

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,

Docket No.

2:12-CV-00184-wks

Plaintiffs,

v.

KENNETH L. MILLER, *et al.*,

Defendants.

**DEFENDANT ANDREW YODER'S REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS**

NOW COMES Defendant Andrew Yoder (“Yoder”), by and through his undersigned counsel, to hereby submit this Reply to Plaintiffs’ Response (ECF No. 81) to his Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim (ECF No. 62) (“Yoder Motion”). Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), alternatively, this Court should dismiss Plaintiffs’ claims against Yoder.

I. THIS COURT LACKS PERSONAL JURISDICTION OVER YODER.

Plaintiffs do not dispute Yoder’s assertion that he has not had “continuous and systematic” contacts with the State of Vermont, such as would subject him to general jurisdiction here. *See generally, e.g., Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846, 2853-2854 (2011). Plaintiffs also do not dispute Yoder’s assertion that Plaintiffs’ allegations against him do not arise out of or relate to his activities within Vermont, such as would subject him to

specific jurisdiction here. *Id.*

Instead, Plaintiffs advance two theories for how they have fulfilled their burden of establishing this Court's jurisdiction over Yoder: First, that Yoder allegedly committed intentional torts "purposefully directed ... at the forum State", thereby permitting a finding of "minimum contacts" under *Calder v. Jones*, 465 U.S. 783 (1984); and, second, that since Yoder allegedly participated in a civil RICO conspiracy, 18 U.S.C. §1965(b) authorizes this Court's exercise of jurisdiction over him, because the "ends of justice require." *See*, Pl. Resp. (ECF No. 81), at pp. 2-4, 7-12. Both arguments are flawed as a matter of law and should be rejected.

A. *Calder v. Jones* does not apply to Plaintiffs' allegations against Yoder.

Other Defendants already have debunked Plaintiffs' erroneous interpretation and attempted application of *Calder v. Jones*, and Yoder incorporates their analyses and arguments herein. *See* Liberty Defs. Reply (ECF No. 94), at pp. 13-16; Wright Reply (ECF No. 98), at pp. 8-12.

Plaintiffs rely upon this Court's decision in *Real Good Toys, Inc. v. XL Machine Ltd.*, 163 F. Supp. 2d 421 (D.Vt. 2001), in which it articulated the *Calder* "effects" test as follows:

Jurisdiction is appropriate when the state has been the "focal point both of the [alleged tort] and the harm suffered," the defendants knew that plaintiff would suffer the "brunt" of the harm there, and they "expressly aimed" their actions at the state.

163 F. Supp. 2d at 424 (citing *Chaiken v. VV Pub. Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997)).

Although Plaintiffs try to narrow *Calder* to merely an analysis of where the "brunt of the injury" occurred, this Court utilized the same three-part test in *Country Home Products, Inc. v. Schiller-Pfeiffer, Inc.*, 350 F. Supp. 2d 561, 567 (D.Vt. 2004).

Plaintiffs' allegations against Yoder, even as exaggerated in their Response,¹ fail to satisfy the *Calder* test. The entirety of Plaintiffs' allegations against Yoder are set forth in Paragraph 53 of Plaintiffs' Amended Complaint:

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.

Plaintiffs' only other allegations against Yoder are conclusory statements that his actions constituted aiding and abetting Isabella's kidnapping, conspiring to violate RICO, and conspiring to violate Ms. Jenkins' civil rights. (Am. Compl. (ECF No. 59), at ¶¶64, 72, 75).

These allegations **never even mention** Ms. Jenkins or Vermont. All of Yoder's alleged misconduct took place in Nicaragua. At most, Plaintiffs allege that Yoder helped Lisa Miller stay in Nicaragua once he encountered her there. Thus, Nicaragua, not Vermont, was the "focal point" of Yoder's alleged acts. Plaintiffs' Amended Complaint does not claim Yoder did anything which was "expressly aimed" at Vermont (nor even at Ms. Jenkins, for that matter).

