

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,

Docket No.

2:12-CV-184

Plaintiffs,

v.

KENNETH MILLER, *et al.*,

Defendants.

**DEFENDANT ANDREW YODER’S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION
AND FAILURE TO STATE A CLAIM**

NOW COMES Defendant Andrew Yoder (“Yoder”), by and through his undersigned counsel, to hereby move this Court pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) to dismiss Plaintiff’s claims against him, for lack of personal jurisdiction and, alternatively, for failure to state a claim upon which relief can be granted.

I. Introduction

Andrew Yoder has set foot in Vermont only twice in his life -- both times when compelled by subpoena to testify on behalf of the United States of America in proceedings pertaining to the criminal trial of Kenneth Miller.¹ Yoder resides in Ohio. He has no contact

¹ See Affidavit of Andrew Yoder (“Yoder Aff.”), attached hereto as Exhibit 1, at ¶3. This Affidavit is submitted for consideration of jurisdictional issues only, and may be considered by this Court without converting this Motion to one for summary judgment. See, e.g., *Corning, Inc. v. Shin Etsu Quartz Products Co., Ltd.*, 242 F.3d 364 (2d Cir. 2000).

with the State of Vermont or its residents. (Yoder Aff., at ¶2.) Yoder first met Lisa Miller in Nicaragua, while he was serving as a missionary with Christian Aid Ministries, Inc. (“CAM”). Ms. Miller was staying with the pastor of Yoder’s church, Defendant Timothy Miller (“Timo”). (Yoder Aff., at ¶11.) After he learned of Ms. Miller’s situation, Yoder communicated his and CAM’s unwillingness to assist or aid her.² He did so because they did not want her legal situation to jeopardize their religious and humanitarian works. (Tr., at pp. 37-38.)

During a May 2010 vacation back to the United States, Yoder unwittingly became a pawn in others’ actions. (Yoder Aff., at ¶11; Tr., at pp. 19-20.) Timo asked Yoder to cash a check that would be sent to him while Yoder was in the U.S. Because of the logistical issues associated with sending money to persons in Nicaragua, it was not unusual for people visiting the U.S. to be asked to bring cash back with them, so Yoder did not think much about Timo’s request. (Tr., at p. 20.) When the check arrived, Yoder noted that it was from Millmont Greenhouses in Virginia, an entity associated with Defendant Ken Miller. (Tr., at pp. 23-24, 39.) Yoder cashed the check and gave the \$500 to Timo when he returned to Nicaragua. (Tr., at p. 24-25.) When Yoder saw that Millmont Greenhouses had issued the check, he suspected for the first time that this money might have something to do with Lisa Miller, but he never discussed his suspicion with Timo, Ken Miller, or anyone else, and he has no idea what the money really was for, nor whether it had to do with Ms. Miller or not. (Tr., at p. 25-26, 37.)

Plaintiff does not allege that any interactions took place in Vermont, nor does she allege

² See Transcript of Andrew Yoder testimony in United States of America v. Kenneth L. Miller, Case No. 2:11-cr-161-1 (“Transcript” or “Tr.”), attached hereto as Exhibit 2, at pp. 27, 29. This Court may take judicial notice of Yoder’s prior testimony and consider it herein for purposes of determining whether Plaintiff’s incorporation of said testimony by reference into her Complaint was accurate. See Section III., below.

facts which establish any contacts between Yoder and the State of Vermont. Her Complaint³ alleges that Yoder has “sufficient ties” to Vermont to subject him to jurisdiction here, but does not describe those alleged connections, other than his involuntary appearances to testify in criminal proceedings. (Complaint, at ¶10.)

Plaintiff’s claims against Yoder should be dismissed, because he is not subject to personal jurisdiction in the State of Vermont. Having appeared in Vermont only under compulsion, Yoder has not had “minimum contacts” with this State that would justify the exercise of jurisdiction over him. Indeed, the exercise of jurisdiction over Yoder in this forum would violate his Due Process rights. Furthermore, Plaintiff’s purported RICO claim does not confer jurisdiction over Yoder because an alternate forum is available. For that reason, the “ends of justice” do not necessitate this Court’s exercise of jurisdiction.

Alternatively, Plaintiff’s claims against Yoder should be dismissed for failure to state a claim upon which relief can be granted. Plaintiff’s “bare bones” allegations do not establish that Yoder assisted or aided Lisa Miller kidnapping Isabella Miller in any way. Ms. Miller’s actions were a *fait accompli* before Yoder even met her, when their paths crossed in Nicaragua. In addition, Plaintiff’s conspiracy claims against Yoder must fail because her Complaint fails to allege that Yoder had an agreement with anyone to do anything related to Ms. Miller.

II. Personal Jurisdiction

The law pertaining to personal jurisdiction issues is thoroughly set forth in the well-written Motions to Dismiss filed by Liberty University, Inc., et al. (ECF No. 54) (“Liberty

³ Plaintiff has filed an Amended Complaint, which merely corrected the corporate name of another Defendant, and so Yoder refers herein to the Complaint and Amended Complaint interchangeably.

Motion”), and Douglas Wright (ECF No. 40) (“Wright Motion”). Accordingly, rather than be redundant, Yoder incorporates herein the legal analysis and authorities contained in those Motions. This Motion will focus on the application of those jurisdictional principles to Yoder.

A. Yoder lacks minimum contacts with Vermont, such that the exercise of jurisdiction violates his Due Process rights.

In order for this Court to exercise personal jurisdiction over Yoder, Plaintiff must demonstrate that Yoder has had sufficient contact with Vermont to justify being forced to defend himself here. (Liberty Motion, at pp. 4-6; Wright Motion, at pp. 6-8.) Initially, the Court must analyze Yoder’s “minimum contacts” with Vermont to determine whether he has purposefully availed himself of the privilege of conducting activities therein. If so, the Court must then examine the “reasonableness” of subjecting Yoder to suit here.

“Minimum contacts” may be found through either general jurisdiction, when the defendant has a “continuous and systematic” presence in the forum state, or specific jurisdiction, when the defendant’s conduct giving rise to the lawsuit occurred in the forum state. (Liberty Motion, at pp. 6-7, 11; Wright Motion, at pp. 8-9.) Under either analysis, this Court should conclude that Yoder lacks the requisite minimum contact with Vermont.

Yoder resides in Ohio, and has never lived in Vermont. (Yoder Aff., at ¶2.) Yoder has never conducted business in Vermont, or with Vermont residents. (Yoder Aff., at ¶8.) He has never owned property in Vermont, never worked in Vermont or been employed by a Vermont-based business, never been licensed or certified by Vermont, and never paid taxes or similar fees to the State of Vermont. (Yoder Aff., at ¶¶5-7, 10.) Yoder has been named in this action as an alleged agent for CAM, an Ohio company, for whom Yoder’s missionary work took place

entirely outside of Vermont, in Nicaragua. (Yoder Aff., at ¶11.) Yoder not only does not have minimum contacts with Vermont -- he does not have any continuous and systematic contacts with Vermont.

Yoder's only connection of any kind with the State of Vermont is that he was twice compelled by subpoena to appear in Vermont to testify in criminal proceedings. (Yoder Aff., at ¶¶3-4.) Involuntary contact of that nature does not create a basis for exercising personal jurisdiction over Yoder herein. (Wright Motion, at pp. 11-12.) The Supreme Court has stated that "the purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or [as a result] of the unilateral activity of another party or a third person." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Yoder's appearances in Vermont to testify are his *only* contacts with Vermont, and the only such contacts alleged by Plaintiff. (Complaint, at ¶10.) They are precisely the sort of involuntary, attenuated contacts which *Burger King* and its progeny have held are not sufficient to confer personal jurisdiction. (Wright Motion, at p. 11.)

This Court recently held that it lacked personal jurisdiction over a non-resident who had "(1) traveled through Vermont in 2004; (2) attended a concert in Vermont in 2010; (3) visited his half-sister in Vermont in 2012; and (4) has ordered groceries for his current employer from Vermont." *Sylvester v. Pipino*, 2012 WL 5843143, at *2 (D.Vt. Nov. 19, 2012). This Court held that the non-resident's "brief visits" to Vermont "by no means constitute continuous and systematic contacts." *Id.*, citing *Kulko v. California Superior Court*, 436 U.S. 84, 93 (1978), and *Xiu Feng Li v. Hock*, 371 Fed. App'x. 171, 175 (2d Cir. 2010), *cert. denied*, 131 S.Ct. 576 (2010). Similarly, this Court noted that the non-resident's purchases of products from Vermont did not warrant the exercise of jurisdiction over him in an action unrelated to those purchases.

Id., citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984). Yoder's contacts with Vermont are even more limited.

Specific jurisdiction over Yoder does not exist, either. Plaintiff's allegations against him do not involve actions which took place in Vermont. Plaintiff alleges that Yoder met Lisa Miller in Nicaragua in 2009 -- after she had already absconded with Isabella. (Complaint, at ¶53.) She further alleges that Yoder cashed the Millmont Greenhouses check for Timo Miller in May 2010. (*Id.*) But the check was cashed in Tennessee.⁴ As other Defendants have observed, no aspect of Plaintiff's case involves events which took place in Vermont. (Liberty Motion, at pp. 18-19.) Yoder first set foot in Vermont in February 2012, and never interacted with any party to this case in Vermont. (Yoder Aff., at ¶¶3, 12-15.)

Because this Court lacks personal jurisdiction over Yoder, it need not also analyze the reasonableness of subjecting him to suit here. (Liberty Motion, at pp. 16-18.) The burden upon Yoder of being forced to litigate this case in Vermont is obvious, however. (Yoder Aff., at ¶¶2, 11.) It is inherently unreasonable to compel an individual who has never voluntarily entered or interacted with the State of Vermont to defend himself in Vermont against allegations of misconduct which took place outside Vermont. This Court should dismiss Yoder from this action.

