, during which they continued to commit acts in furtherance of the kidnapping conspiracy.

Staver and Lindevaldsen were senior officials at Liberty Counsel and Liberty University School of Law at all times relevant to this case, and were actively engaged in efforts to nullify Janet Jenkins' rights and deny her contact with her daughter. When it became apparent they were losing their legal case, they simply went outside the law to achieve the desired impact. Clearly, they were working toward the same objective on behalf of Liberty Counsel and Liberty University and were acting within their agency. The Liberty Counsel/Liberty University attorneys' conduct in the Rutland Family Court, and outside the Court, was tortious and was intentionally aimed at causing harm to Janet Jenkins.

II. Specific Jurisdiction Exists in Vermont for RUL and Liberty

The new information described herein, and attached hereto as exhibits, also shows that Zodhiates' and Victoria's tortious actions toward Janet Jenkins in Vermont were undertaken as part of their work for RUL – and more specifically – on behalf of their client Liberty Counsel, who was representing Lisa Miller in her Vermont Family Court litigation. Prior to the kidnapping, RUL and Liberty Counsel worked together to raise money for litigation aimed at nullifying Janet Jenkins' parental rights. According to Sidebottom, RUL's "prospecting package" for Lisa Miller's case "underperformed," in that it did not generate the desired revenues for the client. When it was clear that their legal and financial efforts were failing, RUL, Liberty Counsel, Liberty University and others went outside the law, and conspired to kidnap Isabella and ensure her retention outside the United States by providing material assistance to Lisa Miller. Therefore, Victoria and Zodhiates were acting within the scope of their agency for

RUL, and acting on RUL's and its client's behalf, just as they were when they were providing lawful fundraising services toward the same desired outcome.

The information outlined herein establishes that Philip Zodhiates and Victoria Hyden's intentionally tortious conduct was undertaken in furtherance of their business at RUL. As Mr. LaPorta testified: "Philip Zodhiates is Response Unlimited." Moreover, at the time he drove Lisa Miller and Isabella to Buffalo, Zodhiates informed his secretary that he was "working from home on Liberty Counsel." RUL and the Liberty Defendants, through their agents and employees, worked legally to nullify Janet Jenkins' parental rights and, when that failed, they worked illegally and conspired to terminate Janet Jenkins' contact with Isabella on account of her sexual orientation. Hyden, Lindevaldsen and Staver misled this Court in their November 2012 affidavits in support of their Motion to Dismiss, and concealed the relationship between RUL and Liberty Counsel in furtherance of this scheme. This Court should therefore exercise jurisdiction over RUL, and join Mathew Staver, Rena Lindevaldsen, Liberty Counsel and Liberty University as parties to this action.

DATED at Middlebury, Vermont this 7th day of October, 2016.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER	:	
Plaintiffs,	:	
v.	:	Case No. 2:12-cv-184
KENNETH L. MILLER, LISA ANN MILLER f/k/a LISA MILLER-JENKINS, TIMOTHY D. MILLER, RESPONSE UNLIMITED, INC. PHILIP ZODHIATES, individually and as an agent for RESPONSE UNLIMITED, INC., VICTORIA HYDEN, f/k/a VICTORIA ZODHIATES, individually and as an Agent for RESPONSE UNLIMITED, INC., LINDA M. WALL,	:	
Defendants.	:	

OPINION AND ORDER

1. Procedural Background

Plaintiff Janet Jenkins ("Jenkins"), for herself and as next friend of her daughter Isabella Miller-Jenkins ("Miller-Jenkins"), brings this action against individuals and organizations that she alleges conspired with her former same-sex partner, Lisa Miller ("Miller") to kidnap her daughter and transport her outside of the United States. Jenkins contends that Miller, fearing that courts would award Jenkins full custody over her daughter, left the country with the Defendants'

aid after failing to comply with a Vermont court's orders granting Jenkins parental rights and visitation.

This Court previously granted the Defendants' request for a stay of this civil case in light of the federal indictment of Defendant Philip Zodhiates ("Zodhiates") and the criminal investigation of Defendant Response Unlimited, Inc. ("RUL") on the basis of facts closely related to the claims at issue here. ECF No. 192. Although the Court did not explicitly specify how long the stay would last, the Defendants' motion granted by the Court had requested the stay "pending the resolution of the criminal proceedings [then] pending in the United States District Court for the Western District of New York." ECF No. 172. Moreover, the Court ordered the parties to "inform the Court of the status of Zodhiates' criminal case within 14 days of the conclusion of the trial, a guilty plea, or dismissal of the charges in that case." ECF No. 192. Zodhiates was convicted by a jury in that district on September 29, 2016, and a sentencing hearing was initially scheduled for January 30, 2017. The trial judge granted Zodhiates' motion to adjourn sentencing, and sentencing is now set for March 22, 2017. Post-trial motions have been filed and are currently pending with the Court. On October 7, 2016, Plaintiffs filed the instant motion informing the Court that Zodhiates' trial had concluded in a guilty

verdict, and requesting that the Court lift its prior stay of this case. ECF No. 204.

In addition, Plaintiffs have moved to join additional defendants connected to the legal representation of Jenkins' former same-sex partner, Lisa Miller ("Miller").[1] In particular, they seek to join attorneys Rena Lindevaldsen, Esq. ("Lindevaldsen") and Mathew Staver, Esq. ("Staver"), as well as Liberty Counsel, a Christian law firm with which they were affiliated when they began to represent Miller. In addition, they seek to join Liberty University, an institution that the Court had previously dismissed from the case for lack of personal jurisdiction, arguing that the evidence adduced at Zodhiates' trial and in discovery so far provides new grounds for a different jurisdictional ruling. ECF No. 204.

Finally, the Plaintiffs seek a ruling from the Court asserting that it has specific jurisdiction over Defendant Response Unlimited, Inc. ("RUL"). Defendant RUL had previously moved to dismiss the Plaintiffs' claims against it, alleging lack of personal jurisdiction. ECF No. 57. The Court

[1] Liberty University contends that Plaintiffs' motion is "more properly viewed as a motion to amend" governed by Federal Rule of Civil Procedure 15(a)(2), rather than Rule 21, as the Plaintiffs assert. In a letter submitted to the Court, Liberty Counsel also contends that Plaintiffs' motion should be considered a motion for leave to amend, and that it will assert jurisdictional and other defenses only if the Court grants the Plaintiffs' motion, and only once it has been properly served.

subsequently ordered the parties to proceed with jurisdictional discovery to permit it to reach a more informed decision on this question. ECF No. 115. The Plaintiffs contend that information obtained through the criminal proceedings and jurisdictional discovery suffices to show that RUL had sufficient minimum contacts with Vermont to give rise to personal jurisdiction in this forum, and request that the Court rule on this question.

For the reasons outlined below, the Court **grants** Plaintiffs' motion to lift the stay of this civil case. Moreover, the Court **grants** Plaintiffs' motion to amend the complaint so as to join Lindevaldsen, Staver, Liberty Counsel and Liberty University. Finally, the Court finds that it has jurisdiction over Defendant RUL, and thereby **denies** RUL's pending motion to dismiss on this ground.

2. New Facts Alleged in Revised Second Amended Complaint

Plaintiffs put forth substantial additional evidence gathered through Zodhiates' criminal proceeding and in jurisdictional discovery, both in their revised pleadings, in the recitation of facts contained in their motion and reply brief, and in supporting exhibits. These facts are laid out in greater detail in the parties' filings, and will not be recited in their entirety here. However, several incidents described in the Plaintiffs' papers are worth highlighting briefly.

First, the Plaintiffs allege that Defendant RUL had a business relationship with Liberty Counsel specifically related to Liberty Counsel's efforts to terminate Jenkins' contact with Miller-Jenkins and entitle Miller to obtain sole custody of Miller-Jenkins. In particular, RUL entered into an agreement with Liberty Counsel to raise funds for Liberty Counsel's work on behalf of Miller by developing and sending out materials on the case to conservative mailing lists. Around the time that these entities entered into this agreement in 2007, Zodhiates met with Staver and toured Liberty University and Liberty Counsel's premises. Although the parties dispute how long this business relationship continued, Plaintiffs allege that RUL employees continued to correspond over Miller's case well into the fall of 2009. In January of 2009, Zodhiates wrote to William Sidebottom, the director of communications for Liberty Counsel, with whom he had communicated regarding RUL's work with Liberty Counsel, to suggest that he had a "personal option" for Lisa Miller that the lawyers "should not or would not want to know about". In addition, the Plaintiffs allege in their motion that as part of its work for Liberty Counsel, RUL hosted Miller and Miller-Jenkins at its offices, where its staff prayed that Jenkins' contact with Miller-Jenkins would be stopped. Finally, Plaintiffs assert that on the day that Zodhiates drove Miller to the United States border with Canada in order to flee the

country, he wrote to other RUL employees stating that he was working from home on Liberty Counsel, and that other employees speculated that he was working on the Lisa Miller case.

