

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-wks

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO THE MOTION
TO STAY

NOW COME Plaintiffs, Janet Jenkins et al., by and through undersigned counsel, and hereby files the following supplemental memorandum in advance of the upcoming oral argument in this matter on the Motion to Stay filed by Defendants (Dkt. # 172).

This memorandum is being filed to notify the Court of certain issues that have recently come to Plaintiffs' attention regarding parallel criminal proceedings against Defendant RUL and its agents. Additional facts that were not previously revealed by the Defendants or known to the Plaintiffs have come to light and weigh strongly against the granting of a stay. Plaintiffs therefore file this Supplemental Memorandum to apprise the Court of this information before oral argument.

Attached as Exhibit A is a copy of the "Notice of Motion and Motion to Conduct Inquiry into Defense Counsel's Conflicts of Interest" (the "Conflict Motion") filed in *U.S.A. v. Philip Zodiates*, 14-CR-175, Dkt. #20 (W.D.N.Y.). The Conflict Motion presents new information regarding Victoria Hyden, a defendant in the above-captioned matter. The information in the Conflict Motion is contrary to her assertions under oath in this matter. A copy of the Affidavit of Victoria Hyden (Dkt. # 54-3), is attached hereto as Exhibit B. The

Conflict Motion also provides information regarding a criminal investigation against Response Unlimited, Inc.¹

MEMORANDUM

Defendants are seeking a stay of these entire civil proceedings on account of the indictment of Philip Zodhiates in the Western District of New York. The Court denied Defendants' prior request for a stay, which had been requested when the criminal investigation was pending against Zodhiates but no indictment had yet been filed. *See* Dkt. #169, Memorandum and Order Re: Motion to Compel, p. 4-5. Following Zodhiates' indictment, Defendants renewed their motion to stay, which is set for oral argument on March 16, 2015.

Plaintiffs have learned that in addition to Mr. Zodhiates, RUL itself is the target of an ongoing government criminal investigation. In the Conflict Motion filed on February 10, 2015, the Government stated:

Additionally, the government has an ongoing investigation into the involvement of defendant's company, Response Unlimited, in the charged offenses. Attorney Hemley continues to represent Response Unlimited. Hemley has represented Response Unlimited since early 2014 when it was first subpoenaed by the grand jury.

Ex. A, Conflict Motion, p. 8, n.1.

Attorney Hemley has confirmed to the Plaintiffs that RUL has been served with government subpoenas seeking substantially similar, if not the very same, information as is being requested by the Plaintiffs, and RUL has, in fact, complied with these subpoenas. As

¹ While this Supplemental Memorandum is intended primarily as a supplement to Plaintiffs' Response to the Motion to Stay, the attached Conflict Motion also provides information relevant to jurisdictional discovery issues and the pending Motions to Dismiss. Specifically, the Conflict Motion confirms that on September 20, 2009 – the date of the kidnapping – there was a four-minute phone call between a landline at Response Unlimited and Terry Miller (Lisa Miller's father), who then immediately contact Lisa Miller. Prior filings by RUL have disclaimed any business connection between RUL and Lisa Miller. However, the business's landline communication on the date of the kidnapping reveals the falsity of that assertion and demonstrates the need for full jurisdictional discovery.

such, RUL should be precluded from arguing that turning the *very same* information over to the Plaintiffs would prejudice them, and violate their constitutional protections. Plaintiffs assert, once again, that Zodiates and RUL's arguments regarding the reasons for the requested stay are mere attempts to delay this litigation and prejudice the Plaintiffs. The Court should reject the most recent request for a stay and permit the case to proceed. As stated previously, the Plaintiffs do not intend to depose Defendant Philip Zodiates before his anticipated criminal trial, and do not object to a limited protective order to that effect. At this time, the only discovery pending is jurisdictional discovery against RUL, and the Court has concluded that RUL is able to respond without implicating Fifth Amendment rights. *See* Order, Dkt. 169, p. 4-5 (denying prior motion to stay).

