UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

JANET JENKINS, et al, Plaintiffs	)	
v.	)	Docket No. 2:12-cv-184
KENNETH L. MILLER, et al, Defendants	)	

MOTION TO DISMISS OF DEFENDANTS PHILIP ZODHIATES AND RESPONSE UNLIMITED, INC. FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE

Defendants Philip Zodhiates and Response Unlimited, Inc. ("Movants"), by their attorneys Gravel & Shea, move to dismiss the claims against them under Fed.R.Civ.P. 12(b)(2) and 12(b)(3) for lack of personal jurisdiction and improper venue. This motion is based on the following grounds:

1. Plaintiff has failed to make out a *prima facie* case that Movants have sufficient minimum contacts to establish personal jurisdiction and that such jurisdiction comports with "fair play and substantial justice" under 12 V.S.A. § 913 and the Due Process Clause.

2. Plaintiff also fails to make out a *prima facie* case that personal jurisdiction is available under 18 U.S.C. § 1965(b) of the Racketeer Influenced and Corrupt Organizations Act, because she does not allege that personal jurisdiction does not exist over all Defendants in any other judicial district. On the contrary, Plaintiff's allegations suggest that such jurisdiction exists in the Western District of Virginia.

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3. Venue is improper under 28 U.S.C. § 1391(b), because "a substantial part of the events or omissions giving rise to the claim" did not occur in this District. It is also not proper under 18 U.S.C. § 1965(a) or (b).

See accompanying Memorandum of Law.

Dated: Burlington, Vermont
November 16, 2012

/s/ Norman Williams

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v.	)	Docket No. 2:12-cv-184
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MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS PHILIP ZODHIATES AND RESPONSE UNLIMITED, INC. TO DISMISS COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE

Preliminary Statement

Plaintiff Janet Jenkins has sued her former partner by a civil union, Lisa Miller, for kidnapping, racketeering, and civil rights violations, along with a coterie of (mostly) Virginia residents and organizations which allegedly assisted Miller. Jenkins has sole legal custody of Isabella Miller-Jenkins, who was born during the civil union. However, Miller took Isabella to Nicaragua in 2009 and has been living with her there since.

Two of the Virginia Defendants, Philip Zodhiates and a company he owns named Response Unlimited, Inc. ("Movants"), now move to dismiss the claims against them for lack of personal jurisdiction and improper venue. Plaintiff does not make out a *prima facie* case for personal jurisdiction against Movants under either the Vermont long-arm statute or RICO. She does not allege that Zodhiates or Response Unlimited is located or has a physical presence here for purposes of the minimum contacts test. She does allege generally that "[Defendants']

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conduct . . . [is] such that they should reasonably anticipate being haled into Court here," Cmplt. ¶ 2, but Zodhiates' extraterritorial conduct does not rise to the level required by *In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71 (2d Cir. 2008). Response Unlimited is not alleged to have engaged in any wrongdoing at all, so personal jurisdiction is also not available against it under the "effects test." Finally, Plaintiff alleges that general jurisdiction is available against Response Unlimited because it "provid[es] Christian direct mail and marketing services nationally and internationally, including in Vermont." That statement is not correct, however. Response Unlimited does not in fact do business in Vermont, as the attached affidavit states. *See* Ex. 1 (Aff. of Matthew LaPorta).

Plaintiff's attempt to obtain personal jurisdiction under the Racketeer Influenced and Corrupt Organizations Act is no more successful. As the Second Circuit explained in *PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 71 (2d Cir. 1998), RICO "does not provide for nationwide personal jurisdiction over every defendant in every civil RICO case, no matter where the defendant is found." Rather, Plaintiff must show that there is no other district with personal jurisdiction over all Defendants. She has not made such a showing, nor is it likely she could, since all Defendants appear amenable to personal jurisdiction in the Western District of Virginia.

Venue is also not proper in this District with respect to Movants. The general venue statute does not apply, because "a substantial part of the events or omissions giving rise to the claim" did not occur in Vermont. 28 U.S.C. § 1394(b)(2).[1] The Complaint makes clear that all of the planning and funding for Lisa Miller and Isabella's trip occurred in Virginia, as well as the

[1] The Complaint contains no allegations which would support venue under subsections (1) or (3) of 28 U.S.C. § 1394(b).

alleged efforts to continue to provide funding once Lisa and Isabella were in Nicaragua. Not only would Virginia be a more convenient forum for Defendants, but the witnesses and other evidence are located there. Venue is also not available under RICO with respect to Defendants Zodhiates and Response Unlimited. Neither Movant "resides, is found, has an agent, or transacts his affairs" in this state, as 18 U.S.C. § 1965(a) requires.

Factual Allegations

Plaintiff Janet Jenkins alleges that Lisa Miller kidnapped her own daughter by birth, Isabella Miller-Jenkins, on September 21, 2009. Jenkins asserts that Miller took Isabella from Virginia to Nicaragua, where the two of them have resided since with a religious group known as the "Beachy Amish-Mennonite Christian Brotherhood" ("Brotherhood"). *See* Cmplt., Opening Para. (unnumbered) and ¶¶ 21; 34-37; 39-40. Although Miller had legal custody of Isabella when she travelled to Nicaragua, the Complaint states that she departed to avoid a visitation order issued by the Rutland Family Court for September 25-27, 2009. *Id.*; ¶¶ 33-35. On November 20, 2009, the Family Court issued an Order transferring legal custody to Plaintiff effective January 1, 2010, but Miller did not and has not complied. *Id.*, ¶ 43. Jenkins asserts that other Defendants acted in concert with Miller by providing financial and logistical assistance. *See id.*

Defendant Philip Zodhiates, one of the two Movants here, allegedly drove Miller and Isabella from Virginia to Buffalo, New York, on September 21, 2009. Cmplt., ¶ 36. The Complaint states that they were met there by a taxi, which took Miller and her daughter to Canada. *Id.*, ¶ 37. With the assistance of a Canadian member of the Brotherhood, Lisa and Isabella allegedly flew from Toronto to Nicaragua the next day. *Id.*, ¶ 41. In addition to driving

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Miller and Isabella to Buffalo, Plaintiff alleges that Zodhiates provided $500 to Miller in May 2010, and that he has solicited donations on her behalf. Cmplt., ¶¶ 53, 59.

