

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,  
Plaintiffs,

v.

KENNETH MILLER, ET AL.,  
Defendants.

Docket No. 2:12-cv-184

PLAINTIFFS' REPLY TO MOTION TO COMPEL JURISDICTIONAL DISCOVERY  
FROM RESPONSE UNLIMITED, INC.

NOW COME Plaintiffs Janet Jenkins, et al., by and through their attorneys Langrock Sperry & Wool, LLP, and hereby reply to the Response of Response Unlimited, Inc., ("RUL") to Plaintiffs' Motion to Compel.

The discovery sought from RUL is necessary for determining jurisdiction. Vermont's long-arm statute specifically permits personal jurisdiction based on imputed conduct. *See* 12 V.S.A. § 913(b) ("Upon the service, and if it appears that the contact with the state by the party or the activity in the state by the party or the contact or activity imputable to him is sufficient to support a personal judgment against him, the same proceedings may be had for a personal judgment against him as if the process or pleading had been served on him in the state.") (emphasis added). Thus, it is necessary to ascertain what conduct may be imputed to RUL. The ultimate determination of jurisdiction must be made by this Court, not by RUL in deciding whether to provide or withhold discovery. The Court has ordered jurisdictional discovery, and RUL has failed to comply with the Court's directive by stonewalling Plaintiffs' tailored discovery requests. Plaintiffs therefore have been forced to move to compel a response under F.R.C.P. 37.

RUL has designated its sales manager, rather than its owner, Philip Zodhiates, who would be in the best position to respond for the corporation, to answer Plaintiffs' jurisdictional discovery. Nevertheless, RUL has an ongoing obligation to provide all information available to the corporation, i.e., all information known by any of its officers, agents, or employees. *See* F.R.C.P. 33(b)(1)(B) (if the party is a corporation, the interrogatories may be answered "by any officer or agent, who must furnish the information available to the party," i.e., the corporation); *Weddington v. Consol. Rail Corp.*, 101 F.R.D. 71, 74 (N.D. Ind. 1984) ("[T]here is a duty on the part of corporate entity to discover all information available to it through its officers, employees and others.") (emphasis added). The interrogatory responses are binding on the corporation and must reflect the personal knowledge of all relevant individuals, which would include Zodhiates and Victoria Hyden. *See Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1210 (8th Cir. 1973) ("[K]nowledge of officers and employees of [the corporation], relative to the subject matter of the instant cause, is imputed to the corporation itself."). To the extent any interrogatory responses provided by RUL do not include the personal knowledge of Zodhiates, Hyden, and all other RUL employees and agents, they are incomplete.

Jurisdiction over RUL can arise from either RUL's actions or the actions of RUL's agents. These agency relationships are the primary goal of Plaintiffs' targeted jurisdictional discovery, although Plaintiffs also sought additional information regarding RUL's contacts with Vermont.<sup>1</sup> Contrary to RUL's assertions, Plaintiffs' discovery requests are narrowly focused on these jurisdictional issues.

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<sup>1</sup> Plaintiffs' jurisdictional discovery request included multiple interrogatories regarding RUL's own contacts with Vermont. Because RUL provided an adequate response, those interrogatories are not subject to the instant Motion to Compel.

“An agent’s contacts are imputable to the principal for the purposes of establishing personal jurisdiction where ‘(1) the agent acted within the scope of actual or apparent authority bestowed by the principal; or (2) the principal ratified the agent’s actions after the fact.’” *Shovah v. Mercure*, 2013 WL 4736836 (D. Vt. Sept. 3, 2013) (quoting *Lakeside Equip. Corp. v. Town of Chester*, 173 Vt. 317, 324 (2002)); *see also Myers v. Bennett Law Offices*, 238 F.3d 1068, 1073 (9th Cir. 2001)). Thus, discovery requests related to the issues of actual agency, apparent agency, or ratification are all permissible within the limited scope of jurisdictional discovery. Although an agency relationship can be explicit, it may also be implied from circumstances, and can arise from a single instance. *See State v. Poutre*, 154 Vt. 531, 581 A.2d 731, 735 (1990) (“An agency relationship may be implied from the circumstances of a particular situation, and can arise from a single transaction.”). Thus, while specific incidents are important, information regarding context and circumstances are essential to making an accurate agency determination. Plaintiffs’ Motion to Compel explained the basis for each of Plaintiffs’ interrogatories and requests to produce, and Plaintiffs will not repeat those arguments here. (Plaintiffs note, however, that RUL failed to address *any* of Plaintiffs’ point-by-point explanations for their interrogatories, instead resorting to broad-brush arguments. Notably, RUL failed to respond to the specific contradictory evidence raised by Plaintiffs with regards to Interrogatories 7, 14, and Request to Produce 24.)

