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.

KENNETH L. MILLER, LISA ANN MILLER F/K/A LISA MILLER-JENKINS, TIMOTHY D. MILLER, ANDREW YODER, INDIVIDUALLY AND AS AN AGENT FOR CHRISTIAN AID MINISTRIES, INC., CHRISTIAN AID MINISTRIES, INC., RESPONSE UNLIMITED, INC., PHILIP ZODHIATES, VICTORIA HYDEN, F/K/A VICTORIA ZODHIATES INDIVIDUALLY AND AS AN AGENT FOR BOTH RESPONSE UNLIMITED, INC., AND LIBERTY UNIVERSITY AND ITS RELATED MINISTRY THOMAS ROAD BAPTIST CHURCH, INC., LIBERTY UNIVERSITY, AND ITS RELATED MINISTRY THOMAS ROAD BAPTIST CHURCH, INC., LINDA M. WALL, INDIVIDUALLY AND AS AGENT FOR THOMAS ROAD BAPTIST CHURCH, INC., AND DOUGLAS WRIGHT,

Defendants.

Civil Action
Docket No. 2:12-CV-00184-wks

PLAINTIFFS' RESPONSE TO MOTION TO DISMISS BY LIBERTY UNIVERSITY, INC., THOMAS ROAD BAPTIST CHURCH, AND VICTORIA HYDEN

Plaintiffs Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, by and through their attorneys, Sarah Star, Esq., Attorney and Counselor at Law, P.C. and Langrock Sperry & Wool, LLP, hereby oppose the Motion by Liberty University, Inc.,

Thomas Road Baptist Church, Inc. ("TRBC"), and Victoria Hyden ("Hyden") (hereinafter collectively the "Liberty Defendants") to Dismiss for Lack of Personal Jurisdiction, Venue, and Failure to State a Claim.

I. THE COURT HAS PERSONAL JURISDICTION OVER EACH OF THE LIBERTY DEFENDANTS.

A. Standard of Review for Personal Jurisdiction

On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), plaintiff bears the burden of establishing the court's jurisdiction over defendants. *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez,* 171 F.3d 779, 784 (2d Cir. 1999). However, if a forum's personal jurisdiction over a defendant is questioned before discovery has commenced, as it is here, the plaintiff only has to establish, *prima facie,* that personal jurisdiction is proper based on information in the complaint as well as supporting documentation in order to defeat the motion. *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990). This showing may rest solely on plaintiff's own pleadings, affidavits and supporting materials. *Tom and Sally's Homemade Chocolates, Inc. v. Gasworks, Inc.*, 977 F.Supp. 297, 300 (D.Vt. 1997). The court must assume all the factual allegations in the complaint are true, and resolve all doubts in plaintiff's favor "notwithstanding a controverting presentation by the moving party." *A.I. Trade Fin., Inc. v. Petra Bank*, 989 F.2d 76, 79-80 (2d Cir. 1993). Thus, at this early pre-discovery stage in the litigation, although the Liberty Defendants have submitted affidavits in opposition to the jurisdictional allegations in Plaintiffs' Amended Complaint, the Court must assume all factual allegations in the Amended Complaint as true and only has to find that Plaintiffs have made a *prima facie* showing of jurisdiction over these Defendants.

B. Defendants Liberty University, Victoria Hyden and TRBC Have Sufficient Minimum Contacts With Vermont For This Court to Assert Jurisdiction.

1. Personal Jurisdiction May Be Either General Or Specific.

To the extent that this is a diversity action[1], personal jurisdiction "is determined in accordance with the law of the state where the court sits, with federal law entering the picture only for the purpose of deciding whether a state's assertion of jurisdiction contravenes a constitutional guarantee." *Metro. Life Ins. Co. v. Robertson-Ceco Corp*., 84 F.3d 560, 566-567 (2d Cir. 1966). A federal court may exercise personal jurisdiction over a foreign defendant if the plaintiff makes a two-part showing: (1) that the defendant is amenable to service of process under the forum state's laws, and (2) that the court's assertion of jurisdiction under these laws comports with the requirements of due process. *Id.* Since Vermont's long-arm statute, 12 V.S.A. § 913(b) permits jurisdiction over foreigners to the full extent of the due process clause, the second prong, due process, is the relevant inquiry. *See Ben and Jerry's Homemade, Inc. v. Coronet Priscilla Ice Cream Corp.*, 921 F. Supp. 1206, 1209 (D.Vt. 1996).

The due process test involves two inquiries relating to minimum contacts and reasonableness. *Metro. Life Ins. Co.*, 84 F.3d at 567. In analyzing a defendant's contacts with the forum state, the court looks to "some act by which defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The defendant must have certain minimum contacts with the forum state so as to reasonably anticipate being haled into court there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287 (1980).