The second Movant, Response Unlimited, Inc. ("RUL"), is owned by Zodhiates. Jenkins alleges that RUL "provid[es] Christian direct mail and marketing services nationally and internationally, including in Vermont." *Id.* However, RUL submits an affidavit herewith stating that it does not send out mailings on behalf of clients and that it does not have any clients in Vermont. *See* Ex. 1.

Plaintiff alleges three causes of action against Zodhiates and RUL: (1) aiding and abetting a kidnapping (Cmplt., ¶¶ 63-64); (2) conspiracy under the Racketeer Influenced and Corrupt Organizations Act (*id.*, ¶¶ 71-73); and (3) conspiracy to violate her civil rights (*id.*, ¶¶ 74-75). She asserts long-arm jurisdiction under 12 V.S.A. § 913 with respect to the kidnapping and civil rights claims. Cmplt., ¶¶ 1-2. She asserts both long-arm and personal statutory jurisdiction under 18 U.S.C. § 1965(a) with respect to the RICO claim. *Id.* Plaintiff alleges venue is proper in this District under 28 U.S.C. § 1391 because "a substantial part of the events or omissions giving rise to the claim occurred in this District" and "under principles of pendent venue." Cmplt. ¶ 1. She also asserts that venue is available with respect to her RICO claim under 18 U.S.C. § 1965. *Id.*

Argument

I. PLAINTIFF HAS NOT AND CANNOT MEET HER BURDEN OF SHOWING THAT THE VERMONT COURTS HAVE PERSONAL JURISDICTION OVER EITHER PHILIP ZODHIATES OR RESPONSE UNLIMITED, INC.

A. Plaintiff Must Make A *Prima Facie* Showing Based On Specific Factual Allegations That Personal Jurisdiction Is Available With Respect To Each Defendant And Each Claim.

It is a familiar rule that the plaintiff bears the burden of establishing personal jurisdiction over each defendant. *See, e.g., Audsley v. RBS Citizens, N.A.*, No. 5:10-cv-208, 2011 U.S. Dist. LEXIS 39272 (D.Vt. April 11, 2011); *Country Home Products, Inc. v. Schiller-Pfeiffer, Inc.*, 350 F.Supp. 2d 561 (D.Vt. 2004). Unless controverted by affidavit, the plaintiff may rely on the well-pleaded allegations in her complaint. *Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 56 (2d Cir. 2012). However, the Court "will not draw argumentative inferences in the plaintiff's favor," nor "accept as true a legal conclusion couched as a factual allegation." *Id.* at 59 (citations and internal quotations omitted). As the Supreme Court has recently emphasized, factual allegations must rise "above the speculative level," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and "conclusory statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).[2] Where factual allegations are controverted by affidavit, the plaintiff may not rest on her pleadings but must meet the affidavit with one of her own or other evidence. *See CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011); *Purdue Research Found. v.*

[2] Although *Twombly* and *Iqbal* did not directly address jurisdictional pleading standards, the rule governing the pleading of jurisdiction (Rule 8(a)(1)) establishes the same standard as the rule governing the pleading of claims (Rule 8(a)(2). Moreover, fact allegations asserting claims are often intertwined with those asserting jurisdiction. Finally, the same policy considerations which led the Supreme Court to tighten pleading standards for claims apply to jurisdictional pleadings. *See Central W. Va. Energy Co. v. Mt. State Carbon, LLC*, 2012 U.S. Dist. LEXIS 45231 (S.D.W.Va. 2012); *Haley Paint Co. v. E.I. Dupont De Nemours & Co.*, 775 F. Supp. 2d 790 (D.MD. 2012).

Sanofi Synthelabo, SA, 338 F.3d 773, 782-83 (7th Cir. 2003); *Amazon.com, Inc. v. Nat. Ass'n of College Stores, Inc.*, 2011 WL 6008971, *6 (W.D. Wash. 2011); *Piontek v. BB&T Corp.*, 2010 WL 2349035 (E.D. Pa. 2010); *Gannon v. Flood*, 2008 WL 905982, *2 (S.D. Fla. 2008).

B. Personal Jurisdiction Is Not Available Under Vermont's Long-Arm Statute Or The Due Process Clause.

1. Defendants Zodhiates And Response Unlimited, Inc. Have No Physical Presence Or Business Dealings In Vermont.

"Vermont's long-arm statute, 12 V.S.A. § 913(b), confers jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause." *Dall v. Kaylor*, 163 Vt. 274, 275, 658 A.2d 78 (1995). Accordingly, Plaintiff must show that she meets two requirements: the "minimum contacts" test and the reasonableness inquiry. *See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 127 (2d Cir. 2002); *see also Dall*, 163 Vt. at 275. With respect to the minimum contacts test, "Specific jurisdiction exists when 'a [s]tate exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum,'" while general jurisdiction "is based on the defendant's general . . . contacts . . . and permits a court to exercise its power in a case where the subject matter of the suit is unrelated to those contacts." *Id.* at 567-68 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16, 104 S. Ct. 1868, 80 L. Ed. 2d 404 & nn. 8-9 (1984)).

Plaintiff fails to make a *prima facie* showing that either Philip Zodhiates or RUL have a physical presence in Vermont sufficient to meet the minimum contacts test. The Complaint does not allege that Zodhiates has ever stepped foot in this state. *See* Cmplt., ¶ 12. It asserts that this Court has personal jurisdiction over him only because the company he owns, RUL, has "sufficient contacts with the State of Vermont to subject it to personal jurisdiction." *Id.* Apart

from the conclusory nature of this allegation, it is well-established that a company's contacts will not be attributed to an individual. *See Calder v. Jones*, 465 U.S. 783, 789 (1984) (employees' "contacts with California are not to be judged according to their employer's activities there" because "[e]ach defendant's contacts with the forum State must be assessed individually"); *In re Terrorist Attack on Sept. 11, 2001,* 538 F.3d 71, 96 (2d Cir. 2008), *abrogated in part on other grounds, Samantar v. Yousuf,* 130 S. Ct. 2278 (2010) (actions of Mideast bank could not be imputed to bank president); *Ytuarte v. Gruner + Jahr Printing & Publ. Co.*, 935 F.2d 971, 972-73 (8th Cir. 1991) (attributing forum contacts of partnership to individual partners or to managing partner offends due process).

