

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as
next friend of Isabella Miller-Jenkins,
a/k/a Isabella Miller,

Plaintiffs,

v.

Docket No. 2:12-cv-184

KENNETH MILLER, *et al.*,

Defendants.

**MOTION TO DISMISS CLAIMS AGAINST DEFENDANT
CHRISTIAN AID MINISTRIES, INC. FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND
FOR LACK OF PERSONAL JURISDICTION**

Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(2), Defendant Christian Aid Ministries, Inc. (“CAM”) moves the Court to dismiss the claims filed against it for failure to state a claim upon which relief can be granted, and for lack of personal jurisdiction. As grounds for this motion, CAM states that:

1. The Amended Complaint asserts claims against CAM which are allegedly based on the sworn testimony of Andrew Yoder, a former employee of CAM, during the trial before this Court in the matter of *United States v. Kenneth L. Miller*, Case No. 2:11-cr-161-1 (“Miller Trial”). The certified transcript of Yoder’s testimony in the Miller Trial, of which this Court may take judicial notice, establishes that Yoder did not testify as alleged in the Amended Complaint, and that there is, therefore, no foundation for Plaintiff’s primary allegation regarding

CAM's involvement in the matter currently before this Court. Accordingly, the Amended Complaint is subject to dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim against CAM for which relief can be granted.

2. Even if the Court were to ignore the misstatement of fact with regard to Yoder's testimony, however, none of the claims against CAM can withstand scrutiny under the standard of review promulgated by the U.S. Supreme Court in *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Since the Amended Complaint fails to state a claim upon which relief may be granted, the claims against CAM should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

3. The Amended Complaint fails to establish a *prima facie* case to support this Court's personal jurisdiction over CAM, and CAM should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

A memorandum of law in support of this motion is attached hereto.

MEMORANDUM OF LAW

INTRODUCTION

Although three of the five counts in the Plaintiff's Amended Complaint contain allegations about CAM, the allegations are based upon inaccurate and untrue assertions about testimony in a prior case. Even if the allegations about CAM in the Amended Complaint are presumed to be true, however, they are insufficient, as a matter of law, to provide grounds for entitlement to relief. As such, the claims against CAM must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). Additionally, this Court lacks personal jurisdiction over CAM, thus requiring dismissal under Fed. R. Civ. P. 12(b)(2).

PROCEDURAL BACKGROUND

CAM is one of 12 Defendants named in the Amended Complaint. This motion is timely filed in accordance with the Court's Order of November 15, 2012 (ECF No. 51).

CAM is named as a co-conspirator in three of the Amended Complaint's five counts:

- Count One alleges that Defendant Lisa Miller conspired with and was aided and abetted by at least nine other Defendants, including CAM, to commit the intentional tort of kidnapping;
- Count Three alleges that Defendant Kenneth Miller conspired with at least eight other Defendants, including CAM, for the commission of a violation of 18 U.S.C. §1962(c), through a pattern of racketeering;
- Count Four alleges that Defendant Lisa Miller conspired with at least nine other Defendants, including CAM, to violate the civil rights of Plaintiff Janet Jenkins and Isabella Miller-Jenkins.

FACTUAL ALLEGATIONS

The allegations in the Amended Complaint with regard to CAM's role in the alleged conspiracies are based, purportedly, on the testimony of Andrew Yoder during the criminal trial of Kenneth Miller in August, 2012¹. Those allegations consist, *inter alia*, of the following:²

- Yoder testified that Lisa Miller was receiving aid from CAM in Nicaragua;
- Yoder testified that he notified his employer, CAM, of Lisa Miller's custody case in November, 2009;
- CAM did nothing to report the situation to the authorities, and expressed sympathy with Lisa Miller's decision to kidnap Isabella Miller-Jenkins.
- Lisa Miller received aid through CAM to continue her abduction of Isabella Miller-Jenkins.

(*see* Amended Complaint, ¶¶53, 54). Despite the allegation that Yoder testified that Lisa Miller was receiving aid from CAM in Nicaragua, the transcript of Yoder's testimony belies this assertion, and, in fact, states the opposite.

Furthermore, although the Amended Complaint correctly alleges that CAM is an Ohio corporation, it incorrectly asserts that CAM employs pastors and relief workers in Vermont, and that CAM, through its agents and employees, including Andrew Yoder, has contacts with the state of Vermont such that CAM is subject to the jurisdiction of this Court. As demonstrated by the Affidavit of Roman Mullet, attached hereto as Exhibit 2, CAM has no such contacts.

