

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

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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.

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**DEFENDANT CHRISTIAN AID MINISTRIES, INC.’S  
REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS**

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NOW COMES Defendant Christian Aid Ministries, Inc. (“CAM”), by and through its undersigned counsel, to hereby submit this Reply to Plaintiffs’ Response (ECF No. 83) to its Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted and for Lack of Personal Jurisdiction (ECF No. 63) (“CAM Motion”). Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), alternatively, this Court should dismiss Plaintiffs’ claims against CAM.

**I. THIS COURT LACKS PERSONAL JURISDICTION OVER CAM.**

Plaintiffs primarily rely upon the same two flawed arguments in support of jurisdiction over CAM which they advanced in regard to Defendant Andrew Yoder (“Yoder”): first, that Yoder, acting as CAM’s agent, committed an intentional tort purposefully directed toward Vermont, thereby allowing this Court to exercise jurisdiction under *Calder v. Jones*, 465 U.S.

783 (1984); and, second, that Yoder, acting as CAM's agent, participated in a civil RICO conspiracy, thereby triggering jurisdiction over CAM under 18 U.S.C. §1965(b), because "the ends of justice require." *See* Pl. Resp. (ECF No. 83), at pp. 13-15, 18-22. Those arguments are thoroughly rebutted in Yoder's Reply Brief (ECF No. \_\_\_\_\_), at pp. \_\_\_\_\_, which CAM hereby incorporates by reference.

Plaintiffs also advance a half-hearted argument that CAM is subject to general jurisdiction in Vermont. *See* Pl. Resp. (ECF No. 83), at pp. 12-13. Plaintiffs do not even attempt to argue that CAM is subject to specific jurisdiction here, implicitly conceding that their claims do not arise from any of CAM's (or Yoder's) alleged contacts with Vermont. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

Therefore, CAM's Reply will address Plaintiffs' contention that this Court has general jurisdiction over CAM, and their implicit argument that Yoder's alleged acts can serve as a basis for imposing jurisdiction over CAM.

**A. CAM does not have "minimum contacts" with Vermont.**

Plaintiffs' description of CAM's allegedly "continuous and systematic" contacts with Vermont rests precariously upon four "facts": (1) "CAM is a nonprofit corporation with worldwide reach"; (2) "CAM solicits donations via its website [and] received donations from Vermont in the amount of approximately \$8,000 per year"; (3) CAM's alleged agent, Yoder, "travelled to Vermont twice to participate in proceedings related to Kenneth Miller"; and (4) other unidentified alleged CAM agents "voluntarily travelled to Vermont to attend the court proceedings involving Kenneth Miller and while in Vermont, distributed CAM materials, specifically CD's, to Vermont residents." *See* Pl. Resp. (ECF No. 83), at pp. 12-13.

Even if true, these allegations together still fall well short of establishing the sort of

“continuous corporate operations within a state [which are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.” *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). Before considering these assertions together, however, each of them warrants individual scrutiny, to illustrate how Plaintiffs have distorted their own supporting evidence.

Plaintiffs’ first contention, that CAM’s charitable activities have a “worldwide reach”, is both accurate and immaterial. The question is not whether CAM provides humanitarian aid and disaster relief to various places around the world, the question is whether CAM has any contact *with Vermont*. Plaintiffs have not contested CAM’s evidence that it does not conduct any operations in Vermont and never has; it does not own or lease property in Vermont and never has; it does not employ Vermont residents and never has; it does not maintain offices or facilities in Vermont and never has; it does not deal with vendors in Vermont and has not for a decade; it has never registered to do business in Vermont, never been qualified to do business in Vermont, never appointed agents in Vermont, never banked or held assets in Vermont, nor paid taxes to Vermont; and it has never even provided disaster response services within Vermont. *See* Affidavit of Roman Mullet (ECF No. 63-2), at ¶¶4-13. CAM has a presence in numerous states and foreign countries, but it is undisputed that it does not have a presence in Vermont.