Plaintiff does no better meeting the minimum contacts tests with respect to RUL. She alleges, again in conclusory fashion, that it "is a Delaware corporation with sufficient contacts with the State of Vermont to subject it to jurisdiction in this Court, including providing Christian direct mail and marketing services nationally and internationally, including in Vermont." Cmplt., ¶ 14. Because Plaintiff does not suggest that RUL's direct mail and marketing services have anything to do with her claims in this case, she must rely on general as opposed to specific jurisdiction. *See Bechard v. Constanzo*, 810 F.Supp. 579, 584-85 (D. Vt. 1992) (no general jurisdiction over New York doctor who treated Vermonter in New York).

As the Supreme Court recently explained in *Goodyear Dunlop Tires Operations v. Brown*, 131 S. Ct. 2846 (2011), "[a] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations . . . when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Id.* at 2851 (citation omitted). Just as "the paradigm forum for the exercise of general jurisdiction is the individual's

domicile," the Court said, "for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Id.* at 2853-54.

In *Goodyear Dunlop*, the Court made clear that merely engaging in business activities in a particular state did not render a company subject to general personal jurisdiction there. The case involved an allegedly defective bus tire which caused an accident in northern France, killing two 13-year-old boys from North Carolina. *See id.*, 131 S. Ct. at 2850. The tire in question had been manufactured by a Turkish subsidiary of Goodyear and distributed in France through a French subsidiary. *See id.*, 131 S. Ct. at 2852. However, other tires manufactured by the same subsidiary were sold in North Carolina. *Id.* Based on that fact, the North Carolina Court of Appeals held that the North Carolina courts had general jurisdiction over the parents' lawsuit against the foreign subsidiaries. *See id.*

The Supreme Court reversed. "A corporation's continuous activity of some sorts within a state," it said, "is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Goodyear Dunlop*, 131 S. Ct. at 2856 (citations and internal quotations omitted). Here, it said, the subsidiary's sales of tires in North Carolina "fall far short of 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." *Id.* at 2857 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

Goodyear Dunlop leaves no doubt that Plaintiff's vague and conclusory allegation that RUL provides "Christian direct mail and marketing services" for customers in Vermont does not suffice to establish general jurisdiction in Vermont. Beyond that, the allegation is not even

accurate. As the affidavit of RUL Matthew LaPorta states, RUL does not send material to Vermont on behalf of clients, and it in fact has no clients in this State. *See* Ex. 1.

2. Personal Jurisdiction Is Not Available Over Defendants Zodhiates Or Response Unlimited Based On Their Conduct Outside Vermont.

Plaintiff also asserts generally that this Court has personal jurisdiction over all Defendants, "as their conduct and connection with Vermont are such that they should reasonably anticipate being haled into Court here." Cmplt., ¶ 2. As discussed in the Background section above, Plaintiff alleges that Zodhiates assisted Lisa Miller in leaving the United States for Nicaragua with Isabella on September 22, 2009. Compl, ¶54. According to the Complaint, Zodhiates drove Lisa Miller and Isabella to the Canadian border on September 21, 2009, without Plaintiff's knowledge (¶ 36); conspired with Kenneth Miller to arrange for the purchase of plane tickets to Nicaragua for Lisa and Isabella (¶ 37); arranged for Lisa Miller's personal belongings to be brought to Nicaragua in November 2009 (¶ 42); sent $500 to Nicaragua for Lisa and Isabella's use (¶ 53); and "knew of Lisa Miller's whereabouts and solicited donations from other Law School employees for her aid." (¶ 59). Defendant Zodhiates is alleged to have acted as RUL's agent (¶ 62), but Defendant RUL itself does not appear to be accused of any tortious conduct.

The allegations above, even if accepted as true, do not suffice for personal jurisdiction over Zodhiates in Vermont. As the Second Circuit emphasized in *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71, 93 (2d Cir. 2008), personal jurisdiction based on extraterritorial conduct is proper only "when defendant is a primary participant in intentional wrongdoing . . . expressly directed at [the] forum" (quotation and citation omitted). As the Court emphasized, "[m]ere foreseeability of harm in the forum state is insufficient." *Id.*

The difficulty of obtaining personal jurisdiction based on extraterritorial conduct alone is pointed up by *In re Terrorist Attacks*. The plaintiffs there were individuals who suffered personal injuries, lost family members, or incurred property damage in the attacks on the World Trade Center and Pentagon on September 11, 2001. *See id.*, 538 F.3d at 75. The defendants included four members of the Saudi royal family (the "Four Princes") who allegedly funded "charities" while knowing that their contributions would be transferred to al Qaeda. *See id.* at 75-77. Al Qaeda, of course, had announced jihad against the United States. *Id.* at 95. Moreover, the U.S. Government had listed several such charities as "Specifically Designated Global Terrorists" and taken steps to shut them down. *See id.* at 76-77. Plaintiffs argued that the defendants must be held responsible for the harm they suffered, because "'there would not be a trigger to pull or a bomb to blow up without the resources to acquire such tools of terrorism and to bankroll the persons who actually commit the violence.'" *Id.* at 76 (quoting *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1021 (7th Cir. 2002)).

In holding that personal jurisdiction was not available over the Four Princes in U.S. courts, the Second Circuit assumed that they "could and did foresee that recipients of their donations would attack targets in the United States." *Terrorist Attacks*, 538 F.3d at 94-95. As it said:

> Even assuming that the Four Princes were aware of Osama bin Laden's public announcements of jihad against the United States and al Qaeda's attacks on the African embassies and U.S.S. Cole, their contacts with the United States would remain far too attenuated to establish personal jurisdiction in American courts. It may be the case that acts of violence committed against residents of the United States were a foreseeable consequence of the princes' alleged indirect funding of al Qaeda, but foreseeability is not the standard for recognizing personal jurisdiction. Rather, the plaintiffs must establish that the Four Princes "expressly aimed" intentional tortious acts at residents of the United States.