The minimum contacts analysis differs for the two types of personal jurisdiction: general and specific. *Gaffney v. Shelton*, 2012 WL 368683, *5 (D. Vt. Feb. 3, 2012). A court may assert

[1] The same standard applies for cases brought under 28 U.S.C. § 1331, federal question jurisdiction. *See, e.g., Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 243-44 (2d Cir. 2007); *Mrs. U.S. Nat. Pageant, Inc. v. Miss U.S. Organization, LLC*, 875 F.Supp.2d 211, 219 (W.D.N.Y. 2012).

general jurisdiction over a foreign defendant when its affiliations with the State are "continuous and systematic." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). Specific jurisdiction, on the other hand, relies upon an activity or occurrence that takes place in the forum state and is therefore subject to the State's regulation. *Id.* at 2846. While general jurisdiction addresses all affiliations a party may have with the forum state, specific jurisdiction is confined to the adjudication of issues deriving from or connected with the very controversy that establishes jurisdiction. *Goodyear Dunlop Tires Operations, S.A*, 131 S. Ct. at 2851 (internal citations omitted).

Specific jurisdiction may also be found even when a defendant has not acted within the jurisdiction if the defendant has engaged in intentional tortious conduct directed at a plaintiff in the forum and causing harm in the forum. *See Calder v. Jones*, 465 U.S. 783, 788, 104 S.Ct. 1482 (1984). Under *Calder*, intentional actions "directed at the plaintiff and having sufficient impact upon it in the forum" may give rise to specific jurisdiction. *IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 261 (3d Cir. 1998). Jurisdiction under *Calder* is appropriate when the forum state has been the "focal point of both the [alleged tort] and of the harm suffered," the defendants knew the plaintiff would suffer the "brunt" of the harm there, and they "expressly aimed" their actions at the state. *Chaiken v. VV Pub. Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997); *Libutti v. United States*, 178 F. 3d 114, 123 (2d Cir. 1999) (minimum contacts exist when defendant "purposefully directed" harmful effects of its activities at the forum state). This Court has held that minimum contacts for jurisdiction exist under *Calder* where foreign defendants knew that the "brunt of the injury" would be sustained in Vermont. *See Real Good Toys, Inc. v. XL Machine Ltd.*, 163 F. Supp. 2d 421, 425 (2001); *see also Audsley v. RBS Citizen, N.A.*, 2011 WL 1397312, *4 (D.Vt. April 11, 2011).

Once the requisite minimum contacts have been established, the court must then turn to the reasonableness inquiry. Plaintiffs must show that asserting jurisdiction over the defendant would not offend traditional notions of fair play and substantial justice. *Metro Life Ins. Co.*, 84 F.3d at 568. The five factors looked to when analyzing reasonableness are: (1) the burden on the defendant; (2) the forum state's interest in the dispute; (3) the plaintiff's interest in convenient and effective relief; (4) the interstate judicial system's interest in efficiently resolving the cases; and (5) the interest of all states in advancing their shared social policies. *Burger King*, 471 U.S. at 476-477. Where the requirement of minimum contacts has been met, however, "only the unusual case" will not satisfy the reasonableness inquiry. *Mansfield Heliflight, Mansfield Heliflight, Inc. v. Heli-One Canada Inc.*, 2012 WL 4479851, *9 (D. Vt. Sept. 28, 2012) (citing *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1170 (6th Cir. 1988)); *Metropolitan Life*, 84 F.3d at 575 ("dismissals resulting from the application of the reasonableness test should be few and far between").

C. Liberty University's Contacts With Vermont Are Sufficient To Establish Both General and Specific Jurisdiction.

1. The Court Has General Jurisdiction Over Liberty University.

Defendant Liberty University's contacts with Vermont are sufficiently "continuous and systematic" to subject it to general jurisdiction in this forum. *Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2851. Liberty University is a national institution that Defendants admit currently has twenty-nine residential students from Vermont. (Defendants' Ex. 1, Jerry Falwell Affidavit, ¶ 3). While this number may seem small to Liberty University, twenty-nine is actually a substantial number of students from a small state like Vermont attending an out of state university. In enrolling these students, Liberty University has entered into a financial transaction with each one of them. According to Liberty University's website, tuition and fees at