Furthermore, the Plaintiffs have alleged additional facts regarding Lindevaldsen's and Staver's involvement in Miller's scheme to transport Miller-Jenkins outside of the country and avoid detection by law enforcement. Specifically, they allege that Zodhiates was in touch with Lindevaldsen via his daughter, and that he asked Lindevaldsen through his daughter when others involved in the conspiracy could go to Miller's last apartment in the United States to obtain her belongings after she left the country. In addition, Jenkins alleges that Lindevaldsen deliberately misled a Vermont family court by stating that she did not know of her clients' whereabouts, when in fact she knew that her client had fled the country. Plaintiffs also allege that, in her role as a professor at Liberty University, Lindevaldsen essentially espoused the notion that Miller should commit civil disobedience rather than comply with a Vermont court's orders granting her former same-sex partner parental rights and full custody of Miller-Jenkins. Furthermore, Plaintiffs assert that Zodhiates was in contact with both Lindevaldsen and Staver on the day that he drove Miller to the border in order to flee the country. Finally, Plaintiffs contend

that Staver was Lindevaldsen's boss and supervisor during the relevant time period, both at Liberty Counsel and Liberty University, and specifically served as co-counsel to Miller alongside Lindevaldsen in Miller's family court litigation.

Discussion

1. Lifting the stay on the case

This Court has broad discretion in deciding whether to issue or extend a stay, and must exercise its "studied judgment," weigh "competing interests[,] and maintain an even balance" in doing so. *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F. 3d 83, 96-97, 99 (2d Cir. 2012) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort."). Nevertheless, staying a civil case until the conclusion of a parallel criminal prosecution "has been characterized as an extraordinary remedy," *id.* at 98, and a criminal defendant has "no absolute right to a stay of civil proceedings pending the outcome of criminal proceedings." *Guggenheim Capital, LLC v. Birnbaum*, 722 F.3d 444, 453-54 (2d Cir. 2013) (internal quotation omitted); *see also Gen. Dynamics Corp. v. Selb. Mfg. Co.*, 481 F.2d 1204, 1213 (8th Cir. 1973) (noting that protection of the rights of a defendant in a criminal case "does not mandate a complete disregard for the

rights of civil litigants). The Second Circuit has embraced a six-factor test for courts to consider as a "rough guide" in its exercise of this discretion. *Louis Vuitton*, 676 F. 3d at 99. Thus, as this Court previously noted, it should look to:

> 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Id. (citing *Trs. of Plumbers & Pipefitters Nat'l Pension Fund*, 886 F.Supp. 1134, 1139 (S.D.N.Y. 1995).

Here, there is no question that the issues in the criminal case, which center on Zodhiates' assistance to Miller in escaping the country with Miller-Jenkins in order to avoid complying with a Vermont court's custody orders, substantially overlap with the allegations in this civil case, as required by the first factor. In assessing the second factor, courts typically look to whether an indictment has been issued, in order to avoid giving weight to mere speculation that a criminal proceeding could result from a defendant's testimony. *See, e.g., Id.* at 1139 ("A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct"); *Hicks v. City of New York*, 268 F. Supp. 2d 238, 242 (E.D.N.Y. 2003) ("[T]he strongest argument for granting a stay

is where a party is under criminal indictment"). However, the existence of an indictment itself does not weigh in favor of granting a stay where the case has already been tried. *Chartis Prop. Cas. Co. v. Huguely*, No. DKC 13-1479, 2013 WL 5634266, at *3 (D. Md. Oct. 15, 2013) ("Defendant is correct that courts are loath to stay a civil case when a criminal case is in the pre-indictment stage. But while this case is post-indictment, it is also post-trial, post-verdict, and post-sentencing, and currently on appeal. . . . Balancing the posture of the case weighs slightly against imposition of a stay.").

To be sure, as the Defendants posit here, a defendant is entitled to assert his Fifth Amendment privilege at sentencing, on appeal and at a potential re-trial. *See Mitchell v. United States*, 526 U.S. 314, 327 (1999); *United States v. Duchi*, 944 F.2d 391, 394 (8th Cir. 1991) ("the Fifth Amendment right not to testify concerning transactions for which one has been convicted continues until the time for appeal has expired or until the conviction has been affirmed on appeal"); *United States v. Kennedy*, 372 F.3d 686, 691-692 (4th Cir. 2004) ("Because any post-conviction evidence could be used against a defendant if his conviction were to be overturned, the risk of coerced self-incrimination remains until the conviction has been affirmed on appeal."). Thus, "there is no question that [the defendant's] Fifth Amendment rights are implicated" when a civil case unfolds

alongside a criminal case, even on appeal. *Sec. & Exch. Comm'n v. Braslau*, No. 14-CV-01290-ODW, 2015 WL 9591482, at *3 (C.D. Cal. Dec. 29, 2015). Nor do the Plaintiffs here contest that they are. The question "turns upon the *extent* to which his Fifth Amendment rights are implicated. *Id.* Since "[a] defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege," courts evaluate the likelihood that asserting the privilege in the civil case, and risking an adverse inference as a consequence, will hurt the defendant's case. *Louis Vuitton,* 676 F.3d at 98-100. Thus, while there is no clear standard that dictates when the constitutional privilege necessitates a stay, "a plausible constitutional argument would be presented only if, at a minimum, denying a stay would cause substantial prejudice to the defendant." *Guggenheim Capital*, 722 F.3d 453 (citing *Louis Vuitton,*676 F.3d 100) (internal quotation omitted).

In practice, courts evaluating a case after a defendant has been convicted have typically given less weight to the burden to a defendant of proceeding with a civil case than they would before the trial, even when the defendant may assert a Fifth Amendment privilege during the civil proceeding. For example, in *In re Terrorist Attacks on Sept. 11, 2001,* No. 03-MDL-1570-GBD-FM, 2011 WL 5913526, at *5 (S.D.N.Y. Nov. 22, 2011), the court

noted that "the status of a defendant's criminal case weighs strongly *against* granting a stay when the defendant has already been tried, convicted and sentenced." (citing *Sparkman v. Thompson*, No. 08-01-KKC, 2009 WL 1941907, at *2 (E.D.Ky. July 6, 2009)). Relying on the example from the Eastern District of Kentucky, the Southern District of New York in that case also noted that since the defendant had already challenged the government's case at trial and was able to ascertain its theories of guilt, he would be better positioned to avoid making incriminating statements if his civil case proceeded. Similarly, since the government already assembled the evidence needed for a conviction, the defendant would have "only a minimal concern that civil discovery will aid the criminal prosecution." *Id.* Finally, the court looked to the theories on which the defendant had challenged his conviction and concluded that discovery in the civil case would be unlikely to implicate the defendant's right against self-incrimination. *Id; see also Gen. Dynamics Corp.*, 481 F.2d at 1215 (pointing out that although defendants had challenged their convictions on appeal, neither had attacked the sufficiency of the evidence to support a finding of guilt).

In addition, courts weigh the likelihood that a conviction will be reversed on appeal and that a new trial will be granted in deciding whether to stay a civil case at this late stage. *Id.*

(noting that it was far from clear that the defendant's conviction in that case would be reversed by the Circuit court, or that a retrial would be granted); *Sec. & Exch. Comm'n*, 2015 WL 9591482, at *3 (denying stay of civil proceeding where "the possibility of a retrial appears remote" because the Court presiding over the defendant's trial had noted that his appeal does not raise any "substantial question of law or fact likely to result in reversal [or] an order for a new trial."); *Taylor v. Ron's Liquor Inc.*, No. C-10-00694-SI, 2011 WL 499944, at *3-4 (N.D. Cal., Feb. 8, 2011) (holding that stay was not warranted where "the possibility of a retrial appear[ed] remote" and the defendant did not "state that he [was] making any argument on appeal that would entitle him to a new trial if he won"). When the likelihood is low, courts have favored the imposition of other measures to protect a defendant's Fifth Amendment rights if they were to arise in the future. *Id.*

Here, the factors typically considered by courts at the post-conviction stage weigh against maintaining a stay once Zodhiates has been sentenced. On February 14, 2017, the court presiding over Zodhiates' criminal case denied his motion for a judgment of acquittal and motion for a new trial. A brief review of the attached post-trial briefing substantiates the Plaintiffs' view that Zodhiates' "claims of trial court error

appear weak if not entirely frivolous." As such, the likelihood of success on appeal also appears remote. Finally, sentencing is set to occur in two days, and will therefore likely have concluded by the time discovery in this case gets underway.

Even if a new trial were granted pursuant to Fed. R. Crim. P. 33 or on appeal, the bases for the retrial do not appear to implicate his Fifth Amendment rights in this civil proceeding, but rather the rights of other Defendants. According to the government brief, Zodhiates has requested a new trial on the basis of (1) the Court's denial of his motion to suppress RUL phone bills; (2) the Court's denial of his offer to introduce specific instances of good conduct in support of his character; (3) a legal error in the jury instructions regarding parental rights; and (4) the Court's allegedly improper questioning of a witness. Only the first of these grounds raises potential conflicts for the civil litigation. If the RUL phone bills indicating Zodhiates' location were to be excluded in a future retrial, for example, they may be discovered from RUL through this litigation and therefore introduced into the criminal proceeding regardless. In fact, the only prejudice that the Defendants point to in their response brief is a potential prejudice to RUL that would arise if Zodhiates invoked the Fifth Amendment rather than provided evidence that would weaken the

arguments for a finding of specific jurisdiction against RUL. Nothing in this opinion precludes Zodhiates from pursuing this strategy and continuing to assert the Fifth Amendment in this civil case or at later stages of the criminal proceeding. These forms of harm, however, do not rise to the level of a constitutional argument because they are not being asserted on behalf of a non-corporate defendant. *See Taylor*, 2011 WL 499944, at *4 (finding that a stay was not warranted where the "primary focus of the motion to stay appears to be the possible prejudice to the *other* defendants in this civil action" and "these other defendants are not attempting to exercise a constitutional privilege"). To the extent that discovery of RUL phone records would harm Zodhiates in a re-trial if an appeals court were to reverse the trial judge's ruling on the suppression claim, this Court could simply permit RUL to produce these documents subject to a protective order upon a motion by the Defendants. Plaintiffs have indicated that they are amenable to such an order on this or other specific issues that may arise.