Id. at 95.

If no personal jurisdiction is available over persons who give funds to terrorist front organizations, knowing such funds will be transferred to those who are engaged in jihad against the United States, it is difficult to understand how personal jurisdiction could be asserted against Philip Zodhiates or Response Unlimited, Inc., in this case. It must be recalled that, on September 21, 2009, when Defendant Zodhiates allegedly drove Lisa Miller and Isabella to Buffalo from Virginia, Lisa had sole legal custody of Isabella, her daughter by birth. *See* Cmplt. ¶ 43. Zodhiates was violating no order and engaging in no intentional tort. Even if Zodhiates could have foreseen that the Rutland Superior Court would issue an order on November 20, 2009, changing the custody for Isabella effective January 1, 2010, and even if he could have foreseen that Lisa would not obey it – neither of which the Complaint alleges – there would still be no basis for personal jurisdiction under *Terrorist Attacks*. The Complaint does not assert that either Zodhiates or Response Unlimited directed Lisa to harbor Isabella in Nicaragua after custody was changed to Plaintiff. In short, they were not primary participants in intentional and allegedly tortious acts expressly aimed at this forum, as the Second Circuit requires. At most, they enabled Lisa Miller to keep Isabella out of the reach of Janet Jenkins, just as the Four Princes enabled Osama and al Qaeda to attack the World Trade Center. That is not enough, even if the harm was foreseeable.[3]

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[3] Such a result is consistent with numerous cases holding that conspiracy allegations do not suffice for personal jurisdiction over alleged co-conspirators. *See, e.g., Stauffacher v. Bennett*, 969 F.2d 455, 460 (7th Cir. 1990) ("The cases are unanimous that a bare allegation of conspiracy between the defendant and a person within the personal jurisdiction of the court is not enough"); *Lehigh Valley Indus., Inc. v. Birenbaum*, 527 F.2d 87, 93-94 (2d Cir. 1975) ("the bland assertion of conspiracy . . . is insufficient to establish [personal] jurisdiction"); *Silver Valley Partners, LLC v. DeMotte*, 400 F.Supp. 2d 1262 (W.D. Wash. 2005) (court finds personal jurisdiction in Washington over an Idaho resident who solicited mining investments from Washington residents which were allegedly fraudulent, but dismisses other Idaho residents and an Idaho company which had allegedly conspired with him for lack of personal jurisdiction).

3. The Exercise Of Personal Jurisdiction Over Defendants Zodhiates And Response Unlimited, Inc. Would Offend "Our Traditional Conception Of Fair Play And Substantial Justice."

In order to pass muster under the Due Process Clause, Plaintiff must also show that the exercise of personal jurisdiction would comport "with our traditional conception of fair play and substantial justice." *Int'l Shoe Co v. Washington*, 326 U.S. 310, 316 (1945); *see also Bechard v. Constanzo*, 810 F.Supp. 579, 583 (D. Vt. 1992). The Supreme Court has established five factors which must be considered: (1) the burden on 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 Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985).

These factors weigh against the assertion of personal jurisdiction over Defendants Zodhiates and RUL in Vermont. First, litigating the case here would impose a substantial burden, since neither Zodhiates nor RUL have any connections to Vermont. Their records and files are in Virginia, as are almost all of the witnesses likely to have information about the matters alleged in the Complaint. As to the second factor, while Vermont may have an interest in providing redress to one of its citizens, that "consideration[ ] [is] hardly a sufficient basis for asserting general jurisdiction where the defendants' contacts do not rise to the level of 'minimum contacts,' particularly in light of the fact that the alleged tort did not arise in Vermont. . . ." *Bechard, id.* at 586. Third, while it may be convenient for Plaintiff to litigate here, she, like Defendants, also faces the difficulty of obtaining evidence and the testimony of witnesses who are overwhelmingly located in Virginia. In evaluating the fourth factor, efficient administration of justice, "courts generally consider where witnesses and evidence are likely to be located." *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 574-75 (2d Cir. 1996). As it

did in *Metropolitan Life*, this factor weighs heavily in favor of Defendants. Finally, Virginia and Vermont both share a social policy which condemns interference with parental rights. *See Wyatt v. McDermott*, 725 S.E. 2d 555, 558 ("We recognize the essential value of protecting a parent's right to form a relationship with his or her child"). On balance, these factors tip against the exercise of personal jurisdiction here, due to the fact that the evidence and witnesses are overwhelmingly located in Virginia.

C. Personal Jurisdiction Is Not Available Under 18 U.S.C. § 1965(b) Over Defendants Zodhiates Or Response Unlimited, Inc. With Respect To Plaintiff's RICO Claim.

1. Nationwide Jurisdiction Is Not Available Under Sec. 1965(b) Where All Defendants Are Subject To Personal Jurisdiction In Another District.

In addition to bringing common law and civil rights claims against Zodhiates and Response Unlimited, Plaintiff asserts in Count III of her Complaint that they and others conspired with Defendant Kenneth Miller to violate the Racketeer Influence and Corrupt Organizations Act ("RICO"). Cmplt. ¶¶71-73. Plaintiff alleges that the Court has personal jurisdiction over Zodhiates and Response Unlimited with respect to this claim under 18 U.S.C. § 1965(b), "because the ends of justice require that any defendant residing in another District be brought before this Court." *Id.*, ¶ 1.[4]

The Second Circuit considered personal jurisdiction under the RICO statute in *PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65 (2d Cir. 1998). The case involved a dispute between United Can and Crown Cork & Seal, a minority shareholder. *See id.* at 68. United Can sued in New York, alleging that Crown and two of its officers had obtained sensitive

[4] Plaintiff also asserts RICO jurisdiction under 18 U.S.C. § 1965(a) "because Defendants reside, are found, have an agent, or transact their affairs in this District." Cmplt. ¶ 1. As discussed under Point IB above, this conclusory allegation is not accurate with respect to Zodhiates or Response Unlimited.

information and used it to engage in extortion, mail and wire fraud, trade disparagement, unfair competition, and RICO violations, among other things. *See id.* at 69. The two Crown officers, one of whom lived in New Jersey and the other in Pennsylvania, moved to dismiss for lack of personal jurisdiction. *Id.* United Can argued that, under 18 U.S.C. § 1965(d), nationwide jurisdiction was available over its RICO claims. *Id.* at 70.