Further, it is now confirmed that Defendant Victoria Hyden has been immunized against criminal prosecution and therefore does not face any prejudice from the continuation of this civil litigation. The Government's Conflict Motion states:

The Vermont grand jury subpoenaed Ms. Hyden to testify. She retained Mr. Hemley to represent her. She initially invoked her right not to answer questions in the grand jury. But after receiving an immunity order she provided some testimony. She admitted being present with Lisa Miller and her father in a Walmart parking lot.

Ex. A, Conflict Motion, p. 6.

The information contained in the Conflict Motion demonstrates that Defendant Hyden has not been truthful in her filings before this Court. This admission that she was present in a Walmart parking lot is directly contrary to Defendant Hyden's prior sworn statement that she "never provided Lise Miller with any assistance, aid, or advice of any kind[.]" (Dkt. 54-3, Affidavit of Victoria Hyden, reattached hereto as Ex. B.) Defendant Hyden's affidavit repeatedly proclaimed her complete ignorance of the allegations of this matter. *Id.* However, once she no longer had the right to remain silent, she admitted that she was present with Philip Zodiates and

Lisa Miller just before Lisa Miller fled the country, and as Lisa Miller was abandoning her vehicle in a Lynchburg Walmart parking lot. This shows that Defendant Hyden is willing to intentionally mislead this Court in order to cause further delay and harm to the Plaintiffs. Her request for a stay is a continuation of her deceptive conduct.

The Conflict Motion also reveals another misrepresentation by Hyden. The Conflict Motion states:

The phone records further show that the first call on September 20 [the date of the kidnapping] involving the Zodhiates phones or the Lisa Miller phones was a call Terry Miller made to Victoria Hyden at about 2:00 pm. . . . These contacts suggest that Victoria Hyden had some knowledge about what happened on September 20, 2009. Moreover, the Response Unlimited cell phones that traveled with Lisa Miller to Buffalo had several calls with Victoria Hyden's cell phone during the trip.

Ex. A, Conflict Motion, p. 4-5.

In her previous sworn statement, Hyden stated that "I did not call Mr. Terry Miller in Tennessee on September 20, 2009 . . . In fact, I can not recall ever having spoken with Mr. Terry Miller at any time." Ex. B, Affidavit of Victoria Hyden, ¶ 13. This prior sworn statement is apparently false.

In light of the Defendants' conduct and misrepresentations to the Court, there is a strong public interest in allowing this case to continue. There is no risk of prejudice to the Defendants if this civil litigation continues. Defendant Hyden has been immunized and therefore faces no personal risk. RUL is still at the same stage in the criminal proceedings – under investigation by the grand jury – as Zodhiates was when the last request for a stay was denied. As to Philip Zodhiates, Plaintiffs are willing to enter into a limited protective order that would protect Zodhiates from a civil deposition while his criminal case remains pending. Because a stay of civil proceedings is only warranted if denying the stay will result in prejudice to a party, a stay must not be granted in this case, especially in light of the recently discovered facts outlined herein. *See Ironbridge Corp. v. C.I.R.*, 528 F. App'x 43, 46 (2d Cir. 2013).

Based upon the foregoing, Plaintiffs supplement their Response to the Motion to Stay and renew their request that the Court deny Defendants' Motion to Stay in its entirety, or, in the alternative, grant a limited stay of deposing Philip Zodhates while his criminal case is pending.

DATED at Middlebury, Vermont this 3rd day of March, 2015.

LANGROCK SPERRY & WOOL, LLP

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

14-CR-175

PHILIP ZODHIATES,

Defendant.

**NOTICE OF MOTION AND MOTION TO CONDUCT INQUIRY INTO
DEFENSE COUNSEL'S CONFLICTS OF INTEREST**

PLEASE TAKE NOTICE that upon the attached motion, WILLIAM J. HOCHUL, JR., United States Attorney for the Western District of New York, by Paul Van De Graaf, Special Assistant United States Attorney for the Western District of New York, respectfully moves this Court to conduct an inquiry into the conflicts of interest that exist regarding Attorney Robert Hemley's representation of Phillip Zodiates.