In addition to bearing on the second and fourth factors (regarding the status of the case and the Defendants' interests) of the six-factor test identified in *Louis Vuitton*, the conclusion of the trial also touches on the Court's analysis of the fifth factor (its own interest). Courts deciding whether to

stay a case after an indictment has been issued have noted that doing so "will likely narrow the issues before the court, and prevent both parties from performing unnecessarily duplicative work." *Harris v. Nassau Cty.*, No. 13-CV-4728-NGG-RML, 2014 WL 3491286, at *4 (E.D.N.Y. July 11, 2014) (citing *Crawford & Sons*, 298 F.Supp. 2d 317, 319 (E.D.N.Y. 2004) (finding that a stay would "avoid duplication" as a "conviction or acquittal in the criminal action may negate or buttress some or all of the plaintiffs' claims" and provide the parties with the benefit of "the transcript and rulings in the criminal action") and *Trs. of Plumbers*, 886 F.Supp. at 1140 (finding that the criminal action "may reduce the scope of discovery in the civil case and the evidence gathered during the criminal prosecution can later be used in the civil action")). Having already incurred the benefits to judicial efficiency that stem from allowing the criminal case to go to trial before the civil case advances, this Court's interests will weigh in favor of allowing the civil case to proceed once Zodhiates has been sentenced.

Finally, the Supreme Court's ruling on same-sex partnerships and family rights since this Court's last opinion granting a stay touches on both the public's interest and the Plaintiffs' interests in this litigation and weighs in favor of lifting the stay under the third and sixth factors. In *Obergefell v. Hodges*,

135 S. Ct. 2584, 2604, 192 L. Ed. 2d 609 (2015), the Court held that "the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty." In doing so, the Court highlighted the importance of the judiciary's role in protecting fundamental individual rights even in the midst of democratic political deliberation on contentious and sensitive issues. *Id.* at 2605-2606. Finally, the Court made clear that legal questions that affect the stability of same-sex families require particularly urgent action. *Id.* at 2606 ("The petitioners' stories make clear the urgency of the issue they present to the Court. . . . April DeBoer and Jayne Rowse now ask whether Michigan may continue to deny them the certainty and stability all mothers desire to protect their children, and for them and their children the childhood years will pass all too soon."). Here, Jenkins alleges deprivations of her rights stemming from her same-sex union by individuals who explicitly advocated against legal respect for those rights. Having received clear confirmation from the Supreme Court that the Constitution protects Jenkins' rights, and that courts must act as stewards of those rights in times of controversy, the public and Jenkins have an interest in ensuring that these claims are resolved expeditiously.

In short, all of the factors analyzed above weigh in favor of lifting the stay once the trial and sentencing stages of Zodhiates' criminal case have been completed. Thus, the Court orders that the stay be lifted on March 23, 2017 or on the date Zodhiatez is sentenced, whichever occurs later.[2] Zodhiates may assert the Fifth Amendment as appropriate, but must otherwise proceed with discovery in this matter after the stay is lifted.

2. Personal Jurisdiction Over Additional Defendants

Plaintiffs have moved to amend the complaint to add several additional Defendants connected to Miller's legal representation over the course of her custody dispute pursuant to Fed. R. Civ. P. 21. Specifically, they allege in their proposed amended pleadings that Lindevaldsen and Staver, Miller's attorneys during her custody dispute, were both personally involved in Miller's efforts to leave the country in order to avoid a Vermont court's orders, and that they acted on behalf of both Liberty University and Liberty Counsel in doing so. They also seek leave to amend their complaint to reflect the proposed addition of the parties. *See Fair Hous. Dev. Fund Corp. v. Burke*, 55 F.R.D. 414, 417 (E.D.N.Y. 1972) (complaint should be

[2] The Court withholds judgment on whether a protective order might be warranted at a later point to limit the potential harm of civil discovery to Zodhiates' criminal case.

amended after parties have been added for purposes of clarity or otherwise).

Federal Rule of Civil Procedure 21 provides that "the court may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. "Although Rule 21, and not Rule 15, governs the addition of new parties to an action, the Court is guided by the same standard of liberality afforded to motions to amend pleadings under Rule 15." *Soler v. G & U, Inc.*, 86 F.R.D. 524, 527–28 (S.D.N.Y. 1980) (internal citation and quotation omitted). Rule 15 provides that "the court should freely give leave [to amend] when justice so requires." Fed.R.Civ.P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) ("If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits"). However, courts may deny a motion for leave to amend in light of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment [or] futility of amendment." *Id.*; *Zerman v. E.F. Hutton & Co.*, 628 F. Supp. 1509, 1511 (S.D.N.Y. 1986) ("the liberal amendment principles of 15(a) do not require the court to indulge in futile gestures"). Here, the proposed Defendants

contend that amending the complaint so as to permit Plaintiffs to join them as defendants would be futile because the Court lacks personal jurisdiction over them.

In addition, in response to Plaintiffs' request for a ruling on a prior motion to dismiss Defendant RUL, RUL alleges that the Court lacks personal jurisdiction over it as well. Plaintiffs assert that the Court has jurisdiction to proceed on the claim against RUL both because of RUL's own activities in connection with Liberty Counsel, and because it can be held liable for the acts of its agents and employees, Zodhiates and his daughter, Victoria Hyden ("Hyden").

As this Court previously noted, its exercise of personal jurisdiction over each Defendant must comport with the requirements of due process. ECF No. 115; *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996).[3] "The due process test for personal jurisdiction has two related components: the 'minimum contacts' inquiry and the 'reasonableness' inquiry. *Id.* In evaluating whether a defendant

[3] In that opinion, the Court also noted that the Plaintiffs asserted both federal question and diversity subject-matter jurisdiction. Although in a diversity action a court must initially determine whether a plaintiff has shown that a defendant is amenable to process under the forum state's laws, Vermont's long-arm statute "confers jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause." Vt. Stat. Ann. Tit. 12, §913(b); *Dall v. Kaylor*, 658 A.2d 78, 79 (Vt. 1995).

has sufficient contacts with the forum state to justify the court's exercise of personal jurisdiction, courts distinguish between "specific" and "general" jurisdiction. "Specific jurisdiction exists when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum; a court's general jurisdiction, on the other hand, is based on the defendant's general business contacts with the forum state and permits a court to exercise its power in a case where the subject matter of the suit is unrelated to those contacts." *Id.* at 568 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414 (1984)). The Plaintiffs here do not assert that the Court has general jurisdiction over any of the alleged Defendants, but instead purport to show that the Defendants have established sufficient contacts with the forum because of their activities arising from the allegations in this suit. "Once it has been decided that a defendant purposefully established minimum contacts with the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 170 (2d Cir. 2013) (quoting *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) (internal quotation marks omitted)).

Defendants make three preliminary arguments that this Court must address before analyzing the jurisdictional claims against each particular Defendant in question. First, Defendants imply that this Court need not revisit the jurisdictional allegations against the Defendants that the Plaintiffs seek to add because it has already dismissed the same or closely connected Defendants on the ground that it lacked personal jurisdiction. Second, the Defendants contest the factual allegations made out in both the Plaintiffs' motion and in their proposed amended pleadings by submitting contrasting factual affidavits which, if taken as true, may defeat a showing of personal jurisdiction. Third, the Defendants take issue with the fact that parts of the Plaintiffs' prima facie showing of personal jurisdiction are made as factual assertions in Plaintiffs' motion rather than as a formal part of the Plaintiffs' pleadings. None of these arguments require the Court to hold in Defendants' favor.