The Second Circuit disagreed: "Reading all of the subsections of § 1965 together, the court finds that §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*, 138 F.3d at 71. The section governing personal jurisdiction, the Court explained, is not section 1965(d) but Section 1965(b). *See id.* at 71-72. Under that subsection, personal jurisdiction may be available over "'other parties' not residing in the district," but only on "a showing that 'the ends of justice' so require." *Id.* at 71. The Court concluded:

> This is an unsurprising limitation. There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965(a), is to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible, haling defendants into far flung fora.

Id. at 71-72.

Based on this reading of section 1965, the Second Circuit affirmed the District Court's dismissal of the individual defendants for lack of personal jurisdiction. *See PT United Can*, 138 F.3d at 72. Although the RICO statute itself does not specify what "the ends of justice" means, the District Court in *PT United Can* followed the Ninth Circuit's decision in *Butcher's Union Local No. 498 v. SDC Investment, Inc.*, 788 F.2d 535, 538-39 (9th Cir. 1986), in finding the phrase "to refer to a case in which there is no district with personal jurisdiction over all defendants." *PT United Can*, 138 F.3d at 71, n. 5. In *PT United Can*, such jurisdiction existed in

Pennsylvania. The plaintiff did not challenge that result, and the Second Circuit said "[w]e conclude that the natural reading given to § 1965(b) by the 9th Circuit in *Butcher's Union* and the district court here was correct." *Id.* at 72.

Since *PT United Can*, a number of District Courts in this Circuit have agreed that "'ends of justice' jurisdiction is authorized where the RICO claim could not otherwise be tried in a single action because no district court could exercise personal jurisdiction over all of the defendants." *Elsevier Inc. v. W.M.P.R., Inc.*, 692 F.Supp. 2d 297, 315 (S.D.N.Y. 2010). Examples include *Nuevo Mundo Holdings v. PriceWaterhouseCoopers LLP,* No. 03 Civ. 613, 2004 WL 2848524, at *7, 2004 U.S. Dist. LEXIS 24900, at *21 (S.D.N.Y. Dec. 9, 2004); *Zito,* 2004 WL 2211650, at *20, 2004 U.S. Dist. LEXIS 19778, at *62; *Gates v. Wilkinson,* No. 01 Civ. 3145, 2003 WL 21297296, at *3, 2003 U.S. Dist. LEXIS 9417, at *9 (S.D.N.Y. June 4, 2003); *Anderson v. Ind. 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). It is up to Plaintiff to make this showing. *Gates, id.* at *3.

2. Because Plaintiff Has Not Shown Or Even Alleged That All Defendants Could Not Be Sued In Another District, Nationwide Jurisdiction Is Not Available Under 18 U.S.C. § 1965(b).

While the Complaint baldly asserts that "personal jurisdiction is also proper under § 1965(b) in this forum because the ends of justice require" it, Cmplt. ¶ 1, there is no allegation that suit could not proceed in another district, as *PT United Can* and subsequent cases require. Moreover, the factual allegations suggest that it could. Defendant Zodhiates is alleged to be a resident of Virginia, as are six other Defendants. *See id.*, ¶¶ 8, 12, 13, 15-18. Although Response Unlimited is alleged to be a Delaware corporation, its affidavit submitted herewith recites that its place of business is also Virginia. *See* Ex. 1.

The three remaining Defendants, Timothy Miller, Andrew Yoder, and Christian Aid Ministries, also appear to be subject to personal jurisdiction in Virginia. Miller and Christian Aid Ministries are accused of assisting Lisa Miller take Isabella from Virginia to Nicaragua in September 2009. *See* Cmplt. ¶ 54. Yoder is accused of helping to provide cash to Lisa Miller in Nicaragua by means of an alleged scheme involving the purchase of hydrangea plants from Millmont Greenhouses, Inc., which is located in Waynesboro, Virginia. *See id.* ¶ 53. Unless and until Plaintiff shows personal jurisdiction over all Defendants is not available in the Western District of Virginia, section 1965(b) cannot serve as a basis for personal jurisdiction against Zodhiates or Response Unlimited in Vermont.

3. To The Extent Sec. 1965(b) Is Construed To Provide Personal Jurisdiction Against Defendants Zodhiates Or Response Unlimited, Inc., In Vermont, It Would Violate The Constitutional Due Process Clause.

Although Defendants Zodhiates and Response Unlimited, Inc. do not believe 18 U.S.C. § 1965(b) may be construed to provide personal jurisdiction over them on the facts of this case, any such construction would violate their due process rights under the Fifth Amendment. As both the Tenth and Eleventh Circuits have explained, a federal statute conferring nationwide jurisdiction cannot trump the "traditional notions of fair play and substantial justice," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), protected by the Due Process Clause. *See Peay v. Bell South Medical Assistance Plan*, 205 F.3d 1206 (10th Cir. 2000); *Republic of Panama v. BCCI Holdings,* 119 F.3d 935 (11th Cir. 1997). As the Eleventh Circuit held, "the Due Process Clause of the Fifth Amendment provides an independent constitutional limitation on the court's

exercise of personal jurisdiction over a defendant served pursuant to a federal statute's nationwide service of process provision." *Id.* at 939.[5]

The instant case provides a textbook example of a case which would be unreasonable to litigate in the forum chosen by Plaintiff. *None* of the numerous Defendants are located here, and the events which are the subject of the litigation occurred elsewhere. The witnesses and evidence are located in Virginia, as are the great majority of Defendants. Although Plaintiff's choice of forum is entitled to respect, it cannot outweigh the unreasonable burden which would be imposed not only on Zodhiates and Response Unlimited but on all the Defendants and witnesses by forcing them to defend her claims here. *See* Part IA(3), *supra.*

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[5] Although a number of courts have upheld statutory nationwide jurisdiction against constitutional challenges, they have done so on the grounds that such jurisdiction is an exercise of federal sovereignty. *See, e.g., Fitzsimmons v. Barton*, 589 F.2d 330, 333 (7th Cir. 1979) (tracing rationale to *United States v. Union Pac. R.R.*, 98 U.S. 569, 603-04 (1878)); *Mariash v. Morrill*, 496 F.2d 1138, 1143 (2d Cir. 1974) (minimum contacts requirement not "particularly relevant" where federal statute provides for nationwide jurisdiction).