B. Plaintiff's purported RICO conspiracy claim does not confer jurisdiction in this Court over Yoder.

Plaintiff contends that this Court has personal jurisdiction over Yoder (and the rest of the

⁴ Plaintiff's allegations refer to Yoder's testimony before this Court in Kenneth Miller's criminal trial. This Court may take judicial notice that Yoder testified that the check was sent to his then-home address in Tennessee. (Transcript, at p. 19, 22.)

non-resident Defendants herein) pursuant to 18 U.S.C. §1965, based upon Plaintiff's claims asserted under the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. Plaintiff relies upon the so-called nationwide service of process provisions of 18 U.S.C. §1965(b) to confer personal jurisdiction over Yoder. (Complaint, at ¶1.) Yet the Second Circuit has made clear 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 Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 71 (2d Cir. 1998).

PT United Can sets forth two prerequisites which must be met before one can take advantage of the nationwide service of process provision of 18 U.S.C. §1965(b). First, there must be at least one Defendant in the case who "resides, is found, had an agent, or transacts his affairs" in the district, such that personal jurisdiction exists under 18 U.S.C. §1965(a). *PT United Can*, at 71. Second, the plaintiff must establish that "the ends of justice require that other parties residing in any other district be brought before the court," in accordance with 18 U.S.C. §1965(b). *Id.* As the Second Circuit held, "[t]his jurisdiction is not automatic but requires a showing that the 'ends of justice' so require." *Id.*

Plaintiff cannot establish either prerequisite. First, Plaintiff cannot establish personal jurisdiction over any Defendant under 18 U.S.C. §1965(a). This is not a traditional "minimum contacts" analysis, but rather is limited to the more narrow criteria set forth in the statute: "resides, is found, has an agent, or transacts his affairs" in the district. (Liberty Motion, at pp. 21-23.) Yoder does not reside, have an agent, or transact his affairs in this District. (Yoder Aff., at ¶¶2-10.) Therefore, jurisdiction over Yoder does not exist under §1965(a).

Nor does jurisdiction exist over any other Defendant under §1965(a). Kenneth Miller's temporary presence in Vermont for his criminal trial, and Plaintiff's service of process upon him

during that time, do not constitute being “found” in Vermont within the meaning of the statute. (Liberty Motion, at pp. 23-25.) Similarly, Lisa Miller’s former contacts with Vermont do not give rise to jurisdiction over her under §1965(a), because none of the RICO predicate acts took place in Vermont. (Liberty Motion, at pp. 25-26.) Thus, this Court never needs to consider whether jurisdiction exists over out-of-state defendants such as Yoder under §1965(b), because there is no jurisdiction over any defendant pursuant to §1965(a).

Second, Plaintiff also fails to establish grounds for the exercise of personal jurisdiction under §1965(b). As the Second Circuit held in *PT United Can*, that necessitates a showing that “the ends of justice so require.” In order to make an “ends of justice” showing, Plaintiff must establish that there is no other district which could exercise personal jurisdiction over all the Defendants. (Liberty Motion, at pp. 29-30.) The clear purpose of RICO’s nationwide process provision is to ensure that there is a forum somewhere in which the alleged enterprise and all its participants can be sued together, in a single proceeding. *See, e.g., PT United Can*, at 71-72, n.5 (citing with approval, *Butcher’s Union Local No. 498 v. SDC Investment, Inc.*, 788 F.2d 535, 538-539 (9th Dist. 1986)). Thus, the “ends of justice” test serves as a limitation on a plaintiff’s ability to compel out-of-state residents into a foreign forum, unless that is the only option other than piecemeal litigation.

Plaintiff has not alleged that this Court is the only district which could hear this matter -- because it is not. It appears that personal jurisdiction exists over all Defendants within the Western District of Virginia. (Liberty Motion, at pp. 30-31.) Accordingly, since there appears to be an alternate forum available, Plaintiff cannot use the nationwide service of process provision of 18 U.S.C. §1965(b) to compel Yoder (and the other Defendants) to appear in this forum.

Finally, Yoder notes that any effort to assert personal jurisdiction under the provisions of

RICO requires that Plaintiff's RICO claim must be a colorable claim in the first place. If the RICO claim is "so insubstantial, implausible, ... or otherwise devoid of merit" as to not even constitute a colorable claim, the plaintiff may not rely upon 18 U.S.C. §1965 as a basis for personal jurisdiction. *See, e.g., IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1055 (2d Cir. 1993). Although this is, admittedly, a "high burden," *id.* at 1056, Plaintiff's RICO claim against Yoder is not colorable. (Liberty Motion, at pp. 36-41, 45-51.)

Vermont lacks personal jurisdiction over Yoder, and thus Plaintiff's Complaint should be dismissed pursuant to Civil Rule 12(b)(2).⁵

III. Failure to State a Claim

In the alternative, Yoder moves this Court to dismiss him from this action pursuant to Fed.R.Civ.P. 12(b)(6) for Plaintiff's failure to state a claim upon which relief could be granted. Despite the dearth of factual allegations against Yoder, Plaintiff asserts three causes of action against him: Count One, conspiring with and aiding and abetting Lisa Miller's intentional tort of kidnapping; Count Three, conspiring with Kenneth Miller to commit acts of racketeering, in violation of 18 U.S.C. §1962(d); and Count Four, conspiring with Lisa Miller to violate Plaintiff's civil right to equal protection in violation of 42 U.S.C. §1985(3). (Complaint, at ¶¶64, 72, 75.) None of these claims exist against Yoder on the facts alleged.

⁵ Second Circuit precedent appears to hold that personal jurisdiction potentially could be asserted over Yoder under 18 U.S.C. §1965 even if he lacks "minimum contacts" with Vermont under a traditional Due Process analysis. Yoder believes that authority is unconstitutional, and hence incorporates by reference the argument and authority set forth at Liberty Motion page 22, footnote 9, and formally objects to any attempted exercise of personal jurisdiction over him which does not comport with a "minimum contacts" Due Process analysis. As with the Liberty Defendants, Yoder recognizes that such a Constitutional challenge is presently foreclosed by Second Circuit precedent, but raises it herein to preserve it for future review.

Plaintiff's *only* specific allegations against Yoder are set forth in Paragraph 53 of the Complaint. Plaintiff alleges as follows:

Andrew Yoder was never an employee of Millmont Greenhouses, Inc. On August 10, 2012, Andrew Yoder testified under oath that he received a check to cash from Kenneth Miller to enable him to bring cash to Nicaragua to transfer to Timothy Miller. Yoder testified that he believed this cash was related to Lisa Miller. Yoder also testified that he had met Lisa Miller and Isabella through Timothy Miller in 2009, that she was receiving aid from CAM in Nicaragua, and that he knew of her custody case. He testified that he notified his employer, CAM of this in November 2009.

The remainder of Plaintiff's allegations against Yoder are merely conclusory statements. (Complaint, at ¶¶64, 72, 75.)

As a general rule, when deciding a Rule 12(b)(6) motion to dismiss, a court typically must consider nothing other than the complaint, *see, e.g., Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007), and it must accept the allegations therein as true. *See, e.g., Cleveland v. Caplaw Enter.*, 448 F.3d 518, 521 (2d Cir. 2006). The Second Circuit, however, recognizes two exceptions to that general rule. First, courts may consider any document which is incorporated by reference in the complaint, even if not appended thereto. *Roth*, at 509 (quoting *Cortec Indus., Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 47 (2d Cir. 1991)). Second, courts may take judicial notice of public records, including documents filed in other matters. *See, e.g., Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). This includes transcripts of testimony in a previous action. *Id.*; *Young v. Selsky*, 41 F.3d 47, 50 (2d Cir. 1994).

Thus, in this case, where Plaintiff's allegations rest entirely upon Yoder's testimony in the criminal prosecution of Kenneth Miller, this Court may consider the transcript of that testimony, and need not blindly accept Plaintiff's characterization thereof. *See, e.g., SEC v.*

Siebel Sys., Inc., 384 F.Supp. 2d 694, 699 n. 6 (S.D.N.Y. 2005); *Johnson & Johnson v. Am. Nat. Red Cross*, 528 F.Supp. 2d 462, 464 (S.D.N.Y. 2008).

Plaintiff obviously wants this Court to draw the “reasonable inference” from her allegations about the Millmont Greenhouses check that Yoder had some sort of prior agreement with Ken Miller and/or Timo Miller to assist whatever they were doing with regard to Lisa Miller (if anything). But it is not reasonable to draw inferences which are definitively contradicted by the very document incorporated by reference into Plaintiff’s Complaint (i.e., the Transcript). Yoder testified that he had no discussions with either Timo Miller or Ken Miller about Lisa Miller before she arrived in Nicaragua. (Transcript, at pp. 25-26.) Indeed, he testified that he never communicated with Ken Miller about Ms. Miller. (Tr., at pp. 26, 33.) Yoder testified that he had nothing to do with Lisa’s travel to Nicaragua. (Tr., at p. 27.) He also testified that he never met Ms. Miller until he saw her at church one day in Nicaragua. (Tr., at p. 12.) Yoder testified that he never talked to anyone about the purpose of the \$500 check he cashed, and he did not (and still does not) know whether it had anything to do with Lisa Miller. (Tr., at pp. 33, 38, 43.)