Under Plaintiffs’ logic, any corporation or organization which has a significant international presence, and hence a “worldwide reach”, would be subject to jurisdiction in any district or state, regardless of its own activities or lack thereof in that forum. That is completely at odds with every Supreme Court decision on personal jurisdiction since *International Shoe*, and earlier. The entire concept of “continuous and systematic” contacts with the forum state would be blown away by Plaintiffs’ theory. The fact that CAM operates in Nicaragua, or Romania, or

Louisiana has absolutely no bearing upon whether it operates in, and hence is subject to jurisdiction in, Vermont. *See, e.g., J. McIntyre Mach., Ltd. v. Nicastro*, 131 S.Ct. 2780, 2787 (2011) (“those who live or operate primarily outside a state have a due process right not to be subject to judgment in its courts”).

Plaintiffs next contend that since CAM solicits donations on its website, which is accessible in Vermont, and has received the whopping sum of almost \$8,000 a year from Vermont residents, CAM has “purposefully availed” itself of the privilege of doing business in Vermont, and is subject to jurisdiction. It is well-established that the operation of a website which is not targeted towards a particular forum does not confer general jurisdiction. *See, e.g., Viko v. World Vision, Inc.* 2:08-CV-221, 2009 WL 2230919, \*12-13 (D.Vt. July 23, 2009); *see also* Liberty Defs. Reply (ECF No. 94), at p. 3, n. 3. It is also well-established that when the forum state accounts for only nominal percentages of sales revenues -- or, by extension, donations -- that is not sufficient to confer general jurisdiction. *See* ECF No. 94, at p. 2, n. 2. It is uncontroverted that \$8,000 is less than one hundredth of one percent (0.01%) of CAM’s total annual support. *See* Aff. of Roman Mullet (ECF No. 63-2), at ¶14. Jurisdiction cannot rest upon such attenuated contacts. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

Plaintiffs offer no support for their contention that Andrew Yoder’s involuntary appearances in Vermont to testify pursuant to government subpoenas somehow confers general jurisdiction over CAM.<sup>1</sup> A plethora of cases hold that involuntary contacts, such as appearances

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<sup>1</sup> Plaintiffs omit the fact that these trips were compelled by subpoena. Tellingly, Plaintiffs did not even raise this argument as a basis for jurisdiction over Yoder, *see* ECF No. 81, and yet they persist in doing so as to CAM.

pursuant to subpoena, are meaningless for purposes of establishing jurisdiction.<sup>2</sup> (Indeed, one wonders how *two* isolated appearances could amount to a “continuous and systematic” presence in Vermont.) Moreover, both of Yoder’s appearances in Vermont took place after his missionary service with CAM ended, when he no longer had any formal association with CAM. *See* Aff. of Andrew Yoder (ECF No. 62-1), at ¶¶ 3, 11. Plaintiffs’ reliance upon this as a lynchpin of their jurisdictional argument illustrates how tenuous that argument is.

But Plaintiffs’ final “fact” -- the alleged presence of CAM “agents and employees” at Kenneth Miller’s criminal trial, and their alleged distribution of literature – distorts reality to the point that it crosses the line. Plaintiffs cite to an unidentified person’s posting on the “MillerCase.org” website or blog dated August 10, 2012. *See* Pl. Resp. Exh. C (ECF No. 83-3). Plaintiffs do not allege that “MillerCase.org” is related to or associated with CAM in any way -- nor could they, because it is not. Nevertheless, Plaintiffs, *without any support whatsoever*, classify the unidentified individuals (described merely as “we” or “[t]he group” within this posting) as “CAM’s agents and employees [who] voluntarily travelled to Vermont to attend the court proceedings.” *See* Pl. Resp. (ECF No. 83), at pp. 12-13 (emphasis added).

Describing the subjects of the “MillerCase.org” posting as “CAM’s agents and employees” goes way beyond drawing reasonable inferences; it is complete speculation. There is **nothing** to support that conclusion. Even if the individuals somehow could be linked to CAM, what part of the “MillerCase.org” posting remotely suggests that they were acting in the course and scope of an agency or employment relationship, so as to impute their actions to CAM? This is utter nonsense.