The Supreme Court fatally undermined this rationale in *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982). It explained there that "the restriction on state sovereign power . . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause." *Id.* at 702-03 n. 10. That rationale has been reaffirmed by the Court since. *See J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2798 (2011) ("constitutional limits on a state court's adjudicatory authority derive from considerations of due process, not state sovereignty"); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 702-03 n. 10 (Brennan, J., concurring). Both courts and commentators have taken note. *See, e.g., Willingway Hosp., Inc. v. Blue Cross & Blue Shield*, 870 F.Supp. 1102, 1106 (S.D. Ga. 1994) ("To allow Congress to dictate personal jurisdiction through the enactment of nationwide service of process provisions, unquestioned by the judiciary [,] is nonsensical"); 4 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, Civil 2d § 1067.1 at 328-29 (1990) ("If due process is to have any application at all in federal cases – and the Fifth Amendment requires that it does – it seems impossible that Congress could empower a plaintiff to force a defendant to litigate any claim, no matter how trifling, in whatever forum the plaintiff chooses, regardless of the burden on the defendants.").

II. VENUE IS NOT PROPER IN THIS DISTRICT WITH RESPECT TO DEFENDANTS ZODHIATES OR RESPONSE UNLIMITED, INC.

A. Where, As Here, Venue Is Challenged Plaintiff Must Establish It For Each Defendant And Each Claim.

The Second Circuit made clear in *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353 (2d Cir. 2005), that the plaintiff has the burden of making out a *prima facie* showing of venue if the Court chooses to rely on pleadings and affidavits. *See id.* at 355 (citing *Cutco Indus. v. Naughton*, 806 F.2d 361, 364-65 (2d Cir. 1986)). If the Court holds an evidentiary hearing, plaintiff must demonstrate venue by a preponderance of the evidence. *See id.*[6]

As with personal jurisdiction, the plaintiff must establish proper venue for each defendant. *See Payne v. Marketing Showcase, Inc.*, 602 F.Supp. 656, 658 (N.D. Ill. 1985). In addition, she must show that venue is proper with respect to each claim. *See, e.g., Saferstein v. Mardinly, Durham, James, Flandreau & Rodger, P.C.*, 927 F.Supp. 731 (S.D.N.Y. 1996); *City of New York v. Cyco.net*, No. 03 CV 383 (DAB), 2005 U.S. Dist. LEXIS 1028 (S.D.N.Y. Jan. 27, 2005).[7]

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[6] The Second Circuit's allotment of the burden to plaintiff is consistent with the majority of courts in other circuits. *See, e.g., Bartholomew v. Va. Chiropractors Ass'n*, 612 F.2d 812, 816 (4th Cir. 1979); *Johnson v. Washington Gas Light Co.*, 89 F.Supp. 2d 45, 47 (D.D.C. 2000); *Nissan Motor Co., Ltd. v. Nissan Computer Corp.*, 89 F.Supp. 2d 1154, 1161-62 (C.D. Cal. 2000); *Overland, Inc. v. Taylor*, 79 F.Supp. 2d 809, 811 (E.D. Mich. 2000); *Etienne v. Wolverine Tube, Inc.*, 12 F.Supp. 2d 1173, 1179-80 (D. Kan. 1998). Two circuits have held to the contrary, however. *See In re Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 794 (7th Cir. 1998); *Myers v. Am. Dental Ass'n*, 695 F.2d 716, 724 (3d Cir. 1982).

[7] Plaintiff also alleges in conclusory fashion that "pendent venue" is available "because all claims arise out of the same nucleus of operative facts." Cmplt., ¶ 1. Although there is no statutory basis for "pendent venue," it has been adopted by some courts in cases involving supplemental jurisdiction. *See, e.g., SEC v. Bilzerian*, 378 F.3d 1100, 1107 (D.C. Cir. 2004). Other courts have declined, particularly where specific venue statutes are involved. *See, e.g., Johnson v. Gen. Dynamics Info. Tech., Inc.*, 675 F.Supp. 2d 236, 242 (D. N.H. 2009); *Sompo Japan Ins. Co. of America v. Yang Ming Marine Trans. Corp.*, 578 F.Supp. 2d 584, 598 (S.D.

(continued on next page)

B. Plaintiff's Pleadings Do Not Establish That Venue Is Proper With Respect to Defendants Zodhiates Or Response Unlimited, Inc. Under 28 U.S.C. § 1391(b).

Under 28 U.S.C. § 1391(b), a civil action may be brought in:

> (1) a judicial district in which defendant resides, if all defendants are residents of the State in which the district is located;
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

As the Complaint reflects, none of the Defendants reside in Vermont. Venue is therefore not available under Section 1391(b)(1).[8] The next question is whether "a substantial part of the events or omissions giving rise to the claim" occurred in this District, so as to satisfy section 1391(b)(2). In confronting that question, the Second Circuit's warning in *Gulf Insurance* must be heeded:

> . . . we caution district courts to take seriously the adjective "substantial." We are required to construe the venue statute strictly. *See Olberding v. Illinois Cent. R.R.*, 346 U.S. 338, 340 (1953). That means 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.

N.Y. 2008). *See generally* Note, "Pendent Venue: A Doctrine In Search Of A Theory," 68 U. Chi. L. Rev. 931, 941 (2001).