DATED: Buffalo, New York, February 10, 2015.

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: s/ KATHLEEN A. LYNCH for
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

14-CR-175

PHILIP ZODHIATES,

Defendant.

**MOTION TO CONDUCT INQUIRY INTO
DEFENSE COUNSEL'S CONFLICTS OF INTEREST**

WILLIAM J. HOCHUL, JR., United States Attorney for the Western District of New York, The United States of America, by Paul Van De Graaf, Special Assistant United States Attorney for the Western District of New York, respectfully moves this Court to conduct an inquiry into the potential conflicts of interest that exist regarding Attorney Robert Hemley's representation of Phillip Zodiates.

Mr. Hemley has represented Mr. Zodiates in connection with the government's investigation since at least 2012. During the investigation, the government made contact with two of Mr. Zodiates's children, Victoria Hyden and Rebecca Zodiates. Mr. Hemley was retained to represent these two witnesses. The government anticipates calling them as witnesses at Mr. Zodiates's trial. Mr. Hemley's representation of these related parties creates potential conflicts of interest, including conflicts relating to the duty of loyalty and the protection of privileged information. At present, the government does not take the position that Mr. Hemley cannot represent the defendant, but the government recommends

the following: 1) the proper waivers should be given by the defendant and accepted by the Court, 2) Mr. Hemley should terminate representation of Victoria Hyden and Rebecca Zodiates with regard to the pending investigation and trial, and 3) if these witnesses are called to testify at Mr. Zodiates's trial, Mr. Hemley either should not conduct the cross-examination. The government therefore requests that the court make the proper initial inquiries and conduct a *Curcio* hearing to determine the appropriate waivers. *Curcio v. United States*, 680 F.2d 881 (2d Cir. 1982).

I. Background

A. Summary of the Case

This case arises from the international parental kidnapping of IMJ, a minor who was the subject of a contentious custody battle in Vermont. The custody battle involved two women, Lisa Miller and Janet Jenkins, who, at the time of IMJ's birth, were in a Vermont civil union. The couple separated in 2004 and Lisa Miller moved to Virginia with IMJ. Between 2004 and 2009, a Vermont judge gave Lisa Miller custody and granted Janet Jenkins visitation rights. Lisa Miller moved to Virginia and began refusing Janet visitation of IMJ because she came to believe that her lesbian relationship was sinful. Significant litigation in both Vermont and Virginia intensified. Lisa was being represented by Liberty Counsel, a conservative public interest law firm associated with Liberty University in Lynchburg, Virginia. In September, 2009, a Vermont judge warned Lisa that she would lose custody if she did not comply with the court ordered visitations. On September 22, 2009, Lisa Miller and IMJ left the United States through the Canadian border and flew from

Toronto, Canada to Nicaragua. Lisa and IMJ have not returned to the United States since their flight in 2009. Legal custody of IMJ was transferred to Janet as of January 1, 2010 by a Vermont court order.

Investigation into the kidnapping revealed that Lisa Miller lacked the resources and connections to travel to Nicaragua on her own. Investigation into possible co-conspirators has revealed that Kenneth Miller, Timothy Miller, and Philip Zodiates assisted Lisa Miller in leaving the country with her daughter in 2009. Some of the information obtained in this case was collected from phone records covering the days leading up to Miller leaving the country. For example, the phone billing records for a phone subscribed to by the defendant's company Response Unlimited, show that the phone traveled from Virginia to New York at the time the Miller's fled. Mr. Zodiates's involvement in the investigation surfaced in 2012, after Ken Miller was indicted in Vermont. Mr. Zodiates retained Mr. Hemley in connection with the investigation. In September 2014, Mr. Zodiates was indicted in the Western District of New York on charges of aiding and abetting the removal of IMJ and with conspiring to remove and retain IMJ from September to November 2009. Mr. Hemley and Buffalo attorney James Grable represent Mr. Zodiates in this matter. At trial, the government anticipates calling three witnesses who were previously represented by Mr. Hemley.

B. Victoria L. Hyden

Victoria Hyden is one of Phillip Zodiates' daughters. In 2009, Ms. Hyden worked at Liberty University School of Law. The Dean of the law school was Mathew Staver, the

head of Liberty Counsel, which represented Lisa Miller in her custody litigation in both Vermont and Virginia. Telephone toll records show significant contacts on September 20, 2009 (the day before Lisa Miller travelled to Buffalo) between Terry Miller, Lisa's father (who lives in Tennessee), and various phone numbers associated with Mr. Zodiates. At the same time, Terry Miller was making calls to phones associated with Lisa Miller. The phone records show no contacts directly between Mr. Zodiates's numbers and Lisa Miller's numbers on September 20. Terry Miller testified at the Ken Miller trial that, while he doesn't remember details about the day, his daughter asked for his help in arranging a meeting she was having with someone at a Walmart. The government's evidence shows that Lisa Miller and Mr. Zodiates met on the evening of September 20, 2009, at a Walmart parking lot, where Lisa left her car before leaving Lynchburg, Virginia. (The evidence suggests that Lisa Miller spent the night of September 20 somewhere closer to Waynesboro, where Mr. Zodiates lives.) The government presented evidence at the Ken Miller trial that Lisa Miller's car was towed away from the parking lot of a Lynchburg, Virginia Walmart several weeks later. The government will argue that Lisa and Mr. Zodiates used Lisa's father as a go between to arrange their meeting.

The phone records further show that the first call on September 20 involving the Zodiates phones or the Lisa Miller phones was a call Terry Miller made to Victoria Hyden at about 2:00 pm. Over the next minutes, Terry Miller had several contacts with Lisa's cell phone, including an eleven-minute call. Then one of the land lines from Response Unlimited, Mr. Zodiates's business, made a four-minute call to Terry Miller, who immediately contacted Lisa. These contacts suggest that Victoria Hyden had some

knowledge about what happened on September 20, 2009. Moreover, the Response Unlimited cell phones that traveled with Lisa Miller to Buffalo had several calls with Victoria Hyden's cell phone during the trip.

The Vermont grand jury subpoenaed Ms. Hyden to testify. She retained Mr. Hemley to represent her. She initially invoked her right not to answer questions in the grand jury. But after receiving an immunity order she provided some testimony. She admitted being present with Lisa Miller and her father in a Walmart parking lot. However, she denied remembering when it occurred. She denied remembering anything about conversations with her father about Lisa Miller. The evidence suggests that Ms. Hyden was not truthful in her grand jury testimony. Nevertheless, the government will likely call her at Mr. Zodiates's trial and ask her questions about her knowledge of the relationship between Lisa Miller and Mr. Zodiates. In short, Ms. Hyden's truthful testimony might be adverse to Mr. Zodiates.

C. Rebecca Zodiates

The Response Unlimited cell phone records show that the phones that traveled to Buffalo in September 2009 made calls to Pensacola Christian College during the trip. Rebecca Zodiates, another of Phillip Zodiates' daughters, was attending Pensacola Christian College at the time. The government subpoenaed Ms. Zodiates to help show that Mr. Zodiates was using the phone during the trip. At the time of Ken Miller's trial, Ms. Zodiates signed a statement that formed the basis of a stipulation about her testimony, which was offered as an exhibit at the trial. When Ms. Zodiates was subpoenaed she was

represented by Mr. Hemley. At the upcoming trial, Ms. Zodhiates may be asked more questions about her knowledge of her father's travel to Buffalo.

II. Argument

A defendant's Sixth Amendment right to effective assistance of counsel includes representation by an attorney who is free from conflicts of interest. *United States v. Cain*, 671 F.3d 271, 293 (2012); *United States v. Levy*, 25 F.3d 146, 152 (2d Cir. 1994); *Wood v. Georgia*, 450 U.S. 261, 271 (1981). The Sixth Amendment also provides the defendant with the right to be represented by the attorney of his choosing, but this right is not absolute. *Cain*, 671 F.3d at 293. The Second Circuit's "decision in *United States v. Levy*, 25 F.3d 146, 153 (2d Cir. 1994) sets out the analysis that a district court confronted with 'the specter of conflicts of interest' must follow in order to determine whether the right to a defendant to counsel of his own choosing should be honored in a particular case." *Cain*, 671 F.3d at 293.

The district court must make an initial inquiry when it is notified that a potential conflict exists. *Levy*, 25 F.3d at 153. In a criminal case, the government has an obligation to advise the district court about potential conflicts. *Id.* at 152. The initial inquiry involves an investigation into whether an actual, potential, or no genuine conflict exists. *Id.* at 153. If the court determines that an actual or potential conflict exists but it "would not fundamentally impair the lawyer's representation" the district court must inquire if the defendant is willing to make a knowing, intelligent waiver in accordance with the procedures set out in *Curcio*, 680 F.2d at 888-90. *Cain*, 671 F.3d at 293.

The particular conflict that exists when defense counsel has represented a trial witness is the conflicting duty of loyalty and confidentiality between past and current client. When the representation of a potential trial witness is limited, the defendant generally has the right to decide to make the appropriate waivers. *See United States v. Cunningham*, 672 F.2d 1064, 1073 (2d Cir. 1982). The district court can decide to limit cross-examination to certain matters or require cross-examination to be conducted by a conflict-free attorney to ensure that the attorney does not violate attorney-client privilege. *Id.* at 1073-74.

A. The Court Should Make An Initial Inquiry Into The Potential Conflicts Of Interest

Mr. Hemley's representation of his multiple clients potentially poses a conflict in regard to his ability to provide undivided loyalty to all three. For example, the attorney representing witnesses at the Zodiates trial must be able to give advice about providing truthful testimony so that the client will avoid perjury exposure. It is possible that truthful testimony would be adverse to Mr. Zodiates's interests. In this regard, the testimony of Ms. Hyden presents more concern than the testimony of Ms. Zodiates in light of the other evidence that Ms. Hyden has knowledge about the offenses. Put simply, the same attorney should not represent both Mr. Zodiates and the witnesses who will be called at the trial. For this reason, Mr. Hemley should withdraw from representing these witnesses.

Even if Mr. Hemley stops providing legal advice to Ms. Hyden and Ms. Zodhaites, he still has a duty of loyalty to them as clients. Moreover, he likely learned confidential attorney client information while representing these witnesses. The duty of loyalty and the

duty to protect confidential information pose continuing potential conflicts. Both witnesses have to right to preserve the confidentiality of privileged communications with Hemley. *Curcio*, 680 F.2d at 884. The witnesses' rights include the right to assert a request for disqualification. *Cf. Cunningham*, 672 F.2d at 1068 (defendant's lawyer represented witness testifying in front of a grand jury who did not join in government's motion for disqualification). When a witness and former client does not seek disqualification the court still needs to balance the interests of the former clients, the interest of the public in the integrity of the judicial system, and the interests of the defendant. *Curcio*, 680 F.2d at 885.¹

B. If The Court Finds There Is An Actual Or Potential Conflict It Must Hold A *Curcio* Hearing

After an initial inquiry is made and court determines that a potential conflict exists the court must ask the defendant if he is willing to waive that the risks of that potential conflict. If the court is satisfied at the inquiry stage that there is no actual conflict or potential for one to develop, its duty ceases. *Levy*, 25 F.3d at 154. There is a narrow class of cases in which conflicts are unwaivable. These arise when no rational defendant would knowingly and intelligently desire the conflicted lawyer's representation. *Id.* at 153. The government does not believe the potential conflicts in this case are unwaivable but "district courts have broad latitude in deciding whether to disqualify a defendant's chosen counsel."