The contrast with the facts of *Calder* is striking; *Calder* involved an "allegedly libelous story concern[ing] the California activities of a California resident ... drawn from California sources" and circulated most widely in California. 465 U.S. at 788-790. That is a far cry from Plaintiffs' allegation that Yoder merely "knew of [Lisa Miller's] custody case" in Vermont. It is

¹ Plaintiffs' claim that their Amended Complaint alleges more than it does, and that Yoder testified before this Court to things which the Transcript of his testimony (ECF No. 62-2) demonstrates he never actually said, is discussed in detail in Part II. below.

not even alleged that Yoder knew whether Jenkins still resided in Vermont.

The Supreme Court noted in *Calder* that one's ability to "foresee" that his actions may have an effect in the forum state "is not sufficient for an assertion of jurisdiction." *Calder*, at 789 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)). Plaintiffs strain to fit this case into the *Calder* holding by arguing that Yoder and the other "conspirators" acted to help Lisa Miller evade and violate the orders of the Vermont Superior Court, and hence those actions were "aimed at" and "focused upon" the State of Vermont. But that stretches *Calder* well past the Due Process breaking point. Even if Yoder had assisted Lisa Miller (or those who assisted her), the impact of such actions upon the Vermont judicial system was merely foreseeable at best, and thus "not sufficient for an assertion of jurisdiction" under *Calder*.

Plaintiffs' Response to Yoder's Motion to Dismiss attempts to rely upon another "fact" which is never pled in their Amended Complaint: "Mr. Yoder assisted Timothy Miller with the authentication of birth certificate documentation for Lisa Miller." (Pl. Resp., at p. 3.) Although Plaintiffs purport to cite the transcript of Yoder's testimony before this Court during the Kenneth Miller criminal trial² -- *except that Yoder said no such thing!* Yoder's complete testimony on this topic runs from page 9, line 20, through page 12, line 2, and Lisa Miller is never mentioned.³ To the contrary, Yoder testified that he routinely provided information to Timothy Miller about residency requirements, but he *never* said he did so "for Lisa Miller." Plaintiffs blatantly

² See ECF 62-2. Plaintiffs do not contest Yoder's assertion that since their claims incorporate his testimony by reference, this transcript is properly considered by this Court on a Civil Rule 12(b) motion, nor do they dispute Yoder's assertion that any inaccurate recitation of that alleged testimony may be disregarded. See Yoder Motion (ECF No. 62), at p. 2, n. 2, and pp. 10-11. Plaintiffs agree that this Court may take judicial notice of said transcript. See Pl. Resp. (ECF No. 81), at p. 14.

³ The topic was briefly addressed again on cross-examination at page 27, line 25, through page 28, line 7, but Ms. Miller was never mentioned there, either.

mischaracterized Yoder's testimony in their Amended Complaint, and they continue to do so in their briefing.

Regardless, this alleged "fact" has no bearing on Plaintiffs' jurisdictional argument. Even if it were true that Yoder had assisted Timothy Miller in securing Nicaraguan residency for Lisa Miller, that could not constitute an action "expressly aimed" at Vermont, nor would it render Vermont the "focal point" of Yoder's actions. If anything, that would only cement that Nicaragua, not Vermont, was the center of Yoder and Miller's "conspiratorial" acts.

Since *Calder* does not apply to Plaintiffs' claims against Yoder, Plaintiffs have failed to establish even a *prima facie* case that Vermont may exercise jurisdiction over Yoder. Since Yoder lacks "minimum contacts" with Vermont, the Due Process Clause of the Fourteenth Amendment prevents this Court from exercising jurisdiction over Yoder, and it is not even necessary to analyze the "reasonableness" of doing so. This Court should dismiss Yoder from this action.

B. RICO does not provide for jurisdiction over Yoder.

Plaintiffs ask this Court to apply the wrong test to their assertion of jurisdiction under 18 U.S.C. §1965(b), and then compound that error by misapplying both the test this Court should apply and the test Plaintiffs seek to employ. This Court should conclude that the "ends of justice" do not require it to exercise jurisdiction over Yoder and the other foreign defendants in this action.