First, Defendants assert that, because the Court previously found that it did not have personal jurisdiction over Liberty University, it need not re-evaluate this question now. Furthermore, relying on *Spiegel v. Schulmann*, 604 F.3d 72, 78 (2d Cir. 2010), they argue that an amendment to add Staver and Lindevaldsen as agents would be futile because they are essentially "another version of a defendant that the court [has]

already determined it [has] no personal jurisdiction over." To be sure, where a Plaintiff seeks to add a previously-dismissed defendant without adducing any evidence about her alleged wrongdoing to suggest that the Court's analysis should differ, courts have rejected these attempts with little additional guidance. *See, e.g., Spiegel*, 604 F.3d at 78 (rejecting attempt to join a defendant where "[n]either the plaintiff's third amended complaint nor the evidence adduced during discovery provided any basis to demonstrate that the district court would have had personal jurisdiction over [a defendant alleged to have committed the same wrongdoing as a previously-dismissed defendant]."); *Goins v. Longstreet*, No. 12-CV-55, 2013 WL 869844, at *7 (W.D.Pa. Feb. 13, 2013) (dismissing a plaintiff's attempts to revive claims against previously dismissed defendants where plaintiff "alleges no new violations of his civil rights"); *Zerman v. E.F. Hutton & Co.*, 628 F. Supp. 1509, 1511-1513 (S.D.N.Y. 1986) (rejecting plaintiff's attempt to rejoin previously dismissed defendants where the allegations in the modified complaint were little more than a rehash of the allegations in the original complaint which were previously rejected by the Second Circuit"); *Crenshaw v. Hamilton*, No. 08-CV-6186, 2012 WL 1565696, at *2-3 (W.D.N.Y. Mar. 30, 2012) (refusing to permit plaintiff to add defendants who were "previously dismissed with prejudice" where "the proposed

claims plaintiff seeks to assert against them were either previously dismissed with prejudice or are so closely related to those dismissed claims that they were logically encompassed by [the judge]'s rulings in [the] matter"). However, as explained more fully below, the Plaintiffs here provide evidence about Lindevaldsen's and Staver's allegedly tortious activity that they did not fully set forth before. Since the Court's prior ruling on the lack of personal jurisdiction over Liberty University relied on the conclusion that Lindevaldsen and Staver did not commit tortious acts over the course of their representation of Miller, the new evidence leads this Court to reconsider its prior holding.

Second, the Court need not base its jurisdictional conclusions solely on the facts alleged by Plaintiffs in their proposed amended complaint. "In order to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that jurisdiction exists." *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (internal quotation omitted). A "plaintiff must allege specific facts on which personal jurisdiction can be based," *Moore v. Motz*, 437 F. Supp. 2d 88, 91 (D.D.C. 2006), and "cannot rely on conclusory allegations", *id.*, or "a legal conclusion couched a factual allegation." *In re Terrorist Attacks*, 714 F.3d at 673; *see also*

Chloé v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163 (2d Cir.2010) (a prima facie showing "must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant") (internal quotation marks and brackets omitted). However, such a showing may be made through a plaintiff's "pleadings *and* affidavits." *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1071 (9th Cir. 2001) (emphasis added).[4]

In addition, while courts "will not draw *argumentative* inferences in the plaintiff's favor," *In re Terrorist Attacks*, 714 F.3d at 673 (emphasis added), a "plaintiff presenting a prima facie case is entitled to have … conflicts resolved in his favor." *Wien Air Alaska, Inc. v. Brandt*, 195 F.3d 208, 211 (5th Cir. 1999); *Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 580 (2d Cir. 1993), *as amended* (May 25, 1993) ("If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima

[4] Courts have asserted the importance of distinguishing between a jurisdictional analysis and a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), which precludes courts from relying on facts outside the pleadings. *See Newsome v. Gallacher*, 722 F.3d 1257, 1270 (10th Cir. 2013) ("we believe it is important to keep the 12(b)(2) and 12(b)(6) analyses distinct"); *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 265 (D.D.C. 2011) (noting that courts evaluating a Rule 12(b)(6) motion may not rely on facts outside the pleadings).

facie showing is sufficient notwithstanding the contrary presentation by the moving party").

Here, the Defendants have raised the jurisdictional argument in opposition to the Plaintiffs' motion to join defendants and amend the complaint pursuant to Rules 21 and 15 of the Federal Rules of Civil Procedure, not in the context of a motion to dismiss. However, the futility argument set forth by Defendants essentially alleges that leave to amend and add defendants should be denied because the Court would be required to dismiss the proposed defendants if it did add them. Thus, to evaluate Defendants' argument, the Court will apply the evidentiary standards that it would be required to apply at the motion to the dismiss stage. *See Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001) (Court will judge futility against motion for summary judgement standard where motion for leave to amend is filed in response to a motion for summary judgment and opposing party alleges that it would not withstand an inevitable summary judgment motion in the future, but will apply standard for motion to dismiss for failure to state a claim where motion for leave to amend is filed in response to such a motion to dismiss and opposing party asserts that it would not withstand such a motion in the future). Therefore, Lindevaldsen's and Staver's presentation of affidavits denying the factual claims

made out in the Plaintiffs' briefs will not serve to undercut the Plaintiffs' prima facie showing of personal jurisdiction if the facts they present otherwise demonstrate that this standard has been met. Setting aside these preliminary arguments, the Court assesses the jurisdictional arguments against each of the proposed Defendants in turn.

3. *Joinder of Rena Lindevaldsen, Esq. and Mathew Staver, Esq.*

Plaintiffs have moved to name both of Miller's lawyers in her custody dispute as Defendants in this civil action. Neither Lindevaldsen nor Staver were named as Defendants earlier in this litigation, and this Court has therefore not ruled directly on whether it has jurisdiction over them before. However, in its prior ruling dismissing Liberty University as a Defendant, the Court rejected the Plaintiffs' argument that "the actions of Lisa Miller's attorneys in litigating her case are sufficient to give this Court jurisdiction over Liberty University." It first found that there was no factual support for the assertion that the attorneys had committed a tortious act in their representation of Miller in Vermont, and later found that the attorneys' contacts with the forum do not amount to a purposeful availment of the privilege of doing business here. The Defendants urge the Court to disregard many of the new factual allegations made out by Plaintiffs and to reiterate both

conclusions. However, under the facts now alleged by the Plaintiffs, the Court's holding would not be supported by the principles of specific jurisdiction articulated in this Circuit.

There are two theories of specific jurisdiction which could permit this Court to find that it has jurisdiction over Lindevaldsen and Staver. *See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 173 (2d Cir. 2013) (distinguishing between the "effects test" theory and "purposeful availment" theories of specific personal jurisdiction). First, in *Calder v. Jones*, 465 U.S. 783, 788-89 (1984), the Supreme Court held that specific personal jurisdiction exists even where a defendant engaged in activities entirely outside of the state if the defendant took "intentional, and allegedly tortious, actions … expressly aimed" at the forum and "the brunt of the harm" was suffered in the forum. In *Walden v. Fiore*, __ U.S. __, 134 S. Ct. 1115, 1122-23 (2014), the Court limited this "effects test" somewhat, clarifying that a "plaintiff cannot be the only link between the defendant and the forum." Rather, the Court reiterated that the jurisdictional inquiry must focus on the "relationship among the defendant, the forum, and the litigation", asserting that "[t]he crux of *Calder* was that the … 'effects' of the alleged [tort] connected the defendants to [the forum], not just to the

plaintiff." *Id.* at 1123-24. In addition, the Court has found specific jurisdiction in cases where a defendant's suit-related conduct occurred *within* the forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-476 (1985) ("where the defendant deliberately has engaged in significant activities within a State or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there"). This "purposeful availment" theory therefore looks to whether the plaintiff's claims arise from the defendant's activities in the forum. *See Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 343 (2d Cir. 2016).

The new facts alleged by the Plaintiffs are sufficient to establish a prima facie showing of specific jurisdiction under the "effects" test outlined in *Calder* and *Walden*. In their amended pleadings, Plaintiffs assert that Lindevaldsen and Staver are or have been employees of Liberty University and Liberty Counsel in relation to the claims set forth therein, and that Lindevaldsen and Staver were Miller's lead attorneys in her family court case regarding Miller-Jenkins. They allege that Zodhiates suggested that he had a "personal option" for Miller in an email to a Liberty Counsel employee in early 2009 should the family courts involved find against her despite her

attorneys' efforts to prevent Jenkins from having contact with Miller-Jenkins. Furthermore, Plaintiffs claim that Miller was held in contempt by a Virginia court on August 25, 2009 for failing to comply with its prior orders. According to the pleadings, she failed to appear at the hearing imposing the contempt sanction and instead held a press conference with Staver and Lindevaldsen at her side. In other communications with RUL employees, Zodhiates stated that Lindevaldsen and Staver made representations regarding when they expected the Vermont court would award full custody to Jenkins. The amended pleadings further allege that Miller stated, after arriving in Nicaragua in 2009, that Liberty Counsel had advised her that it would be in her best interests to disappear (presumably through her attorneys or at their instruction, although the pleadings do not specify who at Liberty Counsel provided Miller with this advice).

Next, the pleadings claim that Hyden delivered emails from Zodhiates to Lindevaldsen after Miller fled the country regarding Miller's needs. Specifically, these emails requested donations for supplies to be sent to Miller and sought to coordinate the removal of items from Miller's apartment. According to the amended complaint, Lindevaldsen packed up Miller's personal belongings directly. During this time,

Plaintiffs allege that Lindevaldsen falsely claimed that she was unable to communicate with Miller to the Vermont family court in an attempt to delay contempt proceedings aimed at locating Miller-Jenkins. As a result, Plaintiffs assert in their amended complaint that Miller was able to leave the United States in advance of September 25, 2009 and remain there past January 1, 2010 with the assistance of Lindevaldsen and others. They therefore bring claims against Lindevaldsen and Staver for the intentional tort of kidnapping and for conspiracy to violate the civil rights of Jenkins and Miller-Jenkins based on discriminatory animus against same-sex couples and against Jenkins due to sexual orientation. While all of these assertions are found in the amended pleadings themselves, the Plaintiffs provide additional support for these factual representations in their briefs and supporting attachments. This Court must disregard the contrary presentation made by the attorneys in their affidavits at this stage. *See Seetransport Wiking Trader Schiffarhtsgesellschaft*, 989 F.2d at 580.