Plaintiff does not assert "supplemental jurisdiction" in this case, so it is not clear how she intends "pendent venue" to apply. It is extremely doubtful that "pendent venue" over Plaintiff's state law and civil rights claims could be based on venue under RICO, however, even if RICO venue were available.

[8] Most of the 11 Defendants reside in Virginia. *See* Cmplt., ¶¶ 8, 12-18. The exceptions are Defendants Yoder and Christian Aid Ministries, Inc., said to reside in Ohio, and Defendants Lisa Miller and Timothy Miller, alleged to reside in Nicaragua. Because not all Defendants reside in Virginia, venue would not be available there either under section 1391(b)(1).

417 F.3d at 357 (emphasis in original).

As *Gulf Insurance* also takes pains to point out, "It would be error, for instance, to treat the venue statute's substantial part test as mirroring the minimum contacts test employed in personal jurisdiction inquiries." *Id.* The Second Circuit's position reflects the accepted understanding that "the laws relating to venue give added protection to defendants beyond those that are provided by the statutory and constitutional prerequisites of personal jurisdiction." 14D Charles A. Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure*, § 3801 at p. 15 (3d ed. 2007).[9] As a practical matter, courts "focus on the relevant activities of the defendant . . . in determining where a substantial part of the underlying events occurred." *Great Socialist People's Libyan Arab Jamahiriya v. Miski*, 496 F.Supp. 2d 137, 142 (D. D.C. 2007) (internal quotation and citation omitted).

Looked at through the lens of *Gulf Insurance*, the Complaint here comes nowhere near to meeting the requirements of section 1391(b)(2). It alleges that, after Lisa Miller and Isabella moved from Vermont to Virginia in 2004, Lisa converted to fundamental Christianity; renounced homosexuality; and joined the Keystone Baptist Church in Winchester, Virginia, Cmplt., ¶¶ 19-20. According to the Complaint, she befriended its Pastor Douglas Wright (a Defendant) and began to deny contact between Plaintiff and Isabella. *See id.*

Plaintiff alleges that, after her civil union with Lisa Miller was dissolved in April 2007, Lisa actually did comply with several parent-child contact orders. *See* Cmplt., ¶ 25. In the spring of 2008, however, she joined the Thomas Road Baptist Church in Lynchburg, Virginia,

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[9] In view of the Second Circuit's language in *Gulf Insurance*, this Court's earlier statement that "venue is proper anywhere there is personal jurisdiction" in *Country Home Products, Inc. v. Schiller-Pfeiffer, Inc.*, 350 F.Supp. 2d 561, 568 (D. Vt. 2004), must be re-examined.

and was allegedly counseled not to allow contact between Isabella and Plaintiff. *See id.* Plaintiff asserts that, in June 2008, an anti-gay activist named Linda Wall (also a Defendant) and Lisa Miller agreed that Miller should flee with Isabella and formed "The Protect Isabella Coalition" to prevent contact between Isabella and Plaintiff. *See id.*, ¶¶ 26-27.

The Complaint asserts that Lisa Miller contacted Defendant Zodhiates on May 29, 2009. Cmplt., ¶ 29. By the late summer, it states, she and her "co-conspirators" had devised a plan for Lisa to take Isabella to Nicaragua, where they would join the "Beachy Amish-Mennonite Christian Brotherhood." *Id.*, ¶ 34. On September 19, 2009, Lisa allegedly met Pastor Wright in a parking lot in Winchester, Virginia, where she said goodbye and asked him to dispose of some personal items. *See id.*, ¶ 35. On September 21, 2009, Defendant Zodhiates allegedly drove Lisa and Isabella to Buffalo, New York. *Id.*, ¶ 36. There, the Complaint states, a taxi took them across the border to Canada, and they flew from Toronto to Nicaragua. *Id.*, ¶ 37. Lisa did not return Isabella for a court-ordered visitation from September 25-27, 2009. *Id.*, ¶ 40. Various Defendants in Virginia continued to assist Lisa Miller by providing funds and shipping personal goods to Nicaragua. *Id.*, ¶¶ 39, 42, 53-54, 59.

What is striking about the Complaint is that almost all of the wrongful conduct is alleged to have occurred in Virginia, while none at all occurred in Vermont. The only other places where wrongdoing is alleged are: (1) the states between Virginia and Buffalo, New York, through which Zodhiates drove on September 19, 2009; (2) Canada, where Lisa and Isabella boarded a plan for Nicaragua; and (3) Nicaragua itself. In these circumstances, adjudicating Plaintiff's claims in Vermont would run afoul of the basic policy behind 28 U.S.C. § 1391(b). As the Supreme Court has emphasized, "the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial."

Leroy v. Great Western United Corp., 443 U.S. 173, 183-84 (1979) (emphasis in original). The statute does *not* "give the plaintiff the right to select the place of trial which best suits his convenience." *Id.* at 184. Rather, the key factors are "the availability of witnesses, the accessibility of other relevant evidence, and the convenience of the defendant (but *not* of the plaintiff.)" *Id.* at 185 (emphasis in original). Based on the Complaint itself, all of these considerations point away from Vermont and toward the Western District of Virginia. Because venue is available there, section 1391(b)(3) does not come into play.

C. Venue Also Is Not Available With Respect To Plaintiff's RICO Claim Against Defendants Zodhiates and Response Unlimited, Inc. Under 18 U.S.C. § 1965.

In addition to alleging venue under 28 U.S.C. § 1391(b), Plaintiff asserts that 18 U.S.C. § 1965(a) and (b) provide venue with respect to her RICO claims. *See* Cmplt., ¶ 1. Defendants Zodhiates and Response Unlimited do not meet the requirements of subsection (a), however, and subsection (b) is not a venue provision at all. Even if it were, Plaintiff has not made a *prima facie* showing that it applies, as discussed in Part ID above.