Preliminarily, Yoder notes that any attempt to base jurisdiction on 18 U.S.C. §1965(b) must be premised upon a colorable civil RICO conspiracy claim against him. Plaintiffs have failed to state a RICO claim against Yoder, as detailed in part II. below, and hence their argument that personal jurisdiction exists under RICO must be disregarded by this Court.

Regardless of whether Plaintiffs have stated any *other claims* against Yoder, or whether they have stated RICO conspiracy claims against *other Defendants*, unless this Court finds that Plaintiffs have stated a valid RICO claim against Yoder, the entire jurisdictional discussion of 18 U.S.C. §1965(b) is moot.

The Second Circuit Court of Appeals, in its seminal decision on RICO jurisdiction, *PT United Can Co., Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65 (1998), affirmed the District Court's usage of the "ends of justice" test set forth in *Butcher's Union Local No. 498 v. SDS Inv., Inc.*, 788 F.2d 535 (9th Cir. 1986). Under that test, the "ends of justice" only require the exercise of jurisdiction when there is no other district which has personal jurisdiction over all the defendants. *PT United Can*, at 71, n.5 (citing *Butcher's Union*, 788 F.2d at 538-539). That comports with the purpose of 18 U.S.C. §1965(b) to ensure that there is some district in which the case can be brought against all the alleged participants; before a court can compel foreign defendants to appear via RICO's nationwide service of process provisions, it must find that it is, in essence, the only option other than piecemeal litigation. *Id.* at 70-72.

As the Liberty Defendants point out, *every* court in the Second Circuit to consider this issue following *PT United Can* has interpreted it as adopting the *Butcher's Union* "ends of justice" test. *See* Liberty Reply (ECF No. 94), at pp. 16-17; Liberty Motion (ECF No. 66), at pp. 29-30. That is unsurprising, given the Second Circuit's "conclu[sion] that the natural reading given to §1965(b) by the 9th Circuit in *Butcher's Union* and the district court here was correct". *PT United Can*, 138 F.3d at 72. Nevertheless, Plaintiffs urge this Court to go out on a limb and instead apply the Tenth Circuit's "ends of justice" analysis from *Corey v. Aztec Steel Building, Inc.*, 468 F.3d 1226 (2006), which Plaintiffs characterize as "flexible and case-specific." (Pl. Resp., at p. 11.) Thus, although it is doubtful whether even the *Corey* court would have found

jurisdiction herein under 18 U.S.C. §1965(b),⁴ Plaintiffs argue that this Court should apply its view of the “ends of justice.”

Plaintiffs’ laborious attempt to avoid application of the *Butcher’s Union* “ends of justice” test undercuts their half-hearted argument that there is jurisdiction over Yoder under that test. Without a scintilla of evidence, Plaintiffs boldly claim that “Vermont would still properly exercise jurisdiction over Yoder in this case because Andrew Yoder and CAM ... lack contacts with Virginia,” the alternative district suggested by Defendants. (Pl. Resp., at p. 11.) Plaintiffs have no idea whether that statement is true, yet make it the cornerstone of their argument anyway. To establish their *prima facie* case that jurisdiction exists under 18 U.S.C. §1965(b), Plaintiffs must establish that “the ends of justice require” jurisdiction in Vermont -- i.e., that no other judicial district has jurisdiction over all Defendants -- and they have not done so. Plaintiffs’ showing requires something more than a wholly-unsupported statement in a responsive brief.

Moreover, so there is no confusion on this topic, Plaintiffs are simply wrong: Yoder and CAM both concede that they would be subject to personal jurisdiction in the Western District of Virginia.