In sum, the Plaintiffs plead specific facts that Lindevaldsen in particular engaged in tortious conduct to counsel Miller to leave the country, coordinate and conspire with Zodhiates and Hyden to assist her in doing so, and prevent the authorities from learning of Miller's whereabouts. It is beyond question

that the "brunt of the harm" was felt by Jenkins in Vermont, where she resides and would have lawfully brought Miller-Jenkins to reside. *Calder,* 465 U.S. at 789. Moreover, as this Court has previously noted, the actions taken by all Defendants in furtherance of this conspiracy and kidnapping were directed not only at Jenkins, a forum resident, but also at the forum itself. ECF No. 161, p. 10. Since the Vermont state courts awarded Jenkins certain rights, which she would have exercised in Vermont but for Defendants' allegedly tortious conduct, the Defendants' allegedly wrongful acts connected them "to the forum in a meaningful way." *Walden,* 134 S. Ct. at 1125. Therefore, the Plaintiffs have made out a prima facie showing of personal jurisdiction against Lindevaldsen under the "effects" theory articulated in *Calder* and *Walden.*

While Plaintiffs claim that Staver, too, engaged in tortious conduct aimed at Vermont, their allegations against Staver alone are admittedly weaker than those against Lindevaldsen. Zodhiates allegedly called a phone number used by Staver on the day that he transported Miller to the border to escape the country. In their reply brief, Plaintiffs claim that jurisdictional discovery indicating that Zodhiates was in touch with Liberty University attorneys before and after Miller fled the country supports the inference that this contact was part of an ongoing

pattern of communication between Zodhiates and the attorneys. However, Plaintiffs do not allege that Staver and Zodhiates actually spoke on that occasion, or describe the contents of that conversation. Similarly, the allegation that Staver met with Zodhiates and provided him with a tour of the law school is not itself evidence that he engaged in tortious conduct. Furthermore, the representations that Staver allegedly made to the Vermont and Virginia courts after Miller left the country are not necessarily false unless knowledge of Miller's whereabouts is imputed to him, since Plaintiffs have failed to put forth evidence that suggests that Staver was directly aware of her location at that time, as they have for Lindevaldsen. Nor did Staver's approval of the mailing produced by RUL, which was intended to raise funds for Staver and Lindevaldsen's appeal of a Virginia court's decision constitute tortious conduct in and of itself. While the sum of these facts suggests that Staver was closely connected to Zodhiates' and Lindevaldsen's strategy to advocate for Lisa Miller's legal position, they do not demonstrate that Staver himself participated in efforts to assist Miller in fleeing the country.

Moreover, the Court is not persuaded by Plaintiffs' argument that Staver's mere representation of Miller in the Vermont proceedings permits us to find personal jurisdiction over him

here. This Court previously rejected that argument, noting that the Second Circuit's reading of the "purposeful availment" theory of specific jurisdiction in *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 128 (2d Cir. 2002) requires more of attorneys and law firms representing clients in a particular district. Moreover, the cases cited by Plaintiffs in support of their assertion that an application for admission pro hac vice makes a lawyer and her law firm subject to specific jurisdiction are distinguishable. For example, the court's holding to that effect in *W. Thrift & Loan Corp. v. Rucci*, No. CIV. 11-3644 JNE/TNL, 2012 WL 1021681, at *3 (D. Minn. Mar. 27, 2012) was premised on the fact that the plaintiff's "suit directly arises from and relates to [his attorney's] unsuccessful attempt to become admitted pro hac vice in the [relevant] [l]itigation." Where a pro hac vice admission, or even the lawyer's engagement in litigation in a forum state, is not connected to the matter at issue, courts have refused to find personal jurisdiction solely on this basis. *See, e.g., Wolk v. Teledyne Indus., Inc.*, 475 F. Supp. 2d 491, 502 (E.D. Pa. 2007); *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 275 (D.D.C. 2011) ("The … Defendants' participation in litigation-related activities alone also does not subject [the Defendants] to personal jurisdiction in [that forum]"); *Medina v. Medina*, 260 F.3d 622 (5th Cir. 2001)

(rejecting plaintiff's argument that an attorneys' pro hac vice representation of a client is sufficient to establish personal jurisdiction where the representation in that forum was not based upon the initial legal action challenged by the plaintiff).[5]

Nevertheless, Staver's leadership roles at both Liberty University and Liberty Counsel implicate him in the commission of the alleged torts for purposes of establishing jurisdiction. First, as Dean of Liberty University School of Law, Staver was allegedly both Hyden's and Lindevaldsen's boss and supervisor. As General Counsel of Liberty Counsel until 2006, he was also allegedly Lindevaldsen's boss and supervisor while she was

[5] Similarly, in most jurisdictions, the mere existence of an attorney-client relationship involving representation in a different forum, without more, does not establish personal jurisdiction in the place where the client resides. *Flagstar Bank, FSB v. Centerpointe Fin., Inc.*, No. 2:10-CV-14234, 2011 WL 2111982, at *4-5 (E.D. Mich. May 26, 2011) ("The situation Plaintiff describes is very similar to those cases involving plaintiffs who sue attorneys and law firms that represented them in out-of-state proceedings for malpractice. In those cases, courts in the plaintiff's home state routinely hold that they do not have personal jurisdiction over defendant law firms simply because the non-resident attorneys purportedly breached their fiduciary duties to the plaintiff or committed malpractice") (citing *Satwelle v. Farrell*, 70 F.3d 1381, 1392 (1st Cir.1995) (finding that New Hampshire court did not have jurisdiction over a claim by resident of that forum against law firm it hired in California to represent it in proceeding in Florida)); *Austad Company v. Pennie & Edmounds*, 823 F.2d 223 (8th Cir.1987) (finding that South Dakota court did not have jurisdiction over New York law firm hired by South Dakota resident to represent it in a Maryland lawsuit)).

employed there. In addition, Staver appeared as Lindevaldsen's co-counsel in her representation of Lisa Miller during the family court proceedings in Vermont and Virginia, suggesting that he had a particularly strong role in supervising Lindevaldsen in this particular case.

In determining whether the activities of an employee may count towards the minimum contacts necessary to establish personal jurisdiction over his employer, the Court may consider traditional common law principles of liability. *See Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 55-60 (1st Cir. 2002) ("Traditional common law concepts support the conclusion that [defendants' relationship] suffices to bring the parties within the rule that permits imputation of contacts for jurisdictional purposes."). Even where an employee is acting outside of the scope of her employment, her contacts may be attributed to her employer if she was acting as the employer's agent in performing the tortious act. *See Myers v. Bennett Law Offices*, 238 F.3d 1068, 1073 (9th Cir. 2001) (rejecting the argument that employee's acts may not be considered for jurisdictional purposes since he "allegedly acted outside the scope of his employment", on the grounds that the employee had at least apparent authority to conduct those acts and that the employer subsequently ratified those acts).

It is well established that an employer may be found liable for the acts of his or her employee acting within the scope of his or her employment, and that the contacts established by the employee acting in this respect will be attributable to the employer for purposes of establishing jurisdiction. *See Myers*, 238 F.3d at 1073; *Doe v. Forrest*, 853 A.2d 48, 54 (Vt. 2004) ("Under the settled doctrine of respondeat superior, an employer or master is held vicariously liable for the tortious acts of an employee or servant committed during, or incidental to, the scope of employment") (quoting *Brueckner v. Norwich Univ.*, 730 A.2d 1086, 1090 (Vt. 1999)). Here, some of Lindevaldsen's allegedly tortious acts were clearly committed within the scope of her employment. For example, Lindevaldsen allegedly lied to the Vermont courts about her ignorance of Miller's whereabouts after Miller left the country. This statement, allegedly made in furtherance of the conspiracy to kidnap Miller-Jenkins and violate Jenkins' and Miller-Jenkins' civil rights, was clearly part of Lindevaldsen's legal representation, which Staver supervised. Under this theory alone, Lindevaldsen's tortious act could be attributable to Staver for jurisdictional purposes.

Moreover, Staver's alleged role as Lindevaldsen's supervisor, both at Liberty Counsel and at Liberty University School of Law, established an agency relationship between

Lindevaldsen and Staver. "A claim of agency requires facts establishing: (1) the manifestation by the principal that the agent shall act for him; (2) the agent's acceptance of the undertaking; and (3) the understanding of the parties that the principal is to be in control of the undertaking." *Allen v. Dairy farmers of Am., Inc.*, 748 F. Supp. 323, 342 (D. Vt. 2010) (quoting *Cleveland v. Caplaw Enters*, 448 F.3d 518, 522 (2d Cir. 2006)). An essential characteristic of an agency relationship is that the agent acts subject to the principal's direction and control. *In re Shulman Transp. Enters., Inc.*, 744 F.2d 293, 295 (2d Cir. 1984) (citing *Restatement (Second) of Agency* § 1(1) comment b, § 14 (1958)). Here, Lindevaldsen was conducting her representation of Miller on behalf of Liberty Counsel, but used her position at Liberty University to generate broader awareness of the case and to physically conduct some of her work. In both her role with Liberty Counsel and Liberty University, Staver was Lindevaldsen's superior. Although the Plaintiffs have not presented explicit evidence that Staver expressed that Lindevaldsen would act for him in the representation or that he would ultimately be in control of the undertaking, these elements of the agency relationship can be inferred from the respective roles of the two lawyers in both organizational settings.