¹ *United States v. Kenneth L. Miller*, U.S. Dist. Ct. for the Dist. of Vt., Docket No. 2:11-cr-161-1 (2012) (hereinafter, "Miller Trial"). A copy of the certified transcript of the Testimony of Andrew Yoder, from Day 3 of the Miller Trial, is attached hereto as Exhibit 1.

² Although the Amended Complaint identifies Defendant Andrew Yoder as CAM's agent, it does not allege any liability against CAM based on an agency theory. As discussed in § I(D) below, there are no grounds to do so.

ARGUMENT AND LAW

I. The Amended Complaint Fails to State a Claim Against CAM upon Which Relief Can Be Granted.

A. Fed. R. Civ. P. 12(b)(6) Standard of Review.

The Supreme Court clarified the standard a complaint must satisfy to survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss in *Twombly*, 127 S. Ct. 1955. It stated that “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1964-65; *see also Coggins v. County of Nassau*, 07-CV-3624 (JFB) (AKT), 2008 WL 2522501 (E.D.N.Y. June 20, 2008) (Aff’d. in part, appeal dismissed in part and remanded sub nom.); *Coggins v. Buonora*, 362 F. Appx. 224 (2d Cir. 2010). Under this standard, even though a complaint need not contain detailed factual allegations, its “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true.” *Twombly*, 127 S. Ct. at 1965.

The complaint must contain sufficient factual matter to “state a claim for relief that is plausible on its face.” *Id.*, at 1955. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009), citing *Twombly*, at 1955. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, at 1955).

Twombly rejected the familiar Rule 12(b)(6) standard of *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957), that “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Twombly*, 127 S. Ct. at 1969 (quoting *Conley*, 355 U.S. at 45-46). The Court characterized the *Conley* rule as one “best forgotten as an incomplete, negative gloss on an accepted pleading standard.” *Twombly*, 127 S. Ct. at 1969.

Normally, in reviewing a motion to dismiss, the court is required to look only at the allegations on the face of the complaint, as well as any documents appended thereto. The Second Circuit, however, has established two exceptions to this rule:

First, courts may consider a document not appended to the complaint if the document is “incorporated in [the complaint] by reference.” [*Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007) (quoting *Cortec Indus. V. Sum Holding L.P.*, 949 F.2d 42, 47 (2d Cir. 1991), *cert. denied*, 503 U.S. 960, 12 S. Ct. 1561, 118 L.Ed.2d 208 (1992)]. Second, courts “‘take judicial notice of documents filed in other courts . . . not for the truth of the matters asserted in other litigation, but rather to establish the facts of such litigation and related filings.’” *Crews v. County of Nassau*, 06-CV-2610 (JFB), 2007 U.S. Dist. LEXIS 6572 at *5, 2007 WL 316568, n.2 (E.D.N.Y. Jan. 30, 2007) (quoting *Kramer v. Time Warner Inc.*, 937 F. 2d 767, 774 (2d Cir. 1991)).

Coggins, supra at *6. See, also, *Jasper v. Sony Music Entm’t Inc.*, 378 F. Supp. 2d 334, 338-39 (S.D.N.Y. 2005) (“on a motion to dismiss, a court may also consider matters ‘of which judicial notice may be taken under Fed. R. Evid. 201.’ (citations omitted) Included among such matters are public records, including pleadings, testimony and decisions in prior lawsuits.”); *Johnson & Johnson v. Am. Nat. Red Cross*, 528 F. Supp. 2d 462, 464 (S.D.N.Y. 2008) (the “hearing testimony is also incorporated in the Complaint by reference and constitutes a public record of which the Court can take judicial notice. The Court can therefore consider the entire hearing

testimony on this motion.”); and *Young v. Selsky*, 41 F.3d 47, 50 (2d Cir. 1994)) (taking judicial notice of defendant’s testimony in a previous action).

In discussing the Second Circuit’s exceptions to the rule that courts normally are required to look only at the allegations on the face of the complaint, the court in *Coggins* noted that, with regard to both exceptions, courts routinely take judicial notice of transcripts of related judicial proceedings at the motion to dismiss stage. *Coggins* at *7.

B. Contrary to the Allegations in the Amended Complaint, the Actions Attributed to CAM Are Not Supported by the Previous Testimony of Andrew Yoder.

The Miller Trial was presided over by this Court. It is particularly appropriate, therefore, for this Court to take judicial notice of the testimony of Andrew Yoder in that trial. In so doing, it will become evident that there is no basis for Plaintiff’s allegations against CAM in the instant case. Specifically, Yoder did not testify, as alleged in the Amended Complaint, that Lisa Miller was receiving aid from CAM while living in Nicaragua. To the contrary, Yoder testified repeatedly and consistently that CAM did not provide any support or aid whatsoever to Lisa Miller:

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

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

United States v. Kenneth L. Miller, U.S. Dist. Ct. for the Dist. of Vt., Case No. 2:11-cr-161-1, Transcript of Testimony of Andrew Yoder, Day 3 of Jury Trial (hereinafter, “Yoder Transcript”), p. 17, lines 17-21.