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<sup>2</sup> *See, e.g., Burger King Corp. v. Rudzewicz*, 471, U.S. 462, 475 (1985) (unilateral activities of a third person do not constitute purposeful availment); *see also*, Wright Motion (ECF No. 40), at pp. 11-12.

Furthermore, the only mention of CAM in the “MillerCase.org” posting is a passing reference to CAM *literature*, not CAM *agents*: “The group had a good evening of singing, passing out CAM CD’s, and witnessing.” See ECF No. 83-3, at p. 4. It is well-established that placing goods into the stream of commerce does not subject a corporation to suit in any jurisdiction in which those goods eventually may be found. See, e.g., *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Asahi Metal Industry Co., v. Superior Court*, 480 U.S. 102 (1987). “Flow of a manufacturer’s products into the forum ... may bolster an affiliation germane to *specific* jurisdiction [but] do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2855 (2011) (citations omitted). The “fact” that some random unaffiliated persons passed out CAM CDs while in Vermont has no bearing on whether CAM can be forced to appear in Vermont to face claims that have nothing to do with those materials.<sup>3</sup>

Moreover, even if these *were* CAM agents, who *were* in Vermont within the course and scope of their agency or employment, and *were* intentionally distributing CAM materials in Vermont, that is a single, isolated incident entirely unrelated to CAM’s alleged wrongdoing. That is not the sort of “continuous and systematic” contact with Vermont which gives rise to general jurisdiction. See, e.g., *International Shoe*, 326 U.S. at 318 (“single or occasional” acts within a state are not sufficient to subject a corporation to suit on matters unrelated to those acts).

Thus, upon analysis, Plaintiffs seek to impose jurisdiction upon CAM based upon the following four grounds: (1) CAM operates in various parts of the United States and world, but not at all in Vermont; (2) CAM’s website attracts donations from Vermont residents which total

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<sup>3</sup> See also Liberty Defs. Reply (ECF No. 94), at pp. 10-12, discussing Plaintiffs’ attempt to base jurisdiction over Thomas Road Baptist Church on lawful First Amendment activities by its alleged “members.”

less than 0.01% of CAM's annual support; (3) a former CAM employee involuntarily appeared in Vermont twice pursuant to subpoena; and (4) unknown persons with no discernable connection to CAM distributed an unknown number of CAM CD's on a single occasion. Those facts do not satisfy Plaintiffs' burden of establishing a *prima facie* case for jurisdiction over CAM. At best, they demonstrate a nominal, almost non-existent connection between CAM and Vermont, which decades of Supreme Court precedent has held insufficient to support the exercise of jurisdiction. This Court should grant CAM's Motion and dismiss it from this action for lack of personal jurisdiction.

**B. Plaintiffs have failed to allege that Yoder was acting as CAM's agent at the time of the acts which purportedly give rise to jurisdiction under *Calder v. Jones* or RICO.**

Plaintiffs premise their arguments in favor of jurisdiction over CAM under both *Calder v. Jones* and 18 U.S.C. §1965(b) upon the alleged actions of Yoder. Plaintiffs further characterize Yoder, without any discussion whatsoever, as CAM's "agent", and hence assume that Yoder's conduct automatically serves as the foundation for this Court's exercise of jurisdiction over CAM.

CAM does not quarrel with the notion that **if** Yoder undertook actions in the course and scope of an agency or employment relationship with CAM that conferred jurisdiction over Yoder under either *Calder* or RICO, such actions would also confer such jurisdiction over CAM. But Plaintiffs skip a step in the analysis. Although they assert Yoder to have been CAM's agent, they do not allege sufficient facts to establish that he was acting as CAM's agent *while doing the things upon which jurisdiction is based in this action.*

In other words, part of Plaintiffs *prima facie* case that jurisdiction exists over CAM is establishing that Yoder was CAM's agent at the relevant times. Agency is not a factual

allegation which this Court must accept as true; it is a legal conclusion which the Plaintiffs must allege sufficient facts to allow this Court to draw. *See* Liberty Defs. Reply (ECF No. 94), at pp. 7-8, 11-12. Plaintiffs have not done so.