Activities of a party's agent may count toward the minimum contacts necessary to support jurisdiction if these acts fall within the scope of the agent's authority. *See Grand Entm't Grp., Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3d Cir. 1993); *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 55 (1st Cir. 2002). Lindevaldsen's representations to the Vermont courts about her knowledge of Miller's whereabouts were clearly within the scope of her actual authority because they were part and parcel of the activity that she was hired to engage in. Thus, even if this conduct is not attributable to Staver under a theory of respondeat superior, it is otherwise attributable under a theory of agency.

Moreover, if Lindevaldsen in fact acted as Staver's agent for purposes of the representation of Miller, the knowledge that she had while acting within the scope of her authority would be chargeable to Staver, regardless of whether that knowledge was actually communicated. *Sawyer v. Crowell*, 559 A.2d 687, 690 (Vt. 1989). Thus, Lindevaldsen's alleged knowledge that Miller had fled the country with Miller-Jenkins, which she allegedly held while making a contrary representation to the Vermont courts, would be attributable to Staver under common law principles. Although Lindevaldsen was called to testify as a witness, and did not speak in her capacity as counsel when she represented

that she did not know of her client's whereabouts, she made a motion on behalf of herself and Staver to withdraw as counsel based on the same claim of ignorance. Thus, in making this motion and representation as Staver's agent, her alleged knowledge of Miller's whereabouts would be attributed to him. As a result, the misrepresentation in question would be attributable to him as well. Finally, Plaintiffs claim that Staver "oppos[ed] Ms. Jenkins' efforts to locate Isabella or gain information about her kidnapping through the questioning of witnesses in Lynchburg" through his representation in the Virginia courts. ECF No. 216, p. 24. If Staver did so with the attributed knowledge that Miller had in fact left the country and was now located in Nicaragua, as Lindevaldsen is alleged to have known, then this manner of proceeding with the case may also have aided the conspiracy in question and could have been premised on tortious misrepresentations. As a result, once Lindevaldsen's knowledge is attributed to Staver, his own conduct during his continued representation of Miller could constitute an independent tort. This wrongful conduct, in turn, was specifically aimed at Vermont and produced harm in this state, thus establishing specific personal jurisdiction over him, as well. Accordingly, the relationship between Lindevaldsen and Staver allows this Court to find specific personal

jurisdiction over Staver, notwithstanding his secondary role in the alleged wrongdoing.

4. *Joinder of Liberty Counsel*

For the same reasons, this Court finds that it has personal jurisdiction over Liberty Counsel. By the Defendants' own admissions, Lindevaldsen and Staver represented Miller while they were employed by Liberty Counsel. Staver served as President and General Counsel of Liberty Counsel between 1989 and 2006. Between 2006 and 2014, Staver served as Dean of the law school and Professor of Law at Liberty University. According to the Plaintiffs, he continued to represent Miller until after she left the country, appearing pro hac vice in the Vermont courts. Despite Staver's position at Liberty University during that time, the Vermont family court filings attached to Plaintiffs' and Defendants' motions indicate that Staver represented Miller on behalf of Liberty Counsel after 2006. Similarly, Lindevaldsen was an employee of Liberty Counsel until 2006, and thereafter began working as a Professor of Law at Liberty University. While employed by Liberty University, she continued to represent Lisa Miller on behalf of Liberty Counsel as a contract attorney until after Miller left the country. During this time, Liberty Counsel engaged in fundraising efforts

to support the work of its employees in litigating Miller's case.

Here, Staver and Lindevaldsen's representation of Miller, including their allegedly tortious statements made during the course of that representation, can be imputed to Liberty Counsel regardless of Staver and Lindevaldsen's formal employment relationship with Liberty Counsel at different moments over the course of the representation. As this Court previously noted, a corporation's presence in a forum is manifested, for jurisdictional purposes, "by activities carried on in its behalf by those who are authorized to act for it." *Int'l Shoe Co.*, 326 U.S. at 316; *See also Grand Entm't Grp., Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3d Cir. 1993) ("Activities of a party's agent may count toward the minimum contacts necessary to support jurisdiction"); *Ochoa v. J.B. Martin and Sons Farms, Inc.*, 287 F.3d 1182, 1189 (9th Cir. 2002); *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 55-56 (1st Cir. 2002). Even if Staver and Lindevaldsen were not formally employees of Liberty Counsel towards the end of their representation, there is no question that they had actual authority to pursue this representation on Liberty Counsel's behalf. *See City of Burlington v. Zurn Idus., Inc.*, 135 F. Supp. 2d 454, 458 (a "corporation …is not bound by a contract

…executed by one of its employees, however, unless it had granted the employee the authority to enter into the contract on the corporation's behalf"). Liberty University asserts as much in its motion. ECF No. 213 ("Staver, Lindevaldsen and Miller's other Liberty Counsel attorneys entered their appearances and litigated for Miller solely in their capacities with Liberty Counsel."). Therefore, their contacts in litigating the case can be imputed to Liberty Counsel for jurisdictional purposes. Since this Court has personal jurisdiction over Lindevaldsen and Staver, it must also have personal jurisdiction over Liberty Counsel.

5. *Joinder of Liberty University*

This Court previously granted the Defendant's motion to dismiss Liberty University on the ground that the Court lacked personal jurisdiction over it. In doing so, the Court noted that there was no factual support for the assertion that Miller's attorneys committed a tortious act that caused an injury to Jenkins, and that there was no evidence suggesting that Liberty University knew of Hyden's tortious conduct. As noted above, Plaintiffs have made specific allegations that the Liberty attorneys did in fact commit significant wrongdoing during the course of their representation in the Vermont family court proceedings. In addition, Plaintiffs argue that Hyden's acts

should be imputed to Liberty University because her supervisors were actually aware of her tortious conduct, she served as a critical link in the chain of the conspiracy, and her conduct was in furtherance of Liberty University's business or educational goals as a Christian law school. Furthermore, Plaintiffs contend that Lindevaldsen was acting on behalf of Liberty University and not *just* Liberty Counsel while representing Miller in Vermont, asserting that she used Liberty University resources and held herself out as acting on behalf of Liberty University when she engaged in this representation. Finally, Plaintiffs contend that Liberty Counsel and Liberty University were operating as one unified entity in supporting Lindevaldsen and Staver's representation of Miller.

Plaintiffs' last argument is the most compelling, and warrants a finding of personal jurisdiction by this Court. As the First Circuit has noted, even if two entities' relationship "were to fall slightly outside of the confines of [the specific common law doctrines of partnership or joint venture by estoppel]," it is "consistent with the Due Process Clause to attribute to [one entity] the retention of, and certain interactions with, [a third party] where, as [the third party] alleges, they have led [the third party] and the public to believe they were joint venturers." *Daynard v. Ness, Motley, Loadholt, Richardson &*

Poole, P.A., 290 F.3d 42, 56–57 (1st Cir. 2002); *Mansfield Heliflight, Inc. v. Heli-One Canada Inc.*, No. 2:12-CV-46, 2012 WL 4479851, at *6 (D. Vt. Sept. 28, 2012) ("The issue is not one of liability, but is instead one of attribution of contacts for jurisdictional purposes, a less stringent test than that for liability") (internal quotations omitted). In *Daynard*, when an agent of one firm had hired a defendant employee, the employee reasonably understood the agent to be acting on behalf of a joint venture between two firms, and then relied on this understanding by providing services to both firms, the contacts of each firm could be imputed to the other for jurisdictional purposes. 290 F.3d at 56-57. Similarly, this Court has also assessed how two entities hold themselves out to the public in determining whether the contacts of one entity with the forum will be imputed to the other. *Mansfield Heliflight, Inc.*, 2012 WL 4479851, at *7 (D. Vt. Sept. 28, 2012). In *Mansfield Heliflight*, this Court noted that two companies' contacts can be attributed to one another for purposes of personal jurisdiction if they are "two arms of the same business group, operate in concert with each other, and enter into agreements with each other that are nearer than arm's length." *Id.* (quoting *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litigation*, 693 F.Supp.2d 409, 420 (D.Del.2010)). In reaching its conclusion that such a close relationship was present in

that case, the Court looked to the company's public representations, its descriptions of itself in press releases and other public pronouncements and the actual conduct of the companies with third parties during the negotiation of the agreement which formed the basis of that matter. Finally, the Second Circuit has noted that where there is joint control of two business entities, one may be found to be the agent of the other for purposes of establishing jurisdictional contacts. *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 365-66 (2d Cir. 1986).