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

A. I don't recall.

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

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

Yoder Transcript, p. 18, lines 6-12.

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

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

Q. Why did that give you pause?

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

Yoder Transcript, p. 24, lines 6-12.

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

Ms. Cowles: Objection. I am not sure the witness knows the source of that.

The Court: Well, objection overruled. If he can testify as to the representation that the authorities at CAM made as to the reason why there was to be no contact with Lisa Miller.

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

Yoder Transcript, p. 37, line 19-p. 38, line 8.

Thus, it simply is not true that Andrew Yoder testified that CAM provided aid to Lisa Miller. Although Yoder testified that CAM was “sympathetic” with Lisa Miller’s case,³ the allegations that CAM did anything at all to assist her are completely without basis. Plaintiff has failed to identify any cause of action for which being sympathetic, or simply failing to report Lisa Miller’s presence in Nicaragua, would entitle Plaintiff to relief. CAM is therefore entitled to be dismissed.

C. Even if All of the Allegations Regarding CAM Are Taken to Be True, the Amended Complaint Nonetheless Fails to State Any Claim Upon Which Relief Can Be Granted, and CAM Should Therefore Be Dismissed.

1. Count One: Conspiracy to Commit and Aiding and Abetting the Commission of the Intentional Tort of Kidnapping.

Count One of the Amended Complaint alleges that CAM, along with a number of other named defendants, conspired with and aided and abetted Lisa Miller in the commission of the intentional tort of kidnapping. This claim fails not only because there is no private right of action for kidnapping under Vermont law, but also because the Amended Complaint does not contain factual allegations meeting the standard required by *Twombly*, 127 S. Ct. 1955, to survive a Fed. R. Civ. P. 12(b)(6) motion.

(a) Count One Should Be Dismissed Because it is Not Based on a Private Right of Action.

CAM incorporates by reference the arguments set forth in §IV(2) of the Motion to Dismiss for Lack of Personal Jurisdiction, Lack of Venue, and Failure to State a Claim on Behalf of Defendants Liberty University, Inc., *et al.* (ECF No. 54) (“Liberty Motion”). There is no recognized private right of action under Vermont or federal law for the intentional tort of

³ Yoder Transcript, p. 18, line 23.

kidnapping; *a fortiori*, there can be no private right of action for conspiracy to commit kidnapping. *Buck v. Prupis*, 529 U.S. 594, 120 S.Ct. 1608 (2000).

(b) Plaintiff's Claim that CAM Was Part of a Conspiracy to Commit Kidnapping Does Not Meet the Plausibility Standard Set Forth in *Twombly*, and Therefore Must Be Dismissed.

Even if an underlying right of action existed with regard to Count One of the Amended Complaint, Plaintiff nevertheless has failed to articulate a legally cognizable conspiracy claim against CAM. In order to state a claim upon which relief may be granted, a pleading must contain, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). As held by the Supreme Court in *Twombly*, 127 S. Ct. at 1959, in order to satisfy this requirement, "factual allegations must be enough to raise a right to relief above the speculative level." "A complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b)(6)." *DeJesus v. Sears Robuck & Co., Inc.*, 87 F.3d 65, 70 (2d. Cir.), cert. denied, 519 U.S. 1007, 117 S. Ct. 509, 136 L. Ed. 2d 399 (1996).

Count One of the Amended Complaint alleges, with regard to CAM, simply that CAM was one of a number of persons or entities that Lisa Miller "did conspire with, and was aided and abetted by." (Amended Complaint, at ¶64).

At best, the allegations that CAM "did conspire with" and "aided and abetted" Lisa Miller are nothing more than "a label and conclusion" which *Twombly* held to be insufficient to survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss. A thorough search of the remainder of the Amended Complaint for specific allegations regarding CAM yields only the allegations that Lisa Miller received aid from CAM, that CAM did not report her presence in Nicaragua to the authorities, and that CAM sympathized with her case. (Amended Complaint, ¶¶53 and 54.) As

set forth above, the allegation that Andrew Yoder testified that CAM provided aid to Lisa Miller is belied by the Yoder Transcript in the Miller Trial, and should not be taken as true for the purpose of ruling on CAM's motion to dismiss. Even if the allegation is taken as true, however, the totality of the allegations against CAM in the Amended Complaint does not create plausible grounds to raise a right to relief above the speculative level that CAM conspired with others to commit the intentional tort of kidnapping, or aided and abetted Lisa Miller in committing kidnapping. Simply put, even if CAM *had* provided aid to Lisa Miller once she was in Nicaragua, that neither means nor suggests that CAM had any involvement in the alleged kidnapping, which occurred prior to Lisa Miller's arrival in Nicaragua. Without some allegation that CAM played some part in Lisa's flight from the U.S. to Nicaragua, of which the Amended Complaint is barren, this cause of action fails as to CAM.