¹ Additionally, the government has an ongoing investigation into the involvement of defendant's company, Response Unlimited, in the charged offenses. Attorney Hemley continues to represent Response Unlimited. Hemley has represented Response Unlimited since early 2014 when it was first subpoenaed by the grand jury. It is possible that at some point during this case the interests of Mr. Zodiates and Response Unlimited will diverge. A further inquiry into the facts and circumstances surrounding this potential conflict also should be conducted by the Court.

Fulton, 5 F.3d at 614; see also *United States v. Perez*, 325 F.3d 115, 125-27 (2d Cir. 2003) (discussing the “narrow category of cases” the Second Circuit has held attorney conflicts to be unwaivable). If the defendant has expressed his willingness to make a waiver the court must hold a hearing to examine whether the defendant has made that waiver properly. This hearing is to determine if the defendant in fact is making a knowing and intelligent waiver of his right to a conflict-free attorney of his choosing.

At such a hearing, the trial court (1) advises the defendant of his right to representation by an attorney who has no conflict of interest, (2) instructs the defendant as to the dangers arising from particular conflicts, (3) permits the defendant to confer with his chosen counsel, (4) encourages the defendant to seek advice from independent counsel, (5) allows a reasonable time for the defendant to make a decision, and (6) determines, preferably by means of questions that are likely to be answered in narrative form, whether the defendant understands the risk of representation by his present counsel and freely chooses to run them.

Perez, 324 F.3d at 119. In this case the court should make a determination that the defendant understands the risks and pitfalls with proceeding with Mr. Hemley and has had the opportunity to make a knowing and intelligent waiver.

C. The Court Should Limit The Subject Matter Of Cross Examination Or Bar Attorney Hemley From Conducting The Cross Examination Of His Prior And Current Clients

If the defendant waives the potential conflicts in this case and the court determines the waiver was “knowing and intelligent” the court should further impose some restrictions on cross-examination. Restrictions are necessary to safeguard the rights of the witnesses and the government’s interest in preserving the highest ethical standards of professional responsibility in a judicial proceeding. *Cunningham*, 672 F.2d at 1073. It is up to the district court to decide whether to limit cross-examination of prior clients to matters of public

record to ensure that attorney-client privilege is upheld. *Id.* at 10733-74. The government believes that the competing interests will be best preserved if the court limits the subject matter or directs that Mr. Hemley's co-counsel, James Grable, conduct cross-examination of Ms. Hyden and Ms. Zodiates.

III. Conclusion

Based on the reasons set forth above, the government respectfully requests that the court make an initial inquiry into defense counsel's potential conflict of interest and hold a Curcio hearing. The government further requests that Mr. Hemley be barred from cross-examining both Victoria Hyden and Rebecca Zodiates.

DATED: Buffalo, New York, February 10, 2015.

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: s/ KATHLEEN A. LYNCH for
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EXHIBIT B

Exhibit Three

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**

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.)

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 VICTORIA HYDEN

I, Victoria Hyden, being first duly sworn, do hereby depose and state as follows:

1. I am a life-long resident of the Commonwealth of Virginia, and my husband and I reside in the City of Lynchburg. I have been named as a Defendant in the above-captioned lawsuit and offer this affidavit based on my direct and personal knowledge.

2. Contrary to the allegations in Paragraph 13 of the Complaint, and Amended Complaint, filed in this matter, I am not now and have never been "an employee and agent" of

Thomas Road Baptist Church, Inc., (hereinafter "TRBC"). Indeed, I am not now and never have been a member of the church known as TRBC.

3. With respect to Response Unlimited Inc., that is a direct mail business owned and operated by my father and I have never been a director, officer, or agent of it. I have performed part-time clerical work for my father's business but none of my activities in that regard had anything to do with Lisa Miller, or any of the events alleged in this lawsuit, or the State of Vermont. I believe the last time I did any work for my father's business was in the summer or perhaps fall of 2009.