In this case, Plaintiffs have made out a prima facie case that Liberty Counsel and Liberty University were operating in concert with each other and entering into agreements with each other that are closer than arm's length. They shared common leadership, were located in the same building, and Lindevaldsen, when acting as an attorney for Liberty Counsel, used the resources of Liberty University to carry out the business of her representation of Miller. The Plaintiffs allege that Liberty Counsel acted as a "laboratory school" to train Liberty University students, essentially serving as a law school clinical program. Furthermore, Lindevaldsen and Staver's representation of Miller, ostensibly solely on behalf of Liberty Counsel, was critical to carrying out their roles as professors

at Liberty University. Lindevaldsen wrote a book about her representation of Miller which Plaintiffs allege was required reading for students at the law school, and, as noted above, designed exam questions based on this case. In addition, Plaintiffs allege that the entities held themselves out to the student body and the public as being closely connected. For example, when RUL was in the process of negotiating an agreement with Liberty Counsel to fundraise for Miller's legal representation, Staver gave Zodhiates a tour of the Law School building. Ms. Lindevaldsen communicated from a Liberty University email address and used a Liberty University phone when she served as counsel in the Miller litigation on behalf of Liberty Counsel.[6]

In short, because Liberty Counsel and Liberty University operated as a unified entity with respect to Lindevaldsen and Staver's representation of Miller, Liberty Counsel's contacts with Vermont may be imputed to Liberty University. Since Lindevaldsen and Staver's contacts with Vermont must be imputed

[6] Plaintiffs argue that because Lindevaldsen held herself out as acting on behalf of Liberty University, this Court should impute her contacts to Liberty University as Liberty University's agent. It is not clear whether Plaintiffs are asserting, through this claim, that Lindevaldsen had apparent authority or that Liberty University ratified her actions. The Court need not address this argument, however, since the relationship between the two entities that employed Lindevaldsen during the relevant time period suffices to justify the Court's jurisdictional holding.

to Liberty Counsel, they must be imputed to Liberty University as well. Therefore, the Court finds that it has personal jurisdiction over Liberty University for the same reasons that it has jurisdiction over Liberty Counsel.

6. *Joinder of Response Unlimited, Inc.*

Plaintiffs have requested a ruling on the Court's jurisdiction over RUL. Defendants first assert that such a ruling would be premature, because in order to demonstrate that RUL is not subject to this Court's specific jurisdiction, Zodhiates would need to respond to Plaintiffs' allegations in a manner that would waive his Fifth Amendment privilege. However, Plaintiffs can prevail on their jurisdictional claim at this point so long as they make out a prima facie showing of sufficient minimum contacts and reasonableness on the basis of their pleadings and affidavits. *See In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d at 673. Even if Defendants, through Zodhiates' testimony, could present contrasting evidence, the Court must resolve those conflicts in the light most favorable to the Plaintiff. *Seetransport Wiking Trader*, 989 F.2d at580, Therefore, if Plaintiffs assert sufficient facts to make out a prima facie case for personal jurisdiction over RUL, Defendants do not suffer any harm from Zodhiates' continued assertion of the privilege. If Zodhiates waives the privilege at a subsequent

point in this action, Defendants are free to re-assert these jurisdictional arguments at that later stage.

Plaintiffs argue that this Court has jurisdiction both because of the direct conduct that RUL engaged in to harm Jenkins and because RUL is vicariously liable for the acts that Zodhiates performed in furtherance of the conspiracy at issue. They assert that RUL was essentially a co-conspirator in efforts to terminate Jenkins' contact with Miller-Jenkins, and that their attempts to finance Liberty Counsel's legal representation of Miller are sufficient to subject RUL to jurisdiction in Vermont.

The Second Circuit has previously concluded that in certain circumstances funders of organizations that caused harm to a plaintiff in a forum would not be subject to personal jurisdiction where the funding of the tortious act was indirect. *In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 94-95 (2d Cir. 2008), *abrogated on other grounds by Samantar v. Yousuf*, 560 U.S. 305 (2010) (finding no personal jurisdiction over four foreign princes who donated to Muslim charities that in turn funded al Qaeda because "providing indirect funding to an organization that was openly hostile to the United States does not constitute [the] type of intentional conduct" that would give rise to personal jurisdiction under *Calder*'s effects test). There, the Court found that even if it was foreseeable

that donating money to Muslim charities would lead to that money being re-directed to terrorist organizations, "foreseeability is not the standard for recognizing personal jurisdiction." *Id.* However, in a later, related case, the Circuit court granted jurisdictional discovery to determine whether individuals who *directly* funded terrorist organizations would be subject to personal jurisdiction. *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 678-79 (2d Cir. 2013). In defining the range of the relevant inquiry, the court was concerned that "factual issues persist with respect to whether this support was 'expressly aimed' at the United States" because it was not clear from Plaintiffs' allegations "(1) when the alleged support was given to al Qaeda, (2) what support was given, (3) whether the support was "earmarked" for use in specific schemes or attacks not directed at the United States, or (4) specifically how these defendants were involved in the process of providing support to al Qaeda." *Id.*

Here, Plaintiffs offer evidence that the agreement between RUL and Liberty Counsel specifically concerned Miller's legal representation, and that RUL and Liberty Counsel sought to defend what they viewed as a moral and religious cause by preventing Jenkins' contact with Miller-Jenkins. The facts put forth by Plaintiffs suggest that the RUL staff was committed to

this objective at a spiritual level, inviting Miller and Miller-Jenkins to the RUL offices to pray for them. However, the evidence the Plaintiffs have presented does not demonstrate that in reaching its business agreement with Liberty Counsel, RUL intended to support Liberty Counsel's efforts to prevent that contact through unlawful or tortious means. Rather, the mailing produced by RUL requests donations specifically for Liberty Counsel's appeal to the Virginia Supreme Court, in which Miller sought to have Virginia's recognition of the Vermont court orders overturned. The letter also seems to acknowledge that when faced with the Virginia lower court decision, "Lisa had no choice but to comply with the Vermont courts." Thus, the intent of this arrangement, as expressed in the documents produced by the Plaintiff, was to support Miller's lawful effort to appeal the lower court decision, assuming that the consequence of not doing so would be personally and spiritually difficult, but legally required. As a result, RUL's direct business engagement and financial support for Liberty Counsel does not appear to be intended to be used specifically for Liberty Counsel's tortious conduct. Even if it was foreseeable that such support would be used in a tortious manner, foreseeability alone would not give rise to personal jurisdiction. *See In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d at 95.[7] Since Plaintiffs have not made

[7] In addition, efforts to finance Miller's legal representation

a prima facie showing that RUL provided support for Liberty Counsel in order to support intentionally tortious or unlawful conduct, this business engagement alone cannot give rise to personal jurisdiction over RUL.[8]

Nevertheless, Zodhiates' contacts with the forum may be imputed to RUL because he acted as RUL's agent when he committed the tortious acts that gave rise to personal jurisdiction over him. In addition to the facts that the Court previously identified as relevant to its personal jurisdiction holding over RUL, Plaintiffs have put forth additional allegations about Zodhiates' tortious conduct. Specifically, they contend that Zodhiates sent an email to a Liberty Counsel's employee, Mr. Sidebottom, suggesting that he had a "personal option" for Miller if she found herself without additional legal recourse.

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do not give rise to personal jurisdiction under a purposeful availment theory because RUL *itself* did not create contact with the Vermont forum through the litigation. *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 335 (2d Cir. 2016) ("The relationship between the defendant and the forum must arise out of contacts that the defendant *himself*' creates with the forum") (internal quotation omitted).

[8] Moreover, in the absence of a showing that the two business entities were conspiring with each other to prevent Jenkins' contact with her daughter through unlawful means by signing this agreement, Plaintiffs' citations to cases providing that one co-conspirator's minimum contacts with a forum may be imputed to another are inapposite. These cases become relevant only because Plaintiffs have made out a showing that Zodhiates' actions may be imputed to RUL for jurisdictional purposes. As discussed below, however, this legal conclusion would suffice to find jurisdiction, so no analysis of RUL's potential role as a co-conspirator is necessary.

He also allegedly coordinated with Lindevaldsen regarding the timing of Miller's departure and about providing support for Miller after she left the country. In its prior jurisdictional decision, this Court held that there was sparse evidence regarding whether Zodhiates was acting as RUL's agent in undertaking these acts, and granted jurisdictional discovery specifically on this ground.

As the Court noted in that decision, a corporation's presence in a forum may be manifested "by activities carried on in its behalf by those who are authorized to act for it. *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945); *see also Grand Entm't Grp., Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3d Cir. 1993) ("Activities of a party's agent may count toward the minimum contacts necessary to support jurisdiction"); *Ochoa v. J.B. Martin and Sons Farms, Inc.*, 287 F.3d 1182, 1189 (9th Cir. 2002); *Daynard*, 290 F.3d at 55-56 (1st Cir. 2002). Defendant RUL looks to Vermont law to argue that when evaluating whether actions by an individual can be imputed to a corporate entity, courts must assess whether the actions are within the scope of the person's employment, and actions that cannot "properly be seen as intending to advance the employer's interests" are outside the scope of employment. *Doe v. Forrest*, 853 A.2d 48, 55 (Vt. 2004).

It contends that since RUL is "not engaged in the business of transporting people or third-party luggage," Zodhiates' actions cannot be imputed to RUL.