Plaintiff’s allegation that Yoder testified that Lisa Miller was receiving aid from CAM in Nicaragua is false -- he testified to the exact opposite. Yoder testified that he explicitly told Lisa Miller that he and CAM were not going to help her. (Tr., at p. 29.) Moreover, Plaintiff’s implication that Yoder testified to participation in Ken Miller and Timo Miller’s alleged scheme to assist Lisa is also false -- Yoder testified to the contrary, that he never talked to Ken Miller about anything, and he had no idea as to the purpose of the check he cashed for Timo.

Plaintiff’s claims against Yoder fail both legally and factually. They are analyzed individually below.

A. Plaintiff has not alleged any conduct by Yoder which assisted Lisa Miller's kidnapping of Isabella.

Count One of Plaintiff's Complaint alleges that Yoder conspired with and aided and abetted Lisa Miller in committing the intentional tort of kidnapping. (Complaint, at ¶64.) But no such cause of action exists. Although kidnapping is a criminal offense, there is no private right of action under Vermont or federal law for the "intentional tort" of kidnapping. (Liberty Motion, at pp. 32-33.)

In any event, Plaintiff has not pled any facts to support her assertion of such a claim against Yoder. The Complaint alleges only that Yoder "met" Ms. Miller in Nicaragua in 2009. (Complaint, at ¶53.) There are no allegations that Yoder did anything remotely akin to "conspiring with" Ms. Miller, and he testified that he and CAM explicitly refused to aid Ms. Miller while she was in Nicaragua.

Since Yoder never even met Lisa Miller until she and Isabella were already in Nicaragua, he could not possibly have aided her efforts to kidnap Isabella. More importantly, Plaintiff has made no such allegation against Yoder. Therefore, Plaintiff has not stated a claim against Yoder.

B. Plaintiff has not alleged a valid RICO conspiracy claim against Yoder.

Plaintiff's next claim against Yoder is Count Three, which alleges a civil RICO conspiracy with Kenneth Miller, in violation of 18 U.S.C. §1962(d). (Complaint, at ¶¶72-73.) Plaintiff claims, in Count Two, that Kenneth Miller violated 18 U.S.C. §1962(c) by engaging in a pattern of racketeering.

As the Liberty Defendants argued, Plaintiff failed to allege an injury proximately caused by the alleged RICO violations, and hence lacks standing to pursue this claim. (Liberty Motion, at pp. 36-41.) In addition, Plaintiff failed to allege a viable RICO claim against Kenneth Miller, because she has not pled facts constituting a “pattern of racketeering activity” within the meaning of 18 U.S.C. §1961, and hence she cannot maintain a RICO conspiracy claim under 18 U.S.C. §1962(d). (Liberty Motion, at pp. 45-51.) Either of these flaws is fatal to Plaintiff’s claim.

Plaintiff’s case against Yoder, in particular, fails due to the lack of any allegations of an agreement between Yoder and Kenneth Miller. (Liberty Motion, at pp. 41-44.) The fundamental element of any RICO conspiracy claim (or any conspiracy claim, for that matter), is an agreement to violate RICO. *See, e.g., United States v. Applins*, 637 F.3d 59, 75 (2d Cir. 2011). The defendant must know about and agree to facilitate the scheme. *Baisch v. Gallina*, 346 F.3d 366, 376-377 (2d Cir. 2003).

Plaintiff does not allege that Yoder had an agreement with Kenneth Miller. (Complaint, at ¶¶53, 54, 66.) Plaintiff’s conclusory allegation within Count Three that Yoder “conspired with” Kenneth Miller is not sufficient to withstand a motion to dismiss. *See, e.g., Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2004). Yoder may have inadvertently played some part in Ken Miller and Timo Miller’s dealings, but that is not actionable as participation in a RICO conspiracy. There are no allegations of an agreement between Yoder and Kenneth Miller to engage in racketeering activity or even to perform the alleged predicate acts, and therefore Plaintiff’s Count Three must be dismissed as to Yoder.

C. Plaintiff has not alleged a valid civil rights conspiracy claim against Yoder.

Plaintiff's final claim against Yoder is Count Four, conspiracy to violate Plaintiff's civil rights, allegedly denying her equal protection on account of her gender. (Complaint, at ¶75.) She alleges that Yoder conspired with Lisa Miller, in violation of 42 U.S.C. §1985(3), to deny Plaintiff the right to a parent-child relationship with Isabella.⁶

Preliminarily, Yoder notes Defendant Wright's compelling argument that §1985(3) does not apply to private conspiracies, nor to class-based animus which is not based on race. (Wright Motion, at pp. 14-19.) Yoder agrees with Defendant Wright that Plaintiff's Complaint does not allege discrimination on the basis of her gender, but rather, at most, alleges discrimination on the basis of her sexual orientation, to which §1985(3) does not apply. (Wright Motion, at pp. 18-23.) Finally, even if Plaintiff's claim were otherwise viable, the lack of any state action precludes any claim based upon an alleged denial of equal protection. (Wright Motion, at pp. 24-25; Liberty Motion, at pp. 56-58.) Count Four of Plaintiff's Complaint is not a cognizable cause of action.

In any event, Count Four is flawed for the same reason Plaintiff's other claims are flawed: the complete absence of any allegations of an agreement between Yoder and Lisa Miller, the gravamen of any conspiracy claim. The sole allegations against Yoder are that he "met" Ms. Miller in 2009 in Nicaragua. (Complaint, at ¶53.) Yoder could not possibly have conspired with Ms. Miller to flee the United States -- he first met her in Nicaragua after she had already left the country. By the time their paths crossed, Ms. Miller had already done what she set out to do. Yoder's communications with her were the polar opposite of an agreement to

⁶ On its face, it is difficult to comprehend how a conspiracy intended to deny someone a parent-child relationship could ever amount to a gender-based equal protection violation, particularly when both parents are women. How could a scheme allegedly designed to favor one female parent over another female parent constitute discrimination on the basis of gender?

assist her; as he testified, Yoder expressly told her that neither he nor CAM could or would aid her efforts. (Tr., at pp. 28-29.)

Plaintiff's allegations about Yoder fall short of alleging a viable claim under 42 U.S.C. §1985(3). His collateral, unknowing involvement with the Ken Miller to Timo Miller money transfer cannot be reasonably construed as an agreement with Lisa Miller to deprive Plaintiff of equal protection of the laws of the United States. Plaintiff's bare assertions and conclusory allegations are not plausible on their face, and hence this claim must be dismissed for failure to state a claim. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678, 681 (2009).

IV. Conclusion

Yoder respectfully requests that this Court dismiss Plaintiff's Complaint against him, for lack of personal jurisdiction pursuant to Civil Rule 12(b)(2), and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Yoder has no connections with the State of Vermont whatsoever, and his two appearances in Vermont under compulsion to testify do not subject him to jurisdiction in Vermont forever after. None of Yoder's (or any Defendant's) alleged conduct took place in Vermont. Even the broad jurisdiction provisions of RICO cannot justify forcing this action to proceed in Vermont, when an alternate forum appears to be available to Plaintiff in Virginia.

In addition, Plaintiff's paper-thin allegations against Yoder simply do not allege actionable conduct. Her claims are based upon vague and conclusory descriptions of conspiracies. Yet without any allegations that Yoder actually knew of any supposed scheme, nor any allegations that Yoder agreed with anyone to do anything to assist any such schemes, Plaintiff cannot maintain an action against him. Plaintiff asks this Court to draw "reasonable

inferences” from her description of Yoder’s trial testimony, but his testimony definitively denied that which Plaintiff seeks to infer. She has not stated a viable claim against Yoder.

Yoder should be dismissed from this case and allowed to do what he has always attempted to do with regard to the sad story of Lisa Miller and Janet Jenkins: stay out of it.

Wherefore, Defendant respectfully requests the Court to dismiss the counts against him.

Respectfully submitted,

McCormick, Fitzpatrick, Kasper & Burchard, P.C.

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*Attorneys for Christian Aid Ministries, Inc. and
Andrew Yoder*

Exhibit 1

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,

Docket No.
2:12-CV-184

Plaintiffs,

v.

KENNETH MILLER, *et al.*,

Defendants.

AFFIDAVIT OF ANDREW YODER

STATE OF OHIO)
) ss:
COUNTY OF BROWN)

ANDREW YODER, having first been duly cautioned, hereby affirms as follows:

1. I am one of the Defendants in this lawsuit. All statements herein are true and accurate and are made upon my own personal knowledge.
2. I am a resident of the State of Ohio, and have been since October of 2011. Prior to that, I was a resident of the State of Tennessee, and had been since March of 1992, including during the time period in 2008-2011 that I worked as a missionary and lived temporarily in Managua, Nicaragua. I have never resided in the State of Vermont.
3. I have only been to the State of Vermont twice, and only under legal compulsion. I was compelled by subpoenas issued by the United States to testify before a grand jury on

February 16, 2012, and during the criminal trial of Kenneth L. Miller on August 10, 2012.

4. Aside from my involuntary appearances pursuant to subpoenas, I have not visited Vermont nor had any contact with the State of Vermont.

5. I have never owned or leased property in the State of Vermont.

6. I have never worked in Vermont, been employed by a company located in Vermont, nor employed any persons who resided in or were citizens of Vermont.

7. I have never held a license or professional certificate issued by the State of Vermont, nor registered to do business in Vermont or otherwise sought to do business in Vermont or with Vermont residents.

8. I have never contracted with any persons or entities located in Vermont, nor transacted business of any kind in the State of Vermont, or with Vermont residents.

9. I have never been a party to any legal action in Vermont courts, other than this case.

10. I have never paid taxes, fees, or charges of any kind to the State of Vermont, nor engaged in any conduct which would require me to do so.

11. From January 2008 through October 2011, I served as a missionary in Managua, Nicaragua, through an affiliation with Christian Aid Ministries, Inc. ("CAM"). None of my duties for CAM involved the State of Vermont in any way. CAM is headquartered in Ohio, and all of my contact with CAM was with persons based in Ohio. CAM does not have offices in Vermont. During my entire tenure with CAM, I was located in Nicaragua, except for a 3-week furlough, or vacation, each year when I returned to the United States and during which I had no obligations to CAM.

12. My only interactions with Defendant Lisa Miller took place in Nicaragua.

13. My only interactions with Defendant Timothy D. Miller took place outside the State of Vermont.

14. I had never met Defendant Kenneth L. Miller prior to being compelled by subpoena to travel to the State of Vermont to testify in his criminal trial in August of 2012. Other than speaking to him in passing at the trial, I have never interacted with him, in the State of Vermont or elsewhere.

15. I have never met Defendants Philip Zodiates, Victoria Hyden, Linda M. Wall, or Douglas Wright, and thus I have not interacted with any of those individuals within the State of Vermont.

FURTHER AFFIANT SAYETH NAUGHT.



Andrew Yoder

Sworn to and subscribed in my presence this 13 day of November, 2012.



Notary Public



Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA)

VS)

CASE NO: 2:11-cr-161-1

KENNETH L. MILLER)

TESTIMONY OF ANDREW YODER
DAY 3 OF JURY TRIAL

BEFORE: HONORABLE WILLIAM K. SESSIONS, III
DISTRICT JUDGE

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I N D E X

WITNESS:	PAGE:
ANDREW YODER	
Direct Examination by Ms. Cowles	3
Cross Examination by Mr. Autry	25
Further Examination by Ms. Cowles	38
Further Examination by Mr. Autry	43
GOVERNMENT EXHIBITS:	
33D - Phone Records	21
36 - 10-26-09 E-mail	10
57C - 9-21-09 E-mail	6, 33
57D - 9-22-09 E-mail	9
57J - 5-5-10 E-mail	18
62B - \$500 Check	23, 32

1 MS. COWLES: Your Honor, at this time the
2 government would call Andy Yoder.

3 A N D R E W Y O D E R, The Witness, after being
4 duly sworn, was examined and testified as follows:

5 THE COURT: Good morning, Mr. Yoder.

6 DIRECT EXAMINATION BY MS. COWLES:

7 Q. Mr. Yoder, I think there's a pitcher of water and a cup
8 up there if you need one.

9 A. Thank you.

10 Q. Mr. Yoder, can you tell us where you're from
11 originally?

12 A. I'm living in Ohio right now.

13 Q. Where did you first live in the U.S.?

14 A. Pennsylvania. I was born in Pennsylvania.

15 Q. Now, you said you're currently living in Ohio. How
16 long have you been there?

17 A. Since October of 2011.

18 Q. Where were you prior to October of 2011?

19 A. In 2007, January of 2007 'til October of 2011 we lived
20 in Managua, Nicaragua.

21 Q. What were you doing in Managua during that time?

22 A. I was working for an organization by the name of
23 Christian Aid Ministries.

24 Q. That's sometimes also called CAM?

25 A. Yes.

1 Q. What was your position with Christian Aid Ministries?

2 A. I was the field director.

3 Q. What's the job of the field director in Managua?

4 A. Basically the administration of a number of
5 humanitarian aid programs; medical, food, clothing, seed
6 projects, self help projects.

7 Q. Now, is CAM associated with a particular religious
8 denomination?

9 A. It's primarily supported by the Amish and Mennonite
10 Churches of the U.S..

11 Q. What kind of compensation did you receive while you
12 were working with CAM in Nicaragua?

13 A. I was there as a VS worker. I, we had our expenses
14 paid. I did receive a small amount of money monthly for
15 just expenses, extra expenses.

16 Q. But for the most part it was a volunteer position?

17 A. That's correct.

18 Q. Now, you mentioned you were actually based in Managua?

19 A. Yes.

20 Q. How many families did CAM have in that area?

21 A. There were four families.

22 Q. Where did the families live compared to one another?

23 A. We all lived in a -- well, we call it a compound, about
24 four acres with a wall around it. And we each had our
25 houses, warehouse, offices. So we were close together.

1 Q. Where did you attend church during the period of time
2 that you lived in Managua?

3 A. In Managua about 20 minutes from where our base was.

4 Q. Who was the pastor of that church?

5 A. Timothy Miller.

6 Q. How did CAM's mission in Managua compare to the kind of
7 outreach that Timothy Miller was doing through his church
8 there?

9 A. We focused primarily on the, meeting the humanitarian
10 aid needs in the country; food, medical. Where the church
11 was there specifically to minister to the spiritual needs of
12 the people.

13 Q. How did CAM's resources compare to the kind of
14 resources Timothy Miller had to work with?

15 A. Well, Christian Aid Ministries received a lot of
16 support, financial support for the programs there where the
17 church in Managua really was just supported by some small
18 offerings.

19 Q. Did Timothy Miller ever refer people to CAM for
20 assistance?

21 A. Occasionally.

22 Q. At some point during your time in Managua did you
23 become aware of a woman named Lisa Miller?

24 A. Yes.

25 Q. How did Lisa Miller first come to your attention?

1 A. The first time I met her was on a Sunday morning at a
2 church service where this lady with her child was there and
3 was introduced as Sarah and Lydia.

4 Q. I want to talk about that first meeting, but I want to
5 focus a little before that. At some point before you
6 actually met her in person did you hear about her?

7 A. I had received one e-mail several weeks before that
8 from Timo kind of briefly explaining a little bit about her.

9 Q. I'd like to show you what's in evidence as Government's
10 Exhibit 57C. That's 008952.

11 MS. COWLES: May I approach, Your Honor?

12 THE COURT: Yes.

13 Q. (By Ms. Cowles:) Do you recognize this e-mail in
14 57C?

15 A. Yes, I do.

16 Q. Is this the e-mail you were describing from Timo
17 Miller?

18 A. Yes.

19 Q. What's the date of this e-mail?

20 A. September 21, 2009.

21 Q. And the time?

22 A. 12:16 p.m..

23 Q. Are you listed in the to line of that e-mail?

24 A. Yes.

25 Q. And where are you listed?

1 A. As Andy Yoder.

2 Q. What e-mail address, I believe it says Andy Yoder work,
3 what was your email address associated with work in Managua?

4 A. It was ayoder@cammika.org.

5 Q. Who provided that account to you?

6 A. Christian Aid Ministries.

7 Q. Did you have that account throughout your time in
8 Nicaragua?

9 A. That's correct.

10 Q. When you were working with that account did you notice
11 whether the times and dates of the messages that you
12 received in it appeared consistent with the time and date
13 around you?

14 A. Yes.

15 Q. Now, could you just read the first portion of this
16 message out-loud, please?

17 A. The following is a strange case that is coming up for a
18 last hearing on Wednesday before the Supreme Court as I
19 understand. Lisa has some of the best lawyers available,
20 but they are telling her she will probably lose the case
21 because the homosexuals and lesbians are trying to make an
22 example of the case. There is a lot of politics involved in
23 the case, high up politics and, of course, the powers of
24 darkness.

25 Q. And if you could just continue with the next line.

1 A. They tell me there is a lot of info on the net about
2 it, some not accurate, but protectisabella.com is their site
3 from which I took this.

4 Q. Now, below the signature there are two articles
5 attached there. Turning to Page 008953, for you I think
6 that's just the second page of the e-mail, could you read
7 the first paragraph there?

8 A. Okay. I'm not sure which one you're --

9 Q. Just the very first paragraph on the top of the second
10 page.

11 A. Lisa is represented in her child custody visitation
12 legal dispute with Janet Jenkins by Liberty Counsel with
13 offices in Florida and Virginia. Their website is
14 <http://www.lc.org>.

15 Q. And then what is the next paragraph? If you could just
16 read that one out-loud?

17 A. The only court that has not yet heard arguments in this
18 case that began in 2003 is the U.S. Supreme Court. The
19 nation's highest court has so far declined to hear appeals.
20 Currently Vermont is viewed as having legal jurisdiction in
21 the matter regarding visitation because a Vermont judge
22 ruled that Jenkins is a legal parent to Isabella entitled to
23 liberal unsupervised visitation. In 2003 Liberty Counsel
24 still has appeals pending on behalf of Lisa and Isabella.

25 Q. Now, looking at the next section under the header

1 Virginia Citizens Launch to Protect Isabella Coalition in
2 that first paragraph there's a website described there. Do
3 you see that?

4 A. Yes.

5 Q. And what's the name of that website?

6 A. Protectisabella.com.

7 Q. Did you ever discuss that website with Timothy Miller?

8 A. I don't have any recollection of doing so.

9 Q. Did you ever talk to Timothy Miller or did you talk to
10 Timothy Miller at the time you received this about where he
11 was getting the information he sent to you?

12 A. No.

13 Q. Did you later talk to him about possible sources of
14 information for finding information about Lisa?

15 A. Yes.

16 Q. And did he point you to a particular site?

17 A. Um, the only one I remember is, it slips my mind now.
18 It was a website done by Liberty Counsel, but I can't think
19 of the site.

20 Q. That's all right. Let's look ahead at Government's,
21 what's in evidence as Government's Exhibit 57D.

22 MS. COWLES: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. (By Ms. Cowles:) And that begins at Bate's Number
25 008955. Do you recognize this message?

1 A. Yes.

2 Q. First of all, what's the date of this message?

3 A. Tuesday, September 22, 2009 at 12:05.

4 Q. And where are you identified on this message?

5 A. In the from line, the second line, Andy Yoder.

6 Q. What is this e-mail about?

7 A. Timo Miller had asked me about the requirements, the
8 current requirements for residencies in Nicaragua. That was
9 part of my job there at Christian Aid Ministries to help
10 people get residencies. So he was just asking what are the
11 requirements and how quickly can it be gotten.

12 Q. At or around the time you sent this e-mail did you talk
13 to Timothy Miller about why he needed that information?

14 A. I don't recall any conversation.

15 MS. COWLES: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes.

18 Q. (By Ms. Cowles:) I would like to show you what's been
19 marked as Government's Exhibit, marked and admitted as
20 Government's Exhibit 36. And that's in evidence. 011235.

21 Now, what's the date of this message?

22 A. 10-26-2009, 5:01 p.m.

23 Q. And could you read the subject line?

24 A. Birth certificate authentication.

25 Q. Now, this e-mail is not to you; correct?

1 A. That's correct.

2 Q. Do you know the person Kim Eichorn whose listed in the
3 to line there?

4 A. Yes.

5 Q. Who is Kim Eichorn?

6 A. He was my supervisor with an office here in Ohio.

7 Q. What was his role for CAM?

8 A. He was just considered like a field supervisor.

9 Q. Does he regularly travel to Nicaragua as part of his
10 work?

11 A. Yes.

12 Q. And to your knowledge are he and Mr. Timothy Miller
13 acquainted?

14 A. Yes.

15 Q. How would Mr. Eichorn normally be involved in obtaining
16 authenticated birth certificates for CAM staff?

17 A. That was one of the steps of getting a residency. We
18 had to send the birth certificates to Kim and then he then
19 would send them to New York to the Nicaragua Consulate to be
20 authenticated.

21 Q. So if you were trying to get a Nicaraguan residency set
22 up for someone you worked with how would that process have
23 worked?

24 A. Well, that would be the first step would be to send
25 some of the documents to Kim to get authenticated. And then

1 I have the other list outlined here that was work to be done
2 there in Nicaragua.

3 Q. Now, I believe you mentioned previously an incident
4 where you actually met Lisa Miller. How far, how long did
5 that happen after the time you received the first e-mail
6 from Timothy Miller about her?

7 A. I'm thinking it was within three, four weeks.

8 Q. Now, how did you first notice them?

9 A. I met them at a church service in Managua.

10 Q. I believe you indicated Lisa and Isabella were going by
11 the name of Sarah and Lydia at that time?

12 A. That's correct.

13 Q. How were they dressed?

14 A. With traditional Mennonite dress.

15 Q. Did they consistently dress that way during the period
16 of time you knew them?

17 A. Yes.

18 Q. To your knowledge were they Mennonites at that point in
19 time?

20 A. No.

21 Q. How did you confirm that this was actually Lisa and
22 Isabella as opposed to some other woman and child named
23 Sarah and Lydia?

24 A. My recollection the following Sunday, which would have
25 been a week later, I asked Timo about them, is this Lisa.

1 And he confirmed it was.

2 Q. Did you talk to Timothy Miller about Lisa's situation
3 at that point in time?

4 A. Not much. I don't think there was much conversation at
5 that point.

6 Q. When did you first talk to him about what Lisa's
7 situation was?

8 A. I don't recall an exact date. For several months there
9 wasn't much conversation about the case.

10 Q. When you first approached him to identify who these
11 people were did he explain what they were doing in
12 Nicaragua?

13 A. Just briefly. Just basically what the e-mail here
14 states.

15 Q. Can you tell us what you recall him saying?

16 A. I don't have a specific recollection. He basically
17 said, you know, they are -- well, I really don't have a
18 recollection of exactly what he said.

19 Q. Did he talk to you about whether or not Lisa Miller was
20 involved in a court case?

21 A. Yes.

22 Q. What, if anything, do you remember him telling you
23 about that court case?

24 A. Well, my understanding was that she came to Nicaragua
25 because she expected to lose custody of her child.

1 Q. Did Timothy Miller ever talk to you about visitation
2 orders involved in Lisa Miller's court case?

3 A. I don't have a specific recollection.

4 Q. Did you discuss those?

5 A. Yes, we discussed her case occasionally.

6 Q. Did you talk about the visitation orders?

7 A. I don't recall. I know I got some of the information
8 from the websites. I was aware of that situation. And some
9 of that came from Timo and some from the website.

10 Q. Do you remember when you testified in the grand jury a
11 few months ago?

12 A. Yes.

13 Q. And do you remember talking about your early
14 conversations with Timothy Miller at that point in time?

15 A. Yes.

16 Q. Do you remember talking about whether or not you
17 discussed visitation orders with him at that point in time?

18 A. I don't remember.

19 Q. Would it be helpful for you to look at that transcript?

20 A. Right.

21 Q. I'll ask you to just take a look at that for a moment
22 and I'll take it back and see if we can talk a little more.

23 MR. AUTRY: If you could tell me what page you are
24 on?

25 MS. COWLES: I apologize. We are looking at Bates

1 Number Page 008827.

2 Q. (By Ms. Cowles:) Mr. Yoder, does that help refresh
3 your recollection about your conversations with Timothy
4 Miller about visitation orders?

5 A. Yes. As I mentioned it's not real clear in my mind
6 what came from Timo and what came from the website
7 information, but I do know we had those conversations.

8 Q. And what was the nature of those conversations that you
9 had with Timothy Miller?

10 A. It was about her violating the visitation orders as
11 well as possibly losing custody of her child.

12 Q. Now, while Lisa was in Nicaragua where was she living?

13 A. At the beginning she lived with Timo and Joanna and
14 later on a couple blocks down the street.

15 Q. Who did she spend most of her time with?

16 A. Mostly with Timo and with the, there in the church.

17 Q. At some point in time did you notify Christian Aid
18 Ministries in the United States about Lisa Miller's presence
19 in Nicaragua?

20 A. Yes.

21 Q. Do you recall approximately when that happened?

22 A. I would say it was probably maybe six, eight weeks
23 after she arrived.

24 Q. So that would be late October, very early November?

25 A. November maybe.

1 Q. Do you know if it was early November or later November?

2 A. I'm not sure.

3 Q. How did you notify CAM that Lisa was in Managua?

4 A. I basically just sent them a brief summary of why she
5 is there and I ask, you know, what should be our
6 relationship with her.

7 Q. Would looking at that e-mail that you sent to CAM help
8 you recall when you notified CAM about Lisa's presence?

9 A. Yes.

10 Q. I'm going to show the what's been marked Bate's Number
11 008700.

12 MR. AUTRY: Is this one of the exhibits?

13 MS. COWLES: No, it's not. I can show it to
14 defense counsel too.

15 Q. (By Ms. Cowles:) Mr. Yoder, does that help refresh
16 your recollection about when you notified CAM about Lisa
17 Miller?

18 A. Yes, it looks like it was --

19 MR. AUTRY: If I could just have a minute to
20 review it?

21 THE COURT: Yes. That's fine.

22 MS. COWLES: Your Honor, if it is helpful to the
23 Court I will proffer that I have no intentions of admitting
24 this document.

25 THE COURT: All right. The government doesn't

1 seek to introduce the document. She's just using this to
2 refresh the witness' present recollection.

3 MR. AUTRY: I understand, Your Honor. If, just
4 two pages single spaced, I just wanted an opportunity to
5 review this.

6 THE COURT: Well, you are a fast reader. I can
7 see that, Mr. Autry.

8 MR. AUTRY: I am, Your Honor.

9 THE COURT: So, with that --

10 MS. COWLES: I apologize.

11 Q. (By Ms. Cowles:) So, Mr. Yoder, did that help refresh
12 your recollection of when you notified CAM that Lisa was in
13 Managua?

14 A. Yes.

15 Q. And approximately when did you do that?

16 A. The first of November. November 9th to be exact.

17 Q. Now, how did CAM respond to your notification about
18 Lisa Miller being in Nicaragua?

19 A. I received instruction from them that because of
20 possible legal implications we were not to be involved in
21 helping her in any way.

22 Q. Did that instruction come down quickly after your
23 e-mail?

24 A. Yes.

25 Q. Did it, in fact, come down the very next day?

1 A. I would say within the next several days.

2 Q. Now, did that instruction from CAM cause any problems
3 within the Mennonite community in Managua?

4 A. It was somewhat uncomfortable that we were operating
5 with two different sets of instructions there.

6 Q. Did Timothy Miller ever seek help from CAM in
7 connection with Lisa Miller?

8 A. I don't recall.

9 Q. Do you recall if he ever asked for medicines or foods
10 or any of the things you might have had on her behalf?

11 A. We discussed it and we, we did make it clear to him
12 that we, we could not help.

13 Q. Did you end up developing a personal relationship with
14 Lisa Miller?

15 A. Um, me personally, no. Just, it was just kind of a
16 social relationship in church.

17 Q. But you did have some interactions with her?

18 A. Right. That's correct.

19 Q. Why did you choose to maintain some personal
20 interactions with her given CAM's instruction that you
21 shouldn't have contact with her?

22 A. Well, obviously we went to church together. And we
23 were and Christian Aid as well was sympathetic to her case.

24 Q. Now, I would like to show you what's in evidence as
25 Government's Exhibit 57J. Bate's Numbers beginning at

1 008969. May I approach, Your Honor?

2 THE COURT: Yes.

3 Q. (By Ms. Cowles:) Now, starting actually on the second
4 page of this Exhibit 008970. Well, I guess it's the message
5 at the bottom of the first page going on to the second.

6 Could you start reading at the first of the messages dated
7 5-5-2010 4:04 p.m.?

8 A. The second page?

9 Q. It starts on the first page and then goes on to the
10 second page. It starts at the bottom of the first page.

11 A. It starts, hello brother, here is the address for the
12 coffee payment. They plan to leave Thursday the 13th so the
13 check should be there a few days before so they can cash it
14 and bring it down. Just make the check out to him and
15 include a note and say it is for me. Thank you for your
16 business and may the Lord bless you richly, Timo.

17 Q. And then whose address appears below Timo's signature?

18 A. Andrew S. Yoder, P.O. Box 2145, Clarkrange, Tennessee.
19 That would be my address.

20 Q. Now, looking then at the next message in the series it
21 appears on the first page. Well, let me ask you first
22 this, this message includes your name and address. To your
23 knowledge why would Timothy Miller be sending Ken Miller
24 your name and address in May of 2010?

25 A. We were spending several weeks in the states visiting.

1 And before I left Timo asked me if I could bring some money
2 along back, that someone would be sending me a check. And I
3 told him I would.

4 Q. Was that an unusual request in any way?

5 A. Not really. I didn't think that much about it.

6 Q. Why would someone have asked an acquaintance in
7 Nicaragua to bring back money from the United States like
8 that?

9 A. Well, the logistics of sending, not only money, but
10 other supplies to and from the states it was often done by
11 people who were traveling back and forth.

12 Q. Did you end up agreeing to bring that check back?

13 A. Yes.

14 Q. Now, looking at the message in the middle of that first
15 page. Could you read that for us today?

16 A. Greetings Timo, I just got the check for the coffee in
17 the mail today unfortunately. So is it possible for you to
18 contact Andrew to let him know to bring the cash even if the
19 check hasn't arrived yet? The check is made out to Andrew
20 S. Yoder for \$500 and should be there some time this week,
21 but probably not by Thursday depending when they leave. Or
22 I could contact Andrew too if had known his phone number.
23 Blessings, Ken.

24 Q. Now at some point while you were in the United States
25 did you have some contact with Timothy Miller about this

1 check?

2 A. Yes. He called me and let me know that the check might
3 not arrive in time and asked me if I could just bring the
4 500 and the person taking care of my finances could take
5 care of the check afterward.

6 Q. I would like to show you a page of what's been admitted
7 as Government's Exhibit 33D. That's 011091.

8 MS. COWLES: May I approach, Your Honor?

9 THE COURT: Yes.

10 Q. (By Ms. Cowles:) Mr. Yoder, what telephone were you
11 using during that furlough trip to the United States?

12 A. We had a phone that belonged to Jesse and Melinda
13 Troyer from Crossway, Tennessee, which was my
14 brother-in-law.

15 Q. And you were just using that during the period of your
16 trip?

17 A. That's correct.

18 Q. Looking at this page of the exhibit that you have in
19 your hand and that's displayed on the screen. Do you see
20 numbers on there that you recognize as calls to that number?

21 A. Yes, I do.

22 Q. And where are those numbers?

23 A. It's the number 931 277-3312.

24 Q. That's a call on May 10th of 2010?

25 A. That's correct.

1 Q. It was actually a series of calls back and forth to two
2 different numbers in that area code. Do you have any
3 understanding of who the other number might be?

4 A. One ending in 4088 was his wife's phone number.

5 Q. Now, looking across at the call at 6:14 p.m. to the
6 3312 number how long was that call?

7 A. Thirty minutes.

8 Q. Do you recall any of the details with your
9 conversation, I apologize, I'm going to start over.

10 Do you recall any of the details of your
11 conversation with Timothy Miller about this check when you
12 were in the U.S.?

13 A. Basically I just remember that the purpose of the call
14 was to let me know that the check may not arrive and asked
15 if I could bring the money anyway.

16 Q. Did you agree to do so?

17 A. Yes.

18 Q. Now, where was this check sent to you?

19 A. To my post office box.

20 Q. Did you receive that before you returned to Nicaragua?

21 A. Yes.

22 Q. When did you receive it?

23 A. We were actually on the way to the airport. I guess by
24 this e-mail it looks like it was on a Thursday.

25 MS. COWLES: Your Honor, may I approach?

1 THE COURT: Yes.

2 Q. (By Ms. Cowles:) I'm going to show you what's been
3 admitted as Government's Exhibit 62B., Page 009636. And I
4 would like to focus your attention on the first check
5 displayed on that page. Do you recognize that check?

6 A. Yes.

7 Q. What is it?

8 A. It's a check for \$500 made out to Andrew S. Yoder.

9 Q. Do you remember receiving this check?

10 A. Yes.

11 Q. Now, this check is issued by, it appears, Milmont
12 Greenhouses, Inc.. Were you familiar with Milmont
13 Greenhouses, Inc. at the time you got this check?

14 A. Yes.

15 Q. How were you familiar with them?

16 A. I had heard of the business Milmont Greenhouses. I had
17 worked for another ministry previous to working for
18 Christian Aid Ministries and occasionally saw a Milmont
19 Greenhouse check.

20 Q. Had you ever worked for Milmont Greenhouses?

21 A. No.

22 Q. Had you ever sold them anything?

23 A. No.

24 Q. So at the time that you received this check was there
25 any reason that Milmont Greenhouses would be paying you,

1 Andy Yoder, money?

2 A. No.

3 Q. Now, what did you do with this check once you received
4 it?

5 A. I cashed it and took the money along to Nicaragua.

6 Q. Did you have any hesitation about cashing the check?

7 A. Well, I did somewhat knowing it came from Ken Miller
8 for Timo and I thought it could possibly have connections to
9 Lisa Miller.

10 Q. Why did that give you pause?

11 A. Well, because of Christian Aid Ministries' policy that
12 we were not to have anything to do with helping her.

13 Q. Now, just to be clear, this series of e-mails we looked
14 at previously talks about the check being for coffee. Were
15 you in any way involved in a sale of coffee between Timothy
16 Miller and Ken Miller in the spring of 2010?

17 A. No.

18 Q. To your knowledge did this check have anything to do
19 with coffee?

20 MR. AUTRY: Objection, leading.

21 THE COURT: Objection overruled. You can answer
22 that question.

23 THE WITNESS: No, I, I didn't know.

24 Q. (By Ms. Cowles:) Now, you said you cashed the check
25 before you left Tennessee; correct?

1 A. Yes.

2 Q. What did you do with that money?

3 A. I took it on to Nicaragua and gave it to Timo.

4 Q. Did you discuss the money with Timothy Miller when you
5 gave it to him?

6 A. No.

7 Q. Why not?

8 A. Well, because of the, you know, thinking it might have
9 connections there with Lisa.

10 Q. Why wouldn't you have wanted to bring that up with
11 Timothy Miller?

12 A. Well, I just really didn't want to know, you know, if
13 it did or not. I just preferred to stay, you know, not to
14 argue about it.

15 MS. COWLES: Your Honor, I have no further
16 questions.

17 THE COURT: All right. In light of the fact we
18 did start late we'll go to quarter of. And
19 cross-examination?

20 MR. AUTRY: Yes, Your Honor.

21 CROSS EXAMINATION BY MR. AUTRY:

22 Q. Good morning, Mr. Yoder.

23 A. Good morning.

24 Q. You've had no discussions about Lisa Miller before she
25 arrived in Nicaragua; correct?

1 A. No.

2 Q. With anyone?

3 A. Not that I recall.

4 Q. Not with Timo Miller?

5 A. No.

6 Q. Not with Ken Miller?

7 A. No.

8 Q. And you didn't know Ken Miller personally before any of
9 this?

10 A. I knew who he was, but I didn't know him personally,
11 no.

12 Q. You had no discussions with him about Lisa Miller?

13 A. No.

14 Q. Not before the check?

15 A. No.

16 Q. Not after the check?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Sorry. Your responses have to be audible just for the
21 transcript.

22 And you had no knowledge about whether or not Ken
23 Miller was involved in her travel to Nicaragua?

24 A. I was at a later date. I wasn't at the time that she
25 arrived.

1 Q. Because you weren't involved in her travel to
2 Nicaragua?

3 A. Pardon?

4 Q. Because you weren't involved in her travel; correct?

5 A. That's correct.

6 Q. And you didn't know at the time how, how she was
7 getting to Nicaragua or that she was coming to Nicaragua;
8 correct?

9 A. That's correct.

10 Q. Now, weeks later you saw her at church; correct?

11 A. Yes. Yes.

12 Q. And that's how you came to know about her situation?

13 A. Well, the e-mail came first was my first introduction.

14 Q. Okay.

15 A. That was several weeks before she showed up in church.

16 Q. Now, that e-mail from Timo Miller about Lisa Miller
17 weeks before that wasn't soliciting your help in any way;
18 correct?

19 A. No.

20 Q. It was just informative about something that was going
21 on; correct?

22 A. That's correct.

23 Q. And that's how you interpreted it at the time?

24 A. Yes.

25 Q. Now, when Timo asked you about residency requirements

1 that wasn't unusual?

2 A. No.

3 Q. And why is that?

4 A. Because I did help a lot of people get residencies in
5 Nicaragua. So I was used to having people ask me, you know,
6 what are the requirements, what do they need to bring from
7 the states. So I really didn't think that much about it.