RUL is incorrect as a matter of law in asserting that “intentional kidnapping cannot be done by an agent with the actual authority of the principal.” Rather, it is well-established that if an agent engages in illegal activity on behalf of a principal, the principal can be held liable. *See Restatement (Second) of Agency* § 19, cmt. a (1958) (“If the one directed to perform the

[unlawful] act does the act directed, the person directing him may be responsible criminally and, if a tort is committed, civilly.”). None of the cases cited by RUL support its proposition that actual authority for an illegal act is impossible. The Catholic Church cases cited by RUL<sup>2</sup> all simply hold that the purpose of the Church was not sexual abuse, so an agent of the church could not be acting with actual authority in perpetrating abuse. Given the known nature of the Catholic Church’s “business,” it was obvious that a priest’s sexual misconduct was not, in the words of *Kennedy v. Roman Catholic Diocese*, 921 F. Supp. 231, 233 (D. Vt. 1996), “within the scope of his employment or in furtherance of the Diocese’s business.” But here, the full scope of RUL’s business – which is directed by its sole owner Philip Zodhiates<sup>3</sup> – is not known to Plaintiffs or the Court, and Plaintiffs are seeking discovery to ascertain that fact. *See* Interrogatories 7, 12, 15, 16, 17, 18, 19, 20, 21, 22, and 23. Although RUL blithely asserts that RUL could not have actually authorized activities that led to or assisted in the kidnapping of Isabella Miller-Jenkins, jurisdictional discovery is necessary to determine the scope of RUL’s involvement with the kidnapping of Isabella. Because RUL is solely owned by Zodhiates, activities undertaken by Zodhiates with RUL’s resources are likely a business activity imputable to RUL, and Plaintiffs are entitled to that information for jurisdictional purposes. Although RUL will attempt to avoid providing that information by jumping to its

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<sup>2</sup> *Tell v. Roman Catholic Bishops of Diocese*, 2010 Del. Super. LEXIS 162, \*34 n. 61 (collecting cases); *Tichenor v. Roman Catholic Church*, 32 F.3d 953 (5th Cir. 1994); *Kennedy v. Roman Catholic Diocese*, 921 F. Supp. 231 (D. Vt. 1996).

<sup>3</sup> In Interrogatory 12, Plaintiffs requested information regarding, inter alia, “the job duties of Philip Zodhiates and nature of Philip Zodhiates’ work for RUL.” RUL promised to supplement its initial response to this interrogatory, and RUL eventually provided the following, along with boilerplate objections: “Philip Zodhiates is the founder, owner and president of RUL. As such, he oversees and manages its operations, while delegating the day to day tasks. The delegation has increased over time.” This response does not identify the job duties of Zodhiates or the nature of his work. Plaintiffs are therefore entitled to further jurisdictional discovery to ascertain the scope of RUL’s work and the nature of Zodhiates’ involvement, and move to compel a complete response to Interrogatory 12.

preferred ultimate conclusion on jurisdiction, RUL must provide all of the requested factual information and permit the Court to make the legal decision.

The other two cases cited by RUL regarding actual authority<sup>4</sup> involve shareholder ratification of illegal acts by a board of directors – a factual scenario that has *nothing* to do with the unlawful kidnapping of a child. Law of corporations is well-developed and distinct, and cannot be applied here. Thus, despite RUL’s argument to the contrary, it is entirely possible that agents of RUL acted with *actual* authority in aiding the kidnapping of Isabella Miller-Jenkins, and thus jurisdictional discovery is necessary on this issue.

RUL proposes several “suitable” interrogatories. RUL suggests that rather than ascertaining RUL’s activities with regard to Lisa Miller, that Plaintiff should simply inquire whether those activities advanced the business of RUL, which attempts to avoid the highly relevant inquiry of *what* those activities were. RUL proposes the following questions:

- “1. Did RUL have a business relationship with Lisa Miller?
2. Did RUL have contact with Lisa Miller concerning any matter relating to the business of RUL?
3. Did any activity in which RUL engaged concerning Lisa Miller advance the business of RUL?”