Liability for harm resulting to a third person based upon aiding and abetting the tortious conduct of another requires proof that the defendant (1) committed a tortious act as part of a common design with the other; (2) gave substantial assistance to the other knowing that the other's conduct was a breach of duty; or (3) gave substantial assistance to the other to accomplish a tortious result while also acting in a manner that was a breach of duty to the third person. *Montgomery v. Devoid*, 181 Vt. 154 (2006). In order to prove a conspiracy, a plaintiff must show the existence a corrupt agreement, an overt act in furtherance of the agreement, and membership in the conspiracy by each defendant. *Kashi v. Gratsos*, 790 F. 2d 1050, 1055 (2d. Cir. 1986). Plaintiff fails to allege any of these elements with respect to CAM. Indeed, Plaintiff acknowledges that CAM was not even notified about Lisa Miller or her custody case until November of 2009, when she was already residing in Nicaragua. (Amended Complaint at ¶53.)

The (untrue) allegation that CAM provided aid to Lisa Miller in Nicaragua, standing alone, does not support a claim that CAM was part of a conspiracy to assist Lisa's efforts to kidnap Isabella.

Plaintiff has pled no facts demonstrating entitlement to relief against CAM on a theory of conspiracy to commit kidnapping, or aiding and abetting the commission of the kidnapping.

As a matter of law, the claim must be dismissed.

2. Count Three: Conspiracy to Violate RICO.

Count Three of the Amended Complaint alleges conspiracy to commit a violation of the Racketeer Influence and Corrupt Organizations Act (RICO). The case law applicable to Plaintiff's RICO claims has been thoroughly briefed in the Liberty Motion. The arguments set forth therein with respect to Plaintiff's lack of standing because of the failure to allege a cognizable RICO injury; the failure to allege a cognizable RICO conspiracy claim in violation of 18 U.S.C. §1962(d); and the lack of standing because of the failure to state a claim under 18 U.S.C. §1962(c), are incorporated herein by reference.

Specifically, with respect to CAM, there simply are no allegations to support Plaintiff's claim that CAM conspired with Kenneth Miller to violate RICO through a pattern of racketeering.

The civil RICO statute, 18 U.S.C. §1962(c), makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." To establish a claim for a civil violation of §1962(c), "a plaintiff must show that he was injured by defendants' (1) conduct, (2)

enterprise, (3) through a pattern, (4) of racketeering activity.” *Azrielli v. Cohen Law Offices*, 21 F.3d 512, 520 (2d. Cir. 1994) (internal quotations omitted).

RICO defines “racketeering activity” to include a variety of criminal offenses, one of which is kidnapping. “Pattern of racketeering activity” is defined by RICO as requiring “at least two acts of racketeering activity” committed within a 10 year period. 18 U.S.C. §1961(5). To establish a pattern, a plaintiff must also prove that the predicate acts of racketeering activity by a defendant are “related, and that they amount to or pose a threat of continued criminal activity.” *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989).

To establish a RICO conspiracy, it is necessary to prove “ ‘the existence of an agreement to violate RICO’s substantive provisions.’ ” *U.S. v. Sessa*, 125 F.3d 68, 71 (2d. Cir. 1997), quoting *United States v. Benevento*, 836 F. 2d 60, 73 (2d Cir. 1987), cert. denied sub. nom., *Scarpa v. United States*, 522 U.S. 1065, 118 S. Ct. 731, 139 L. Ed. 2d 669 (1998). In other words, to establish that CAM was part of a RICO conspiracy, Plaintiff would be required to allege and prove that CAM not only agreed to associate itself with a RICO enterprise, but that it agreed to commit two predicate acts in furtherance of a pattern of racketeering activity in connection with the enterprise. *See, Cofacredit, S.A. v. Windsor Plumbing Supply Co., Inc.*, 187 F.3d 229 (2d Cir. 1999).