Section 1965(a) states that a RICO action "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." Plaintiff does not allege that any of the first three criteria apply to Zodhiates and Response Unlimited. *Cf.* Cmplt., ¶¶ 12, 14. She asserts only that Response Unlimited "provid[es] Christian direct mail and marketing services nationally and internationally, including in Vermont." *Id.*, ¶ 14. With respect to Zodhiates, Plaintiff states that he is "the President and sole owner of Response Unlimited," and that it has sufficient contacts "to subject it to personal jurisdiction in this Court." *Id.*, ¶ 12.

As shown by the attached affidavit of Matthew LaPorta and discussed in Part IB(1) above, the linchpin of Plaintiff's argument is not correct as a factual matter. Response Unlimited

does not transact any business in Vermont. It does not send any mail into the state or anywhere else on behalf of clients, for the simple reason that that is not the kind of business it's in. *See* Ex. 1, ¶ 4. Moreover, it has no clients in Vermont. *Id.*, ¶ 5.

Because Response Unlimited does not in fact "transact its affairs" in Vermont, venue is not available over either it or Zodhiates under section 1965(a). The case law makes clear that a defendant satisfies that test only when "it regularly carries on business of a substantial and continuous character" within the forum district. *DeMoss v. First Artists Prod. Co.*, 571 F.Supp. 409, 411 (N.D. Ohio 1983); *see also Magic Toyota, Inc. v. Southeast Toyota Distribs., Inc.*, 784 F.Supp. 306 (D.S.C. 1992); *Obee v. Teleshare, Inc.*, 725 F.Supp. 913, 916 (E.D. Mich. 1989); *Abeloff v. Barth*, 119 F.R.D. 315, 326 (D. Mass. 1988). Since Response Unlimited conducts no business at all here, the question is not a close one.[10]

Plaintiff also relies on subsection 1965(b), but the House Report suggests it is not a venue provision but a provision for nationwide service of process. *See* H.R.Rep.No. 1549, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S. Code Cong. & Admin. News 4007, 4034 (1970). Even if subsection (b) did provide venue, however, it would not permit it here for the reasons discussed in Part ID, *supra.*

[10] Even if Response Unlimited did "transact its affairs" here, that would not establish venue with respect to Defendant Zodhiates. As the court explained in *Payne v. Marketing Showcase, Inc.*, 602 F.Supp. 656, 659 (N.D. Ill. 1985), "[w]ith respect to the individual defendants, 'transacts his affairs' refers to their personal affairs, not the affairs they may have transacted on behalf of their employer." *Accord, Bulk Oil (USA), Inc. v. Sun Oil Trading Co.*, 584 F.Supp. 36 (S.D.N.Y. 1983).

Conclusion

Personal jurisdiction is not available and venue is not proper in this District with respect to either Philip Zodhiates or Response Unlimited, Inc. The claims against them should be dismissed under Fed.R.Civ.P. 12(b)(2) and 12(b)(3).

Dated: Burlington, Vermont
November 16, 2012

/s/ Norman Williams

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Robert B. Hemley, Esq.
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For Defendants Philip Zodhiates and
Response Unlimited, Inc.

Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

JANET JENKINS, et al, Plaintiffs	)	
v.	)	Docket No. 2:12-cv-184
KENNETH L. MILLER, et al, Defendants	)	

AFFIDAVIT OF MATTHEW LaPORTA
ON BEHALF OF DEFENDANT RESPONSE UNLIMITED, INC.

Matthew LaPorta, being first sworn, states as follows:

1. I am the Sales Manager at Defendant Response Unlimited, Inc., and a resident of Virginia.

2. Response Unlimited, Inc. is located in Waynesboro, Virginia. I have worked at Response Unlimited, Inc. since 2006 and am familiar with its business.

3. I have reviewed the Complaint in this action, specifically including the allegation in Paragraph 14 that Response Unlimited, Inc. "provid[es] Christian direct mail and marketing services nationally and internationally, including in Vermont."

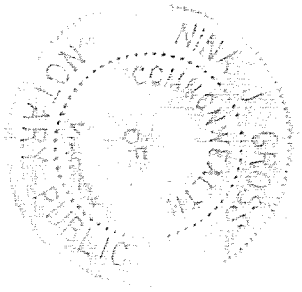
4. Response Unlimited, Inc. does not send out mailings on behalf of clients. Response Unlimited, Inc. prepares content and rents out mailing lists which it owns or manages to clients. Clients either send out mailings themselves, or Response Unlimited retains other companies to perform such services. From time to time, Response Unlimited also rents mailing lists to brokers who then make them available to their clients.

5. Response Unlimited, Inc. has no clients in Vermont, nor does it have any ongoing relationship with any broker in Vermont.

Matthew LaPorta

Sworn to before me this
14th day of November 2012.

Notary Public
My Commission Expires: July 31, 2013
Notary Registry Number 303530



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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

JANET JENKINS, et al, Plaintiffs	)	
v.	)	Docket No. 2:12-cv-184
KENNETH L. MILLER, et al, Defendants	)	

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2012, I caused Motion to Dismiss of Defendants Philip Zodhiates and Response Unlimited, Inc. for Lack of Personal Jurisdiction and Improper Venue, together with supporting Memorandum, to be served through the CM/ECF system on Robert G. Cain, Esq., rcain@pfclaw.com; Thomas E. McCormick, Esq., tem@mc-fitz.com; Frank H. Langrock, Esq., flangrock@langrock.com; Brooks G. McArthur, Esq., bmcarthur@jarvismcarthur.com; Joshua M. Autry, Esq., jmautry@dennisboylelaw.com; Ritchie E. Berger, Esq., rberger@dinse.com; Lisa B. Shelkrot, Esq., lshelkrot@langrock.com; Sarah Star, Esq., srs@sarahstarlaw.com; Sophie E. Zdatny, Esq., szdatny@dinse.com; and by U.S. Mail, postage prepaid, on Peggy J. Schmitz, Esq. and Steven J. Shrock, Esq., Crutchfield, Crutchfield & Johnson, Ltd., 255 North Market St., P.O. Box 599, Wooster, OH 44691-0599.

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Dated: Burlington, Vermont
November 16, 2012

/s/ Norman Williams

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