In Interrogatory 18, Plaintiffs did ask whether Lisa Miller was a client of RUL or otherwise transacted business with RUL. In its supplemental response, RUL indicated that “there is no record” of her being a client but did not deny that Lisa Miller was a client. This, along with other evidence regarding Lisa Miller’s extensive phone contact with several different cell and office numbers associated with RUL, creates an inference that there was a

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<sup>4</sup> *Kerbs v. California Eastern Airways, Inc.*, 1952 Del. LEXIS 87, \*6 (Del. 1952) and *In re Mesa Ltd. Partnership Preferred Unitholders Litig.*, 1991 Del. Ch. LEXIS 214, \*20.

relationship between Lisa Miller and RUL. The supplemental response also failed to answer the first part of Interrogatory 12, which asked RUL to “identify and describe all transactions between Lisa Miller and RUL.” Indeed, proposed Question #3 above assumes that RUL did engage in conduct concerning Lisa Miller, while suggesting that, in the opinion of RUL, that conduct did not advance its business. Plaintiffs are entitled to know what the relationship between Miller and RUL is, and what services were performed by RUL in regard to Lisa Miller. Plaintiffs therefore move to compel a complete response to Interrogatory 18. *See* F.R.C.P. 37(a)(4) (“an evasive or incomplete response must be treated as a failure to disclose, answer, or respond.”).

Further, the information suggested as appropriate by RUL was requested in Interrogatory 19<sup>5</sup> and in Interrogatory 20<sup>6</sup>. These requests are narrowly tailored to determine the business relationship between Lisa Miller and RUL. There is already some evidence of a business relationship based on multiple phone calls from Lisa Miller to RUL’s business phone numbers. Moreover, even if there is “no record” of Lisa Miller herself being a client of RUL, it is very plausible, based on the limited information obtained without discovery, that Lisa Miller, Isabella and Janet Jenkins were the subject of business dealings that RUL had with *others*, including Lisa Miller’s attorney Mathew Staver, who has publically acknowledged that he has a business relationship with RUL, and whose organization, Liberty Counsel, did substantial fundraising around Lisa Miller’s family court case. Hence, it is essential to know what services RUL and its employees/agents provided that were related to Lisa Miller,

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<sup>5</sup> Interrogatory 19 asks that RUL “Describe any services – whether for compensation or for free – that RUL and/or its agents provided to or on behalf of Lisa Miller”

<sup>6</sup> Interrogatory 20 asks RUL to “Describe any services that RUL, its employees, and/or its agents have provided – whether for compensation or for free – that were in any way related to Lisa Miller, Isabella Miller-Jenkins or Janet Jenkins.”

Isabella Miller-Jenkins or Janet Jenkins because this information goes directly to whether RUL directed tortious conduct at Plaintiffs in Vermont. Rather than permitting RUL to answer only with the conclusion, Plaintiffs request that the Court compel RUL to provide the facts about the business relationship between RUL and activities involving Lisa Miller, and thus permit the Court to resolve the ultimate jurisdictional questions.

Plaintiffs also seek jurisdictional discovery regarding apparent authority. “Apparent authority ‘derives from conduct of the principal, communicated or manifested to the third party, which reasonably leads the third party to rely on the agent’s authority.’” *Lakeside Equip. Corp. v. Town of Chester*, 173 Vt. 317, 325 (2002) (quoting *New England Educ. Training Serv., Inc. v. Silver Street P’ship*, 148 Vt. 99, 105 (1987); see also *Damian Servs. Corp. v. PLC Servs., Inc.*, 763 F.Supp. 369, 372 (N.D.Ill. 1991) (apparent authority exists where principal, through words or conduct, creates reasonable impression that agent has been granted authority to perform certain acts). As the owner of RUL, Philip Zodhiates may have acted on behalf of RUL in a way to bestow apparent authority on another agent. As a corporation, RUL of course can’t act without human intervention. See, e.g., *In re Vitamins Antitrust Litig.*, 216 F.R.D. 168, 173 (D.D.C. 2003) (“The corporation as a fictional entity can never know that a fact is true except to the extent its employee or agent does.”). As the sole owner, Zodhiates is able to control the actions of RUL. For example, communications that Lisa Miller had with Victoria Hyden are relevant for jurisdiction if Hyden was acting with apparent authority for RUL based on the actions of Zodhiates. See Interrogatory 9. Based on the little that Plaintiffs have been able to find out without discovery, this scenario is entirely plausible. However, to determine whether that sort of scenario occurred and would create personal jurisdiction over RUL, it is necessary to know the actions and the substance of

communications of the relevant individuals. *See* Interrogatories 9, 11, 15, 16, 17, 21. All of these facts are unknown to Plaintiffs without discovery from RUL – which the Court ordered on October 24, 2013, and which Plaintiffs are now seeking to compel. It is not RUL’s role to judge whether the facts give rise to jurisdiction over it. The requested information must be provided to Plaintiffs and thereby to the Court, and then the Court will adjudicate the legal issue of jurisdiction.