Plaintiff’s Amended Complaint contains no allegations that CAM, or any of its employees or agents (including Andrew Yoder) entered into any such agreements. “[U]nder any prong of §1962, a plaintiff in a civil RICO suit must establish a pattern of racketeering activity. To survive a motion to dismiss, this pattern must be adequately alleged in the complaint.” *Knoll*

v. Schectman, 275 Fed. Appx. 50, 51 (2d Cir. 2008), quoting *Spool v. World Child Int'l Adoption Agency*, 520 F.3d 178, 183 (2d Cir. 2008) (citation and internal quotation marks omitted).

Given the complete absence of anything more than the purely conclusory allegation that CAM conspired with Kenneth Miller to violate the RICO statute, the claim against CAM in Count Three of the Amended Complaint must be dismissed.

3. Count Four: Conspiracy to Violate Plaintiff's Civil Rights Under 42 U.S.C. §1985(3).

Count Four of the Amended Complaint alleges that the Defendants conspired to violate the civil rights of Janet Jenkins and Isabella Miller-Jenkins on account of gender, and to prevent the courts of Vermont from securing equal protection under the law of Janet Jenkins and Isabella Miller-Jenkins' parent-child relationship. (Amended Complaint, at ¶75.) Since Count Four fails to state a claim for relief under 42 U.S.C. §1985(3), this claim should be dismissed.

(a) The Amended Complaint Fails to State a Non-Conclusory Claim of Conspiracy Against CAM.

To prevail on a §1985(3) claim, Plaintiff must prove that the Defendants: (1) engaged in a conspiracy; (2) for the purpose of depriving Plaintiff of equal protection or equal privileges under the law; (3) took action in furtherance of the conspiracy; (4) deprived Plaintiff of the exercise of any right or privilege of a citizen of the United States; and (5) were motivated by discriminatory animus. 42 U.S.C. §1985(3), *See, also, New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1358 (2d. Cir. 1989) *cert. denied*, 495 U.S. 947, 110 S. Ct. 2206, 109 L. Ed. 2d 532 (1990). The Amended Complaint states merely that a conspiracy existed, but fails to allege facts that would show that the Defendants, motivated by animus, conspired to deprive Plaintiff of substantive rights. “[A] complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion

to dismiss.” *Boddie v. Schneider*, 105 F.3d 857, 862 (2d. Cir. 1997) (quoting *Leon v. Murphy*, 988 F.2d 303, 311 (2d Cir. 1993); *See, also, Webb v. Goord*, 340 F.3d 105, 110-11 (2d. Cir. 2003). (“[A] plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.” (internal citations omitted)).

The Amended Complaint makes no allegations regarding any agreement between CAM (or any of its employees or agents, including Andrew Yoder) and any other Defendant, let alone an agreement to achieve any unlawful end. Indeed, there are no allegations that CAM even knew of Lisa Miller until it was notified by Andrew Yoder of her presence in Nicaragua in November of 2009, after which CAM allegedly did nothing other than express sympathy for her plight and fail to notify the authorities of her whereabouts. As previously established, the only other allegation concerning CAM, i.e., that Andrew Yoder testified that CAM provided aid to Lisa Miller in Nicaragua, is belied by the transcript of Yoder’s testimony. Even if taken as true, however, the meager allegations against CAM are insufficient as a matter of law to raise a right to relief above the speculative level and require dismissal for failure to state a claim.

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

Based upon the legal arguments presented in the Liberty Motion and the Motion to Dismiss filed on behalf of Douglas Wright (ECF No. 40) (“Wright Motion”), Count Four should be dismissed due to the lack of any allegations upon which an invidiously discriminatory animus on the part of CAM (or any of the other Defendants, for that matter) against any recognized protected class could be based. Even if true, providing aid to Lisa Miller certainly provides no evidence of discrimination or animus toward women. If anything, it demonstrates the opposite.

Viewed in the light most favorable to Plaintiff, the Amended Complaint fails to state any claims concerning CAM which evince, even remotely, any illegally discriminatory action. CAM is entitled to the dismissal of Count Four for failure to state a claim upon which relief can be granted.

(c) The Amended Complaint Has Not Alleged, and Cannot Allege, State Action.

Again, for the reasons set forth in the Liberty and Wright Motions, Count Four must be dismissed as a matter of law. Even if the Amended Complaint properly pled CAM's participation in some agreement to violate Plaintiff's civil right to equal protection, she would be alleging a purely private conspiracy, which is not actionable under 42 U.S.C. §1985(3). Without state action, which Plaintiff does not even purport to allege here, there can be no cause of action. Hence, Count Four must be dismissed.