Plaintiffs assert that "it appears that RUL's entire staff knew of and supported the effort to interfere with Ms. Jenkins' rights in Vermont and that the staff also were aware of the company's role in those efforts." In addition, they argue that Zodhiates' email stating that he was working for RUL on Liberty Counsel on the day that he aided Lisa Miller in fleeing the country is "contemporaneous evidence …that he was engaged in RUL's work on behalf of Liberty Counsel" at that time. Finally, they argue that since it is "undisputed that RUL's business objective was to raise money to support Liberty Counsel and Lisa Miller's efforts to nullify Ms. Jenkins' parental rights in Vermont," Zodhiates was acting within the scope of those business objectives when he conspired to nullify Jenkins' parental rights and the Vermont orders through "other acts that were outside the law."

Since Zodhiates was RUL's employee during the time in question, there was undoubtedly an agency relationship between Zodhiates and RUL. In general, a principal is liable for an agent's acts if the agent has authority to bind the principle, and an agent's contacts are attributable to the principle if the

actions taken to establish those contacts were within the scope of the agent's authority. *See Daynard*, 290 F.3d at 55; *Myers*, 238 F.3d 1073. Here, the facts suggest that Zodhiates entered into an agreement with Miller's counsel to support Miller's escape, after suggesting this possibility to another Liberty Counsel employee. The jurisdictional question thus turns on whether Zodhiates had authority to enter into this agreement.

An agent's authority to act for a principle may be actual or apparent. Apparent authority relies on a showing that the person engaging with the agent believed that the agent was acting on behalf of the principle. *Myers*, 238 F.3d at 1073. The evidence set forth by Plaintiffs suggests that Liberty Counsel understood that Zodhiates was acting on behalf of RUL when he was engaged with Liberty Counsel on the lawful fundraising effort. However, Plaintiffs have not alleged facts to show that Lindevaldsen or Staver believed that Zodhiates was acting on behalf of RUL when he agreed to support Miller in her efforts to flee the country. Therefore, they have not shown that Zodhiates had apparent authority to undertake the tortious acts which formed the basis of the jurisdictional finding over him.

Alternatively, an agent's actions may be imputed to the principle if he has actual authority, which may be either express or implied. *City of Burlington*, 135 F. Supp. 2d 458.

"Implied authority is actual authority circumstantially proven from the facts and circumstances attending the transaction in question. Such authority may be implied or inferred from the words used, from customs and from the relations of the parties." *Id.* (internal quotations omitted). In this case, RUL and Liberty Counsel had previously entered into an agreement to support Miller's legal claims in opposition to the Vermont court's orders. Although this agreement was not, on its face, intended to support Miller's unlawful failure to comply with the court orders, the general purpose was to support her position in the litigation. As part of that relationship, Zodhiates regularly communicated with Sidebottom about matters related to Miller on behalf of RUL. This pattern of communication leads to the inference that Zodhiates had implied actual authority to act on RUL's behalf when he again emailed Sidebottom about the possibility of an alternative option. In addition, Zodhiates' emails to RUL employees saying that he was working from home on Liberty Counsel when he drove Miller and Miller-Jenkins to the border, and the employees' apparent understanding that this could mean that Zodhiates was working on the Miller case, also constitutes circumstantial evidence that RUL impliedly authorized Zodhiates to act on its behalf in regard to this matter.[9]

[9] Even if this Court were to apply the Vermont common law

In addition, numerous courts of appeals have held that an agent's actions may be attributed to the principle for purposes of personal jurisdiction where the principle later ratifies this conduct. *Stolle Machinery Co., LLC v. RAM Precision Industries*, 605 Fed. Appx. 473, 481 (6th Cir. 2015); *Daynard*, 290 F.3d at 55-60 (citing *Myers*, 238 F.3d at 1073; *Wessels, Arnold & Henderson v. Nat'l Med. Waste, Inc.*, 65 F.3d 1427, 1433 (8th Cir.1995)). However, the RUL employees' receipt of Zodhiates' email and apparent failure to challenge him on his work for "Liberty Counsel from home" is unlikely to constitute ratification. It is not clear that the RUL employees effectively accepted Zodhiates' acts, because Plaintiffs have not shown that Zodhiates ever made clear to them exactly what he was doing when he was working on the Lisa Miller case. *See Wessels, Arnold &* Henderson, 65 F.3d at 1433 ("[A] principal cannot accept the benefits of the agent's unauthorized conduct and then deny liability based on the fact that the conduct was

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standards for respondeat superior rather than a more general agency analysis, this case is distinguishable from others in which an employee's tortious activity was not considered to be "in furtherance of the [employer's] business". *Lewis v. Bellows Falls Congregation of Jehovah's Witnesses*, 95 F. Supp. 3d 762, 766 (D. Vt. 2015) (quoting *Doe v. Norwich Roman Catholic Diocesan Corp.*, 268 F.Supp.2d 139, 142 (D.Conn.2003)). While the agreement between RUL and Liberty Counsel does not itself evidence an intent to perform unlawful acts to that effect, Zodhiates' actions were consistent with RUL's general objective of preventing Jenkins' contact with her daughter.

unauthorized" for purposes of establishing jurisdictional contacts); *Daynard*, 290 F.3d at 57 ("The sole requirement for ratification is a manifestation of assent or other conduct indicative of consent by the principal") (internal quotation omitted). Moreover, the employees took no action to support or follow through on Zodhiates' efforts, or otherwise indicate through their conduct that they were assenting to Zodhiates' unlawful activities.

In short, Zodhiates' contacts with Vermont can be imputed to RUL because Zodhiates had implied actual authority to act on RUL's behalf in suggesting the unlawful "option" for Miller to a Liberty Counsel employee, in allegedly communicating with Lindevaldsen to coordinate Miller's departure and to support her once she was abroad. Since the Court has already found that Zodhiates had sufficient jurisdictional contacts because he engaged in similarly wrongful conduct, RUL also has the necessary minimum contacts to establish personal jurisdiction.

7. *Reasonableness*

Having found that sufficient minimum contacts exist to justify the exercise of specific personal jurisdiction over the relevant Defendants, the Court must determine whether the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice." *Metro. Life Ins.*, 84 F.3d at 568

(quoting *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945)). This inquiry requires courts to "evaluate the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) (citing *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S. 286, 292 (1980)). The reasonableness and minimum contacts inquiries are interrelated: "depending upon the strength of the defendant's contacts with the forum state, the reasonableness component of the constitutional test may have a greater or lesser effect on the outcome of the due process inquiry." *Metro. Life Ins.*, 84 F.3d at 568. That is, "an especially strong showing of reasonableness may serve to fortify a borderline showing of minimum contacts." *Id.* at 560 (quoting *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 210 (1st Cir. 1994)); *see also Burger King Corp.*, 471 U.S. at 477 ("These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.").

This Court has already found that Defendants Kenneth Miller, Zodhiates, Hyden and Linda Wall have not shown a compelling case that jurisdiction in this forum is unreasonable. Applying the same rationale articulated by the Court in that decision, the Court now finds that exercising jurisdiction over Defendants Lindevaldsen, Staver, Liberty University, Liberty Counsel and RUL would be similarly reasonable. To be sure, Lindevaldsen and Staver would suffer some difficulty in defending this suit in Vermont instead of their home states. However, since both attorneys have represented a client in this state before, the difficulty posed by the forum appears readily surmountable. Similarly, Liberty University and Liberty Counsel, while burdened somewhat by this choice of forum, have previously permitted their agents and employees to act on their behalf in this state. RUL's difficulty, like that of Zodhiates, is admittedly somewhat more cumbersome. However, this difficulty must be balanced against Plaintiffs' interest in obtaining convenient and effective relief, which will best be served by maintaining this suit in their chosen forum. In addition, Vermont has a strong interest in adjudicating claims involving a clear disregard for its own courts' orders, particularly those concerning fundamental rights which have recently been upheld by the Supreme Court on constitutional grounds. The Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) also

accentuates the states' shared interest in furthering the substantive social policy of protecting the rights of parents in same-sex relationships. This factor weighs in favor of permitting the matter to proceed in Vermont, where the court orders regarding Jenkins' parental rights were issued. In short, the factors to be evaluated at this stage largely weigh in favor of finding personal jurisdiction against all Defendants. To the extent that the showing of minimum contacts by the organizational Defendants is considered to be weaker because of their indirect nature, this "especially strong showing of reasonableness" strengthens the Court's exercise of personal jurisdiction. *See Metro. Life Ins.*, 84 F.3d at 560.

CONCLUSION

For the foregoing reasons, the Court **grants** the Plaintiffs' motion to amend the complaint so as to join Lindevaldsen, Staver, Liberty Counsel and Liberty University. ECF No. 204. Similarly, the Court holds that it has personal jurisdiction over RUL, and therefore **denies** Defendant RUL's prior motion to dismiss on that ground. ECF No. 57. Finally, the Court **grants** the Plaintiffs' motion to lift the stay of this civil case, and orders that the stay be lifted on March 23, 2017 or on the date of Zodhiates' sentencing, whichever is later. ECF No. 204. Moreover, the Court notes that nothing in this order is intended

to prevent Zodhiates or other Defendants from asserting their Fifth Amendment rights in this civil proceeding.

Dated at Burlington, in the District of Vermont, this 20th day of March, 2017.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge