

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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

Plaintiffs,)

v.)

Docket No. 2:12-CV-00184-WKS

)
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 an agent for)
THOMAS ROAD BAPTIST CHURCH,)
INC., and DOUGLAS WRIGHT,)

Defendants.)
_____)

**MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION,
LACK OF VENUE, AND FAILURE TO STATE A CLAIM
ON BEHALF OF DEFENDANTS LIBERTY UNIVERSITY, INC.,
THOMAS ROAD BAPTIST CHURCH, INC., AND VICTORIA HYDEN**

Now come Defendants, Liberty University, Inc. ("Liberty University"), Thomas Road Baptist Church, Inc. ("TRBC") and Victoria Hyden in her alleged capacity as an agent of Liberty

University or Thomas Road Baptist Church (collectively “Defendants”), by and through their attorneys, Dinse, Knapp & McAndrew, P.C., and hereby move the Court, pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(3), and 12(b)(6), to dismiss the claims against them for lack of personal jurisdiction, improper venue, and failure to state a claim.

MEMORANDUM OF LAW

Introduction

In this RICO action, Plaintiff Janet Jenkins seeks to enlist this Court’s assistance in extracting a pound of flesh from those she believes were associated with Defendant Lisa Miller in Virginia. Apparently Plaintiff hopes to use these proceedings to bring some pressure that will reunite her with Isabella. In doing so, Plaintiff has cobbled together a five count Amended Complaint comprised of “claims” which no legal theory can stretch to support. Plaintiff seeks to require some twelve out-of-state Defendants to litigate these unfounded claims in the foreign jurisdiction of Vermont, even though they have no relevant contacts with Vermont. This Court should reject Plaintiff’s misguided strategy and dismiss the Amended Complaint with prejudice.

Initially, the Court lacks personal jurisdiction over these Defendants and venue is improper in this forum. First, the Court does not have personal jurisdiction over any of these three Defendants. Second, venue is improper under 28 U.S.C. § 1391(b) because none of the events giving rise to Plaintiff’s claims occurred in this judicial district. Finally, venue is improper in this Court under 28 U.S.C. § 1965 where this Court lacks personal jurisdiction over any defendant named in this suit and the Western District of Virginia has jurisdiction over every defendant.

Further, Plaintiff has failed to state a claim against these Defendants in the counts in which they were named. First, there is no private right of action for kidnapping (Count One).

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Second, Plaintiff has failed to adequately allege a cognizable RICO injury, a RICO civil conspiracy, or a pattern of racketeering activity (Counts Two and Three).¹ Third, her federal civil conspiracy claim lacks factual support, fails to show invidious, class-based animus, and fails to allege any state action (Count Four).²

Before turning to each of these arguments in detail, the Court should know something about these three Defendants. Founded in 1971, Liberty University is a 501(c)(3) nonprofit corporation registered in the Commonwealth of Virginia, located on a nearly 7,000 acre campus in Lynchburg, Virginia. Jerry Falwell Jr. Affidavit, ¶¶ 2-3, attached hereto as Exhibit 1.³ It is fully accredited and the largest university in Virginia. *Id.* at ¶ 3. Liberty University educates approximately 12,500 residential students, only 29 of whom are residents of Vermont. *Id.* It offers 253 undergraduate programs and 87 graduate areas of study and is a fully co-educational institution where residential students volunteer nearly 600,000 hours each year on campus and in the community. *Id.*

TRBC is also a nonprofit corporation registered in the Commonwealth of Virginia. Jonathan Falwell Affidavit, ¶ 2, attached hereto as Exhibit 2.⁴ The Church is located in Lynchburg and serves around 20,000 congregants, or "members." *Id.* TRBC was founded in 1956 and it is now led by Pastor Jonathan Falwell. *Id.* at ¶ 1-2. In addition to Sunday worship

¹ Liberty University, TRBC and Hyden are not named in Count Two but this Count is discussed below in Section IV.3.d because in order to have a viable RICO conspiracy claim (Count Three), Plaintiff must also allege an overt act in violation of 18 U.S.C. § 1962(a)-(c) (Count Two).

² Count V of the Amended Complaint is not addressed in this Motion because it is directed solely against a different defendant, Douglas Wright.

³ The Affidavits attached to this motion are provided for jurisdictional purposes only. The Court may consider jurisdictional affidavits without converting this motion to dismiss into one for summary judgment. *Corning Inc. v. Shin Etsu Quartz Products Co., Ltd.*, 242 F.3d 364 (2d Cir. 2000) ("The district court has considerable procedural leeway in deciding 12(b)(2) motions [to dismiss for lack of personal jurisdiction], and it may accept affidavits if it so chooses.").

⁴ See note 3, *supra*.

services, the Church offers bible study and other family support networks through numerous events and gatherings throughout a typical week. *Id.* at ¶ 2.

Victoria Hyden is a 25-year-old married woman and a life-long resident of the Commonwealth of Virginia. Victoria Hyden Affidavit, ¶ 1, attached hereto as Exhibit 3.⁵ She and her husband live in Lynchburg. *Id.* Victoria attended Liberty University and received a Bachelor of Science degree in 2008, followed by a Master of Arts degree in 2010. *Id.* at ¶ 4. She is presently employed as an administrative assistant at Liberty University; she is not and never has been a director, officer, or managing agent of Liberty University, or of any other defendant named in this suit. *Id.*

I. THIS COURT LACKS PERSONAL JURISDICTION OVER LIBERTY UNIVERSITY, THOMAS ROAD BAPTIST CHURCH AND VICTORIA HYDEN.

1. The Legal Standard for Personal Jurisdiction

Plaintiff Janet Jenkins (“Plaintiff”) bears the burden of demonstrating that each of the Defendant's contacts with Vermont are sufficient to establish personal jurisdiction over them in Vermont with respect to each claim asserted. *Country Home Products, Inc. v. Schiller-Pfeiffer, Inc.*, 350 F. Supp. 2d 561, 566-67 (D. Vt. 2004). In considering whether a plaintiff has met its burden of making a prima facie showing that personal jurisdiction exists, a court may not draw argumentative inferences in the plaintiff’s favor, nor does it accept as true legal conclusions couched as factual allegations. *Licci ex rel. Licci v. Lebanese Canadian Bank*, 673 F.3d 50, 59 (2d. Cir. 2012).

This action contains both a state law claim brought pursuant to the Court’s diversity jurisdiction, as well as claims arising under federal law. In the United States District Court for the District of Vermont, the personal jurisdiction analysis is the same for both types of claim.

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⁵ See note 3, *supra*.

For diversity claims, personal jurisdiction “is determined in accordance with the law of the state where the court sits, with ‘federal law’ entering the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee.” *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996). Accordingly, the district court conducts a two-part inquiry: “First, it must determine whether the plaintiff has shown that the defendant is amenable to service of process under the forum state's laws; and second, it must assess whether the court's assertion of jurisdiction under these laws comports with the requirements of due process.” *Id.*

For claims arising under federal law, courts first consider the forum state’s long-arm statute and then analyze whether personal jurisdiction comports with the due process clause of the United States Constitution. *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163-64 (2d Cir. 2010). Vermont’s long-arm statute, 12 V.S.A. § 913(b), permits jurisdiction over foreign defendants to the full extent permitted by the due process clause. *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36, 40, 572 A.2d 1382, 1385 (1990); *Dall v. Kaylor*, 163 Vt. 274, 275, 658 A.2d 78, 79 (1995). Because this interpretation of Vermont’s long-arm statute merges state law with the federal constitutional inquiry, this Court need only focus its attention on whether the exercise of jurisdiction over a defendant would violate due process. *See, e.g., Ben & Jerry’s Homemade, Inc. v. Coronet Priscilla Ice Cream Corp.*, 921 F. Supp. 1206, 1209 (D. Vt. 1996); *Gaffney v. Shelton*, No. 2:11-cv-189, 2012 WL 368683, *3 (D. Vt. Feb. 3, 2012).

The due process clause serves to ensure that a foreign defendant is not subject to the binding judgment of a forum with which it has no significant contacts. *Ben & Jerry’s*, 921 F. Supp. at 1209. Although the due process analysis for a diversity claim arises under the auspices of the Fourteenth Amendment and the due process analysis for a federal question arises under the

Fifth Amendment (Charles Alan Wright & Arthur R. Miller, 4 Fed. Prac. & Proc. Civ. § 1068.1 (3d ed.); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 103 (1987)), the analysis is the same in the Second Circuit. *See Chloe*, 616 F.3d at 163. Examining due process involves two inquiries: “minimum contacts” and “reasonableness.” The “minimum contacts” inquiry analyzes whether a defendant's contacts with the forum state shows that the defendant purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, such that it should reasonably anticipate being haled into court in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287 (1980). Only if a defendant is found to have the requisite minimum contacts with the forum, does the court then turn to the reasonableness inquiry to determine whether the assertion of jurisdiction over the defendant would offend “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Here, Plaintiff cannot show that Defendants Liberty University, TRBC, or Victoria Hyden had the requisite minimum contacts with Vermont to support personal jurisdiction. Moreover, Plaintiff cannot show that the exercise of personal jurisdiction over these Defendants would not offend traditional notions of fair play and substantial justice. Defendants should, therefore, be dismissed from this case for lack of personal jurisdiction.

2. Defendants Lack the Necessary Minimum Contacts With Vermont to Establish Personal Jurisdiction.

There are two types of personal jurisdiction: general, all-purpose jurisdiction and specific, case-linked jurisdiction. “A court may assert *general jurisdiction* over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at

home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011) (emphasis added). “*Specific jurisdiction*, on the other hand, depends on an ‘affiliatio[n] between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum state and is therefore subject to the State’s regulation.” *Id.* (emphasis added). Intentional and purposeful action by a non-resident defendant in the forum state is the key to personal jurisdiction. *Ben & Jerry’s*, 921 F. Supp. at 1210. Plaintiff cannot make a prima facie showing that the Defendants have the requisite minimum contacts with Vermont under either analysis.

(a) This Court Lacks General Jurisdiction Over These Defendants.

Plaintiff’s general jurisdiction allegations in the Amended Complaint are conclusory in nature and are insufficient to meet her burden of demonstrating that Defendants’ contacts with Vermont are sufficient to give this Court jurisdiction. The Amended Complaint alleges only that all defendants in this case “reside, are found, have an agent, or transact their affairs in this district.” Am. Complaint, ¶ 1. However, that legal claim is simply not accurate; Defendants’ contacts with Vermont border on the non-existent and most certainly have not been sufficiently continuous and systematic as to permit a finding of general personal jurisdiction.

(i) This Court Lacks General Jurisdiction Over Liberty University.

Liberty University is incorporated in Virginia and maintains its principal place of business in Lynchburg, Virginia. Ex. 1, Jerry Falwell Affidavit, ¶¶ 2-4. It does not have an office or mailing address in Vermont, does not own or lease any real property in Vermont, is not registered or otherwise qualified to do business in Vermont, and does not have an agent for service of process in Vermont. *Id.* at ¶¶ 5-7. Liberty University does not pay any income, property, or other taxes to the State of Vermont. *Id.* at ¶ 8. Liberty University does not

manufacture any product that could find its way through the stream of commerce into Vermont. *Id.* at ¶ 9. Liberty University does not bank in or hold assets, security interests or other investments in Vermont. *Id.* at ¶ 10. Accordingly, Liberty University has not subjected itself to the jurisdiction of Vermont. *See, e.g., Allen-Sleeper v. Federal Exp. Corp.*, No. 5:09-cv-151, 2010 WL 3323660, *1 (D. Vt. Apr. 14, 2010) (finding no personal jurisdiction where defendant was not incorporated in Vermont, did not have a certificate of authority to transact business as a foreign corporation, did not have a registered agent for service of process, had never paid taxes or derived substantial revenue in Vermont, had never maintained an office or bank accounts in Vermont, and had no assets, investments, or security interests in Vermont).

Moreover, the number and percentage of Liberty University students haling from Vermont is miniscule. *Id.* at ¶ 3. And Liberty University has not participated in college recruiting events in Vermont for at least six years, has not targeted any of its marketing towards media in Vermont, and has sent no recruiting or ministry teams into Vermont for at least ten years. *Id.* at ¶ 11. Indeed, it is difficult to imagine a U.S. educational institution having fewer and less significant contacts with the State of Vermont.

“[C]ourts apply a fairly stringent jurisdictional test to colleges and universities apparently in deference to the ‘no-profit educational mission’ of the organization.” *Waiti v. Walden Univ.*, No. 07-cv-4782, 2008 WL 2280932, *6 (D.N.J. 2008). “[T]he fact that [a University] engages in advertising and promotion that reaches [the forum state’s] residents does not by itself subject [that University] to jurisdiction.” *Id.* Moreover, the operation of a website accessible in the forum state is insufficient to establish general jurisdiction. *Id.* Liberty University’s website (www.liberty.edu) no more targets Vermont than it does any other state in the nation. *See Kloth v. Southern Christian Univ.*, 320 F. App’x 113, 118 (3d Cir. 2008) (maintaining a website

containing information about the school and accessible by students and potential students in other jurisdictions is insufficient to establish personal jurisdiction outside the school's home state); *Chase v. Gist*, No. 12-cv-40020, 2012 WL 1581682, *6 (D. Mass. 2012) (an online university program available to students nationally and not specifically targeting any particular state is insufficient to establish personal jurisdiction).

Although Liberty University occasionally conducts national television advertising campaigns and some of these advertisements may have reached Vermont, no advertisements have ever been specifically tailored to Vermont residents, or sent only and specifically to Vermont media markets. Ex. 1, Jerry Falwell Affidavit, ¶ 12. As a matter of law, national advertising campaigns which do not target Vermont residents are insufficient to subject Liberty University to general personal jurisdiction in Vermont. See *Gehling v. St. George's Sch. of Med., Ltd.*, 773 F.3d 539, 542 (3d Cir. 1985); *Decker v. Circus Circus Hotel*, 49 F. Supp. 2d 743, 748 (D.N.J. 1999) ("National advertising . . . without more, is not enough to establish minimum contacts in the forum state"); *NAPA Dev. Corp., Inc. v. Pollution Control Fin. Auth. of Warren Cnty.*, 346 F. Supp. 2d 730, 732-33 (E.D. Pa. 2004) (noting that "substantial precedent establishes that even national advertising is insufficient for general personal jurisdiction").

(ii) This Court Lacks General Jurisdiction Over TRBC.

Like Liberty University, TRBC is also incorporated in Virginia and maintains its principal place of business in Lynchburg, Virginia. Ex. 2, Jonathan Falwell Affidavit, ¶ 2. TRBC does not have an office or mailing address in Vermont *Id.* at ¶ 3. TRBC does not own or lease any real property in Vermont, nor does it maintain any accounts or investments in Vermont. *Id.* at ¶ 4. It is not registered or otherwise qualified to do business in Vermont and does not have an agent for service of process in Vermont. *Id.* at ¶ 5. TRBC does not pay any

income, property, or other taxes to the State of Vermont. *Id.* at ¶ 6. TRBC does not manufacture any product that could find its way through the stream of commerce into Vermont. *Id.* at ¶ 7. *See, e.g., Allen-Sleeper*, 2010 WL 3323660, at *1. Moreover, TRBC does not bank in or hold assets, security interests or other investments in Vermont, nor does it target or tailor advertising for Vermont or its residents. *Id.* at ¶¶ 8-9. TRBC has never conducted any mission trips into Vermont, and does not have any missions or missionaries in Vermont. *Id.* at ¶ 10.

TRBC occasionally broadcasts sermons on the Internet and on satellite broadcast services but does not direct either specifically at Vermont. *Id.* at ¶ 9. A mere internet presence, without a more direct involvement with the forum, does not create general jurisdiction in any forum where that internet presence may be accessed. *Viko v. World Vision, Inc.*, No. 2:08-cv-221, 2009 WL 2230919 (D. Vt. July 24, 2009). Further, a satellite broadcast that could be viewed by subscribers in any state is no cause for general jurisdiction in a particular forum. *Outdoor Channel, Inc. v. Performance One Media, LLC*, 826 F. Supp. 2d 1271, 1281 (N.D. Okla. 2011).

(iii) This Court Lacks General Jurisdiction Over Victoria Hyden.

For her part, Victoria Hyden has never resided in or been employed in the State of Vermont. Ex. 3, Hyden Affidavit, ¶¶ 5-6. She has never owned or rented property in Vermont. *Id.* at ¶ 7. Nor has she held a license or other professional certification in the State of Vermont. *Id.* at ¶ 8. She has never registered to do business, appointed a registered agent, or otherwise sought to avail herself of the privilege of doing business in the State of Vermont. *Id.* at ¶ 9. She has never paid taxes, fees, or charges of any kind to the State of Vermont. *Id.* at ¶ 10. In fact, prior to this suit, her sole contact with the State of Vermont was accompanying her family on a ski trip when she was 8 or 9 years old. *Id.* at ¶ 11. In short, none of Victoria's activities have ever created any obligations between herself and any Vermont resident. Victoria has insufficient

contacts for this court to assert jurisdiction over her in Vermont. *See Anichini, Inc. v. Campbell*, No. 1:05-cv-55, 2005 WL 2464191 (D. Vt. Oct. 4, 2005) (“Accordingly, jurisdiction usually is not proper unless the defendant actively initiate[s] contacts in a state, or creates continuing obligations between itself and a Vermont resident.”) (citations and quotations omitted).

Consequently, it is evident that none of these three Defendants’ affiliations with Vermont are so continuous or so substantial so as to render any of them "essentially at home in the forum state.” *Goodyear Dunlop Tires*, 131 S.Ct. at 2851. “No single event or contact connecting defendant to the forum state need be demonstrated; rather, the totality of all defendant's contacts with the forum state must indicate whether the exercise of jurisdiction would be proper.” *Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 166 (2d Cir. 2005) (internal quotation marks omitted). The totality of each Defendant’s contacts with Vermont, viewed in the light most favorable to Plaintiff, establishes that they have not purposefully directed activities at the State of Vermont and its residents and, thus, this Court lacks general personal jurisdiction over any of these Defendants.

(b) This Court Lacks Specific Jurisdiction over These Defendants.

General jurisdiction addresses all affiliations a party may have with the forum state, whereas “specific jurisdiction is confined to the adjudication of ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’” *Gaffney*, 2012 WL 368683 at *4 (quoting Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. Rev. 1121, 1136 (1966)). Specific jurisdiction is found "[w]hen a controversy is related to or ‘arises out of’ a defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

Plaintiff's Amended Complaint does not even allege that Defendants Liberty University, TRBC and Victoria Hyden have had any contacts with the forum state in connection with this lawsuit. This controversy cannot, therefore, be related to Defendants' contacts with the forum because they have had no such contacts. The law simply and plainly does not support a finding of specific jurisdiction with regard to any of them.

(i) This Court Lacks Specific Jurisdiction over Liberty University.

Liberty University has had no contacts with Vermont in connection with the subject matter of this suit. Contrary to Plaintiff's allegations, any actions taken on behalf of Lisa Miller in Vermont's courts were not taken by anyone acting in the capacity of an employee or agent of Liberty University. Ex. 1, Jerry Falwell Affidavit, ¶ 14; Mathew Staver Affidavit, ¶¶ 6-11, 13, attached hereto as Exhibit 4;⁶ Rena Lindevaldsen Affidavit, ¶¶ 2-7, attached hereto as Exhibit 5.⁷ Although licensed attorneys working on behalf of Liberty Counsel, Inc., a nonprofit public interest law firm incorporated in Florida, represented Lisa Miller in the Rutland Family Court and Vermont Supreme Court, *id.*, that legal representation was not directed or controlled by Liberty University, nor was it done on behalf of Liberty University. Ex. 1, Jerry Falwell Affidavit, ¶ 14; Ex. 4, Staver Affidavit at ¶ 7, 13; Ex. 5, Lindevaldsen Affidavit, ¶ 6.

Specifically, Liberty Counsel agreed to represent Lisa Miller in January 2005, when Lisa Miller was residing in Virginia. Ex. 4, Staver Affidavit, ¶ 6. Liberty Counsel is a separate entity from Liberty University. Ex. 1, Jerry Falwell Affidavit, ¶ 14; Ex. 4, Staver Affidavit, ¶ 10; Ex. 5, Lindevaldsen Affidavit, ¶¶ 6. It is headquartered in Florida and is governed by a separate and independent board of directors. Ex. 4, Staver Affidavit, ¶ 10. It is not a law firm created or controlled by Liberty University and the University has no input on the cases or management of

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⁶ See note 3, *supra*.

⁷ See note 3, *supra*.

Liberty Counsel. *Id.*; Ex. 1, Jerry Falwell Affidavit, ¶ 14; Ex. 5, Lindevaldsen Affidavit, ¶ 6. Neither Mathew Staver nor Rena Lindevaldsen was employed at Liberty University or its School of Law in January 2005. Ex. 4, Staver Affidavit, ¶ 6; Ex. 5, Lindevaldsen Affidavit, ¶ 3. Even when Mr. Staver and Ms. Lindevaldsen later became employed by Liberty University, all legal work they performed on behalf of Lisa Miller was through Liberty Counsel and was separate and apart from Liberty University and its School of Law. Ex. 1, Jerry Falwell Affidavit, ¶ 14; Ex. 4, Staver Affidavit, ¶¶ 7, 13; Ex. 5, Lindevaldsen Affidavit, ¶¶ 5-6. No one acting in the capacity of an attorney or employee of Liberty University or the School of Law has ever represented or provided legal counsel for Lisa Miller. *Id.* Neither Mathew Staver nor Rena Lindevaldsen has filed any pleading with a Vermont court, in their capacity as counsel for Lisa Miller, on behalf of Liberty University or its School of Law. Ex. 4, Staver Affidavit, ¶¶ 8-9; Ex. 5, Lindevaldsen Affidavit, ¶¶ 6-7. That Ms. Miller's attorneys appeared in Vermont courts on behalf of Liberty Counsel and not Liberty University is also indisputably reflected on the dockets of the respective courts, and within the *pro hac vice* applications submitted to and granted by those courts, records of which this court can take judicial notice. Rule 201, Fed. R. Evid.; See Ex. 6 and Ex. 7, attached hereto (Motion to Admit Attorney Rena M. Lindevaldsen *Pro Hac Vice*; Motion to Admit Attorney Mathew D. Staver *Pro Hac Vice*).

Accordingly the legal representation of Lisa Miller in Vermont courts by Mr. Staver and Ms. Lindevaldsen was not directed or controlled by Liberty University and certainly was not done on behalf of Liberty University. Even if it were, the act of a lawyer providing *pro hac vice* legal representation in a foreign forum does not somehow confer personal jurisdiction in that forum over that lawyer's employer. *See E-Z Bowz, L.L.C. v. Prof'l Prod. Research Co., Inc.*, No. 00-cv-8670, 2003 WL 22064259 at *8 (S.D.N.Y. Sept. 5, 2003). Most importantly, the

Amended Complaint did not allege any facts showing that Liberty University had any contact with Vermont in connection with this case.

(ii) This Court Lacks Specific Jurisdiction over TRBC.

Contrary to Plaintiff's unsupported allegations, Victoria Hyden, Linda Wall and Philip Zodhiates were never employees or agents of TRBC, and are not even members of the Church. Ex. 2, Jonathan Falwell Affidavit, ¶¶ 11, 13, 17. TRBC played no role in any of Lisa Miller's actions, either directly or through an authorized agent. *Id.* at ¶ 23. Indeed, all of Plaintiff allegations against TRBC are not only conclusory but are also false. TRBC is not affiliated with any entity called the "Protect Isabella Coalition," nor was Lisa Miller ever an employee of the Church. *Id.* at ¶¶ 15-16. In fact, none of the named individual defendants are or ever have been officers, deacons, agents, **or even members**, of TRBC. *Id.* at ¶¶ 11, 13, 17, 22, 26. Neither TRBC nor its agents has ever conspired with, or been involved in any way with, anyone involved with Lisa Miller's departure from this country for Nicaragua. *Id.* at ¶¶ 21, 23. Thus TRBC never aided or abetted Lisa Miller's move from Virginia to Nicaragua, as Plaintiff has alleged. *Id.* at ¶ 24. Most importantly, none of the actions of TRBC are alleged to have taken place in Vermont, so they would not confer specific jurisdiction over TRBC, even if they did take place (which they did not).

(iii) This Court Lacks Specific Jurisdiction over Victoria Hyden.

Likewise, contrary to the claims in the Amended Complaint, Victoria Hyden had no involvement whatsoever in Lisa Miller's removal of Isabella to Nicaragua. Ex. 3, Hyden Affidavit at ¶ 16. Victoria never raised money or collected supplies for Lisa Miller before or after Miller left the United States, she never knew of Miller's whereabouts in Central America, and, contrary to the Plaintiff's allegations, Victoria has never called, or to the best of her

knowledge even spoken with, Terry Miller. *See* Am. Complaint at ¶ 41; Ex. 3, Hyden Affidavit at ¶¶ 12-14. *See also* Ex. 4, Staver Affidavit, ¶ 16 (regarding his investigation into the alleged e-mail sent by Victoria, in which she denied sending such an e-mail, none of the staff in the Administrative and Admissions Department received any such e-mail, and no one ever heard of Victoria (or anyone else) making such a request). Most importantly, none of these events are alleged to have taken place in Vermont, so they would not confer specific jurisdiction over Victoria Hyden, even if they did take place (and they did not).

(c) The Claims have no Legal Connection to the Forum State.

Not only have none of these Defendants had any contact with Vermont relative to this suit, but the lawsuit itself has no connection to the forum state and therefore no activity related to the lawsuit gives rise to specific jurisdiction in Vermont. The underlying acts in the Amended Complaint all relate to the removal of Isabella Miller from Virginia to Nicaragua, via New York, Canada and Mexico, every aspect of which occurred outside the State of Vermont. According to the Amended Complaint, the plotting and execution of the alleged kidnapping largely happened in the Virginia towns of Lynchburg, Stuart's Draft, Winchester, Waynesboro, and Forest. Am. Complaint, ¶¶ 35, 38, 40, 41. All of these towns are located in Virginia's Western District. Although the parentage and custody issues between Plaintiff and Lisa Miller were litigated and adjudicated in Vermont, none of the claims in this case seek to adjudicate, modify, overturn, or confirm the jurisdiction or the rulings of the Vermont Family Court (all of which are final as affirmed by the Vermont Supreme Court). Rather, Plaintiff seeks damages for the alleged kidnapping of Isabella by Lisa Miller and her alleged co-conspirators, which involved a series of actions that never occurred within or even touched upon Vermont.

In sum, specific jurisdiction cannot be found with regard to any of these Defendants because none of them has had any contacts with Vermont in relation to this suit (or at all) and because the suit itself has no connection to Vermont.

(d) Asserting Jurisdiction In Vermont Over These Defendants Would Not Be Reasonable.

Not only has Plaintiff failed to establish the minimum contacts necessary to establish general or specific jurisdiction over these Defendants, which ends the personal jurisdiction inquiry, but she cannot show that asserting jurisdiction over these Defendants would be reasonable and would not offend “traditional notions of fair play and substantial justice,” a separate and independent fatal flaw in her attempt to extend jurisdiction over them. *See Metropolitan Life*, 84 F.3d at 568 (quoting *International Shoe*, 326 U.S. at 316). The five factors to consider in analyzing reasonableness are: (1) the burden to the defendant; (2) the forum state's interest in the dispute; (3) the plaintiff's interest in convenient and effective relief; (4) the interstate judicial system's interest in efficiently resolving the cases; and (5) the interest of all states in advancing their shared social policies. *Burger King*, 471 U.S. at 476–77 (citing *World-Wide Volkswagen*, 444 U.S. at 292). *See Gaffney*, 2012 WL 368683 at *4 (setting forth reasonableness inquiry).

First, the burden to these three Defendants in litigating in this forum would be significant because they all reside in or are based in Lynchburg, Virginia and have no connections whatsoever to Vermont. Victoria Hyden would suffer significant personal and financial burden litigating a case over 700 miles from her home and family, especially considering that her sole prior contact with Vermont was a childhood ski trip. Ex. 3, Hyden Affidavit, ¶¶ 11, 17. While institutions such as Liberty University and TRBC do not share the proportional financial burden of an individual person, there are logistical burdens for any Defendant litigating many hundreds

of miles from its place of residence or business. In evaluating this factor, courts generally consider where witnesses and evidence are likely to be located. *Metropolitan Life*, 84 F.3d at 575. Without exception, the key witnesses and evidence in this case are located outside Vermont, primarily in Virginia. This factor has weighed heavily in cases where defendants had no office, employees or property in the forum state. *See, e.g., Benton v. Cameco Corporation*, 375 F.3d 1070, 1079 (10th Cir. 2004).

Turning to the second factor, it is reasonable to conclude that Virginia's interest in this dispute is equal to that of Vermont as each has an interest in providing a forum for its citizens. Third, Plaintiff has an interest in convenient and effective relief but she can bring her claims where the claimed wrongs allegedly occurred, thereby benefiting from the convenience of having most of the defendants and witnesses in close proximity to the forum. Fourth, the interstate judicial system's interest in efficiently resolving the case turns on the location of witnesses, where the wrong in the underlying the lawsuit occurred, what forum's substantive law governs the case, and whether jurisdiction is necessary to prevent piecemeal litigation. *See OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1097 (10th Cir. 1998). Again, none of the liability witnesses are located in Vermont and the alleged wrongful conduct occurred elsewhere. The substantive law of Virginia should govern this case because that is where most of the activities relating to the alleged kidnapping are claimed to have occurred. *See Verzani v. Costco Wholesale Corp.*, 641 F. Supp. 2d 291, 298 (S.D.N.Y. 2009) (holding that several factors, including the location of the activity at the heart of the dispute, should govern the choice of law). Further, Plaintiff need not litigate the case in Vermont to avoid piecemeal litigation and, finally there is no meaningful difference in Virginia and Vermont's social policies towards kidnapping;

both condemn it. *See, e.g., Wyatt v. McDermott*, 283 Va. 685, 725 S.E.2d 555, 558 (2012); 13 V.S.A. § 2405.

Thus, of the five reasonableness factors, no factors weigh in favor of Vermont, one factor is neutral, and the remaining factors all weigh heavily in favor of Virginia. Accordingly, not only are these Defendants' contacts with Vermont nonexistent but the exercise of personal jurisdiction over them would offend traditional notions of fair play and substantial justice. The Amended Complaint should be dismissed.

II. VENUE IS IMPROPER IN VERMONT.

Plaintiff claims that venue is proper in this District, pursuant to 28 U.S.C. § 1391. However, her position is unsupported by the controlling law as the events central to this lawsuit primarily took place in the Western District of Virginia and none of them took place in Vermont. Section 1391(b) states in relevant part that: "A civil action may be brought in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." The Second Circuit has held that the venue statute is to be construed strictly and "district courts [must] take seriously the adjective 'substantial.'" *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005).⁸ Thus, "for venue to be proper, *significant* events or omissions *material* to the plaintiff's claim must have occurred in the district in question, even if other material events occurred elsewhere." *Id.* (emphasis in original). The substantial part test is *not* similar to a personal jurisdiction minimum contacts analysis. *Id.* As described in Section I above, and as detailed in the Amended Complaint, there are *no* events or omissions material to Plaintiff's claims that took place in Vermont. The gravamen of this lawsuit is an alleged kidnapping, every part of which took place outside the State of Vermont. No issue addressed in the Vermont

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⁸ Although the venue statute was rewritten in 2011, the substantial part test remains the same and District Courts continue to apply the *Gulf Insurance* standard. *See, e.g., Sanderson v. Horse Cave Theatre* 76, No. 12-cv-708, 2012 WL 3129485 (S.D.N.Y. Jul. 26, 2012).

Family Court proceedings is being adjudicated here and, thus, venue is improper in this judicial district.

Moreover, as alleged in the Amended Complaint and discussed in Section I of this Memorandum, almost all of the alleged planning, as well as the beginning of the alleged journey taken by Lisa and Isabella Miller to Nicaragua, are claimed to have taken place in towns and cities in the Western District of Virginia. Am. Complaint, ¶¶ 35, 38, 40, 41. The alleged planning for the trip to Nicaragua constitutes a series of significant events material to Plaintiff's kidnapping claim. Section 1391(b)(3) also provides for venue in "any judicial district in which any defendant is subject to the court's personal jurisdiction," but only "if there is no district in which an action may otherwise be brought as provided in this section." Because these claims can and should be brought in the Western District of Virginia under Section 1391(b)(2), this section is not applicable here. Given that there is another district where the claims can be brought, Section 1391(b)(3)'s expanded jurisdiction cannot be invoked in this case.

III. PERSONAL JURISDICTION AND VENUE ARE ALSO IMPROPER IN THIS FORUM UNDER RICO.

Plaintiff alternatively claims that 18 U.S.C. § 1965 of the Racketeer Influenced and Corrupt Organizations Act ("RICO") provides for venue and personal jurisdiction in this matter. The controlling case law in the Second Circuit does not support this assertion. For Plaintiff to show that this Court has jurisdiction over this action pursuant to Section 1965, she must first show that one of the defendants is subject to personal jurisdiction before this Court because such defendant "resides, is found, has an agent, or transacts his affairs" in Vermont. 18 U.S.C. § 1965(a). Second, Plaintiff must show that the RICO claims could not otherwise be tried in a single action because there is no federal district capable of exercising jurisdiction over all the defendants. Plaintiff cannot make either showing.

1. Plaintiff Cannot Show that Vermont has Personal Jurisdiction Over Any Of the Alleged RICO Conspirators.

In its seminal case interpreting service of process and personal jurisdiction for civil RICO claims, the Second Circuit held that, interpreting the RICO statute as a whole, “§ 1965 does not provide for nationwide personal jurisdiction over every defendant in every civil RICO case, no matter where the defendant is found.” *PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 71 (2d Cir. 1998). Instead, a district court must establish that it has personal jurisdiction over at least one defendant within its own district, and only when such jurisdiction exists may a district court establish jurisdiction over parties not residing in the district. *Id.* Section 1965(a) provides that “[a]ny civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.” *PT United Can* provided that this sub-section “grants personal jurisdiction over an initial defendant in a civil RICO case to the district court for the district in which that person resides, has an agent, or transacts his or her affairs.” *Id.* at 71.

Section 1965(b) states that “[i]n any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.” The *PT United Can* court held that subsection (b) provides for nationwide service of process over all other RICO defendants *only if* one defendant is subject to personal jurisdiction within the judicial district in accordance with subsection (a). *Id.* at 71.

The Court further stated: “In other words, a civil RICO action can only be brought in a district court where personal jurisdiction based on minimum contacts is established as to at least

one defendant.” *Id.* at 71. The Second Circuit did not explain why, after holding that § 1965(a) grants RICO jurisdiction only in a district where at least one person “resides, is found, has an agent, or transacts his affairs,” it then referenced the constitutional minimum contacts standard. Whether the text of § 1965(a) establishes the type of contacts necessary for personal jurisdiction in a forum district, or whether § 1965(a) is merely the first step of an inquiry that must ultimately satisfy the constitutional minimum contacts standard was never raised, much less briefed, by the parties in *PT United Can*, and the Court did not elaborate or explain further. However, Section 1965 jurisdiction and venue does not lie in Vermont under either a pure § 1965(a) analysis or under a mixed statutory-minimum contacts analysis.

(a) The Plain Language of Section 1965(a) Does Not Confer Personal Jurisdiction Over Any Defendant in Vermont.

Following the *PT United Can* decision, nearly every district court within the Second Circuit to have considered the jurisdictional contacts issue under § 1965 has resolved this question using only the standard set forth in subsection (a), without turning to an *International Shoe*-type "minimum contacts" analysis. *See Segal v. Bitar*, No.11-cv-4521, 2012 WL 273609 (S.D.N.Y. Jan. 30, 2012); *Pincione v. D'Alfonso*, No. 10-cv-3618, 2011 WL 4089885 (S.D.N.Y. Sept. 13, 2011); *Fernando v. Fernando*, No. 09-cv-1390, 2010 WL 3119729 (E.D.N.Y. Aug. 5, 2010); *Prospect Capital Corp. v. Bender*, No. 09-cv-826, 2009 WL 4907121 (S.D.N.Y. Dec. 21, 2009); *Pardy v. Gray*, No. 06-cv-6801, 2007 WL 1825200 (E.D.N.Y. June 22, 2007); *Gates v. Wilkinson*, No. 01-cv-3145, 2003 WL 21297296 (S.D.N.Y. June 4, 2003); *City of New York v. Cyco.Net, Inc.*, 383 F. Supp. 2d 526, 542 (S.D.N.Y. 2005); *Daly v. Castro Llanes*, 30 F. Supp. 2d 407, 412-13 (S.D.N.Y. 1998). *But see, Casio Computer Co., Ltd. v. Sayo*, No. 98-cv-3772, 2000 WL 1877516 (S.D.N.Y. Oct. 13, 2000). Thus, the overwhelming majority of district courts within this Circuit to have considered the question (indeed, all but one) have held that the

appropriate standard for deciding personal jurisdiction and venue under § 1965 is solely what the statute mandates: that is, whether a defendant “resides, is found, has an agent, or transacts his affairs” within the district.⁹

The decision in *Gates v. Wilkinson* provides the most in-depth analysis of the contacts necessary to establish personal jurisdiction under § 1965(a). The court first found that the “term ‘transacting affairs’ under § 1965(a) is synonymous with the ‘transacts business’ language of the venue provision of the Clayton [Antitrust] Act.” *Gates*, 2003 WL 21297296 at *1 (citing *Bulk Oil (USA) Inc. v. Sun Oil Trading Co.*, 584 F. Supp. 36, 39 (S.D.N.Y. 1983)). Using Clayton Act precedent as persuasive authority, *Gates* held that “a defendant ‘transacts business’ in a district if the defendant conducts business therein of any ‘substantial character.’” *Id.* (citing *Eastman Kodak v. Southern Photo Materials Co.*, 273 U.S. 359, 372-73 (1927)). To “transact business”

⁹ Defendants submit that assertion of nationwide jurisdiction under §1965, absent consideration of the constitutional minimum contacts requirement for the exercise of personal jurisdiction, is a violation of their constitutional Due Process protection which Congress is powerless to authorize through legislation. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (explaining that while Congress may alter federal courts’ *subject-matter* jurisdiction under Article III of the Constitution, “[t]he requirement that a court have *personal* jurisdiction flows not from Art. III, but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty”) (emphasis added).

The Constitution is, of course, the supreme law of the land. U.S. Const. Art. VI, cl. 2. Defendants recognize that a constitutional challenge to § 1965’s nationwide jurisdiction is foreclosed by precedent in the Second Circuit. However, there is a split in the circuits and the Second Circuit should join those circuits that have rejected carte-blanche nationwide jurisdictional mandates, concluding that due process requires something more than mere contacts with the United States. *See e.g., Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 945-46 (11th Cir. 1997) (although personal jurisdiction in federal question cases is constrained by the Due Process Clause of the Fifth, not Fourteenth, Amendment, “[w]e discern no reason why these constitutional notions of ‘fairness’ and ‘reasonableness,’ should be discarded completely when jurisdiction is asserted under a federal statute rather than a state long-arm statute”) (satisfying Fifth Amendment due process requires “balanc[ing] the burdens imposed on the individual defendant against the federal interest involved in the litigation,” focusing on “constitutionally significant inconvenience” of litigating in foreign jurisdiction rather than on traditional minimum contacts analysis) (“*even when a defendant resides within the United States, courts must ensure that requiring a defendant to litigate in plaintiff’s chosen forum is not unconstitutionally burdensome*”) (emphasis added); *Bellaire Gen. Hosp. v. Blue Cross Blue Shield of Michigan*, 97 F.3d 822, 826 (5th Cir. 1996) (concluding that Congress cannot bypass traditional minimum contacts requirements of due process, but applying the contrary decision of a previous panel “with grave misgivings”) (“[w]e fail to apprehend how personal jurisdiction can be separated from due process by Congressional enactment of nationwide service of process provisions”).

Similarly, the Due Process clause protects these Defendants from being haled into a Vermont court under § 1965 solely on the basis of their contacts with the United States outside of the forum state. This argument may be foreclosed in this Circuit but it is raised here to preserve it for future review.

means “the practical, everyday business or commercial concept of doing business or carrying on business of any substantial character.” *Id.* (citing *United States v. Scophony Corp.*, 333 U.S. 795, 807 (1948); *Banana Distrib., Inc. v. United Fruit Co.*, 269 F.2d 790, 794 (2d Cir.1959)). “For a defendant to transact business of any substantial character, there must be some amount of business continuity and certainly more than a few isolated and peripheral contacts with the particular judicial district.” *Id.* Finally, “venue under § 1965(a) requires that a defendant transact his affairs in the district ***at the time the complaint is filed.***” *Id.* at *2.¹⁰ (emphasis added).

The Amended Complaint has not alleged and there is no support whatsoever to maintain that, at the time this action was filed, any of the defendants were transacting their affairs in Vermont, within the meaning defined by *Gates*, or indeed in any manner. None of the defendants have any sort of connection to this forum that could constitute the transaction of their affairs. None of the twelve defendants named in this suit reside or have an agent in Vermont, and Plaintiff has not alleged that any do. Further, no defendant “transacts his affairs” within the meaning of §1965(a) in the District of Vermont. As stated in *Gates*, any business must be of a substantial character, conducted within the forum in an everyday manner and with continuity. *Gates* at *1. Mere peripheral contacts are insufficient and any contacts must exist as of the time the suit is filed. *Id.*

Plaintiff may contend that Kenneth Miller can be “found” in Vermont as a result of his criminal trial. However, this argument is unavailing due to the doctrine granting immunity from service for those present in a jurisdiction solely by reason of involvement in another matter

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¹⁰ Courts in the Second Circuit essentially merge venue and personal jurisdiction when analyzing § 1965. Thus, if a district court finds that personal jurisdiction exists, venue will also exist. *City of New York v. Cyco.Net*, 383 F. Supp. 2d at 544 (“[I]t is the policy in this Circuit to conflate personal jurisdiction and venue by reading the RICO venue provision to permit adjudication in any district where minimum contacts are established.”).

before a court of law. “Generally, witnesses, parties and attorneys coming from another jurisdiction are exempt from service of civil process during the period required for their attendance in court.” *Shapiro & Son Curtain Corp. v. Glass*, 348 F.2d 460, 461 (2d Cir. 1965). This rule is intended to avoid discouraging “the voluntary attendance of those whose presence is necessary or convenient to the judicial administration in the pending litigation.” *Norex Petroleum Ltd. v. Access Indus., Inc.*, 620 F. Supp. 2d 587, 590 (S.D.N.Y. 2009) (quoting *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932)).

Although there are exceptions to this rule, such as where two civil lawsuits “are not independent of each other,” but rather where the second is brought to vindicate rights sought in the first (*see Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1193 (S.D.N.Y. 1996)), that exception is irrelevant here. The exception to the immunity doctrine is generally successfully invoked only where two civil actions lie with regard to the same set of facts. *See Cabiri*, 921 F. Supp. at 1193; *McDonnell v. Am. Leduc Petroleums, Ltd.*, 456 F.2d 1170, 1180 (2d Cir. 1972). Kenneth Miller was served with the Complaint in this case on the final day of his criminal trial. This lawsuit involves some of the same facts raised by the criminal action but it is not related to the vindication of the same set of rights in the way that a second civil lawsuit may enforce or vindicate personal rights and civil damages litigated in an initial suit. A criminal action is an attempt by the Government to enforce its laws, while a civil action is an attempt by an individual to gain a recovery for alleged damages. These are fundamentally different legal actions, one undertaken by the Government at its own behest and one by an individual; they are fully independent of each other. The fact that Kenneth Miller was present in a Vermont court due to a court order, such as bail, has no bearing on the immunity doctrine analysis in the Second Circuit. *Shapiro & Son*, 348 F.2d at 462. (“The fact that [defendant’s] appearance was pursuant to court

order does not affect the immunity.”); *McDonnell*, 456 F.2d at 1179 (holding that the immunity doctrine applies to a court appearance that has been compelled).

Moreover, even if Kenneth Miller could properly be served with process in this action in Vermont, which he cannot be, Plaintiff still cannot satisfy the threshold requirement for venue under Section 1965(a), because “found” under this section “demands more than mere occasional physical presence” as “some acts *relevant to the RICO claim* must have occurred in the venue sought by plaintiff.” *Berry v. New York State Dept. of Corr. Services*, 808 F. Supp. 1106, 1111 (S.D.N.Y. 1992) (emphasis added). The Amended Complaint does not and cannot allege that Kenneth Miller (or any other defendant, for that matter) performed “some acts relevant to the RICO claim” in Vermont. Indeed, the Amended Complaint does not allege *any* contact, let alone a RICO-related contact, between Kenneth Miller and Vermont, other than his temporary and involuntary, court-ordered presence at the time he was served with process.

The only other conceivable jurisdictional hook that Plaintiff might attempt under § 1965(a) pertains to Defendant Lisa Miller. However, Lisa Miller neither “resides” nor is “found” nor “has an agent,” nor “transacts [her] affairs” in Vermont. Plaintiff may claim that Lisa Miller’s short residence in Vermont many years ago, her entry into and dissolution of a civil union in Vermont, and her attempts to avoid a custody order issued by a Vermont court, subject her to personal jurisdiction in Vermont. Such an argument might succeed in a contempt action based upon the Vermont custody order but this is clearly not such an action. Here, Plaintiff alleges a RICO conspiracy, based upon three specific predicate acts, none of which took place in Vermont. Again, Plaintiff is required to show that some acts relevant to her RICO claims occurred in Vermont before jurisdiction can be asserted under § 1965(a) and she cannot do so under the facts alleged in the Amended Complaint. *See Berry*, 808 F. Supp. at 1111 (discussed

supra). See also, *Pardy v. Gray*, 2007 WL 1825200, *4 (E.D.N.Y. June 22, 2007) (finding that § 1965(a) could not be used to bring non-resident defendants into Eastern District of New York, where the alleged RICO predicate acts took place elsewhere).

Accordingly, neither jurisdiction nor venue can be invoked under § 1965(a) over any of the alleged RICO conspirators, because none of them “resides, is found, has an agent, or transacts his affairs” in Vermont. Consequently, nationwide jurisdiction cannot be exercised under § 1965(b).

(b) Personal Jurisdiction under RICO is Absent Even If this Court Employs a Minimum Contacts Analysis.

Even if this Court were to disagree with nearly all of its sister district courts in the Second Circuit and hold that jurisdiction under § 1965 should be decided under a due process/minimum contacts standard, Plaintiff has not and cannot allege that any of the defendants engaged in the alleged acts of racketeering in Vermont such that any of them have the requisite minimum contacts with Vermont. Rather, this controversy “is related to or arises out of” the non-resident co-defendants’ alleged contacts with the Western District of Virginia. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). The Amended Complaint names the defendants as parties to this action precisely because of activity they allegedly undertook to assist Lisa Miller to transport Isabella from Virginia to Nicaragua and to provide her with financial support so they could remain outside of the United States. *None* of this alleged conduct occurred within Vermont.

As discussed in Section I above, given the absence of minimum contacts between Liberty University, TRBC, Victoria Hyden, and Vermont, this Court lacks personal jurisdiction over these three Defendants. The other defendants also lack minimum contacts with Vermont. None of them reside here and none of their alleged actions in this case took place in or were directed at

Vermont. The supposed planning for the alleged kidnapping, one of the alleged RICO acts of racketeering, is claimed to have taken place in Virginia and this is where the Millers' journey is alleged to have begun. *See* Am. Complaint, ¶¶ 35, 38, 40, 41, 66(a). Additionally, the alleged money laundering and mail fraud, the other alleged RICO acts of racketeering, were supposedly aimed at providing cash to Lisa Miller in Nicaragua and those alleged predicate acts took place in Virginia. *Id.* at ¶¶ 53, 66(b)-(c). Lisa Miller was a resident of Virginia immediately prior to her disappearance and had extensive and continuous contacts with Virginia prior to September 2009. *Id.* ¶¶ 6, 20, 25. Whatever contacts Lisa Miller may have had with Vermont in the more distant past, none of her acts or omissions with respect to the RICO violations alleged in this action occurred in Vermont so as to create the requisite minimum contacts.

Defendants Kenneth Miller, Linda Wall, and Phillip Zodhiates are all domiciled in Virginia, *id.* at ¶¶ 8, 12, 13, 17-18, and none of their alleged RICO acts or omissions occurred in Vermont but took place entirely, or primarily, in Virginia. *See, e.g., id.* at ¶ 26 (agreement between Wall and Lisa Miller), ¶ 36 (transportation of Millers from Virginia to Canadian border by Zodhiates), ¶ 37 (purchase of plane tickets for Millers), ¶ 44 (disposing of Millers' belongings in their Virginia apartment), ¶ 53 (alleged money laundering and mail fraud in Virginia). Similarly, Defendant Response Unlimited, Inc., a Delaware corporation, lacks any minimum contacts with Vermont where the alleged actions of Philip Zodhiates, its president and sole owner, all occurred outside of Vermont. *Id.* at ¶ 12, 36. Timothy Miller, a pastor with the Beachy Amish-Mennonite Christian Brotherhood and a resident of Managua, Nicaragua and Crossville, Tennessee, is alleged to have aided and abetted in the abduction of Isabella from Virginia by purchasing plane tickets for Lisa Miller and her daughter to Nicaragua, by meeting them on their arrival in Nicaragua, and by employing Lisa Miller in his Managua home. *Id.* at ¶

9, 34, 37, 54. None of these alleged actions occurred in Vermont. Finally, Plaintiff does not even claim that the remaining RICO defendants, Andrew Yoder and his employer, Christian Aid Ministries, Inc. (CAM), an Ohio resident and an Ohio corporation, have any ties to Vermont. *Id.* at ¶¶ 10-11. Yoder allegedly engaged in RICO acts of racketeering, using Millmont Greenhouses, Inc., a garden center in Stuart's Draft, Virginia, and CAM allegedly provided aid to Lisa Miller in Nicaragua. Am. Complaint, ¶ 38, 53, 54, 56, 66.

In sum, none of the allegations in the Amended Complaint show that there are minimum contacts between any of the defendants and the State of Vermont with respect to the alleged RICO acts of racketeering (or any of Plaintiff's other claims for that matter). Even under a minimum contacts analysis, jurisdiction over Plaintiff's RICO claims cannot lie in Vermont under Section 1965(a) because no defendant has the requisite minimum contacts with Vermont.

2. Section 1965 Jurisdiction Properly Lies In the Western District of Virginia.

Nor can Plaintiff make the second showing required by *PT United Can* to establish that this Court has jurisdiction over her RICO claims. Specifically, Plaintiff must demonstrate that her RICO claims could not otherwise be tried in a single action because there is no federal district capable of exercising jurisdiction over all of the defendants. This Plaintiff cannot do because Virginia's Western District can exercise jurisdiction over all of the defendants.

The Second Circuit explained in *PT United Can* that:

§ 1965(b) provides for nationwide service and jurisdiction over "other parties" not residing in the district, who may be additional defendants of any kind, including co-defendants, third party defendants, or additional counter-claim defendants. This jurisdiction is not automatic but requires a showing that the "*ends of justice*" so require.

138 F.3d at 71 (emphasis added). Thus, the preference set forth in § 1965 is to bring a RICO action where such suit would normally expect to be brought and to avoid, where possible,

“haling defendants into far flung fora.” *Id.* at 71-72. Section 1965(b) does not specify what “the ends of justice” means. However, in *PT United Can*, the Second Circuit affirmed the lower court’s holding that “the ends of justice” requirement “refer[s] to a case in which there is no district with personal jurisdiction over all defendants.” 138 F.3d at 71 n. 5. In so doing, the Second Circuit cited with approval the Ninth Circuit’s decision in *Butcher’s Union Local No. 498, United Food and Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 538-39 (9th Cir. 1986), on which the lower court had relied and which adopted an identical interpretation of “the ends of justice” requirement. *Id.*

An overwhelming number of district courts in the Second Circuit have subsequently followed *Butcher’s Union* and held that § 1965(b) limits the scope of nationwide jurisdiction in RICO cases to only those instances where the RICO claim could not otherwise be tried in a single action elsewhere because no other district court could exercise personal jurisdiction over all of the defendants. *Elsevier Inc. v. W.H.P.R., Inc.*, 692 F. Supp. 2d 297, 315 (S.D.N.Y. 2010). *See also, Thomas v. JP Morgan Chase, N.A.*, No. 11-cv-3656, 2012 WL 2872164 (E.D.N.Y. July 11, 2012); *First Cent. Sav. Bank v. Meridian Residential Capital*, No. 09-cv-3444, 2011 WL 838910 (E.D.N.Y. Mar. 3, 2011); *Fernando v. Fernando*, No. 09-cv-1390, 2010 WL 3119729 (E.D.N.Y. Aug. 5, 2010); *Eldred v. Comforce Corp.*, No. 3:08-cv-1171, 2010 WL 812698 (N.D.N.Y. Mar. 2, 2010); *Nuevo Mundo Holdings v. PriceWaterhouse Coopers LLP*, No. 03-cv-0613, 2004 WL 2848524 (S.D.N.Y. Dec. 9, 2004); *Zito v. Leasecomm Corp.*, No. 02-cv-8074, 2004 WL 2211650 (S.D.N.Y. Sept. 30, 2004); *Regency Capital, LLC v. Corpfinance Int’l, Inc.*, No. 02-cv-5615, 2003 WL 22400200 (S.D.N.Y. Oct. 20, 2003); *Gates v. Wilkinson*, No. 01-cv-3145, 2003 WL 21297296 (S.D.N.Y. June 4, 2003); *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, No. 010cv-1574, 2002 WL 719471 (E.D.N.Y. Mar. 1, 2002); *Nat’l Asbestos Workers Med. Fund v.*

Philip Morris, Inc., 86 F. Supp. 2d 137, 140 (E.D.N.Y. 2000); *Anderson v. Indiana Black Expo, Inc.*, 81 F. Supp. 2d 494, 505 (S.D.N.Y. 2000); *Daly v. Castro Llanes*, 30 F. Supp. 2d 407, 413 (S.D.N.Y. 1998).

Applying that test, it is clear that Plaintiff cannot show that there is no other district that would have jurisdiction over all of the defendants. To the contrary, it is evident that a majority of the defendants would be subject to jurisdiction under § 1965(a) in the Western District of Virginia because they reside, are found, have agents or transact their affairs there.¹¹ The remaining three co-defendants (Timothy Miller, Andrew Yoder, and Christian Aid Ministries, Inc.), who do not reside in Virginia, would likewise be subject to the jurisdiction in Virginia's Western District either because they are alleged to have engaged in acts of racketeering, in Virginia and with Virginia residents (*e.g.*, Am. Compl., ¶¶ 10-14, 34, 36, 38, 41, 53), or, more readily, under the Fourth Circuit's more expansive interpretation and application of RICO's "nationwide service of process" provision.¹²

¹¹ Lisa Miller was residing in Virginia, where she had lived for many years, immediately prior to her disappearance. Am. Complaint, ¶¶ 6, 20, 25. Kenneth Miller, Victoria Hayden, Linda Wall, Douglas Wright, and Phillip Zodhiates are allegedly domiciled in Virginia. *Id.* at ¶¶ 8, 12, 13, 17-18. Liberty University and Thomas Road Baptist Church are both incorporated under the laws of Virginia. *Id.* ¶¶ 15-16. Philip Zodhiates, a Virginia resident, is also the president and sole owner of defendant Response Unlimited, Inc., a Delaware corporation. *Id.* at ¶¶ 12, 14.

¹² Unlike the Second Circuit, the Fourth Circuit holds that 18 U.S.C. § 1965(d) authorizes nationwide service of process against any RICO defendant who resides, is found, has an agent, or transacts his affairs in any judicial district within the United States. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 627 (4th Cir. 1997). Section 1965(d) does not contain the same "ends of justice" requirement found in section 1965(b), the reason for which courts within the Fourth Circuit do not apply it. *See e.g., D'Addario v. Geller*, 264 F. Supp. 2d 367, 387 n.22 (E.D. Va. 2003) ("the Fourth Circuit seems to have eradicated the 'ends of justice' inquiry"); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 267, 274 (D.S.C. 1999) ("the 'ends of justice' analysis of subsection (b) has no place in this court's determination of personal jurisdiction") (noting disagreement between Fourth Circuit's *ESAB* decision and Second Circuit's *PT United* decision). Accordingly, if Plaintiff were required to bring this suit in Virginia, she would not be encumbered by the same "ends of justice" requirement that this Court must apply under *PT United*, and thus could establish personal jurisdiction over all defendants under RICO's § 1965(d), merely by virtue of their contacts with **any** judicial district in the United States. As noted above, however, that jurisdictional shortcut is expressly precluded in the Second Circuit. *PT United*, 138 F.3d at 71 (stating that "§ 1965 does not provide for nationwide personal jurisdiction over every defendant in every civil RICO case, no matter where the defendant is found" and expressly rejecting other circuits' interpretation of § 1965(d) in a manner that confers nationwide jurisdiction over any RICO defendant).

Because the Western District of Virginia clearly qualifies as a “district court [that] could exercise personal jurisdiction over all of the defendants,” the “ends of justice” provision in § 1965(b) does not require that this suit be heard in Vermont. *Elsevier Inc.*, 692 F. Supp. 2d at 315. Indeed, the “ends of justice” analysis followed by the district courts of the Second Circuit *requires* that this case be heard in the Western District of Virginia because that district *can* exercise personal jurisdiction over every defendant.

IV. THE SUIT AGAINST THESE DEFENDANTS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

1. The Standard of Review for Rule 12(b)(6) Motions.

Even were personal jurisdiction and venue proper in this District, this suit would need to be dismissed because Plaintiff has not and cannot state any viable cause of action against these Defendants. On a motion to dismiss under Rule 12(b)(6), the Court accepts as true the factual allegations set forth in the complaint, drawing all reasonable inferences in the plaintiff’s favor. *MLSMK Inv. Co. v. JP Morgan Chase & Co.*, 651 F.3d 268, 273 (2d Cir. 2011). This requirement, however, does not apply to legal conclusions, bare assertions or conclusory allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 681 (2009). To survive a motion to dismiss, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Ruotolo v. City of New York*, 514 F.3d 184, 188 (2d Cir. 2008) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2004)). The factual allegations in Plaintiff’s Amended Complaint are not enough to raise a right to relief for Plaintiff above the speculative level and, therefore, should be dismissed. 550 U.S. at 555.

2. Count One Should Be Dismissed Because It Is Not Based On a Recognized Private Right Of Action.

Count One of the Amended Complaint alleges that the Defendants conspired with and aided and abetted Lisa Miller-Jenkins in her commission of the criminal offense of kidnapping under Vermont law. Am. Complaint, ¶¶ 63-64. Even assuming these conclusory allegations to be true for purposes of this Motion,¹³ Count One must be dismissed because Vermont has not recognized a private right of action for the crime of kidnapping. Criminal statutes, in and of themselves, do not create private rights of action. *See Madden v. Abate*, 800 F. Supp. 2d 604, 606-07 (D. Vt. 2011) (acknowledging that “the existence of a criminal statute prohibiting certain conduct does not in and of itself create a private right of action that may be brought by the victim of that conduct.”); *id.* at 607 (collecting cases from other jurisdictions holding that no civil cause of action may be maintained for violation of criminal offenses). As a general matter, the Second Circuit has long recognized “that crimes are prosecuted by the government, not by private parties.” *Hill v. Didio*, 191 Fed. Appx. 13, 14-15 (2d Cir. 2006) (citing *Connecticut Action Now, Inc. v. Roberts Plating Co.*, 457 F.2d 81, 86–87 (2d Cir. 1972)). Similarly, there is no private right of action for violations of the federal Parental Kidnapping Prevention Act. *Monroe v. McNairy County*, 850 F. Supp. 2d 848, 876 (W.D. Tenn. 2012). *Cf. Giano v. Martino*, 673 F. Supp. 92, 95 (E.D.N.Y. 1987) (“Federal Kidnapping Act was never intended to confer rights on the victim of a kidnapping, and does not do so by its language.”); *Esser v. Roach*, 829 F. Supp. 171, 176 (E.D. Va. 1993) (“[T]he PKPA affords no private, federal cause of action.”).

¹³ For the record, Plaintiff does not concede those allegations to be true. *See* Ex. 1, Jerry Falwell Affidavit, ¶ 15 (“Liberty University did not assist Lisa Miller to leave or to remain outside of the United States, nor did it aid or abet in any way Lisa Miller’s move from Virginia to Nicaragua.”); Ex. 2, Jonathan Falwell Affidavit, ¶¶ 23-24 (stating that TRBC has never conspired with Lisa Miller, nor aided and abetted her move from Virginia to Nicaragua); Ex. 3, Hyden Affidavit, ¶ 16 (“I have never provided Lisa Miller with any assistance, aid, or advice of any kind and . . . at no time have I participated in or conspired to ‘kidnap Isabella Miller-Jenkins [or] intentionally cause her continued detention outside of the State of Vermont[.]’”); Ex. 4, Staver Affidavit, ¶ 20 (“I absolutely did not aid or assist Lisa Miller in fleeing the country.”); Ex. 5, Lindevaldsen Affidavit, ¶ 15 (same).

As this Court has previously recognized, “[w]here a private litigant asserts a claim that is not based upon any recognized private right of action, the Court may dismiss the claim.” *Madden v. Abate*, 800 F. Supp. 2d 604, 606-07 (D. Vt. 2011) (citing to *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 115 (2d Cir. 2007)). Since Count One of the Amended Complaint asserts a claim that is not recognized either under Vermont law or federal law, it should be dismissed with prejudice.

3. Plaintiff’s RICO Claims Should Be Dismissed Because Plaintiff Lacks Standing To Bring A RICO Claim And Has Failed To State A Cognizable RICO Claim Against These Defendants

(a) Overview of Civil RICO Causes of Action

A civil RICO cause of action is created by 18 U.S.C. § 1964(c). “Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee[.]” Section 1962 incorporates four separate causes of action, only two of which are relevant here. Under 18 U.S.C. § 1962(c), it “shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.” Under 18 U.S.C. § 1962(d), it “shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.” In Count Two of the Amended Complaint, Plaintiff asserts a claim under § 1962(c) against Kenneth Miller for his alleged employment by or participation in the affairs of the Beachy Amish-Mennonite Christian Brotherhood, an alleged RICO enterprise and non-party to this civil action. In Count

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Three, Plaintiff alleges a RICO conspiracy claim, pursuant to § 1962(d), against all of the defendants, including Liberty University, TRBC, and Victoria Hyden.

Plaintiff has failed to plead the elements of a RICO claim with respect to these three Defendants because no such claim exists. The Court need not initially address any disputed issues of fact -- of which there are many, as shown by the Affidavits attached hereto and as discussed below -- because the facts Plaintiff has pled fail to support a claim for relief under RICO, warranting dismissal pursuant to Rule 12(b)(6). First, Plaintiff has failed to establish that she has standing to bring her RICO claim where she has not alleged a cognizable RICO injury. Second, Plaintiff has not alleged a cognizable RICO conspiracy claim in the absence of any agreement by any of these three Defendants to engage in a pattern of racketeering activity. Third, Plaintiff lacks standing to bring a RICO conspiracy claim, pursuant to § 1962(d) where she has failed to allege a cognizable RICO claim in Count Two, pursuant to § 1962(c). *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d Cir. 1990) (recognizing that plaintiff only has standing to sue for a RICO conspiracy if plaintiff can show an injury-causing overt RICO act under § 1962(a), (b) or (c)). Any one of these grounds is sufficient to establish that Plaintiff has failed to state a RICO claim against these three Defendants, thereby warranting dismissal of her RICO claims. Each is addressed in turn in the following sections.

First, however, Defendants note that not only is Plaintiff's Amended Complaint insufficient on its face to support her RICO claims, but the allegations she has made are factually unfounded, replete with false statements and baseless innuendo, and Defendants categorically deny that they have engaged in the wrongful acts ascribed to them. With no intent to diminish the sincerity of Plaintiff's distress, it is important for these Defendants to unequivocally make clear that Plaintiff's incendiary allegations against Mathew Staver, Esq. and Rena Lindevaldsen,

Esq., are not only untrue but they are defamatory. They represented Lisa Miller, through Liberty Counsel (not Liberty University), in their capacity as officers of the court and did so with integrity and consistent with the highest ethical standards. Even Plaintiff concedes that they have at all times maintained publicly and in the courts of Virginia and Vermont, including in sworn testimony, their categorical denial that they did not know Lisa Miller's location and that she simply stopped communicating with them and disappeared. Amended Complaint at ¶ 58. In fact, it appears that Plaintiff herself may not reasonably believe these allegations of wrongful behavior against the Defendants to be true. Instead, the goal underlying this suit seems to be to intimidate and pressure those entities and individuals whom Plaintiff or her counsel think may possess information about Isabella's whereabouts. *See, e.g.*, <http://www.commercialappeal.com/news/2012/aug/15/group-vermont-conviction-boosts-gay-parents-rights/?print=1> (viewed on Oct. 29, 2012 at 9:50 p.m.) ("As the guilty verdict was being read against Kenneth Miller, of Stuarts Draft, Va., in U.S. District Court in Burlington, Jenkins' attorney filed a civil lawsuit against both Millers and a number of other groups and individuals alleged to have been involved in her flight. The suit alleges the Millers and the groups worked together to keep Isabella beyond the reach of Jenkins and asks for unspecified monetary damages. ***'Janet's only objective is to get Isabella home safely,' said Sarah Star, a lawyer for Jenkins. 'Anything we're doing is for the purpose of putting pressure on people who know where she is and can help with her return.'***") (emphasis added).

This is an unwarranted use of the civil RICO statute and such an abuse of the judicial process should not be countenanced. *See Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 328 (2d Cir. 2011) (Cabranes, J., dissenting) ("We encounter here another chapter in the long saga of civil RICO and its discontents. Since its enactment in 1970, the civil RICO statute . . . has

exasperated generations of federal judges and practitioners and generated a vast, and often skeptical, literature”).

(b) Plaintiff Lacks Standing Because She Has Failed To Allege A Cognizable RICO Injury.

Plaintiff has failed to allege adequately that she has suffered an injury to her business or property that was proximately caused by the alleged RICO violations. RICO standing is more rigorous than standing under Article III. *Denney v. Deutsche Bank AG*, 443 F.3d 253, 266 (2d Cir. 2006) (citing *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 123 (2d Cir. 2003)).¹⁴ RICO provides a private right of action for “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.” 18 U.S.C. § 1964(c). *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 283 (2d Cir. 2006). “In order to bring suit under § 1964(c), a plaintiff must plead (1) the defendant's violation of [18 U.S.C.] § 1962, (2) an injury to the plaintiff's business or property, and (3) causation of the injury by the defendant's violation.” *Id.*, citing, *Commercial Cleaning Servs., L.L.C. v. Colin Serv. Svs., Inc.*, 271 F.3d 374, 380 (2d Cir. 2001).

RICO's use of the clause “by reason of” has been held to limit standing to those plaintiffs who allege that the asserted RICO violation was the legal, or proximate, cause of their injury, as well as a logical, or “but for,” cause. *Id.* Thus, RICO plaintiffs only have standing to the extent that they have been injured in their business or property by conduct constituting a RICO violation. *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 768 (2d Cir. 1994). Furthermore, “a cause of action does not accrue under RICO until the amount of damages becomes clear and definite.” *Motorola Credit Corp. v. Uzan*, 322 F.3d 130, 135 (2d Cir. 2003) (internal quotation marks omitted).

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¹⁴ A dismissal for lack of RICO standing may be made pursuant to Rule 12(b)(6), rather than Rule 12(b)(1), *Lerner*, 318 F.3d at 126 (citing *Rent Stabilization Ass'n v. Dinkins*, 5 F.3d 591, 594 & n. 2 (2d Cir. 1993)).

The meaning of “proximate cause” in the RICO context is different from that at common law. *Lerner*, 459 F.3d at 284. “In practice, our cases have held RICO plaintiffs to a more stringent showing of proximate cause than would be required at common law. . . . RICO cases, in order to combat the specific mischiefs that the RICO statute was designed to address, seem to require that the kind of harm the victim suffered be foreseeable as well.” *Moore v. PaineWebber, Inc.*, 189 F.3d 165, 179 (2d Cir. 1999) (Calabresi, J., concurring) (citations omitted).

In the Second Circuit, “a plaintiff does not have standing if he suffered an injury that was indirectly (and hence not proximately) caused by the racketeering activity or RICO predicate acts, even though the injury was proximately caused by some non-RICO violations committed by the defendants.” *Baisch v. Gallina*, 346 F.3d 366, 373 (2d Cir. 2003). “[T]he compensable injury flowing from a violation of [§ 1962(c)] necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise.” *Anza v. Ideal Steel Supply Corp.* 547 U.S. 451, 457 (2006) (omitting internal quotation marks). Thus, the Section 1964(c) causation element requires proof that at least one or more of the Defendants’ specified acts of racketeering (predicate acts) was the proximate cause of Plaintiff’s injuries. The central question, therefore, is “whether the alleged violation led directly to the plaintiff’s injuries.” *Anza*, 547 U.S. at 461.

Plaintiff has failed to plead sufficient factual allegations to demonstrate that the alleged RICO violations caused an injury to her business or property. Plaintiff alleges she has suffered injury, “including legal fees, investigative fees, court costs, and unpaid child support obligations and deprivation of personal property.” Am. Complaint ¶ 73. She further alleges that she has

“incurred legal fees and lost business as a result of having to close her daycare center in order to attend contempt and other Court hearings, an [sic] meetings with law enforcement necessary to locate her daughter,” and that she has been unable to collect court-ordered fines. *Id.* at ¶ 79. She has not, however, pled and cannot show that the alleged injurious conduct of kidnapping, mail fraud and money laundering caused her alleged injuries where there is no direct relation between the two.

In particular, the damages Plaintiff alleges she has suffered are not the kind of harm that is foreseeable. Plaintiff was not the intended victim of either the alleged money laundering or mail fraud and her alleged damages are not directly related (or even indirectly related) to either of these racketeering activities.¹⁵ *See Hecht*, 897 F.2d at 24 (finding that plaintiff’s loss of commissions may have been factually caused by RICO violations, but was not proximately caused by the violations, where plaintiff was neither the target of the racketeering enterprise nor the competitor or customer of the racketeer). The “direct relation” requirement generally precludes recovery by a “plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts.” *Commercial Cleaning Services*, 271 F.3d at 381 (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992)).

Even if Plaintiff could properly be characterized as a kidnapping “victim,” Plaintiff’s alleged damages were not proximately caused by and did not directly flow from the alleged kidnapping. “For our purposes, the RICO pattern or acts proximately cause a plaintiff's injury if they are a substantial factor in the sequence of responsible causation, and if the injury is

¹⁵ The Amended Complaint does not allege that Liberty University, TRBC or Victoria Hyden were involved in any way with the alleged money laundering or mail fraud. *See* Am. Complaint at ¶ 66(b) and (c). The alleged purpose of these two acts was to provide financial support to Lisa Miller and the Amended Complaint does not allege that Plaintiff was a targeted victim or was somehow defrauded of any monies. In fact, these two alleged acts of racketeering have no victims, intended or otherwise, under the allegations of the Amended Complaint. Unlike other RICO cases where the acts are aimed at defrauding specific individuals or groups, here the only parties identified in connection with these allegations are claimed to be willing participants using their own funds or transferring funds of others with their permission.

reasonably foreseeable or anticipated as a natural consequence.” *Hecht*, 897 F.2d at 23-24. *See also Hemi Group, LLC v. City of New York*, 130 S.Ct. 983 (2010) (reiterating RICO’s direct relationship requirement between the injury asserted and the injurious conduct alleged). Factual causation, standing alone, is insufficient. “The requirement that a defendant's actions be the proximate cause of a plaintiff's harm represents a policy choice premised on recognition of the impracticality of asserting liability based on the almost infinite expanse of actions that are in some sense causally related to an injury.” *Commercial Cleaning Services*, 271 F.3d at 380.

Under the law of the Second Circuit, Plaintiff’s alleged injuries here were neither reasonably foreseeable nor a natural consequence of Isabella’s alleged kidnapping. In *Burdick v. American Exp. Co.*, the plaintiff alleged that the defendants’ frauds not only damaged his customers, but also interfered with his ability to service his customers, keep them happy and earn a living for himself, creating an injury to his business or property sufficient to confer standing. 865 F.2d 527, 529 (2d Cir. 1989). The Second Circuit disagreed. “[T]his type of harm is simply too remotely related to the predicate acts of mail and securities fraud to support a claim under RICO.” *Id.* Similarly, the legal fees to change custody orders, lost business due to attending a number of hearings regarding same, and unpaid fines, damages Plaintiff has allegedly suffered, are too remotely related to the predicate act of kidnapping and, in fact, appear to predate the alleged kidnapping. *See also Kimm v. Chang Hoon Lee*, 196 Fed. Appx. 14, 16 (2d Cir. 2006) (finding that generalized reputational harms, including the risk of future lost business commissions, and lost legal fees were too speculative to constitute an injury to business or property, as required to confer standing); *Hollander v. Flash Dancers Topless Club*, 173 Fed. Appx. 15 (2d Cir. 2006) (concluding that plaintiff’s alleged damages for lost profits, business interruption expenses, lost business opportunities, and investigation expenses failed to allege the

required proximate causation, where the alleged losses arose out of plaintiff's discovery and investigation of the illegal scheme rather than out of any conspiracy directed at him); *Pelullo v. National Union Fire Ins. Co. of Pittsburgh*, 131 Fed. Appx. 864, 867 (3d Cir. 2005) (holding that RICO plaintiffs failed to allege facts sufficient to support an inference of proximate causation because they alleged defendants subjected them "to a combination of criminal fines, restitution, and forfeitures, extensive civil litigation, coerced settlements, civil judgments, and ruinous attorney fees so as to limit their financial and criminal liability," and the alleged facts did not support an inference of a nexus between defendant's specific activities and the alleged injuries); *Evans v. City of Chicago*, 434 F.3d 916, 926-27 (7th Cir. 2006) ("The loss of income as a result of being unable to pursue employment opportunities while allegedly falsely imprisoned-similar to monetary losses flowing from the loss of consortium, loss of security and peace, wrongful death and similar claims sounding in tort-are quintessentially pecuniary losses derivative of personal injuries arising under tort law.").

Injuries caused not by the alleged racketeering violation, but by the discovery of those actions and the consequences of that discovery, are not cognizable damages under RICO. *See In re Am. Express Co. S'holders Litig.*, 39 F.3d 2395, 400 (2d Cir. 1994). Plaintiff was not the intended target of any alleged RICO violations. To the contrary, the alleged RICO violations were intended to benefit Lisa Miller. To the extent Plaintiff's alleged legal fees, loss of business, investigative fees, court costs, unpaid child support, unpaid fines, and loss of unidentified personal property were incurred after the kidnapping, these alleged damages also fail to state a cognizable RICO injury because these "injuries" were not the intended and foreseeable consequence of the alleged kidnapping, money laundering or mail fraud and were not directly related to any injurious RICO conduct committed by these Defendants.

In short, Plaintiff has not and cannot show that the damage to her business or property resulted from the alleged kidnapping, mail fraud and money laundering, the predicate acts constituting the violation in this case. Accordingly, Plaintiff lacks standing to bring the RICO claims set forth in Counts Two and Three and these claims should be dismissed.

(c) Plaintiff has Failed to Allege a Cognizable RICO Conspiracy Claim in Violation of 18 U.S.C. § 1962(d).

Not only does Plaintiff lack standing to bring a RICO claim, but she has also failed to plead a RICO conspiracy with sufficient particularity. Plaintiff alleges that Defendant Kenneth Miller conspired with other defendants, including Liberty University, TRBC and Hyden, “for the commission of a violation of 18 U.S.C. § 1962(c).” Am. Complaint, ¶ 72. To establish the existence of a RICO conspiracy, however, a plaintiff must plead and prove “the existence of an agreement to violate RICO’s substantive provisions.” *See United States v. Sessa*, 125 F.3d 68, 71 (2d Cir. 1997) (quoting *United States v. Benevento*, 836 F.2d 60, 73 (2d Cir.1987)). An agreement is a fundamental element of any conspiracy under RICO. *United States v. Applins*, 637 F.3d 59, 75 (2d Cir. 2011).

In the civil context, a plaintiff must allege that the defendant “knew about and agreed to facilitate the scheme.” *Baisch*, 346 F.3d at 377. A “conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense” and, at a minimum, a plaintiff must show that the defendants adopted “the goal of furthering or facilitating the criminal endeavor.” *Baisch*, 346 F.3d at 376-77. “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*, 897 F.2d at 25. In the absence of any agreement to engage in a pattern of racketeering activity, *Cofacredit, S.A.*

v. Windsor Plumbing Supply Co., Inc., 187 F.3d 229, 245 (2d Cir. 1999), Plaintiff's RICO claim should be dismissed.

In Count Two, Plaintiff alleges that Kenneth Miller committed three acts of racketeering (kidnapping, money laundering, and mail fraud), in violation of 18 U.S.C. § 1962(c). Am. Complaint, ¶ 65-66. She alleges that Kenneth Miller and “his co-conspirators have repeatedly used the Miller-Jenkins custody case and kidnapping as an example that other Christians should follow vis à vis the custody rights of same-sex parents.”¹⁶ *Id.* Plaintiff next alleges that the Beachy Amish-Mennonite Christian Brotherhood – a non-party – is a religious sect and a RICO enterprise within the meaning of 18 U.S.C. § 1961(4), *id.* at ¶ 68, and Kenneth Miller was employed by or associated with the Beachy Amish-Mennonite Christian Brotherhood. *Id.* at ¶ 69. Other than Kenneth Miller and the reference to “co-conspirators,” Count Two does not allege that Liberty University, TRBC, or Victoria Hyden participated, either directly or indirectly, in the affairs of the Beachy Amish-Mennonite Christian Brotherhood, the alleged RICO enterprise. Nor could Plaintiff do so in good faith. *See* Ex. 3, Hyden Affidavit, at ¶ 16 (denying that she has ever participated in the affairs of the Beachy Amish-Mennonite Christian Brotherhood). Nor does Plaintiff allege in Count Two, or elsewhere in the Amended Complaint, that these three Defendants participated in the kidnapping, money laundering or mail fraud comprising the alleged racketeering activity. Count Three asserts that Defendant (presumably Kenneth Miller) has conspired with others, including Liberty University, TRBC and

¹⁶ Even if this allegation were true, which it is not (*see* Ex. 5, Lindevaldsen Affidavit, ¶ 14), it falls far short of establishing a RICO violation. All of the defendants have a constitutional right to their religious beliefs and social positions and to advocate for them openly. “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Alvarez*, 132 S.Ct. 2537, 2543 (2012). “Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities[.]” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (internal citation omitted). Thus, any sharing by Defendants of their personal views or opinions is protected by the First Amendment and cannot constitute a predicate RICO “racketeering activity,” as defined in 18 U.S.C. § 1961(1).

Victoria Hyden, “for the commission of a violation of 18 U.S.C. § 1962(c) through the aforementioned pattern of racketeering.” *Id.* at ¶ 72. However, the Amended Complaint is silent as to *any* acts taken by these three Defendants which purport to show that they adopted the goal of furthering or facilitating Kenneth Miller’s alleged criminal endeavors. *Baisch*, 346 F.3d at 376-77. In fact, there are *no* factual allegations stating that any of these Defendants agreed with, communicated with or interacted in any way with Kenneth Miller or the Beachy Amish-Mennonite Christian Brotherhood.¹⁷

Plaintiff also alleges that “Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella and avoid detection by infiltrating the Beachy Amish-Mennonite Christian Brotherhood,” Am. Complaint at ¶34, without asserting any facts demonstrating that Liberty University, TRBC, or Hyden participated in or agreed to this alleged plan.¹⁸ The only reference

¹⁷ In Paragraph 37, Plaintiff alleges that Victoria Hyden was “acquainted” with Kenneth Miller but she does not allege that Ms. Hyden was involved in the purchase of plane tickets. In Paragraph 53, Plaintiff alleges that Philip Zodiates contacted Kenneth Miller purportedly to purchase hydrangeas for Victoria Hyden’s wedding but does not allege that Ms. Hyden had any involvement in the creation of an allegedly fraudulent payroll check. In Paragraph 56, Plaintiff alleges that Kenneth Miller was a pastor and member of the Pilgrim Christian Fellowship in Stuart’s Draft, Virginia, where Victoria Hyden had previously attended grade school and that he was acquainted with Victoria and her father. That Victoria Hyden allegedly knew Kenneth Miller is clearly insufficient as a matter of law to support an allegation that she conspired with him in violation of RICO. “The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.” *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 908 (1982).

In Paragraph 39, Plaintiff alleges that members of the Thomas Road Baptist Church communicated with Lisa Miller in Nicaragua, with the assistance of Kenneth Miller. As set forth in the Affidavit of Pastor Jonathan Falwell, attached hereto at Exhibit 2, ¶ 18, the Church has no knowledge of the content of any conversations that may have taken place between Lisa Miller and any of its more than 20,000 members. Moreover, even if true, this allegation cannot be read as an allegation that *the Church* entered into any agreement with Kenneth Miller to further or facilitate his alleged criminal endeavors as required to support a civil RICO conspiracy.

¹⁸ Neither Linda Wall nor Victoria Hyden was capable of binding TRBC by their alleged actions because neither was an employee or agent of the Church. Ex. 2, Jonathan Falwell Affidavit, ¶¶ 12, 14. Although Ms. Hyden was a part-time student employee of Liberty University at the time of the alleged kidnapping and is presently a full-time employee in the Administrative Offices, she has never been an officer, director, manager, or authorized agent of the University. Ex. 1, Jerry Falwell Affidavit, ¶ 13; Ex. 3, Hyden Affidavit, ¶ 4. Even if Plaintiff had properly alleged unlawful actions by employees of Liberty University or members of TRBC this simply cannot create tort liability against those entities—there has been no allegation, nor could there be, that these employees or members were acting as agents of Liberty University or TRBC. See, e.g., *Acordia of Virginia Ins. Agency, Inc. v. Genito Glenn, L.P.*, 263 Va. 377, 386, 560 S.E.2d 246, 251 (2002) (holding that an agency relationship only exists where there is clear intention on the part of one entity that another shall act on its behalf, and on the part of the other entity to act on the first entity’s behalf); *Sweet v. Roy*, 173 Vt. 418, 431, 801 A.2d 694, 704

to an agreement of any kind is contained in Paragraph 26, which alleges Lisa Miller and Linda Wall, as early as June 2008, agreed that Lisa should flee with Isabella. No reference is made to any other agreement between the defendants, including Kenneth Miller, the individual who allegedly engaged in the racketeering activities set forth in Count Two of the Amended Complaint.

Assertions in a RICO complaint lacking any factual foundation are merely conclusory allegations “masquerading as factual conclusions” and are insufficient to defeat a motion to dismiss. *Jackson v. County of Rockland*, 450 Fed. Appx. 15, 19 (2d Cir. 2011). *See also Gallop v. Cheney*, 642 F.3d 364, 369 (2d Cir. 2011) (finding allegations of conspiracy “baseless” where the plaintiff “offer[ed] not a single fact to corroborate her allegation of a ‘meeting of the minds’ among the conspirators”); *Tapia-Ortiz v. Winter*, 185 F.3d 8, 11 (2d Cir. 1999) (dismissing claim where complaint “was devoid of any factual allegations supporting appellant’s claims of a criminal conspiracy,” where he alleged no facts showing that defendants agreed to participate in the conspiracy); *Goren v. New Vision Intern., Inc.*, 156 F.3d 721, 733 (7th Cir. 1998) (recognizing that a conspiracy claim must contain supportive factual allegations describing the general composition of the conspiracy, some or all of its broad objectives, and the defendant’s general role in the conspiracy and a complaint may be dismissed if it contains only conclusory, vague and general allegations of a conspiracy); *Rose v. Bartle*, 871 F.2d 331, 366 (3d Cir. 1989) (allegations supporting a conspiracy claim under civil RICO must be sufficiently specific).

Plaintiff’s civil RICO conspiracy claim should be dismissed because she has failed to plead that there was a meeting of the minds whereby Liberty University, TRBC and/or Hyden knew of the alleged conspiracy and agreed to further and facilitate its goals in violation of RICO.

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(2002) (holding that no act can be said to have been done on another’s behalf unless it is within the kind the servant is employed to perform, and it is done with the purpose of advancing the interests of the master).

(d) **Plaintiff Fails To Adequately Plead a RICO Conspiracy Claim Because She Has Failed To State a Claim Under § 1962(c).**

To establish a RICO conspiracy, a plaintiff must first establish a violation of § 1962(a), (b) or (c). *Hecht*, 897 F.2d at 25 (noting that standing to sue for a RICO conspiracy exists only if the plaintiff can show an injury-causing overt act under § 1962(a), (b) or (c)). “[W]e conclude that injury caused by an overt act that is not an act of racketeering or otherwise wrongful under RICO . . . is not sufficient to give rise to a cause of action under § 1964(c) for a violation of § 1962(d).” *Beck v. Prupis*, 529 U.S. 494, 505 (2000). *See Rolon v. Rafael Rosario & Associates, Inc.*, 450 F. Supp. 2d 153, 160 (D.P.R. 2006) (recognizing that “the conspiracy itself is not a cause of action, without overt acts, because again it is the overt act which moves the conspiracy from the area of thought and conversation into action and causes the civil injury and resulting damage.”).

Count Two of the Amended Complaint purports to allege a violation of 18 U.S.C. § 1962(c), which states that: “It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.” To establish a violation § 1962(c), a plaintiff must show: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). The terms “enterprise,” “racketeering activity,” and “pattern of racketeering activity” are defined in 18 U.S.C. § 1961.

A RICO **enterprise** “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). **“Racketeering activity”** is broadly defined to encompass a variety of state and federal offenses including, *inter alia*, murder, kidnapping, gambling, arson, robbery, bribery and

extortion. *See* 18 U.S.C. § 1961(1). A “**pattern of racketeering activity**” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years ... after the commission of a prior act of racketeering activity.” 18 U.S.C. § 1961(5).

DeFalco v. Bernas, 244 F.3d 286, 305 (2d Cir. 2001) (emphasis added). Plaintiff’s conspiracy claim fails because she has not pled essential facts to show a “pattern of racketeering activity” in violation of § 1962(c).

A “pattern of racketeering” requires at least two predicate acts, but two acts alone will not always suffice to form a pattern. *DeFalco*, 244 F.3d at 305. “[T]wo isolated acts of racketeering activity do not constitute a pattern.” *Sedima*, 473 U.S. at 496, n. 14. *See also H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 238 (1989) (recognizing that RICO’s legislative history provides that “proof of two acts of racketeering activity, without more, does not establish a pattern.”).

To properly plead a pattern, a plaintiff must show that the predicate acts of racketeering activity by a defendant are “related, and that they amount to or pose a threat of continued criminal activity.” *DeFalco*, 244 F.3d at 320 (quoting *H.J. Inc.*, 492 U.S. at 329); *Cofacredit, S.A. v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 242 (2d Cir. 1999). The continuity requirement is “satisfied where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO ‘enterprise.’” *H.J. Inc.*, 492 U.S. at 243. With respect to duration, “very short periods of criminal activity that do not in any way carry a threat of continued criminal activity” do not constitute racketeering to which Congress intended RICO to apply. *United States v. Aulicino*, 44 F.3d 1102, 1111 (2d Cir. 1995) (quoting *H.J. Inc.*, 492 U.S. at 243, n.4). Thus, continuity can be satisfied “either by showing a ‘closed-ended’ pattern -- a series of related predicate acts

extending over a substantial period of time -- or by demonstrating an ‘open-ended’ pattern of racketeering activity that poses a threat of continuing criminal conduct beyond the period during which the predicate acts were performed.” *Spool v. World Child Intern. Adoption Agency*, 520 F.3d 178, 183 (2d Cir. 2008). Plaintiff has sought to allege an open-ended pattern of racketeering activity but she has failed to allege facts sufficient to establish either an open-ended or closed-ended continuity in the Amended Complaint.

(i) Plaintiff Cannot Show Open-Ended Continuity.

“To establish open-ended continuity, the ‘plaintiff need not show that the predicate acts extended over a substantial period of time but must show that there was a threat of continuing criminal activity beyond the period during which the predicates were performed.’” *DeFalco*, 244 F.3d at 323 (quoting *Cofacredit*, 187 F.3d at 242). “Where an inherently unlawful act is performed at the behest of an enterprise whose business is racketeering activity, there is a threat of continued criminal activity and thus open-ended continuity.” *DeFalco*, 244 F.3d at 323. There are no facts asserted here as would show that the Beachy Amish-Mennonite Christian Brotherhood—the only RICO enterprise Plaintiff alleges—exists for purely criminal purposes. In fact, the Beachy Amish-Mennonite Christian Brotherhood is alleged to be a “religious sect, whose activities include evangelizing, as well as providing material aid [to] people who are victims of natural disasters and other circumstances.” Am. Complaint at ¶ 68. “When the enterprise primarily conducts a legitimate business, however, no presumption of a continued threat arises.” *Spool*, 520 F.3d at 186 (internal quotation marks omitted). Not only is there no presumption of a threat of continued criminal activity here, but the alleged predicate acts themselves do not support such a finding. Where the alleged RICO enterprise is an otherwise legitimate entity, a plaintiff must allege that the criminal activity is a regular way of operating

business for the defendant or that “the nature of the predicate acts themselves implies a threat of continued criminal activity.” *DeFalco*, 244 F.3d at 323 (citing *Cofacredit*, 187 F.3d at 243).

Neither has been properly alleged here.

Plaintiff alleges that the racketeering acts “are continuous in that they have occurred over a period exceeding two years, will continue into the future, and pose the threat of continuing for years.” Am. Complaint at ¶ 67. This is a threadbare conclusion, conclusively rebutted by Plaintiff’s own allegations. First, Plaintiff has alleged only two specific “acts” which, according to her own allegations, occurred *only eight months apart* – the alleged kidnapping, which occurred on September 21-22, 2009, *id.* at ¶ 36, and that the money laundering/mail fraud, which arose out of a single incident, occurred in May 2010, *id.* at ¶ 53. Second, no facts alleged in the Amended Complaint support finding a threat of continuing criminal activity into the future. The alleged predicate acts ended upon their completion.¹⁹ The Court may take judicial notice that Kenneth Miller, the figure central to Plaintiff’s § 1962(c) claim, is presently awaiting sentencing in this District. *United States v. Miller*, Docket No. 2:11-cr-00161. Given the criminal proceedings against him and his upcoming sentencing, it is highly unlikely that Kenneth Miller poses a threat of continuing his alleged racketeering activities.

There are no allegations suggesting that the Beachy Amish-Mennonite Christian Brotherhood has engaged in other kidnappings or acts of mail fraud/money laundering as would create an inference of continued criminal activity. Furthermore, as noted in the preceding section, Plaintiff’s conclusory allegation that Kenneth Miller and “his co-conspirators have repeatedly used the Miller-Jenkins custody case and kidnapping as an example that other

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¹⁹ Nor does the fact that Isabella is believed to continue to reside with her mother outside of the United States convert the alleged kidnapping into a continuing crime. *See, e.g., Robbins v. Clinton*, 1994 WL 730423 (8th Cir. Nov. 14, 1994) (unpublished) (rejecting inmate’s RICO claim arising out of his alleged kidnapping and other RICO acts by Arkansas state officials where there was no basis in law or fact that the conduct constituted or posed a threat of “continued criminal activity”).

Christians should follow vis à vis the custody rights of same-sex parents,” is insufficient to support a continuing threat of racketeering activity. The Second Circuit has instructed courts to “tak[e] into account *only the predicate racketeering activity*” in finding a continuing threat or racketeering activity. *Cofacredit*, 187 F.3d at 244 (emphasis added). Plaintiff has not identified any criminal statute or law that this alleged conduct violates, nor does it fall within the definition of a “racketeering activity” set forth at 18 U.S.C. § 1961(1). Thus the Amended Complaint lacks the essential elements of open-ended continuity to support a RICO claim.

(ii) Plaintiff Cannot Show Closed-Ended Continuity.

Plaintiff does not allege close-ended continuity and it is clear from the facts alleged in the Amended Complaint that, even if she attempted to do so, she would fail. “A closed-ended pattern of racketeering activity involves predicate acts extending over a substantial period of time.” *First Capital Asset Management, Inc., v. Satinwood, Inc.*, 385 F.3d 159, 181 (2d. Cir. 2004) (internal quotation marks omitted). The Second Circuit “has never found a closed-ended pattern where the predicate acts spanned fewer than two years.” *Id.* As noted in the preceding section and according to Plaintiff’s own allegations, the predicate acts in this case span no more than eight months between the time Lisa Miller left the country with Isabella in September 2009 and the allegedly fraudulent transmission of \$500 to Lisa Miller in May 2010. An eight-month time span is insufficient as a matter of law to establish close-ended continuity. *See, e.g., Spool*, 520 F.3d at 184 (holding that a sixteen-month period of time was insufficient to establish closed-ended continuity, particularly in the absence of separate schemes or large numbers of participants and victims); *DeFalco*, 244 F.3d at 322 (observing that a year-and-a-half was an insufficient length of time in which to demonstrate closed-ended continuity”); *Cofacredit*, 187 F.3d at 244 (finding a span of less than one year to be insufficient to demonstrate closed-ended continuity);

GICC Capital Corp. v. Technology Finance Group, Inc., 67 F.3d 463, 469 (2d Cir. 1995) (refusing to find “long term criminal conduct” where the alleged specific racketeering activities occurred over less than one year).

Accordingly, Plaintiff fails to adequately plead a RICO conspiracy claim because she has failed to allege a pattern of racketeering activity, whether the Amended Complaint is analyzed as a closed- or open-ended scheme.

(iii) Plaintiff has alleged a narrow single purpose scheme that also fails to satisfy the continuity requirement.

In addition, “[a]lthough closed-ended continuity is primarily a temporal concept, other factors such as the number and variety of predicate acts, the number of both participants and victims, and the presence of separate schemes are also relevant in determining whether closed-ended continuity exists.” *DeFalco*, 244 F.3d at 321. Other courts in this Circuit have “uniformly and consistently held that schemes involving a single, narrow purpose and one or few participants directed towards a single victim do not satisfy the RICO requirement of a closed or open pattern of continuity.” *Patrizzi v. Bourne in Time, Inc.*, No. 11-cv-2386, 2012 WL 4833344, *5 (S.D.N.Y. Oct. 11, 2012) (collecting cases, including *Medinol Ltd. v. Bos. Scientific Corp.*, 346 F. Supp.2d 575, 616 (S.D.N.Y. 2004) (scheme with three participants, one purpose, and one victim too narrow to be a pattern of racketeering activity); *Lefkowitz v. Bank of N.Y.*, No. 01-cv-6252, 2003 WL 22480049, at *9 (S.D.N.Y. Oct. 31, 2003) (RICO claim insufficient because allegations amounted to nothing more than that “a small number of parties engaged in activities with a narrow purpose directed at a single or at most three victims”); *Weizmann Inst. of Sci. v. Neschis*, 229 F. Supp. 2d 234, 256-57 (S.D.N.Y. 2002) (allegations insufficient to support continuity when they consisted of four predicate acts committed by one participant against a small number of victims in furtherance of a single fraudulent scheme)). *See also Watral v.*

Silvernails Farm LLC., 51 Fed. Appx. 62 (2d Cir. 2002) (finding allegations of continuity insufficient to support claims where complaint alleged only one victim and discrete scheme was directed at a particular set of horses).

The alleged § 1962(c) scheme in this case involves two (or at most three) predicate acts (kidnapping and a single incident of money laundering/mail fraud) and two participants (Kenneth Miller and the Beachy Amish-Mennonite Christian Brotherhood). The purpose of the alleged scheme was to assist Lisa Miler to retain custody of her daughter and to provide her with \$500 in financial support. Plaintiff was not a target of the scheme—Isabella was the alleged target. But even if Plaintiff is considered to be an intended victim and had the alleged scheme been intended to deprive Plaintiff of her custodial rights, Plaintiff would be the victim of a discrete, narrowly-circumscribed scheme. The scheme as alleged in the Complaint is simply too narrow to satisfy the RICO continuity requirement.

Plaintiff has failed to plead a cognizable RICO injury or conspiracy, and also failed to sufficiently plead the predicate acts for a pattern of racketeering activity, all of which are required to state a § 1965(c) claim. Either one of these grounds is fatal to Plaintiff's RICO claims and Plaintiff cannot remedy this defect. Her RICO conspiracy claim in Count Three, falls far short of stating a claim and should be dismissed with prejudice.

4. Count Four Should be Dismissed for Failure to State a Cognizable Claim.

Count Four of the Amended Complaint alleges that the Defendants conspired with each other “to violate the civil rights of Janet Jenkins and Isabella Miller-Jenkins, on account of gender, and to prevent the Courts of Vermont from securing Janet Jenkins and Isabella Miller-Jenkins equal protection of their rights to a parent-child relationship under the law[,]” in violation of 42 U.S.C. § 1985(3). Am. Complaint, ¶¶ 74-75. Even if the factual allegations

against these three Defendants are true, which they most certainly are not, Plaintiff has failed to state a viable civil conspiracy claim as a matter of law.

“The four elements of a § 1985(3) claim are: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right of a citizen of the United States.” *Mian v. Donaldson, Lufkin & Jenrette Securities Corp.*, 7 F.3d 1085, 1087 (2d Cir. 1993) (citing *United Bhd. of Carpenters, Local 610 v. Scott*, 463 U.S. 825, 828–29 (1983)). The conspiracy must also be motivated by “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). In addition, “Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates.” *American Savings & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979). Section 1985(3) may reach purely private conspiracies, *Griffin*, 403 U.S. at 97, however, deprivation of rights under the Equal Protection Clause of the Fourteenth Amendment can arise “only where there has been involvement of the State or of one acting under the color of its authority.” *United Bhd.*, 463 U.S. at 831.

Plaintiff's Amended Complaint fails to state a civil conspiracy claim pursuant to 42 U.S.C. § 1985(3) because: (1) it fails to plead even minimal factual support for the existence of a conspiracy; (2) it fails to allege or show an invidious, class-based animus; and (3) it fails to show any involvement by a State actor in denying Plaintiff equal protection under the law. Any one of these grounds supports the dismissal of Count Four with prejudice.

a. Plaintiff's Complaint Fails to Plead Sufficient Factual Support for a Conspiracy.

Section 1985(3) proscribes certain enumerated conspiracies. It is well-settled that vague, conclusory or general allegations of conspiracy are insufficient to state a claim under 42 U.S.C. § 1985. *Gyadu v. Hartford Ins. Co.*, 197 F.3d 590, 591 (2d Cir. 1999) (recognizing that a “complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss.”). “In order to maintain an action under Section 1985, a plaintiff ‘must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.’” *Webb v. Goord*, 340 F.3d 105, 110 (2d Cir. 2003). A conspiracy “need not be shown by proof of an explicit agreement but can be established by showing that the parties have a tacit understanding to carry out the prohibited conduct.” *Thomas v. Roach*, 165 F.3d 137, 146 (2d Cir. 1999) (internal quotation marks omitted). A plaintiff claiming the existence of a conspiracy must also allege, “with at least some degree of particularity, overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy.” *Id.* at 147. *See also Slotnick v. Garfinkle*, 632 F.2d 163, 166 (1st Cir. 1980) (recognizing that dismissal is warranted if the complaint fails to elaborate or substantiate bald claims that defendants conspired with one another). To constitute a conspiracy under § 1985(3), there must be a meeting of the minds. *Startzell v. City of Philadelphia*, 533 F.3d 183, 205 (3d Cir. 2008). Plaintiff alleges in a conclusory fashion that the Defendants conspired but she fails to plead sufficient facts to support the existence of a civil conspiracy.

As was true in the RICO conspiracy context, the Amended Complaint does not allege any facts to support the existence of an agreement, tacit or otherwise, entered into between these Defendants and the other alleged co-conspirators. The only agreement alleged in the Amended

Complaint is set forth in Paragraph 26: “Upon information and belief, [Linda] Wall and [Lisa] Miller decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella.” The only other inference of any agreement is Plaintiff’s allegation that “Lisa Miller and her co-conspirators had devised a plan to kidnap Isabella.” Am. Complaint, ¶ 34. Plaintiff does not assert that Liberty University, TRBC or Victoria Hyden played a role in the alleged plan to kidnap Isabella, much less allege how any of them ever agreed to work together to achieve such a plan. She even acknowledges that Lisa Miller’s counsel, Mr. Staver and Ms. Lindevaldsen, “have at all times maintained that they did not know their client’s location . . . [and] that she simply stopped communicating with them.”²⁰ Am. Complaint, ¶ 58. The conclusory allegations of a conspiracy against Plaintiff fail to allege facts plausibly suggesting a meeting of the minds between the Defendants and the other alleged co-conspirators or that the Defendants entered into an agreement to violate Plaintiff’s rights. Accordingly, Count 4 should be dismissed for failure to state a claim as a matter of law.

b. Plaintiff Fails to Allege or Show Invidious, Class-Based Animus.

Although § 1985(3) covers purely private conspiracies, it is not a general federal tort law and it requires a plaintiff to demonstrate “some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” *New York State Nat. Org. for Women v. Terry*, 886 F.2d 1339, 1358 (2d Cir. 1989) (quoting *Griffin*, 403 U.S. at 102).

²⁰ Mathew Staver and Rena Lindevaldsen represented Lisa Miller in the custody dispute through their work with Liberty Counsel, Inc., a Florida non-profit public interest law firm. See Am. Complaint, ¶ 22; Ex. 4, Staver Affidavit, ¶ 3. Neither of them was acting as an agent or officer of Liberty University when serving as Lisa Miller’s counsel. Ex. 1, Jerry Falwell Affidavit, ¶ 14 (“The legal representation of Lisa Miller by Liberty Counsel, Inc., through Mathew Staver and Rena Lindevaldsen was not performed for, or on behalf of, or under the direction or control of Liberty University.”); Ex. 4, Staver Affidavit, ¶ 7 (“All representation was provided through Liberty Counsel, separate and apart from Liberty University and Liberty University School of Law.”); Ex. 5, Lindevaldsen Affidavit, ¶ 6 (“[N]either I nor Mathew Staver appeared with Lisa Miller on behalf of Liberty University or Liberty University School of Law. Our representation was never on behalf of Liberty University or Liberty University School of Law.”). In September 2009, Lisa Miller suddenly, and without warning, stopped all communication with her counsel. Ex. 4, Staver Affidavit, ¶ 12; Ex. 5, Lindevaldsen Affidavit, ¶ 9.

Moreover, “[a] claim under § 1985(3) will not lie where a plaintiff cannot show a causal link between the alleged discriminatory conduct and the plaintiff’s membership in a protected class.” *Hills v. Praxair, Inc.*, No. 11-cv-678S, 2012 WL 1935207, *7 (W.D.N.Y. May 29, 2012) (citing *Pabon v. N.Y.C. Transit Auth.*, 703 F. Supp. 2d 188, 202 (E.D.N.Y. 2010)). A “complaint must allege facts showing that the defendants conspired against the plaintiffs because of their membership in a class, and that the criteria defining the class were invidious.” *Hahn v. Sargent*, 523 F.2d 461, 469 (1st Cir.1975). Thus, even if the Court were to conclude that Plaintiff has successfully alleged the existence of a private conspiracy, her § 1985(3) claim fails if she is not a member of a class that falls within the protective ambit of § 1985(3) or if she cannot show the requisite causal link between the Defendants’ actions and her membership in a protected class. Plaintiff makes neither showing here.

Racial animus was the original basis for actions under § 1985(3), *United Bhd.*, 463 U.S. at 836, but, with *Griffin*, the Supreme Court specifically left open which other class-based animus may be covered by § 1985(3). *Terry*, 886 F.3d at 1358. Plaintiff makes a conclusory allegation that Defendants conspired to violate her right to a parent-child relationship with Isabella “on account of Isabella having two mothers instead of a mother and a father,” Am. Complaint ¶ 62, and on account of her gender. *Id.* at ¶ 75. Beyond her conclusory allegation in Paragraph 75 that the alleged conspiracy was on account of her gender, Plaintiff has not stated with particularity any basis for this assertion. Nor does the Amended Complaint allege any facts from which it could be inferred that the defendants, many of whom are women, have an invidious animus against members of their own female class. Rather, the Amended Complaint suggests that the defendants’ alleged actions were taken because they opposed Plaintiff’s court-

determined status as a non-biological parent of a child born during a civil union, not because she is a woman. *See* Am. Complaint, ¶¶ 20, 22, 27, 45, 47-49, 51, 60, 61, 62.

To date no court has recognized animus towards homosexuals or same-sex parents as a motive for a § 1985(3) conspiracy. *See Vega v. Artus*, 610 F. Supp. 2d 185, 204 (N.D.N.Y. 2009) (holding that plaintiff was not entitled to protection under § 1985(3) because Congress has not provided homosexuals with special class protection);²¹ *Martin v. New York State Dept. of Correctional Services*, 115 F. Supp. 2d 307, 316 (N.D.N.Y. 2000) (finding that plaintiff cannot show he is entitled to protection under § 1985(3) where homosexuality has not been afforded suspect or quasi-suspect classification); *Segreto v. Kirschner*, 977 F. Supp. 553, 565 (D. Conn. 1997) (same); *Yost v. Board of Regents, University of Maryland*, No. 93-cv-471, 1993 WL 524757 (D. Md. Nov. 19, 1993) (same); *Harper v. Edgewood Bd. of Educ.*, 655 F. Supp. 1353, 1356 (S.D. Ohio 1987) (same); *Jermano v. Taylor*, No. 11-cv-10739, 2012 WL 4009897, *4 (E.D. Mich. Jul. 21, 2012) (same).

In sum, Plaintiff has failed to show a causal link between any alleged discriminatory conduct and her membership in any recognized protected class. In fact, she cannot. Thus, her § 1985(3) civil conspiracy claim in Count Four fails and should be dismissed and, given the false accusations made against these Defendants, the dismissal should be with prejudice.

c. Plaintiff Has Not Alleged State Action.

Plaintiff's failure to allege state action is an additional ground supporting dismissal of her civil conspiracy claim. Section 1985(3) is a purely remedial statute, aimed at redressing the

²¹ The Second Circuit Court of Appeals recently held that equal protection review of the Defense Against Marriage Act required heightened scrutiny. *Windsor v. U.S.*, ___ F.3d ___, 2012 WL 4937310 (2d Cir. Oct. 18, 2012). In its decision, the Court recognized, for the first time, homosexuals per se as a quasi-suspect class. *Id.* at *6. It is widely-anticipated that the question of whether homosexuals are a quasi-suspect class, entitled to intermediate scrutiny, will be taken up by the United States Supreme Court in the near future. Even so, the *Windsor* ruling did not address whether homosexual parents of non-biological children are a quasi-suspect class.

consequences of private conspiracies that violate clearly established existing rights. This statute does not provide any substantive rights itself and a claimant must identify the federal right that has allegedly been infringed.

In sum, to fall within the remedial purview of § 1985(3), a plaintiff must allege that he has suffered the violation of a right. Whether this requires a showing of state action will turn on the nature of the predicate right: if the right exists as against all actors, private as well as state, then no showing of state action is required. If, on the other hand, the violation alleged is of a right protected only against state interference, such as the rights guaranteed under the Fourteenth Amendment, then the corresponding level of state action must be proven.

Volunteer Medical Clinic, Inc. v. Operation Rescue, 948 F.2d 218, 226 (6th Cir. 1991). “When the asserted constitutional deprivation is based upon a right guaranteed against government interference—for example, rights secured by the Fourteenth Amendment—plaintiffs must demonstrate some ‘state involvement.’” *Terry*, 886 F.2d at 1358. “Section 1985(3) does not therefore protect individuals against private efforts to encroach on constitutional shields, such as the first amendment, that protect only against official conduct.” *Roe v. Abortion Abolition Soc.*, 811 F.2d 931, 933 (5th Cir. 1987). “The Fourteenth Amendment protects the individual against state action, not against wrongs done by individuals.” *United Bhd.*, 463 U.S. at 832 (internal citation omitted).

Plaintiff alleges that Defendants conspired to violate her civil rights by “preventing the Courts of Vermont from securing Janet Jenkins and Isabella Miller-Jenkins equal protection of their rights to a parent-child relationship under the law.” Am. Complaint, ¶ 75. She does not identify any source for her federal conspiracy claim other than this non-specific reference to “equal protection” and so Plaintiff’s claim fails as a matter of law because she has not alleged that any state actor participated in the alleged civil conspiracy. The Equal Protection Clause of the Fourteenth Amendment is only binding against state action. “[A] claim under § 1985(3) for

conspiracy to deny equal protection in violation of the Fourteenth Amendment is not actionable in the absence of state action.” *Edmond v. Hartford Ins. Co.*, 27 Fed. Appx. 51, 53 (2d Cir. 2001). Plaintiff has not adequately pled that any of the defendants in this civil actions were state actors and, in fact, her allegations demonstrate that none of them are. Thus, her civil conspiracy claim, based upon a deprivation of equal protection, fails as a matter of law and should be dismissed with prejudice.

CONCLUSION

In this suit, Plaintiff has made serious but wholly unsupported allegations against these Defendants, a respected university, a church, and a young woman, all of whom reside or are domiciled in the Commonwealth of Virginia. Defendants have demonstrated that they are not amenable to suit in this jurisdiction or this venue. Defendants have also shown that even accepting the allegations of the Amended Complaint as true, they fail to state claims upon which relief can be granted. For these reasons, as discussed above, Defendants respectfully request that the Court grant their Motion to Dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief can be granted.

Dated at Burlington, Vermont, this 16th day of November, 2012.

DINSE, KNAPP & McANDREW, P.C.

By: /s/ Ritchie E. Berger

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CERTIFICATE OF SERVICE

I, Ritchie E. Berger, Esq., certify that on November 16, 2012, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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A copy of the foregoing has also been served upon the following parties by mailing a copy thereof via U.S. first class, postage prepaid mail, to counsel of record at:

None.

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By: /s/ Ritchie E. Berger
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Exhibit One

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 JERRY FALWELL, JR.

I, Jerry Falwell, Jr., being first duly sworn, do hereby depose and state as follows:

1. I am the Chancellor of Defendant Liberty University, Inc. and I make this declaration in support of the Motions filed by Liberty University. The facts stated herein are based on my own personal knowledge or, where indicated, on review of the corporate records of Liberty University.

2. Liberty University is a 501(c)(3) nonprofit educational institution incorporated in the Commonwealth of Virginia on January 18, 1972.

3. Liberty University is located on a nearly 7,000 acre campus in Lynchburg, Virginia, it is fully accredited and the largest university in Virginia. It educates approximately 12,500 residential students, only 29 of whom are residents of Vermont. Liberty University offers 253 undergraduate programs and 87 graduate areas of study. It is a fully co-educational institution where residential students volunteer around 586,262 hours each year on campus and in the community.

4. At all times Liberty University has maintained its principal place of business in Lynchburg, Virginia.

5. Liberty University does not have an office or mailing address in the State of Vermont.

6. Liberty University does not own or lease any real property in the State of Vermont.

7. Liberty University is not registered or otherwise qualified to do business in the State of Vermont and does not have an agent for service of process in the State of Vermont.

8. Liberty University does not pay income, property or other taxes to the State of Vermont.

9. Liberty University does not manufacture any product of any kind that could find its way through the stream of commerce into the State of Vermont.

10. Liberty University does not bank in or hold assets, security interests or other investments in Vermont.

11. Liberty University has not participated in college recruiting events in Vermont for at least six years, has not targeted any of its marketing towards media in Vermont, and has sent no recruiting or ministry teams into Vermont for at least ten years.

12. Liberty University occasionally conducts national television advertising campaigns and some of these advertisements may have reached Vermont, but no advertisements have ever been specifically tailored to Vermont residents, or sent only and specifically to Vermont media markets.

13. In September 2008, Victoria Hyden began working as a part-time student employee at Liberty University. In June 2010, she became a full-time employee within the Administrative Offices of the Liberty University School of Law, a position she continues to hold at the present time. Victoria Hyden has never been an officer, director, manager or authorized agent of Liberty University.

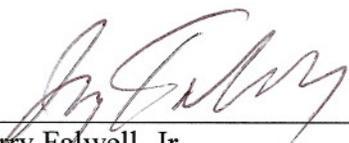
14. Liberty University played absolutely no role in any Vermont Court proceedings relating to the custody of Isabella Miller. The legal representation of Lisa Miller by Liberty Counsel, Inc. through Mathew Staver and Rena Lindevaldson was not performed for, on behalf of, or under the direction or control of Liberty University. Liberty Counsel, Inc. is not owned or controlled by Liberty University.

15. Liberty University did not assist Lisa Miller to leave, or to remain outside of, the United States, nor was it involved in any way in her move from Virginia to Nicaragua.

16. Liberty University never conspired with Lisa Miller, with any of the other named Defendants, or anyone else, to aid or assist Lisa Miller in any manner to avoid court orders, leave the Commonwealth of Virginia, or move to or remain in Nicaragua.

17. Liberty University never conspired to violate or participated in any violation of the Plaintiff's rights, be they judicial, statutory, or constitutional. In fact, Liberty University has never engaged in any conduct directed toward or involving the Plaintiff.

Subscribed and sworn to under penalties of perjury this 13 day of November 2012.



Jerry Falwell, Jr.

COMMONWEALTH OF VIRGINIA

At Lynchburg, VA, this 13th day of November, 2012, personally appeared JERRY FALWELL, JR., and he acknowledged this instrument, subscribed and sworn to by him, to be his free act and deed.

Before me, 

Notary Public
My Commission Expires: 12/31/15



Exhibit Two

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 JONATHAN FALWELL

I, Jonathan Falwell, being first duly sworn, do hereby depose and state as follows:

1. I am Pastor of Defendant Thomas Road Baptist Church ("TRBC"). I make this declaration in support of the Motions filed by Defendant TRBC. The facts stated herein are based upon my own personal knowledge, or upon the corporate business records of TRBC, or, where so indicated, upon my information and belief. If called as a witness, I could and would competently testify thereto.

2. TRBC is a nonprofit corporation registered in the Commonwealth of Virginia. It was founded in Lynchburg, Virginia in 1956 and has remained there ever since. It serves around 20,000 congregants, or "members." In addition to Sunday worship services, the Church offers bible study and other family support services through numerous events and gatherings throughout a typical week.

3. TRBC does not have an office or mailing address in the State of Vermont.

4. TRBC does not own or lease any real property in the State of Vermont, nor does it maintain any accounts or investments in the State of Vermont.

5. TRBC is not registered or otherwise qualified to do business in the State of Vermont and does not possess an agent for service of process in the State of Vermont for such purpose.

6. TRBC does not pay income, property or other taxes to the State of Vermont.

7. TRBC does not manufacture any product of any kind that could find its way through the stream of commerce into the State of Vermont.

8. TRBC does not bank in or hold assets, security interests or other investments in Vermont.

9. To my knowledge and belief, TRBC does not target any advertising for Vermont or specifically tailor advertisements to Vermont residents. TRBC occasionally broadcasts sermons on the Internet and on satellite broadcast services that may contain appeals but does not direct either specifically at Vermont or Vermont media markets.

10. TRBC has sent no mission trips into the State of Vermont, and has no missions or missionaries based in Vermont.

11. Contrary to the allegations in Paragraph 13 of the Amended Complaint, Victoria Hyden has never been an employee, much less an agent of TRBC. In fact, Ms. Hyden is not and never has been a member of TRBC.

12. Contrary to the allegations in Paragraph 16 of the Amended Complaint, TRBC has never called for or organized any prayer meetings at the Vermont Family Courts or any other facilities in the State of Vermont.

13. Contrary to the allegations in Paragraphs 17, 22, and 64 of the Amended Complaint, Linda Wall is not an employee or agent of TRBC and, in fact, she is not even a member of TRBC.

14. Contrary to the allegations in Paragraph 25 of the Amended Complaint, Lisa Miller was never provided housing, a job, or a vehicle by TRBC. Likewise, TRBC has no knowledge of any of its members (of whom there are over 20,000) counseling Ms. Miller. No Deacon or Pastor of TRBC has ever counseled Ms. Miller to not allow contact between Isabella Miller and Ms. Jenkins. Furthermore, Liberty Christian Academy is a separate entity and TRBC has no control over its hiring practices.

15. Contrary to the allegation in Paragraph 27 of the Amended Complaint, neither TRBC, its employees, or authorized agents have ever been involved in, the "Protect Isabella Coalition." In fact, prior to the filing of this lawsuit I had never heard of such an entity, assuming it exists.

16. Contrary to the allegation in Paragraph 28 of the Amended Complaint, Lisa Miller has never been an employee of TRBC.

17. Contrary to the allegations in Paragraph 39 of the Amended Complaint, TRBC has no knowledge of the content of any conversations that may have taken place between Lisa

Miller and any of its more than 20,000 members. Furthermore, Phillip Zodiates is not and never has been an employee or agent, or even a member, of TRBC.

18. Contrary to the allegation in Paragraph 42 of the Amended Complaint, TRBC does not have an elder system of leadership. TRBC has Deacons under the Church's constitution and none of them ever helped to pack Ms. Miller's belongings.

19. Contrary to the allegation in Paragraph 49 of the Amended Complaint, TRBC has never encouraged its employees or agents to disregard state laws governing parental rights.

20. Contrary to the allegation in Paragraph 51 of the Amended Complaint, Tip Killingsworth was not employed by TRBC after June 2009. He was not an employee, agent, or even member, of TRBC in January 2010.

21. Contrary to the allegation in Paragraph 54 of the Amended Complaint, TRBC, its employees, and authorized agents never assisted Ms. Miller in leaving or remaining outside of the United States.

22. Contrary to the allegation in Paragraph 62 of the Amended Complaint, none of the Defendants, in their individual capacities, have been employees or authorized agents of TRBC.

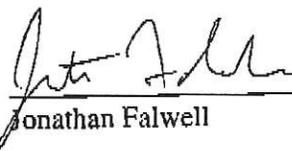
23. Contrary to the allegation in Paragraph 64 of the Amended Complaint, TRBC was not involved in any of the alleged activities of Lisa Miller, nor has TRBC ever conspired with Lisa Miller.

24. Contrary to the allegation in Paragraph 72 of the Amended Complaint, TRBC has never conspired with or assisted any individual involved with Lisa Miller's travels and, specifically, TRBC never aided or abetted Lisa Miller's move from Virginia to Nicaragua.

25. Contrary to the allegation in Paragraph 75 of the Amended Complaint, TRBC has never violated Plaintiff's civil rights. In fact, TRBC has never had any involvement with Plaintiff.

26. None of the other individually-named Defendants, specifically Kenneth Miller, Timothy Miller, Andrew Yoder, or Douglas Wright, are, or ever have been, Officers, Deacons, authorized agents, or even members, of TRBC.

Subscribed and sworn to under penalties of perjury this 13th day of November, 2012.


Jonathan Falwell

COMMONWEALTH OF VIRGINIA

At Lynchburg, Virginia, this 13th day of November, 2012, personally appeared JONATHAN FALWELL, and he acknowledged this instrument, subscribed and sworn to by him, to be his free act and deed.

Before me, Katherine Smith

Notary Public
My Commission Expires: 10/31/15

I was commissioned a notary public as Katherine Rusk.



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



Dinse,
Knapp & McAndrew, P.C.
209 Battery Street
P.O. Box 988
Burlington, VT
05402-0988
(802) 864-5751

Exhibit Four

to

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

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

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

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

v.

Docket No.: 2:12-cv-184

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

AFFIDAVIT OF MATHEW D. STAVER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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

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

the Florida and District of Columbia Bars, and have been admitted to practice before the United States Supreme Court, the Florida Supreme Court, all twelve circuits of the United States Court of Appeals, and other courts.

2. I have been board certified since 1995 in Appellate Practice in the State of Florida. I am AV rated by Martindale-Hubble. I received a Bachelor of Arts degree *Cum Laude*, a Master of Arts degree *Summa Cum Laude*, and received my Juris Doctor degree from the University of Kentucky College of Law.

3. I began in private practice in 1987 in the State of Florida and in 1989 opened my own private law practice in the state. Later in 1989, I founded Liberty Counsel, Inc., a Florida nonprofit public interest law firm. Liberty Counsel has been headquartered in Central Florida since its inception to the present. In 2005, a branch office was opened in Virginia and another office opened in 2007 in the District of Columbia.

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

5. Liberty University School of Law matriculated its first entering class in August 2004. On May 15, 2006, after the Founding Dean stepped down, I began serving as Dean and Professor of Law at Liberty University School of Law and continue in that position to the present.

6. I first became aware of Lisa Miller while I was President and General Counsel of Liberty Counsel in 2004. On or about January 2005, Liberty Counsel agreed to represent Lisa Miller. When Liberty Counsel agreed to represent Lisa Miller, she was residing in Virginia. At that time Rena Lindevaldsen was Senior Litigation Counsel with Liberty Counsel. She and I both

worked full-time with Liberty Counsel out of Liberty Counsel's Florida office and were not employed by Liberty University or Liberty University School of Law.

7. The Amended Complaint alleges in ¶22 that "in 2004 she [Linda Wall] was contacted by attorney Rena Lindevaldsen, of Liberty University and was asked to meet with Lisa Miller to screen her for representation by lawyers working at Liberty University and its related law firm, Liberty Counsel, LLC. After this screening, Lisa Miller was accepted for representation by Liberty University attorneys, and also formed a friendship with Defendant Wall. Lisa Miller's lead attorneys were Dean of the Law School Mathew Staver, and Rena Lindevaldsen, a law professor." This allegation is absolutely false. First, neither I nor Rena Lindevaldsen worked at Liberty University in 2004. I did not become the Dean of Liberty University School of Law until May 15, 2006. In 2004, Rena Lindevaldsen worked full-time with Liberty Counsel in Florida. She became a part-time adjunct professor of law at Liberty University School of Law in August 2005, but she continued to work full-time with Liberty Counsel. In July 2006, she became a full-time professor of law at Liberty University School of Law, and she continued to serve as Special Counsel for Liberty Counsel on select cases, including Lisa Miller's case. Second, no one acting in the capacity of an attorney or an employee of Liberty University or Liberty University School of Law ever represented or provided legal counsel to Lisa Miller. Third, at the time Rena Lindevaldsen and I became legal counsel for Lisa Miller on or about January 2005, we were working in our capacity with Liberty Counsel. At no time have either of us ever represented Lisa Miller on behalf of or in our subsequent capacity with Liberty University or Liberty University School of Law. All representation was provided through Liberty Counsel, separate and apart from Liberty University and Liberty University School of Law.

8. In my role as Founder and Chairman of Liberty Counsel since May 2006, I continue to represent clients primarily at the appellate level and in some select trial cases. This representation is solely in my capacity with Liberty Counsel, however, and not in my capacity with Liberty University or Liberty University School of Law. I have never in any pleading,

including pleadings on behalf of Lisa Miller, appeared in my capacity with Liberty University or Liberty University School of Law.

9. In July 2006, when Rena Lindevaldsen accepted a position as a member of the law faculty at Liberty University School of Law, she ceased her full-time work with Liberty Counsel but continued as Special Counsel on select cases, including the representation of Lisa Miller. Her representation of Lisa Miller was solely in her capacity as Special Counsel with Liberty Counsel and not in her capacity with Liberty University or Liberty University School of Law. She has never appeared on any Liberty Counsel pleading or any other legal pleading while representing Lisa Miller, or at any time, in her capacity with Liberty University or Liberty University School of Law.

10. Liberty Counsel is a separate entity from Liberty University. It is incorporated in Florida. Liberty University is incorporated in the Commonwealth of Virginia. Liberty Counsel is headquartered in Florida and is governed by an entirely separate and independent board of directors. Liberty University has no governing control over Liberty Counsel. Liberty Counsel has a staff of attorneys, legal assistants, and administrative staff who oversee and manage the day-to-day operations of Liberty Counsel. Contrary to the Amended Complaint, Liberty Counsel it is not an LLC. It is a Florida nonprofit corporation. It is not a law firm of Liberty University. Liberty University has no input on the cases or management of Liberty Counsel.

11. I have never personally or telephonically appeared in Vermont at any time or in any Vermont court on behalf of Lisa Miller. My name appears only on the pleadings in a representative capacity with Liberty Counsel, not Liberty University or Liberty University School of Law. The last time I have ever been in Vermont was in 2001 when I argued a case while employed with Liberty Counsel at the Vermont Supreme Court on a completely separate matter for another client unrelated to Lisa Miller. I have no professional or personal contacts with Vermont.

12. Contrary to the Amended Complaint in ¶25, and elsewhere, I have never encouraged or supported any of the named Defendants, including Lisa Miller and Isabella Miller, to not allow contact with Janet Jenkins. I have never counseled Lisa Miller to disobey court orders. I have never counseled or encouraged Lisa Miller to flee from the state, the country, or the reach of any court or law enforcement, nor have I counseled or encouraged anyone to assist her in doing so. I have no knowledge of anyone who may have been involved in such a course of action. As the Amended Complaint acknowledges in ¶58, I have always maintained and continue to maintain that I had no knowledge that Lisa Miller would flee and continue to have no knowledge of her whereabouts. I only infrequently spoke to Lisa Miller during the course of representation. My communication with Lisa Miller primarily occurred during a few conference calls, very infrequent telephone calls, and at hearings in Virginia, but never in Vermont. In September 2009, while the litigation was still continuing in Vermont and Virginia, Lisa Miller suddenly stopped all communication. All communication ceased with absolutely no warning or hint from Lisa Miller or anyone else that she intended to flee. The Vermont trial court was informed that Lisa Miller stopped communicating and was unable to be located.

13. Contrary to the Amended Complaint ¶31, neither I nor Rena Lindevaldsen appeared with Lisa Miller on behalf of Liberty University or Liberty University School of Law. Our representation was never on behalf of Liberty University or Liberty University School of Law.

14. In the fall of 2009, Victoria Hyden was a student at Liberty University. While studying to complete her Master's degree she worked as a part-time student worker as an administrative assistant in the Admissions Department at Liberty University School of Law. She was married in 2010 and changed her last name from Zhodiates to Hyden. After she graduated in May 2010, she was hired full-time in the Admissions Department of Liberty University School of Law. At no time has she acted as an agent of Liberty University School of Law or Liberty University.

15. After learning from an online news source about the indictment of Timothy Miller, I obtained a copy of the charging affidavit. Prior to reading the affidavit, I had never discussed Lisa Miller or anything related about her with Victoria Hyden. I had never heard Victoria Hyden mention Lisa Miller or anything related to her with anyone. The charging affidavit alleged that Philip Zhodiaties requested Victoria Hyden disseminate a request to get supplies for Lisa Miller. Upon reading her name, I asked her if she had received or made such a request, and she assured me she had not. This is the first time I spoke to Victoria Hyden about Lisa Miller and my conversation was limited to this inquiry. Since the indictment never mentioned Victoria Hyden took any action in response to the alleged request, I was satisfied she was telling the truth. The Amended Complaint insinuates that I kept Victoria Hyden on as an employee of the law school despite the allegations she was involved in the disappearance of Lisa Miller. First, the charging affidavit never alleged Victoria Hyden was involved in Lisa Miller's disappearance. Second, I was satisfied after speaking with her that she had no involvement with Lisa Miller.

16. After receiving the Complaint and reading the allegation in ¶41 (also ¶41 in the Amended Complaint), that "On information and belief, Victoria Zhodiaties sent an email during this time to her co-workers at the law school requesting donations for supplies to be sent to Lisa Miller..." I again spoke to her asking if she had ever sent such an email or made any such request. She again stated she had not. I then spoke with other staff in the Administrative and Admissions Departments who were employed before, during and after 2009 to see if anyone had any knowledge of such an email or any other request by any method of communication. No one had received or heard of any such email and no one ever heard of Victoria Hyden or anyone else make such a request. The Amended Complaint repeats these false allegations in ¶59, and then further makes the false allegation that law school employees who spoke to Victoria Hyden were too intimidated to speak to law enforcement for fear of angering me and losing their jobs. This allegation is unequivocally false. In fact, Lisa Miller was not a topic of discussion among the staff.

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

18. Other than reading their names in the indictment of Timothy Miller, in the Complaint and the Amended Complaint, and in online news reports about the case, I have no knowledge of Kenneth Miller, Timothy Miller, Andrew Yoder, Christian Aid Ministries, Inc., or the Nicaragua Beachy Amish-Mennonite Christian Brethern. During the time I knew Lisa Miller, she was neither Amish nor Mennonite and never mentioned either one to me or anyone I know.

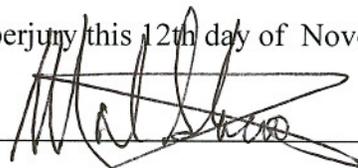
19. I have no knowledge of anyone who spoke of Lisa Miller’s plan or intent to leave Virginia or the country with her child before or after she disappeared. I have no knowledge of anyone who aided, abetted, conspired or had any knowledge respecting Lisa Miller’s disappearance before or after the fact.

20. In sum, at no time did I counsel Lisa Miller to disobey any court order, including the orders of the Vermont courts, and at no time did she, or anyone else, alert me to her plan or

intent to leave Virginia or the country with her child. Contrary to the allegations and inference made in the Complaint and the Amended Complaint, I absolutely did not aid or assist Lisa Miller in fleeing the country. Contrary to the Amended Complaint ¶47, I have not instructed students at Liberty University School of Law “that the correct course of action for a person in Lisa Miller’s situation would be to engage in ‘civil disobedience’ and defy court orders.”

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

Subscribed and sworn to under penalties of perjury this 12th day of November, 2012.



Mathew D. Staver

COMMONWEALTH OF VIRGINIA

At Lynchburg, Virginia, this 12th day of November, 2012, personally appeared MATHEW D. STAVER, and he acknowledged this instrument, subscribed and sworn to by him, to be his free act and deed.

Before me, H. Cynthia Matthews

Notary Public

My Commission Expires: July 31, 2014



**H. Cynthia Matthews
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires 7/31/2014**

Exhibit Five

to

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

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

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

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

v.

Docket No.: 2:12-cv-184

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

Defendants

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

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

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

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

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

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

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

5. The Amended Complaint alleges in ¶22 that “in 2004 she [Linda Wall] was contacted by attorney Rena Lindevaldsen, of Liberty University and was asked to meet with Lisa Miller to screen her for representation by lawyers working at Liberty University and its related law firm, Liberty Counsel, LLC. After this screening, Lisa Miller was accepted for representation by Liberty University attorneys, and also formed a friendship with Defendant Wall. Lisa Miller’s lead attorneys were Dean of the Law School Mathew Staver, and Rena Lindevaldsen, a law professor.” These allegations are inaccurate. First, neither I nor Mathew Staver worked at Liberty University in 2004. In fact, I did not become a part-time (adjunct) instructor until more than a year later, when I taught my first class in August 2005. Second, Liberty Counsel, *not* Liberty University or Liberty University School of Law, represented Lisa Miller. All representation for Lisa Miller was provided through Liberty Counsel, separate and apart from Liberty University and Liberty University School of Law. All pleadings submitted in the Lisa Miller case contained the signature block for Liberty Counsel, *not* Liberty University or Liberty University School of Law.

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

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

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

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

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

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

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

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

12. Other than reading their names in the indictment of Timothy Miller, in the Complaint and the Amended Complaint, and in news reports about the case, I have no knowledge of Kenneth Miller, Timothy Miller, Andrew Yoder, Christian Aid Ministries, Inc., or the Nicaragua Beachy Amish-Mennonite Christian Brethren. During all the years that I knew Lisa Miller, she was neither Amish nor Mennonite and did not mention either religious affiliation to me.

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

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

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

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

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

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

Rena M. Lindevaldsen

Rena M. Lindevaldsen

COMMONWEALTH OF VIRGINIA

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

Before me, *Belinda K. Wetherington*

Notary Public

My Commission Expires: 10/31/15

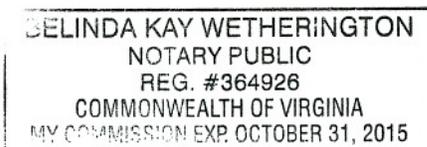


Exhibit Six

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

STATE OF VERMONT
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT
DOCKET NO. 454-11-03

119

LISA MILLER-JENKINS,)
)
Plaintiff,)
)
v.)
)
JANET MILLER-JENKINS,)
)
Defendant.)

ORIGINAL

FILED
OCT - 1 2004

RUTLAND FAMILY
COURT

MOTION TO ADMIT ATTORNEY RENA M. LINDEVALDSEN *PRO HAC VICE*

COMES NOW the undersigned attorney, pursuant to the Vermont Rules of Civil Procedure Rule 79.1(e) and Vermont Rules of Family Court Procedure Rule 15 and petitions this Court for permission to appear Pro Hac Vice on behalf of the above-named Plaintiff(s), and in support thereof would show unto the Court as follows:

1. The undersigned resides in Orange County, Florida, and her office address is 210 East Palmetto Avenue, Longwood, Florida, 32750.
2. The undersigned has been admitted to the following courts:
 New York Court of Appeals (includes all New York State Courts) - 5/8/96
 U.S. District Court for the Southern District of New York - 3/17/98
 U.S. District Court for the Eastern District of New York - 7/16/98
 U.S. Court of Appeals for the Second Circuit - 10/01/02
 U.S. Court of Appeals for the Fifth Circuit - 2/26/03
 Supreme Court of the United States - 3/10/03
 U.S. Court of Appeals for the Fourth Circuit - 4/17/03

U.S. District Court for the Eastern District of Wisconsin - 6/9/03

Florida Supreme Court - 9/18/03

U.S. District Court for the Eastern District of Arkansas - 3/11/04

U.S. District Court for the Western District of Arkansas - 3/11/04

U.S. District Court for the Middle District of Florida - 5/5/04

U.S. District Court for the Northern District of Florida - 5/26/04

U.S. District Court for the Southern District of Florida - 7/9/04

U.S. District Court for the Northern District of New York - 7/9/04

The undersigned's status is active in all courts.

3. Rena Lindevaldsen received her J.D. from Brooklyn Law School in 1995. She has practiced law continuously since she was admitted to the New York Bar in May 1996, and has participated in matters both in state and federal courts.

4. Rena Lindevaldsen has not been held in contempt of court, censured, suspended or disbarred by any court. Rena Lindevaldsen is in good standing with the Appellate Division, Second Judicial Department of the State of New York and is authorized to practice in all courts in the State of New York and the State of Florida.

5. A Certificate of Good Standing from the Supreme Court of the State of Florida is attached to this Motion.

6. The undersigned is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Vermont Rules of Civil Procedure; the Vermont Rules of Family Court Procedure; the Vermont Rules of

Appellage Procedure and the Code of Professional Responsibility of the American Bar Association.

The undersigned further affirms faithful adherence to these Rules and responsibilities.

7. Attorney Judy Barone will continue to actively participate as counsel, accepting all process, notice and other papers service, and signing all papers pursuant to Rule 11.

8. Mathew D. Staver will serve as lead counsel.

WHEREFORE the undersigned counsel, respectfully requests that the Court grant permission to appear Pro Hac Vice in the above-captioned cause.

Respectfully Submitted,



Rena M. Lindevaldsen

Florida Bar No. 0659045

Liberty Counsel

210 East Palmetto Avenue

Longwood, FL 32750

(407) 875-2100 - Telephone

(407) 875-0770 - Facsimile

Attorney for Plaintiff(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight delivery via Federal Express this 30th day of September, 2004, to the following:

Mr. Theodore A Parisi, Jr., Esq.
Theodore A. Parisi, Jr., P.C.
PO Box 297
Castleton VT 05735
Telephone: (802) 265-3311
Telefacsimile: (802) 265-8023
Attorney for Defendant

Judy G. Barone, Esq.
(Local Counsel)
READNOUR & BARONE
225 South Main Street
Rutland, Vermont 05701
Telephone: (802) 775-9886
Telefacsimile: (802) 775-9774
Attorney for Plaintiff


Mathew D. Staver
Florida Bar No. 0701092
(Lead Trial Counsel)
Rena M. Lindevaldsen
Florida Bar No. 0659045
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, FL 32750
Telephone: (407) 875-2100
Telefacsimile: (407) 875-0770
Attorneys for Plaintiff(s)

Supreme Court of Florida

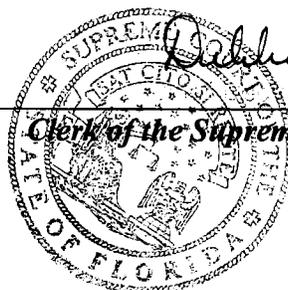
Certificate of Good Standing

I THOMAS D. HALL, Clerk of the Supreme Court of the State of Florida, do hereby certify that

RENA MARI-ANNE LINDEVALDSEN

was admitted as an attorney and counselor entitled to practice law in all the Courts of the State of Florida on September 18, 2003, is presently in good standing, and that the private and professional character of the attorney appear to be good.

*WITNESS my hand and the Seal of the
Supreme Court of Florida at Tallahassee,
the Capital, this November 21, 2003.*



Thomas D. Hall

Clerk of the Supreme Court of Florida.

Exhibit Seven

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

9/20/12

STATE OF VERMONT
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT
DOCKET NO. 454-11-03

LISA MILLER-JENKINS,)
)
Plaintiff,)
)
v.)
)
JANET MILLER-JENKINS,)
)
Defendant.)

MOTION TO ADMIT ATTORNEY MATHEW D. STAVER *PRO HAC VICE*

COMES NOW the undersigned attorney, pursuant to the Vermont Rules of Civil Procedure Rule 79.1(e) and Vermont Rules of Family Court Procedure Rule 15 and petitions this Court for permission to appear Pro Hac Vice on behalf of the above-named Plaintiff(s), and in support thereof would show unto the Court as follows:

1. The undersigned resides in Seminole County, Florida, and his office address is 210 E. Palmetto Avenue, Longwood, Florida 32750.

2. The undersigned has been admitted to the following courts:

- Florida Supreme Court (includes all Florida State Courts) - 10/6/87
- U.S. District Court for the Northern District of Florida - 3/21/95
- U.S. District Court for the Middle District of Florida - 11/16/87
- U.S. District Court for the Southern District of Florida - 4/27/95
- U.S. District Court for the Eastern District of Wisconsin - 12/16/93
- U.S. District Court for the Western District of Wisconsin - 5/4/01
- U.S. District Court for the Southern District of Texas - 7/31/00
- U.S. District Court for the District of Columbia - 10/3/94
- U.S. District Court for the Western District of Michigan - 5/9/01
- U.S. District Court for the Eastern District of Arkansas - 8/28/01
- U.S. District Court for the Western District of Arkansas - 8/28/01
- District of Columbia Court of Appeals - 10/4/93
- United States Supreme Court - 1/14/91
- U.S. Court of Appeals for the District of Columbia Circuit - 12/31/87

U.S. Court of Appeals for the First Circuit - 11/8/94
U.S. Court of Appeals for the Second Circuit - 8/24/94
U.S. Court of Appeals for the Third Circuit - 6/9/94
U.S. Court of Appeals for the Fourth Circuit - 6/15/94
U.S. Court of Appeals for the Fifth Circuit - 6/9/94
U.S. Court of Appeals for the Sixth Circuit - 2/28/94
U.S. Court of Appeals for the Seventh Circuit - 1/14/94
U.S. Court of Appeals for the Eighth Circuit - 7/20/94
U.S. Court of Appeals for the Ninth Circuit - 2/9/94
U.S. Court of Appeals for the Tenth Circuit - 3/4/94
U.S. Court of Appeals for the Eleventh Circuit - 10/14/87

The undersigned's status is active in all courts.

3. The undersigned received his J.D. from the University of Kentucky College of Law in 1987. He has practiced law continuously since 1987, and has participated in trials both in state and federal courts.

4. The undersigned has not been held in contempt of court, censured, suspended or disbarred by any court.

5. A Certificate of Good Standing from the Supreme Court of the State of Florida is attached to this Motion.

6. The undersigned is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States District Courts; the Federal Rules of Civil Procedure and the Federal Rules of Evidence for the District Courts; the Vermont Rules of Civil Procedure; the Vermont Rules of Family Court Procedure; the Vermont Rules of Appellate Procedure and the Code of Professional Responsibility of the American Bar Association. The undersigned further affirms faithful adherence to these Rules and responsibilities.

7. Attorney Judy Barone will continue to actively participate as counsel, accepting all process, notice and other papers service, and signing all papers pursuant to Rule 11.

8. It is necessary for the undersigned to appear in this matter because of his expertise in the issues presented in this case.

9. I will serve as lead counsel on the matter.

WHEREFORE the undersigned counsel, respectfully requests that the Court grant permission to appear *Pro Hac Vice*.

Respectfully Submitted,



Mathew D. Staver
Florida Bar No. 0701092
Liberty Counsel
210 East Palmetto Avenue
Longwood, FL 32750
(407) 875-2100 - Telephone
(407) 875-0770 - Facsimile
Attorney for Plaintiff(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight delivery via Federal Express this 30th day of September, 2004, to the following:

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Theodore A. Parisi, Jr., P.C.
PO Box 297
Castleton VT 05735
Telephone: (802) 265-3311
Telefacsimile: (802) 265-8023
Attorney for Defendant

Judy G. Barone, Esq.
(Local Counsel)
READNOUR & BARONE
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Telephone: (802) 775-9886
Telefacsimile: (802) 775-9774
Attorney for Plaintiff


Mathew D. Staver
Florida Bar No. 0701092
(Lead Trial Counsel)
Rena M. Lindevaldsen
Florida Bar No. 0659045
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, FL 32750
Telephone: (407) 875-2100
Telefacsimile: (407) 875-0770
Attorneys for Plaintiff

Supreme Court of Florida

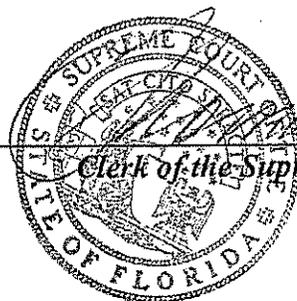
Certificate of Good Standing

I THOMAS D. HALL, Clerk of the Supreme Court of the State of Florida, do hereby certify that

MATHEW DUANE STAVER

was admitted as an attorney and counselor entitled to practice law in all the Courts of the State of Florida on October 6, 1987, is presently in good standing, and that the private and professional character of the attorney appear to be good.

*WITNESS my hand and the Seal of the
Supreme Court of Florida at Tallahassee,
the Capital, this December 16, 2003.*



Thomas D. Hall
Clerk of the Supreme Court of Florida.