Plaintiffs' entire case against Yoder -- and, by extension, against CAM -- rests upon three contentions: (1) Yoder couriered funds from Kenneth Miller to Timothy Miller which allegedly were associated with Lisa Miller; (2) Yoder assisted Timothy Miller in authenticating documents for Lisa Miller;<sup>4</sup> and (3) Yoder and CAM provided unspecified "aid" to Lisa Miller while she was in Managua. *See* Pl. Resp. (ECF No. 83); Am. Compl. (ECF No. 59), at ¶53. Plaintiffs have not established that Yoder was acting in the course and scope of his employment with CAM when he allegedly did those acts.

As detailed in CAM's Motion to Dismiss, Plaintiffs' allegations regarding Yoder's handling of the Millmont Greenhouses check cannot be imputed to CAM because (1) Yoder was on furlough from his employment, and (2) (if the check truly was related to Lisa Miller) his participation was directly contrary to CAM's instructions. *See* ECF No. 63, at pp. 7-9, 16-17. Plaintiffs stretch to fill the gap when they argue that since Yoder's job duties generally involved providing aid to people in need, any aid he might have provided to Lisa Miller was done within the course and scope of his employment. *See* Pl. Resp. (ECF No. 83), at p. 9. By that logic, if a bus driver causes an accident while operating his personal automobile to take his children to soccer practice, he was acting in the course and scope of his employment, since his general job

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<sup>4</sup> This allegation is made for the first time in Plaintiffs' responses (ECF Nos. 81 and 83), and appears nowhere in Plaintiffs' Amended Complaint. If that is not enough reason to disregard it, the fact that it is demonstrably false -- Yoder *never* said that such acts involved or pertained to Lisa Miller -- should be. *See* Yoder Reply (ECF No. 100), at pp. 4-5.

duties are to transport people in a motor vehicle. That is absurd.

While Plaintiffs' failure to establish CAM's vicarious liability for Yoder's alleged actions is most pertinent in the context of CAM's 12(b)(6) motion, *see* II. below, it also applies to Plaintiffs' attempt to assert jurisdiction over CAM on the basis of Yoder's alleged intentional acts directed at the forum. Regardless of whether this Court deems those acts sufficient to confer jurisdiction over *Yoder*, they are not also sufficient to confer jurisdiction over *CAM* in the absence of additional facts supporting a finding that they were undertaken in the course and scope of his employment. Accordingly, this Court should dismiss Plaintiffs' claims against CAM for lack of personal jurisdiction.

**C. Plaintiffs are not entitled to jurisdictional discovery.**

Plaintiffs' "motion" for unspecified and open-ended jurisdictional discovery is no more appropriate as to CAM than it is as to the Liberty Defendants, Pastor Wright, or Yoder, whose responses thereto are incorporated herein by reference. *See* ECF No. 94, at pp. 19-21; ECF No. 98, at pp. 12-13; ECF No. 100, at pp. 8-9.

Regarding CAM in particular, there is nothing which Plaintiffs could hope to discover that would alter the jurisdictional analysis. Plaintiffs do not contest CAM's evidence establishing its lack of contacts with Vermont. *See* *Aff. of Roman Mullet* (ECF No. 63-2). Moreover, as the Liberty Defendants aptly observed, Plaintiffs have demonstrated their ability to scour obscure sources and to produce "evidence" which merely references CAM, so any contention that the lack of discovery to date has hamstrung their efforts rings hollow. There are no factual disputes relating to jurisdictional issues, which one might expect discovery to illuminate. Rather, this aspect of the case turns entirely upon the legal analysis of undisputed facts. Thus, no amount of discovery will transform this Court into a proper forum for Plaintiffs'

lawsuit. This Court should deny Plaintiffs' request.