4. I was a student at Liberty University commencing on August 23, 2006, and received a Bachelor of Science degree from that University on September 16, 2008, and a Master of Arts degree from the University on May 15, 2010. In September 2008, I began working as a part-time student employee at the University and held that position until June 2010, at which time I became a full-time employee within the Administrative Offices of the Liberty University School of Law, a position that I continue to hold. At no time have I been an officer, director, manager, or agent of Liberty University.

5. I have never resided in the State of Vermont.

6. I have never been employed in the State of Vermont.

7. I have never owned or rented property in the State of Vermont.

8. I have never held a license or other professional certification in the State of Vermont.

9. I have never registered to do business, appointed a registered agent, or otherwise sought to avail myself of the privilege of doing business in the State of Vermont.

10. I have never paid taxes, fees, or charges of any kind to the State of Vermont.

11. Prior to this lawsuit, my sole contact with the State of Vermont was accompanying my family on a ski trip there when I was 8 or 9 years old.

12. Contrary to the allegation made “on information and belief” in Paragraph 41 of the Complaint, and Amended Complaint, I did not “in 2009 . . . sen[d] an email . . . to . . . co-workers at the Law School requesting donations for supplies to send to Lisa Miller to enable her to remain outside the country.” In fact, I have never requested donations from *anyone* for supplies or anything else to be sent to Lisa Miller.

13. Likewise, contrary to the allegations made in Paragraph 41 of the Complaint, and Amended Complaint, I did not call Mr. Terry Miller in Tennessee on September 20, 2009, “to assist in arranging [Lisa Miller’s] and Isabella’s transportation from a Wal-Mart parking lot in Lynchburg, Virginia, to Waynesboro, Virginia” In fact, I can not recall ever having spoken with Mr. Terry Miller at any time.

14. Contrary to the allegation made in Paragraph 59 of the Complaint, and Amended Complaint, I, as sworn to above, have never “solicited donations from other Law School employees for [Lisa Miller].” In fact, as far as I recall, I have never heard or seen *anyone* solicit donations from law school employees for or on behalf of Lisa Miller.

15. Likewise, the allegations in Paragraph 59 that I “knew of Lisa Miller’s whereabouts” when allegedly soliciting donations is equally false. In fact, I was not even aware of Lisa Miller’s “whereabouts,” *i.e.*, that she had left the United States and apparently moved to Nicaragua, until a reporter called my office phone line at Liberty University some time in 2010 and told me that.

16. I have never provided Lisa Miller with any assistance, aid, or advice of any kind and, contrary to the general, broad allegations made throughout the Complaint and Amended

Complaint, at no time have I participated in or conspired to “kidnap Isabella Miller-Jenkins [or] intentionally cause her continued detention outside the State of Vermont” Likewise, I have never “participat[ed] and conspire[ed] to participate in the affairs of the Beachy Amish-Mennonite Christian Brotherhood” or “conspir[ed] to violate [the Plaintiff’s] civil rights” as is alleged in the Complaint, and Amended Complaint.

17. It would impose a substantial personal and financial burden if I am required to defend the charges made against me in this lawsuit in the District of Vermont, a jurisdiction which is more than 700 miles from my home and family. Subscribed and sworn to under penalties of perjury this 23 day of October, 2012.

Victoria Hyden
Victoria Hyden

COMMONWEALTH OF VIRGINIA

At City of Lynchburg this 23rd day of October, 2012, personally appeared VICTORIA HYDEN, and she acknowledged this instrument, subscribed and sworn to by her, to be her free act and deed.

Before me,

Kaitlyn S Roberts
Notary Public
My Commission Expires: November 30th 2015



Duse
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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

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 *Plaintiff's Supplemental Memorandum in Opposition to the Motion to Stay* 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 3rd day of March, 2015.

/s/ Katherine B. Kramer
Katherine B. Kramer, Esq.
Langrock Sperry and Wool, LLP
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Middlebury, VT 05753-0351

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