D. CAM Has No Vicarious Liability for the Actions of Andrew Yoder.

Although the Amended Complaint refers to CAM's former employee, Andrew Yoder, as CAM's "agent," there are no assertions that otherwise suggest that CAM has any vicarious liability because of Yoder's actions, nor would it be possible for Plaintiff make such a case. First and foremost, based upon all of the reasons stated herein, Plaintiff has failed utterly to articulate any cause of action based upon the commission of a tortious act for which either Yoder⁴ or CAM could be held liable. In addition, even if Yoder *had* committed a tortious act, in order for CAM to be held vicariously liable, Plaintiff would be required to allege and prove that such act was committed within the scope of Yoder's employment. *See, Brueckner v. Norwich Univ.*, 169 Vt.

⁴ *See*, Defendant Andrew Yoder's Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim, filed contemporaneously herewith.

118, 122-23 (1999). In order to establish that an employee's conduct falls within the scope of his employment, a plaintiff must demonstrate that the conduct:

- (a)...is the kind the servant is employed to perform; (b) ...occurs substantially within the authorized time and space limits; ... (c) ... is activated, at least in part, by a purpose to serve the master...

Id., quoting *Restatement (Second) of Agency* §228(1); *see, also, Sweet v. Roy*, 173 Vt. 418, 430-31 (2002). The conduct of an employee falls outside the scope of employment if it is “different in kind from that authorized, far beyond the authorized time and space limits, or too little activated by a purpose to serve the master.” *Restatement (Second) of Agency* §228(2); *Sweet*, 173 Vt. at 431.

It is difficult to imagine any set of facts that more perfectly epitomizes *Restatement (Second) of Agency* §228(2) than this one. Not only was Andrew Yoder not authorized by CAM to assist Lisa Miller in any capacity, he was specifically instructed not to do so. The only allegation in the Amended Complaint regarding any specific action by Yoder is the allegation that, while he was on furlough in the United States, he received and cashed a check which he suspected *might* somehow be related to Lisa Miller (Am. Complaint, ¶ 53), and then delivered the cash to Timo Miller after returning to Nicaragua following his furlough. As indicated by his testimony in the Miller Trial, he was hesitant to perform this favor for Timo Miller because of CAM's policy that “we were not to have anything to do with helping [Lisa Miller]” and he “thought [the check] could possibly have connections” to her. (Yoder Transcript, at p. 18.) Given these facts, any attempt by Plaintiff to argue that Yoder's actions are attributable to CAM on a theory of *respondeat superior* would be futile.

Most importantly, though, Plaintiff has failed to plead the elements of vicarious liability. Merely reciting that Yoder is sued both “individually and as [an] agent of CAM does not pass

muster; it is the sort of conclusory allegation, without factual support, which *Twombly* and *Iqbal*, *supra*, hold insufficient to state a claim. Absent any allegations that Yoder was acting in the course and scope of his employment at the time he engaged in the conduct at issue herein, Plaintiff has failed to state a claim against CAM arising from that conduct.

II. This Court Lacks Personal Jurisdiction Over CAM.

The Amended Complaint asserts that this Court has personal jurisdiction over CAM, an Ohio non-for-profit corporation, because it “employs pastors and relief workers around the world, including in the United States (including Vermont)” and because “through its agents and employees, including Andrew Yoder, [CAM] has sufficient contacts with the state of Vermont to subject it to the jurisdiction of this Court.” (Amended Complaint at ¶11.)

The truth of the matter, however, is that CAM has no employees in Vermont⁵, and Andrew Yoder, who has not been employed by CAM since October 2011, has been in Vermont only twice, both times pursuant to federal subpoena, to testify in the Miller Trial and proceedings leading thereto. Plaintiff has not met, and cannot meet, her burden of establishing personal jurisdiction over CAM.

The law with regard to personal jurisdiction has been well briefed in the Liberty Motion and the Motions to Dismiss filed herein by Defendants Philip Zodhiates and Response Unlimited, Inc., (ECF No. 57), and for the sake of judicial economy, will not be repeated herein. Suffice it to say, however, that CAM has neither the requisite “minimum contacts,” nor are its contacts and connections with the state of Vermont such that it should reasonably anticipate being haled into court here. *See, e.g., Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct.

⁵ See Affidavit of Roman Mullet, attached hereto and incorporated herein as Exhibit 2.

154, 158, 90 L. Ed. 95 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490 (1980); *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36, 40, 572 A. 2d 1382 (1385) (1990).