8 Q. And Timo informed you, actually, strike that.

9 You didn't talk to Timo about Lisa Miller's case
10 until weeks after she had arrived; correct?

11 A. That's correct.

12 Q. And at that point you discussed with Timo the fact that
13 she might lose her custody case?

14 A. That's right.

15 Q. Okay. And your memory's a little fuzzy about whether
16 or not you talked to him about visitation; correct?

17 A. Yes. I, I know that we discussed it, but I don't know
18 at what point.

19 Q. And your information was also coming from the internet
20 at that point?

21 A. That's correct.

22 Q. And your information was also coming from Lisa Miller;
23 correct?

24 A. Um, not until quite a bit later. We didn't discuss her
25 case until the very last of her stay there in Managua.

1 Q. And when was that?

2 A. Um, it would have been around April, March or April of
3 2009.

4 Q. You mean 2010?

5 A. 2010. Excuse me.

6 Q. So that would have been before the check; correct?

7 A. Um, yes.

8 Q. Because the check was May of 2010?

9 A. That's correct.

10 Q. Okay. So before the check you had a discussion with
11 Lisa Miller; correct?

12 A. Yes.

13 Q. And she talked to you about how she had been in
14 violation of visitation orders; correct?

15 A. Yes.

16 Q. And you had a fairly lengthy discussion with her;
17 correct?

18 A. Yes.

19 Q. And that's because you were explaining to her why
20 Christian Aid Ministries was not going to be involved in
21 helping her; correct?

22 A. Correct.

23 Q. And you wanted to be up front with her about that?

24 A. That's correct.

25 Q. Now, Timo did inform you that he believed she was the

1 full legal guardian; correct?

2 A. I'm not sure about that. I don't have a recollection.

3 Q. Okay. You still have that deposition in front of you?

4 THE COURT: The transcript of the grand jury
5 testimony?

6 MR. AUTRY: Yeah, the grand jury testimony.

7 THE COURT: I don't believe he has it in front of
8 him.

9 THE WITNESS: No.

10 THE COURT: Do you have the transcript?

11 MR. AUTRY: Yes, I do. I'm sorry. I think I
12 grabbed the wrong page number. If you could pull up 8827.
13 I believe it's 008827.

14 (Attorneys conferring off the record)

15 THE COURT: Are you asking him to refresh his
16 recollection in which case this is not being offered to the
17 jury or are you seeking to actually introduce this as a
18 prior inconsistent statement?

19 MR. AUTRY: The latter, Your Honor.

20 THE COURT: Okay. Perhaps it would be best if
21 you, if you first determined whether he has a present
22 recollection of making that statement and that in fact is
23 his --

24 Q. (By Mr. Autry:) Do you have a present recollection --
25 do you currently remember whether or not Timo told you that

1 she was the full legal guardian?

2 A. I don't have a specific recollection that way.

3 Q. If you could read lines four to 12 to yourself. And
4 then let me know when you are done.

5 Was it your recollection at the time that she was
6 the full legal guardian?

7 A. It was my recollection, but I guess I'm not sure if it
8 came from Timo or it came from information that I got from
9 the internet.

10 Q. But you're sure Timo told you she might lose her future
11 custody case?

12 A. Yes.

13 Q. And you had disagreements with Timo about whether or
14 not what he did was illegal; correct?

15 A. That's correct.

16 Q. Because he believed it was legal and you believed it
17 was not?

18 A. I didn't know if it was or not, but I thought it, it
19 possibly could be.

20 Q. So you have, this was a significant point of discussion
21 between you and Timo whether or not the travel to Nicaragua
22 was in fact legal?

23 A. That's correct.

24 Q. And he told you that he believed it was; correct?

25 A. Yes.

1 Q. Okay. You didn't talk to anyone about the purpose of
2 the \$500; correct?

3 A. No.

4 Q. And at the time of the \$500 you had already done pretty
5 extensive internet research on the case?

6 A. That's correct.

7 Q. And you had found out quite a bit from the internet;
8 correct?

9 A. Yes.

10 Q. And what you had found out led you to feel not
11 comfortable with it; correct?

12 A. That's correct.

13 Q. At the time of your grand jury testimony you thought
14 that Ken Miller signed the check; correct?

15 A. That's correct.

16 Q. Okay. If you could look at 62B. And I can get the
17 Bate's Number off of that. I just need the Bate's Number
18 off of that. 009636. If you could look at the check on the
19 top left. That check is signed by, it looks like, Duane
20 Weaver.

21 A. Yes.

22 Q. That's not Ken Miller?

23 A. No.

24 Q. But you said you recognized this check?

25 A. Yes.

1 Q. And you testified in your grand jury that Ken Miller
2 signed the check?

3 A. Yes.

4 Q. Is this the same check?

5 A. I believe it to be, yes.

6 Q. And, again, you had no direct contact with Ken Miller
7 before or after this check; correct?

8 A. No.

9 Q. Okay. Your conversations with Ken, with Timo about the
10 case happened well after Lisa Miller's travel; correct?

11 A. Yes.

12 Q. And after both of you had done internet research into
13 the case; correct.

14 A. It was like at the same time probably.

15 Q. Okay. If you could look at 57C. That's the two pages
16 of e-mail that starts with the word, Brethren. And we'll
17 start on 006974. Top e-mail from Timo, the second sentence,
18 Lisa has some of the best lawyers available, but they are
19 telling her she will probably lose the case. You see that
20 there? Oh, sorry, I didn't see that you hadn't picked it up
21 yet. Second sentence, it says, Lisa has some of the best
22 lawyers available, but they are telling her she will
23 probably lose the case?

24 A. Yes.

25 Q. Is that your understanding of what Tim believed at the

1 time?

2 A. Yes.

3 MS. COWLES: Objection.

4 THE COURT: Well, the objection calls for
5 speculation. You want to rephrase the question?

6 MR. AUTRY: Yes.

7 Q. (By Mr. Autry:) Is this consistent with what Timo
8 Miller was telling you?

9 A. Yes.

10 Q. Okay. In the second paragraph he says, they tell me
11 there is a lot of info on the net about it, some not
12 accurate. Did you receive this e-mail?

13 A. Yes.

14 Q. And was that Timo Miller's perspective that some of the
15 information on the internet was incorrect?

16 MS. COWLES: Objection.

17 THE COURT: Objection sustained.

18 MR. AUTRY: I'll take out the word perspective.

19 THE COURT: Do you want to rephrase the question?

20 MR. AUTRY: Yes, Your Honor.

21 Q. (By Mr. Autry:) Is that consistent with what Timo
22 Miller told you about information on the internet?

23 A. Yes.

24 Q. And he did, in fact, tell you that in this e-mail?

25 A. Yes.

1 Q. If we could go down to the bottom of the page, the fact
2 sheet. Actually scrap that.

3 Let's go to the next page, 006975. And let's go
4 to the top half. Thank you. The last sentence of the
5 second paragraph there, Liberty Counsel still has appeals
6 pending on behalf of Lisa and Isabella. Were you aware that
7 there were still appeals going on?

8 A. Just based on what I was reading.

9 Q. The fourth paragraph, last sentence, Lisa's attorneys
10 have disputed that full faith and credit requires Virginia's
11 enforcement of the Vermont visitation order or any foreign
12 orders recognizing the benefits of same sex unions. Were
13 you aware of this?

14 A. Not more than what I was reading.

15 Q. The same thing, the next paragraph, on March 3, 2009
16 Liberty Counsel filed a brief in The Virginia Court of
17 Appeals referring to the absence of case law and noting that
18 all of the custody cases cited by Janet Jenkins' attorneys
19 relate to heterosexual couples or adoptive parents. The
20 brief asks the Court to rule that Virginia must only
21 recognize Vermont's visitation order and not enforce it.
22 And, again, were you aware of this?

23 A. Not outside of this e-mail.

24 Q. But you did read this e-mail?

25 A. Yes.

1 Q. And this came from Timothy Miller?

2 A. That's correct.

3 Q. If we could go to the bottom paragraph or the bottom of
4 the page.

5 The last two paragraphs there similarly state,
6 Liberty Counsel attorneys representing Lisa Miller continue
7 to file appeals aimed at protecting Isabella from
8 emotionally traumatizing experience to force visits with a
9 lesbian woman she barely knows. The latest appeals explain
10 that the full faith and credit obligation does not require
11 Virginia to enforce the Vermont order. Were you aware of
12 that as well?

13 A. Not other than just reading this e-mail.

14 Q. And the last paragraph there, the road towards justice
15 or toward justice has taken a long and winding path, but we
16 believe the courts are getting closer to addressing the core
17 issues in this case said Matthew D. Staver, founder of
18 Liberty Counsel and Dean of Liberty University School of
19 Law. The people of Virginia, going on to, thank you, have
20 plainly spoken in favor of traditional marriage and have
21 rejected same sex unions. The Virginia Courts must now
22 uphold the Constitution.

23 Were you aware that Liberty Counsel continued to
24 make these claims that Virginia should not enforce the
25 Vermont orders?

1 A. Not other than just reading this e-mail.

2 MR. AUTRY: One moment, Your Honor.

3 THE COURT: Yes.

4 Q. (By Mr. Autry:) Lisa Miller had already left Managua
5 prior to you receiving the check in May of 2010?

6 A. I believe so.

7 Q. And so she had left Managua before you gave the money
8 to Timo Miller in May of 2010?

9 A. Yes.

10 Q. And you have no idea if the money ever made it to Lisa
11 Miller?

12 A. No.

13 Q. Now, CAM's position on Lisa Miller that was because you
14 were afraid of the appearance of --

15 MS. COWLES: Objection.

16 THE COURT: Well, objection sustained. You want
17 to rephrase the question as to whether the directive from
18 CAM was on a particular principle?

19 Q. (By Mr. Autry:) The directive from CAM to refrain from
20 assisting Lisa Miller, that was out of concern of what the
21 appearance would be in helping her when she's in this
22 custody battle?

23 MS. COWLES: Objection. I'm not sure the witness
24 knows the source of that.

25 THE COURT: Well, objection overruled. If he can

1 testify as to the representation that the authorities at CAM
2 made as to the reason why there was to be no contact with
3 Lisa Miller.