Implicitly acknowledging their failure to satisfy the “ends of justice” test, Plaintiffs instead argue that under the “flexible and case-specific” analysis of *Corey*, the “ends of justice” require that Ms. Jenkins not be inconvenienced by having to pursue her “financial pressure”

⁴ See Liberty Defs. Reply (ECF No. 94), at p. 17.

lawsuit elsewhere.⁵ Plaintiffs seem to forget that the central focus of any jurisdictional inquiry is upon the *Defendant*, and whether his Constitutional right to Due Process is being met. *See, e.g., Goodyear Dunlap Tires Operations*, 131 S.Ct. at 2853. Whether Ms. Jenkins is a Vermont resident or whether other Defendants have been criminally prosecuted in Vermont is immaterial to whether compelling Yoder to appear in a jurisdiction where he has **never** voluntarily interacted passes Constitutional muster. As the *PT United Can* court held, “[18 U.S.C.] §1965 does not provide for nationwide personal jurisdiction over every defendant in every civil RICO case, no matter where the defendant is found.” 138 F.3d at 71. Further, “Congress has expressed a preference in §1965 to avoid, where possible, haling defendants into far flung fora.” *Id.* at 72. Vermont is a “far-flung” forum for Yoder, and this Court should dismiss him from this action.

C. Plaintiffs are not entitled to jurisdictional discovery.

Plaintiffs conclude with a “motion” for unspecified jurisdictional discovery. (ECF No. 75, at pp. 52-53.) Yoder incorporates by reference the responses thereto of the Liberty Defendants (ECF No. 94, at pp. 19-21) and Pastor Wright (ECF No. 98, at pp. 12-13). Even if this Court treats Plaintiffs’ vague and open-ended “motion” as a proper request for jurisdictional discovery, they have failed to establish that any such fishing expedition would accomplish anything.⁶

Discovery would be particularly futile as to Yoder, against whom Plaintiff alleges neither general nor specific jurisdiction. The un rebutted Affidavit of Andrew Yoder (ECF No. 62-1)

⁵ Nothing is more telling about Plaintiffs’ motives and tactics than Ms. Jenkins’ extraordinary admission that the point of her lawsuit is to exert “financial pressure [on Defendants] in order to achieve justice.” *See* ECF No. 75, at p. 30, n. 7.

⁶ On the other hand, allowing Plaintiffs to conduct discovery certainly would advance Ms. Jenkins’ stated goal of exerting “financial pressure” upon Yoder and the other Defendants.

establishes that he has had absolutely no contacts with Vermont, other than those compelled by subpoena. No amount of discovery could transform Plaintiffs' allegations against Yoder so as to make Vermont their "focal point" in order to confer jurisdiction under *Calder*. Similarly, no amount of discovery is going to affect whether the "ends of justice" require this lawsuit to proceed in Vermont.⁷ Allowing discovery would do nothing but needlessly prolong this matter, and therefore this Court should exercise its discretion to deny Plaintiffs' request.

II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST YODER.

Plaintiffs' claims against Yoder are based entirely on Yoder's alleged testimony during the criminal trial of Kenneth Miller. The best evidence of that testimony, of course, is the certified transcript of proceedings, *see* Yoder Motion Exh. 2 (ECF No. 62-2), of which Plaintiffs concede this Court may take judicial notice. *See* Pl. Resp. (ECF No. 81), at p. 14.

Plaintiffs do not deny that the transcript demonstrates the errors in their allegations against Yoder in the Amended Complaint, as detailed in Yoder's Motion to Dismiss. Instead, their Response relies upon further distortions and erroneous readings of Yoder's testimony, while failing to cite a single relevant case in support of their purely speculative and conclusory allegations. The Amended Complaint against Yoder should be dismissed.

A. Plaintiffs' allegations about Yoder's alleged conspiratorial activities are untrue and unsupported by the transcript of Yoder's testimony.