In addition, along with actual authority and apparent authority, actions of an agent can be imputed to the principal if the principal ratified the agent’s actions after the fact. Ratification can occur by the principal “manifesting assent that the act shall affect the person’s legal relations” or “conduct that justifies a reasonable assumption that the person so consents.” *Restatement (Third) Of Agency* § 4.01 (2006). *See also IBJ Schroder Bank & Trust Co. v. Resolution Trust Corp.*, 26 F.3d 370, 375 (2d Cir. 1994) (ratification may exist by implication from principal’s failure to dissent within reasonable time after learning what had been done). To determine whether RUL ratified the actions of its agents, it is necessary to know both what the agents did and how RUL responded. If an agent of RUL – such as Hyden, Zodhiates, or another employee – purported to communicate or act on behalf of RUL, and RUL became aware of this fact but did not disaffirm the action, then Plaintiffs would have a strong argument for ratification. *See* Interrogatories 13, 14, 21, 22, 23. This information is entirely within the control of RUL, and it is a key subject of the jurisdictional discovery sought by Plaintiffs.

RUL contends that the jurisdictional discovery “seeks communications and contacts that are beyond the scope of the authority of Ms. Hyden and Mr. Zodhiates.” But RUL has so far failed to provide sufficient information regarding the scope of that authority, although this

is essential to a jurisdictional determination. It is not sufficient for RUL to declare that something is beyond scope of Hyden and Zodhiates' agency without providing information about what the scope is (and not simply declaring the scope, but providing facts to demonstrate it) and what actions were taken. Several of Plaintiffs' interrogatories are directed at determining the scope of Zodhiates' and Hyden's authority, but RUL has resisted providing sufficient answers. *See, e.g.*, Interrogatories 7, 8, 9, 12, 14, 15, 16.

Plaintiffs acknowledge that “[a]n agent is [only] a fiduciary with respect to matters within the scope of his agency.” *Restatement (Second) of Agency* § 13 (1958). Discovery regarding the actions and communications by agents is relevant to demonstrating the scope of the agency relationships here, and such evidence is necessary to support – or disprove – any conclusions regarding scope of authority put forth by RUL. Further, while RUL contends that communications after work hours are necessarily outside the scope of an agency relationship, any attorney will know this is false. In the hyper-connected world of the last decade or so, work-related communications can occur at any time and in any place. This proposed limitation is not reasonable.

Ultimately, the jurisdictional evidence sought from RUL is necessary to enable the Court to determine whether it has jurisdiction over RUL. For the foregoing reasons, Plaintiffs request that the Court grant its Motion to Compel in its entirety.

DATED at Middlebury, Vermont this 3rd day of February, 2014.

LANGROCK SPERRY & WOOL, LLP

/s/ Katherine B. Kramer \_\_\_\_\_

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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.

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, VICTORIA HYDEN,  
F/K/A VICTORIA ZODHIATES  
INDIVIDUALLY AND AS AN AGENT  
FOR BOTH RESPONSE UNLIMITED,  
INC., AND LIBERTY UNIVERSITY  
AND ITS RELATED MINISTRY  
THOMAS ROAD BAPTIST CHURCH,  
INC., LIBERTY UNIVERSITY, 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.

Civil Action

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

**CERTIFICATE OF SERVICE**

I, Katherine B. Kramer, Esq., counsel for Plaintiff Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that I caused the foregoing *Plaintiffs' Reply to Motion to Compel Jurisdictional Discovery from Response Unlimited, Inc.* to be filed with the Court using the CM/ECF electronic filing system, which

will provide electronic notification of such filing(s) to Counsel of Record for the Defendants, and to all other registered users.

Dated at Middlebury, Vermont, this 3<sup>rd</sup> day of February, 2014.

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