4 THE WITNESS: Well, as I mentioned, even though
5 they were sympathetic to Lisa's plight the primary reason
6 was for legal implications. They didn't want to jeopardize
7 everything they were doing in Nicaragua and in other
8 countries around the world for this case.

9 Q. (By Mr. Autry:) And, again, you weren't sure whether
10 or not it was legal for her to be there?

11 A. No, I wasn't sure.

12 Q. Okay. But you ultimately don't know if the check had
13 anything to do with Lisa Miller?

14 A. No, I don't know.

15 Q. And it's possible the check had nothing to do with her?

16 A. That's correct.

17 MR. AUTRY: Nothing further.

18 THE COURT: Okay. Anything further?

19 MS. COWLES: Just a few, Your Honor.

20 FURTHER EXAMINATION BY MS. COWLES:

21 Q. Mr. Yoder, first, I think Mr. Autry asked you if you
22 and Timo Miller had talked about whether or not Ken Miller
23 was involved in Lisa Miller coming to Nicaragua. Did Tim
24 Miller talk to you about that?

25 A. Some time later, I think it was probably several

1 months, you know, after she arrived, we did have a
2 conversation about that.

3 Q. And what did he tell you about Ken Miller's
4 involvement?

5 A. I don't remember the details, but basically just that
6 he was kind of the state side coordinator to help her get to
7 Nicaragua.

8 Q. Now, Mr. Autry also asked you a few things about the
9 check you looked at. At the time you testified in grand
10 jury did you have the opportunity to actually look at that
11 check?

12 A. No.

13 Q. Why did you think that Ken Miller might have signed
14 that check?

15 A. Well, there was something when I opened the envelope or
16 saw the check that I was thinking it had Ken Miller's name
17 on it. It may have been a note in it. It may have been on
18 the envelope. I don't remember.

19 Q. He also asked you to look at a portion of your grand
20 jury testimony. And I'm going to ask you if you could to
21 read the full text of that conversation, please. I'm going
22 to start at the bottom of 00826 with Line 21.

23 Do you have that in front of you?

24 A. Yes.

25 Q. And could you just read that section starting at 00826

1 at Line 21? And I'll let you know when to stop.

2 A. Okay. Which number is it?

3 Q. Starting with Line 21. Question, did you have any
4 discussions with Timo Miller?

5 A. Okay. Did you have any discussions with Timo Miller
6 about whether or not there might be --

7 MR. AUTRY: Your Honor, is this being used to
8 refresh his recollection or impeach him?

9 MS. COWLES: Your Honor, at this point I think
10 we're trying to, to put the evidence in to complete the
11 conversation. Mr. Autry offered eight lines of this
12 testimony from the prior page. It actually begins on this
13 page and continues about another eight or 10 lines beyond
14 what Mr. Autry read.

15 THE COURT: I don't have it here so I don't know
16 if that, in fact, is right.

17 MR. AUTRY: And he actually has my copy so if I
18 could take a look.

19 THE COURT: All right. Why don't we -- you have,
20 do you have some minutes of examination?

21 MS. COWLES: This would be my final section, Your
22 Honor.

23 THE COURT: And do you have much re-direct?

24 MR. AUTRY: Probably not, but I need to see what
25 these eight lines are.

1 THE COURT: Okay. Well, let's address this.
2 That's fine. Take a look at it.

3 MR. AUTRY: If I could just take a look. So
4 you're asking him --

5 THE COURT: Just for the, for reference, Ms.
6 Cowles, where are you asking?

7 MS. COWLES: I apologize. We're beginning at Line
8 21.

9 THE COURT: Of page?

10 MS. COWLES: Of Page 00826 and then continuing
11 through Line 20 on 00827.

12 MR. AUTRY: Your Honor, before I read the
13 substance of this I would object just because we didn't read
14 ours into the record we just had him use it to refresh his
15 recollection.

16 MS. COWLES: Your Honor, I believe at this point
17 it's admissible under 801 to complete the conversation.

18 THE COURT: Right. Once he has testified to his
19 present recollection then something inconsistent with that
20 or in fulfillment of that or describing that can actually be
21 read into the record. So you're looking at, you're looking
22 at 8826 beginning on line what?

23 MS. COWLES: Line 21, Your Honor. And then
24 continuing to 8827, Line 20.

25 THE COURT: Okay. Any objection to the use of

1 the exhibit?

2 MR. AUTRY: No, Your Honor. And we have agreed
3 with the prosecutor that he'll actually go through Line 23
4 on the following page.

5 THE COURT: All right.

6 Q. (By Ms. Cowles:) I apologize, Mr. Yoder, you have some
7 reading to do. If you could start at Page 8826, Line 21,
8 did you have any discussions?

9 A. Did you have any discussion with Timo Miller about
10 whether or not there might be legal implications of Lisa
11 Miller's flight? Answer is yes. What do you recall about
12 this conversation? Basically he didn't think it was going
13 to be a big deal. You know, him and I weren't totally
14 agreed on that, but we did discuss that.

15 Q. And continuing with the next question?

16 A. You mentioned in your answer that she was fleeing the
17 country because of a custody battle and I believe you said
18 the chance that she might lose that battle. What did you
19 understand about what was going on in her case at the time
20 that she came to Nicaragua? Answer, yeah, I knew very
21 little other than it was my understanding that custody had
22 not been given to anyone else, that she still had, you know,
23 she was still the legal guardian at the time was my
24 understanding.

25 Q. Go on to the next question.

1 A. Did you know how things had been going for her with
2 visitation orders and complying with court orders before she
3 left the United States? Answer, yes, it was my
4 understanding that she had violated some of those.

5 Q. And continue.

6 A. Who had you talked to or where did you get that
7 information? Answer, that would have come from Timo Miller.

8 Q. And the final question?

9 A. Did Timo ever tell you where he was getting his
10 information from? Answer is no.

11 MS. COWLES: Your Honor, I have nothing further.

12 THE COURT: Okay. Anything further?

13 MR. AUTRY: Yes, Your Honor.

14 THE COURT: Okay.

15 FURTHER EXAMINATION BY MR. AUTRY:

16 Q. Given the position that CAM had adopted or Christian
17 Aid Ministries had adopted regarding Lisa Miller your
18 concern with the check was that it would appear that you
19 were helping Lisa Miller in violation of that policy?

20 A. That's correct.

21 Q. But you don't really know if you were doing that?

22 A. No.

23 Q. Okay. Regarding your discussions with Timo Miller you
24 disagreed with him about whether what he did was permissible
25 or not; correct?

1 A. Right.

2 Q. And this was a consistent conversation that you would
3 have with him?

4 A. It wasn't a lot of conversation. It was just that he
5 didn't think it was going to be a big deal and I had
6 suspicions it might be.

7 Q. Okay. And that's because he believed she was the full
8 legal guardian; correct?

9 A. I'm not sure about that.

10 Q. Well, if you could look back to what you just read. I
11 would point you to Lines nine to 12. If you could read
12 those to yourself.

13 A. It's obviously when, when she arrived in Nicaragua that
14 was his understanding.

15 Q. So it's obvious to you from your conversations with him
16 that when she arrived in Nicaragua he understood her to be
17 the full legal guardian?

18 A. That's correct.

19 Q. And it's also obvious to you that he understood that to
20 be legal for her to travel to Nicaragua?

21 A. Yes.

22 Q. And that comes from your conversations with him?

23 A. Yes.

24 Q. Now, your memory, you've stated multiple times today,
25 is a little bit fuzzy about your conversations with him

1 regarding her visitation rights?

2 A. That's correct.

3 Q. And your grand jury testimony that was just used to
4 refresh your recollection, that was taken in February of
5 2012 of this year?

6 A. Yes. Yes.

7 Q. Now, you're trying to recall conversations that took
8 place in the early half of 2010 and the late, and the latter
9 end of 2009; correct?

10 A. That's right.

11 Q. So even at the point of your grand jury testimony
12 you're talking about conversations that took place roughly
13 two years prior to that or more?

14 A. Yes.

15 Q. Okay. And even at the point when you had your grand
16 jury testimony your memory was a little fuzzy about where
17 you found out about the visitation; correct?

18 A. Yes. I had two sources, Timo and the internet, and so
19 I was fuzzy about which source.

20 Q. And the third source, Lisa Miller; correct?

21 A. Yes.

22 Q. And she specifically had a conversation with you about
23 how she had violated visitation orders?

24 A. That's correct.

25 Q. And you remember that conversation fairly well?

1 A. Yes. Yes.

2 Q. Now --

3 MR. AUTRY: I have nothing further.

4 THE COURT: Okay. Anything further, Miss Cowles?

5 MS. COWLES: No, Your Honor.

6 THE COURT: Thank you, Mr. Yoder. Let's take our
7 15 minute recess at this point and be back in 15 minutes.

8 (The Court recessed at 10:55 a.m.)

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C E R T I F I C A T E

I, certify that the foregoing is a correct transcript, to the best of my ability, of the proceedings in the above-entitled matter dated August 10, 2012.

Anne Marie Henry

Anne Marie Henry, RPR
Official Court Reporter

DATE

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JANET JENKINS, for herself and as)
next friend of ISABELLA MILLER-)
JENKINS a/k/a ISABELLA MILLER,)
Plaintiffs)
)
v.)
)
KENNETH L. MILLER, et. al.)
Defendants)

CIVIL ACTION NO.: 2:12-CV-00184-WKS

CERTIFICATE OF SERVICE

I certify that on this 30th day of November, 2012, I electronically filed with the Clerk of the Court the following document:

Yoder’s Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim

using the CM/ECF system. The CM/ECF system will provide service of the filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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Dated at Burlington, Vermont, this 30th day of November, 2012.

McCORMICK, FITZPATRICK,
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