Contrary to Plaintiffs' assertions that Yoder "received communication from Timothy Miller in his capacity as CAM employee, seeking instruction on how to allow Lisa Miller to remain in Nicaragua and obtain residency," (ECF No. 81, p. 14), the transcript says nothing at all

⁷ Perhaps if there were some question about whether Yoder and/or CAM were subject to jurisdiction in an alternative forum such as the Western District of Virginia, discovery on that point would be warranted. But they each concede that Virginia is a proper forum, eliminating any such justification for discovery.

about Lisa Miller in this context. *See*, Yoder Motion Exh. 2 (ECF No. 62-2), at p. 10. Likewise, the transcript is devoid of testimony that Timothy Miller was in touch via email with Yoder's supervisor at CAM in Ohio "about getting Lisa Miller residency in Nicaragua." (ECF No. 81, p. 14). *See id.*, at pp 10-11. Both of these allegations misrepresent Yoder's sworn testimony, and completely ignore Yoder's consistent (and uncontroverted) testimony that Yoder and CAM did not provide any support or aid to Lisa Miller whatsoever. *See id.*, at pp. 17, 18, 24, 37.

Likewise, Plaintiffs' assertion that "Yoder's testimony shows that he believed that the money he was transporting to Nicaragua was for Lisa Miller" (ECF No. 81, at p. 16) is not accurate. To this day, Yoder does not know if the check had anything to do with Lisa Miller. His actual testimony was that he thought the money possibly could have connections to Lisa Miller, but that it was also possible that the check had nothing to do with her. *See*, Yoder Motion Exh. 2, at pp. 24, 38. Plaintiffs should not be permitted to maintain a lawsuit based upon "facts" to which "Andrew Yoder testified under oath" (Am. Compl., at ¶53), when the transcript of his testimony fails to support those alleged "facts".

B. The Amended Complaint Fails to State a Claim of Conspiracy to Commit the Tort of Kidnapping.

Plaintiffs' argument that the Amended Complaint adequately alleges Yoder's participation in a conspiracy to kidnap Isabella is debunked by the very cases that Plaintiffs cite in their Response. Plaintiffs have failed to cite a single case involving civil, as opposed to criminal, conspiracy. That aside, the cases simply do not support their arguments, and leave the arguments set forth in Yoder's Motion to Dismiss unchallenged. Specifically, since there is no recognized private right of action under Vermont or federal law for the intentional tort of

kidnapping, there can be no private right of action for conspiracy to commit kidnapping. *Buck v. Prupis*, 529 U.S. 494, 120 S. Ct. 1608 (2000).

Even if an underlying right of action existed, however, the allegations in the Amended Complaint fall far short of meeting the standard necessary to survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss as articulated in *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). As the cases cited by Plaintiffs state, without an agreement between conspirators, there can be no conspiracy.

As a matter of law, the crime of conspiracy must involve the agreement of two or more persons to commit a criminal act or acts...

United States v. Gore, 154 F.3d 34, 40 (2d. Cir. 1998).

Finding that it would be “sheer speculation for jurors to conclude that an agreement to distribute drugs had been made,” the *Gore* court reversed the conspiracy conviction because “[t]he government has not satisfied the most basic element of the conspiracy charge – to show agreement to distribute drugs between [the defendant] and another person...” *Id.* at 41.

Likewise, in the only other case cited by Plaintiffs in support of their argument that Yoder was part of a conspiracy to commit kidnapping, the Second Circuit reiterated that, “the agreement between the party charged and his co-conspirators is the gist of the crime of conspiracy,” *U.S. v. Nusraty*, 867 F. 2d 759, 763 (2d. Cir. 1989), and made it clear that “suspicious circumstances...are not enough to sustain a conviction for conspiracy.” *Id.* at 763. *See also, United States v. Tyler*, 758 F. 2d 66, 68-70 (2d. Cir. 1985) (although there was evidence of defendant’s involvement in a drug sale, there was insufficient evidence of an agreement between the defendant and the dealer); *United States v. Young*, 745 F. 2d 733, 764 (2d. Cir.