Since the subject matter of this lawsuit is unrelated to CAM's alleged contacts with Vermont, general, as opposed to specific, jurisdiction is at issue (*See, Viko v. World Vision, Inc.*, 2009 WL 2230919 (July 24, 2009) quoting *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d. Cir. 1996)), and a more stringent test is applied:

Courts impose a "more stringent" minimum contacts test for general jurisdiction, requiring the plaintiff to show that the "defendants' general business contacts with Vermont were continuous, systematic and of a sufficiently substantial nature as to permit a Vermont court to entertain a cause of action." *Bechard v. Constanzo*, 810 F. Supp. 579, 583 (D. Vt. 1992); See, also *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446, 72 S. Ct. 413, 96 L. Ed. 485 (1952) (explaining that a court may assert general jurisdiction over a foreign defendant only when the "continuous corporate operations within a state [are] thought so substantial and of such nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.").

Id. at *2.

Thus, Plaintiff must be able to establish that CAM has a sufficient physical presence in Vermont to meet the minimum contacts test. This, she cannot do. As set forth in the Affidavit of Roman Mullet, attached hereto and incorporated herein, CAM, a not-for-profit organization, is incorporated in Ohio. Its principal place of business is in Ohio. It has no employees or business agents, and makes no supervisory decisions in Vermont. It has neither an office nor a mailing address in Vermont, and neither owns nor leases property in Vermont. It has no operations located in Vermont. It does not pay taxes or hold assets or investments in Vermont, or derive any significant revenue in Vermont. While CAM has a mailing list of current and former donors that includes approximately 40 Vermont residents (0.006% of the state's population), it has

received donations from only a dozen or fewer Vermont citizens in each of the last of three years. Moreover, those donations have been nominal, constituting less than 0.01% of CAM's revenues during those years.⁶

In summary, CAM lacks the requisite continued and substantial contacts with the state of Vermont to justify suit against it in this state, under the minimum contacts test as described by this Court in *Viko*. Moreover, the question of jurisdiction over CAM on the basis of solicitation of *de minimus* contributions from a statistically insignificant percentage of the state's citizens, coupled with the fact that a former employee was present in the state briefly, pursuant to a federal subpoena, for the sole purpose of testifying in court, does not comport with notions of fair play and due process.

CAM should be dismissed for lack of personal jurisdiction.

CONCLUSION

Plaintiff's allegation that Andrew Yoder testified under oath that CAM provided aid to Lisa Miller in Nicaragua is patently false, as evidenced by the transcript of the testimony, of which this Court may, and should, take judicial notice. In the absence of the false allegation, the *only* allegations about CAM are that (1) CAM expressed sympathy for Lisa Miller's case; and (2) CAM failed to notify authorities that Lisa Miller was in Nicaragua. These allegations fail to state a claim for which relief can be granted under any of the theories propounded by Plaintiff. Even if the allegations regarding the provision of aid is taken to be true, the Amended Complaint still fails to state any legally sufficient claim for relief against CAM. CAM is entitled to the dismissal of all claims against it under Fed. R. Civ. P. 12(b)(6).

⁶ See Affidavit of Roman Mullet, attached hereto and incorporated herein as Exhibit 2.

CAM has also demonstrated that this Court lacks personal jurisdiction over it, such that Plaintiff's claims against it also should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

Accordingly, CAM respectfully requests that this Court grant its Motion to Dismiss.

Respectfully submitted,

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Attorneys for Christian Aid Ministries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Motion to Dismiss Claims Against Defendant Christian Aid Ministries, Inc. for Failure to State a Claim Upon Which Relief Can Be Granted and for Lack of Personal Jurisdiction* was filed electronically. Notice of this filing will be sent to all named parties by the operation of the Court's electronic filing system.

/s/ Thomas E. McCormick, Esq.
Thomas E. McCormick

Exhibit 1

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

APPEARANCES: PAUL J. VAN de GRAAF, ESQUIRE
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Representing the Defendant

DATE: August 10, 2012

TRANSCRIBED BY: Anne Marie Henry, RPR
P.O. Box 1932
Brattleboro, Vermont 05302

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

Exhibit 2

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 ROMAN MULLET

STATE OF OHIO)
) ss:
COUNTY OF HOLMES)

ROMAN MULLET, having first been duly cautioned, hereby affirms as follows:

1. I am the Secretary/Treasurer for Christian Aid Ministries, Inc. (“CAM”), one of the Defendants in this lawsuit. I have been employed by CAM since 1993, and I serve on CAM’s Executive Committee, which consists of the top-level management personnel, and therefore I am familiar with all of CAM’s operations. All statements herein are true and accurate and are made upon my own personal knowledge.

2. CAM is an Ohio nonprofit corporation, which was founded in 1981, and which qualifies as a 501(c)(3) tax-exempt organization. CAM distributes humanitarian aid and Christian literature, and provides disaster relief services in the United States and other countries.