**II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST CAM.**

Plaintiffs' claims against CAM 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* CAM Motion Exh. 1 (ECF No. 63-1), of which Plaintiffs concede this Court may take judicial notice. *See* Pl. Resp. (ECF No. 83), at p. 3.

Plaintiffs do not deny that the transcript demonstrates the errors in their allegations against CAM and Yoder in the Amended Complaint as set forth in CAM'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 CAM 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. 83, p. 4), the transcript says nothing at all about Lisa Miller in this context. *See*, CAM Motion Exh. 1 (ECF No. 63-1), 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. 83, p. 4). *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 CAM did not provide any support or aid to Lisa Miller. *See id.*, at pp. 17, 18, 24, 37. Plaintiffs should not be

permitted to maintain a lawsuit against CAM 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 CAM’s and 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 CAM’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 CAM 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 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 CAM (or 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 CAM (or 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, which he passed along to CAM. Yoder's activities cited by Plaintiffs fall far short of the requisite allegation of an agreement between CAM (or 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 CAM 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 CAM, except by virtue of its purely conclusory allegation that Defendant Kenneth Miller conspired with others, including CAM, 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. (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.” (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 CAM’s Motion (ECF No. 63), 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 CAM’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, CAM 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 CAM, the argument set forth in CAM'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 the Reply Memorandum of Douglas Wright (ECF No. 98, at pp. 16-24) are adopted and incorporated by reference herein.

**E. CAM has no vicarious liability for the actions of Andrew Yoder**

Regardless of how many times the Plaintiffs repeat their mischaracterizations of Yoder's testimony which masquerade as factual allegations in the Amended Complaint, Plaintiffs have not stated, and cannot state, a claim against CAM based on vicarious liability for the actions of Andrew Yoder.

Neither CAM nor Yoder ever provided material aid to Lisa Miller. More importantly, for the purpose of CAM's Motion, Yoder **never testified** that either he or CAM provided aid to Lisa Miller. This allegation in the Amended Complaint is simply and completely at odds with the transcript of his testimony (ECF No. 63-1). The testimony upon which the Plaintiffs base their distorted allegations that CAM, through Yoder, provided aid to Lisa Miller in Nicaragua consist only of the following:

- While on furlough in the United States in May of 2010, Andrew Yoder received and cashed a check from Millmont Greenhouse at the request of Timothy Miller,

and delivered the cash to Miller when he returned to Nicaragua. *Lisa Miller was never mentioned in connection with the transaction and, in fact, was no longer living in Managua at the time of the transaction.* CAM Motion Exh. 1 (ECF No. 63-1), at pp. 19-24; 37.

- On September 22, 2009, Timothy Miller asked Andrew Yoder about the current requirements for residency in Nicaragua. *Again, there was no mention of Lisa Miller in connection with the inquiry.* CAM Motion Exh. 1 (ECF No. 63-1), at p. 10.
- On October 26, 2009, an email was sent to Kim Eichorn, a CAM employee in Ohio, concerning birth certificate authentication. *There is no indication that the inquiry had anything to do with Lisa Miller.* CAM Motion Exh. 1 (ECF No. 63-1), at pp. 10-11.

It is impossible to discern from this testimony that either CAM or Yoder provided aid to Lisa Miller. Plaintiffs' allegations that Yoder testified that CAM provided aid to Lisa Miller are simply erroneous, and cannot be used as a basis for stating a claim against either Yoder or against CAM on an agency theory.

Instead of citing any Vermont law on the issue of apparent authority, Plaintiffs cite the Connecticut case of *Belanger v. Village Pub I, Inc.*, 26 Con. App. 509 (1992), but the case is inapposite. Since Andrew Yoder provided no aid to Lisa Miller, the issue of whether he acted with apparent authority in furtherance of CAM's business is moot.

### **III. CONCLUSION**

Based upon this Court's lack of personal jurisdiction over CAM, and the failure of the Amended Complaint to state any legally sufficient claim for relief against CAM, CAM 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.**

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**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  
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UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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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 Christian Aid Ministries, Inc.'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:

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

McCORMICK, FITZPATRICK,  
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