1984) (rifle hidden in an apartment and suspicious wealth and dealing showed only that defendant was “aware of the conspiracy and associated with some of its members ... [not] that she was a knowing participant in it.”). Furthermore, “a defendant’s mere presence at the scene of a criminal act or association with conspirators does not constitute intentional participation in the conspiracy *even if the defendant has knowledge of the conspiracy.*” *U.S. v. Lorenzo*, 534 F.3d 153 (2d. Cir. 2008), quoting *United States v. Samarier*, 239 F.3d 228, 235 (2d. Cir. 2001) (emphasis added). “Mere association with those implicated in an unlawful undertaking is not enough to prove knowing involvement.” *Tyler, supra* at 764.

Neither the Amended Complaint nor the litany of Yoder’s activities cited in Plaintiffs’ Response come close to making an allegation that an agreement existed between Yoder and any of the others alleged to have participated in a conspiracy to commit kidnapping. The allegations that Timothy Miller sought instruction from Yoder and his supervisor in Ohio about obtaining residency *for Lisa Miller* in Nicaragua are not supported by Yoder’s testimony, and the allegations about Yoder cashing a check from Kenneth Miller’s employer and delivering the cash to Timothy Miller, amount to nothing more than circumstances which, if viewed in the light most favorable to the Plaintiffs, might be considered suspicious. As stated in *Nusraty, supra*, at 763, “suspicious circumstances” are insufficient to establish a conspiracy.

Plaintiffs allege absolutely nothing else about Yoder other than that Yoder was associated with Timothy Miller and Lisa Miller in Nicaragua, and that he had knowledge of Lisa Miller’s custody battle. Yoder’s activities cited by Plaintiffs fall far short of the requisite allegation of an agreement between Yoder and any of the co-conspirators, let alone providing “evidence of conspiracy,” as Plaintiffs allege. The claim does not meet the *Twombly* standard and must therefore be dismissed.

C. **The Amended Complaint Fails to State a Claim Against Yoder for Conspiracy to Violate RICO.**

The central and essential requirement for a finding of any conspiracy, including a RICO conspiracy, is an agreement with others to pursue a shared illegal objective. “Because the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement.” *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d. Cir. 1990). In the absence of an agreement to violate RICO’s substantive provisions, a RICO conspiracy cannot be established.

Plaintiffs’ Amended Complaint fails to allege any such agreement on the part of Yoder, except by virtue of its purely conclusory allegation, that Defendant Kenneth Miller conspired with others, including Yoder, in commission of a violation of 18 U.S.C. §1962(c) through a pattern of racketeering. *See* Am. Compl. (ECF No. 59), at ¶72. This allegation is insufficient to state a claim for relief. *Twombly, supra*.

In an attempt to persuade this Court that their conclusory allegations are supported by fact, Plaintiffs assert that “it is clearly alleged that CAM, through its agent Andrew Yoder, did enter into agreements to commit at least two predicate acts...first...that Andrew Yoder agreed and conspired to kidnap Isabella Miller-Jenkins, and that he joined that conspiracy in advance of the September 25, 2009 visitation, with full knowledge of the Vermont Superior Court’s orders. Second...that Yoder engaged in mail fraud by receiving the laundered money from Kenneth Miller, and cashing a check from Millmont Greenhouses, knowing that he was not owed any money from Millmont for a fictitious coffee purchase.” *See* Pl. Resp. to CAM Motion (ECF No. 83), at pp. 7-8. *No such agreement is alleged*, however, let alone “clearly alleged” in the Amended Complaint, which states *only* that “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.”⁸ (ECF No.59, at ¶53). In the same paragraph, the Amended Complaint alleges that Yoder testified that Lisa Miller was receiving aid from CAM in Nicaragua. As fully briefed in Yoder’s Motion (ECF No. 62), Yoder testified to no such thing. On the contrary, he testified clearly, and repeatedly, that Lisa Miller received no aid from CAM.

Despite Plaintiffs’ best efforts to create factual assertions of Yoder’s involvement in a RICO conspiracy, they have not, and cannot, do so. The first alleged “predicate act” is, itself, nothing more than a conclusory allegation. The second “predicate act” is a mischaracterization of Yoder’s testimony in the Kenneth Miller trial.