3. CAM's administrative headquarters and principal place of business is, and always has been, located in Berlin, Ohio. CAM operates a distribution center in Pennsylvania and clothing centers in Indiana, Iowa, Illinois, and Pennsylvania. CAM also has staff and distribution networks located in various other countries.

4. CAM does not have any operations located in the State of Vermont, and never has operated in Vermont.

5. CAM does not own or lease property in Vermont, and never has done so.

6. CAM does not employ any Vermont residents, and to the best of my knowledge has never employed any Vermont residents.

7. CAM does not maintain an office or facilities of any kind within the State of Vermont, and never has done so.

8. CAM has never registered to do business in Vermont, has never been qualified to do business in Vermont, and has never appointed an agent for service of process in Vermont.

9. CAM does not have any vendors located in the State of Vermont, and has not transacted any business in Vermont or with persons or entities located in Vermont since 2003.

10. CAM does not pay income, property, or other taxes to the State of Vermont, and has never done so.

11. CAM does not bank in or hold assets of any kind in Vermont, and to the best of my knowledge has never done so.

12. CAM has never been a party to any lawsuits in any Vermont courts prior to this one.

13. CAM provides disaster response services in the form of coordinating teams of volunteers to rebuild natural disaster areas in the United States following floods, hurricanes,

earthquakes, tornadoes, and similar events. To the best of my knowledge, CAM has not provided any such services within the State of Vermont.

14. CAM receives financial support through donations received from individuals and organizations, a small number of which have been and are residents of Vermont. Over the past 10 years, the total amount of donations by Vermont residents has never exceeded \$8,000 in any year, which represents less than 0.01% of CAM's total annual support. Aside from communicating with these donors, CAM does not routinely target marketing or solicitation efforts toward Vermont media outlets or Vermont residents.

15. CAM has never employed, corresponded with, transacted business with, or engaged in any coordinated activities with Defendants Kenneth L. Miller, Lisa Ann Miller (fka Lisa Miller-Jenkins), Response Unlimited, Inc., Philip Zodhiates, Victoria Hyden (fka Victoria Zodhiates), Liberty University, Inc., Thomas Road Baptist Church, Inc., Linda M. Wall, or Douglas Wright, whether in the State of Vermont or otherwise.

16. CAM has never employed Defendant Timothy D. Miller, and has never corresponded with, transacted business with, or engaged in any coordinated activities with him in the State of Vermont, nor anywhere outside of Nicaragua.

17. At no time did CAM, its employees, or its volunteers, aid or assist Defendant Lisa Ann Miller (fka Lisa Miller-Jenkins) in any way, whether in the State of Vermont or otherwise. CAM personnel, including Defendant Andrew Yoder, encountered Lisa Miller and her daughter Isabella Miller in Managua, Nicaragua, in 2009 and early 2010. Neither CAM, nor its employees or volunteers, provided food, clothing, shelter, money, or property of any kind to Lisa Miller or Isabella Miller, nor did CAM, its employees, or its volunteers assist with or know about Lisa and Isabella's travel plans, paths, or destinations before they arrived in Managua or after

they left.

18. At no time did CAM, its employees, or its volunteers, conspire with any person or entity to aid or assist Lisa Miller in any way, whether in the State of Vermont or otherwise.

19. Defendant Andrew Yoder was affiliated with CAM from January 2008 through October 2011, during which he served in Managua, Nicaragua. Mr. Yoder has not been employed by or affiliated with CAM since October 2011. Mr. Yoder, like most CAM missionaries serving outside the United States, received a three-week furlough each year in which he could return to the United States, and during which he had no obligations to CAM and performed no duties on behalf of CAM. During those three weeks, Mr. Yoder was "off duty" and CAM did not control or direct his activities, nor was CAM made aware of his activities.

FURTHER AFFIANT SAYETH NAUGHT.

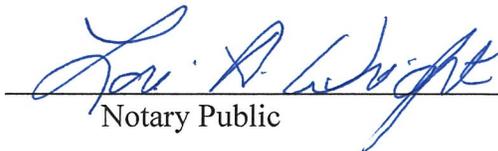


Roman Mullet

Sworn to and subscribed in my presence this 29th day of November, 2012.



LORI A. WRIGHT
Notary Public, State of Ohio
My Commission Expires
April 12, 2016



Notary Public

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:

Motion to Dismiss Claims Against Defendant Christian Aid Ministries, Inc.

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:

Frank H. Langrock, Esq., flangrock@langrock.com;

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Sophie Zdatny, Esq., szdatny@dinse.com; and

Ritchie E. Berger, rberger@dinse.com.

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

McCORMICK, FITZPATRICK,
KASPER & BURCHARD, P.C.

/s/ Thomas E. McCormick

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