In further support of its position that the Amended Complaint fails to state a viable claim of RICO conspiracy, Yoder incorporates by reference the arguments set forth in section G of the Reply of Defendants Liberty University, Inc., *et al.* (ECF No. 94), pp. 23-30.

D. The Amended Complaint Fails to State a Claim of Conspiracy to Violate Plaintiffs’ Civil Rights Under 42 U.S.C. §1985(3).

Since Plaintiffs’ Response fails to address the insufficiency of the allegations against CAM and Yoder with regard to their alleged participation in a conspiracy to violate Plaintiffs’ civil rights under 42 U.S.C. §1985(3), that claim is presumed to be abandoned. In the event Plaintiffs seek nevertheless to pursue that claim against Yoder, the argument set forth in Yoder’s Motion to Dismiss is reiterated and incorporated herein, and the well-reasoned arguments set forth in the Reply of Defendants Liberty University, Inc., *et al.* (ECF No. 94, at pp. 31-35), and

⁸ As discussed above, Yoder did not testify that he “believed” the cash was related to Lisa. His testimony was that he thought the money might possibly be connected with her, but that he did not, and does not, know if that is the case. *See*, ECF No. 62-2, at pp. 24, 38.

the Reply Memorandum of Douglas Wright (ECF No. 98, at pp. 16-24) are adopted and incorporated by reference herein.

III. CONCLUSION

Based upon this Court's lack of personal jurisdiction over Andrew Yoder, and the failure of the Amended Complaint to state any legally sufficient claim for relief against Yoder, Yoder is entitled to the dismissal of all claims against it under Fed. R. Civ. P. 12(b)(2) and 12(b)(6).

Respectfully submitted,

McCormick, Fitzpatrick, Kasper & Burchard, P.C.

By: /s/ Thomas E. McCormick
Thomas E. McCormick, Esq.
40 George Street
P.O. Box 638
Burlington, VT 05402-0638
Email: tem@mc-fitz.com
PH: (802) 238-5577

and

Critchfield, Critchfield & Johnston, Ltd.

By: /s/ Steven J. Shrock
/s/ Peggy J. Schmitz
Steven J. Shrock (#0060025)
Peggy J. Schmitz (#0023932)
138 East Jackson Street
Millersburg, Ohio 44654
Email: shrock@ccj.com; schmitz@ccj.com
PH: (330) 674-3055
FAX: (330) 674-4469

*Attorneys for Christian Aid Ministries, Inc. and
Andrew Yoder, individually and as an agent for
Christian Aid Ministries, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to counsel for all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/Thomas E. McCormick
Attorney for Defendant Andrew Yoder

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)	
)	
v.)	CIVIL ACTION NO.: 2:12-CV-00184-WKS
)	
KENNETH L. MILLER, et. al.)	
Defendants)	

CERTIFICATE OF SERVICE

I certify that on this 29th day of April, 2013, I electronically filed with the Clerk of the Court the following document:

Defendant Andrew Yoder's Reply Brief in Support of Motion to Dismiss

using the CM/ECF system. The CM/ECF system will provide service of the filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Frank H. Langrock, Esq., flangrock@langrock.com;

Lisa B. Shelkrot, Esq., lshelkrot@langrock.com;

Sarah Star, Esq., srs@sarahstarlaw.com;

Brooks McArthur, Esq., bmcarthur@jarvismcarthur.com;

Joshua M. Autry, Esq., jmautry@dennisboylelaw.com;

Robert B. Hemley, Esq., rhemley@gravleshea.com;

Robert G. Cain, Esq., rcain@pfclaw.com;

Sophie Zdatny, Esq., szdatny@dinse.com; and

Ritchie E. Berger, rberger@dinse.com.

Dated at Burlington, Vermont, this 29th day of April, 2013.

McCORMICK, FITZPATRICK,
KASPER & BURCHARD, P.C.

/s/ Thomas E. McCormick
Thomas E. McCormick, Esq.
40 George Street/P.O. Box 638
Burlington, VT 05402-0638
(802) 863-3494
tem@mc-fitz.com