Liberty University are approximately $27,218 per student per year for the residential program. (Plaintiffs' Ex. A, Liberty Quick Facts). Thus, Liberty University is receiving nearly one million dollars of revenue from the State of Vermont and its residents, providing it with systemic and continuous contact with the forum.[2] *See Irving v. Rivera*, 2011 WL 5329726, *3 (D. Vt. Nov. 4, 2011) (business with several hundreds of thousands of dollars in fees in Vermont has continuously and systematically conducted business aimed at Vermont's market); *see also Sollinger v. Nasco Int'l, Inc.*, 655 F. Supp. 1385, 1388 (D. Vt. 1987) (sending catalogs to Vermont and entering into a transaction with a Vermont resident, even if transaction is not completed, constitutes purposeful direction of activities at resident of forum). Liberty Defendants' Motion to Dismiss does not discuss how many "online" students it has from Vermont in addition to residential students. The revenue Liberty University receives from Vermont residents and the number of financial transactions it has entered into with Vermont residents may actually be much higher than the 29 residential students would suggest, given that Liberty has only 12,600 residential students, and 80,000 online students. (Plaintiffs' Ex. A, Liberty Quick Facts). In addition to the stream of matriculating students and corresponding revenue that Liberty University receives from Vermont, Liberty University also markets itself to potential students in Vermont, and solicits donations through its website which is accessed in Vermont. *See* www.liberty.edu. (Plaintiffs' Ex. B, Liberty University Website). Liberty University students also travel to and participate in athletics in the State of Vermont. (Plaintiffs' Ex. C, Women's Hockey Schedule). These contacts are "continuous and systematic" enough for the Court to find that it has general jurisdiction over Liberty University. *Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2851.

[2] Presumably these 29 students are not the first and only Vermont residents to have attended Liberty University, and further inquiry will reveal a higher number of Vermont alumni and even more extensive financial

2. The Court Has Specific Jurisdiction Over Liberty University.

In addition to general jurisdiction, Liberty University also has numerous contacts with the State of Vermont from which this action arose and, therefore, is subject to specific jurisdiction. As set forth in the Amended Complaint, this action arises out of a conspiracy by Defendants to aid and abet Lisa Miller in evading Vermont Superior Court Orders. (Amended Complaint ¶¶ 64, 72.) Liberty University's employees/agents represented Lisa Miller in Vermont Superior Court proceedings and were directly involved in the litigation that gave rise to the Vermont Superior Court Orders at issue. Attorneys Mathew Staver and Rena Lindevaldsen applied to both the Vermont Superior Courts and Vermont Supreme Court on multiple occasions to appear *pro hac vice* before them and, based on her own affidavit in support of Defendants' motion to dismiss, Attorney Lindevaldsen personally appeared in the Vermont Supreme Court twice on Lisa Miller's behalf and participated in numerous Vermont Superior Court proceedings. (Defendants' Ex. 5, Lindevaldsen Aff at ¶ 7). In addition to Lindevaldsen and Staver, David Corry, the General Counsel of Liberty University (Plaintiffs' Ex. D, David Corry web biography), also appeared in the Vermont Superior Court on Lisa Miller's behalf. (Plaintiffs' Ex. E, Rutland Family Court docket sheet, *Miller-Jenkins v. Miller-Jenkins*). Significantly, David Corry works for Liberty *University*.

Such litigation contacts with Vermont by attorneys working for Liberty University are sufficient to give this Court jurisdiction over Liberty University. *See, e.g., Trinity Industries, Inc. v. Myers & Associates, Ltd.*, 41 F.3d 229, 231 (5th Cir. 1995) (finding personal jurisdiction in Texas over law firm where "[o]ver a three-year period [a name partner of the defendant firm] appeared *pro hac vice* for Trinity in the Northern District of Texas."); *Kan. Tpk. Auth. v. Barr*

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transactions.

Bros. & Co., 1989 WL 117314, at *2 (D. Kan. Sept. 11, 1989) (finding specific jurisdiction over lawyers and law firm, based on contacts including "moving for and obtaining admission *pro hac vice* to Kansas courts, entering into a contract with a Kansas law firm for services as local counsel, filing numerous pleadings and motions seeking relief in Kansas courts, appearing before and presenting arguments to Kansas courts, sending correspondence into the state, telephone communications into the state, attendance at depositions in the state and other discovery, including an inquiry under the Kansas Open Records Act."); *Willis v. Semmes, Bowen & Semmes*, 441 F. Supp. 1235, 1238–40 (E.D. Va. 1977) (establishing personal jurisdiction over law firm where attorney's legal representation of client brought him into Virginia for a bankruptcy proceeding in which settlement agreements were signed and submitted to the Court, concluding that "it should be reasonably clear that [defendant's] participation in the bankruptcy proceeding through its partner [] and through the agency of local counsel more than meets the 'transacting any business' ground for jurisdiction.").

Although Liberty Defendants assert that Liberty University is not subject to jurisdiction in Vermont because the Dean of its Law School, Mathew Staver, and its professor, Rena Lindevaldsen, were representing Lisa Miller in Vermont in their roles with Liberty Counsel as opposed to their employment roles with Liberty University, the facts alleged and discovered to date by Plaintiff suggest otherwise. The attorneys appearing in both the Vermont Supreme Court and Vermont Superior Court on Lisa Miller's behalf are and were at the time of representation high-level employees of Liberty University: the Dean of Liberty University School of Law and a Professor of Law, respectively. Although Staver's and Lindevaldsen's motions for admission *pro hac vice* in Vermont were submitted as exhibits to Liberty Defendants' Motion to Dismiss to show that these individuals were not employed by Liberty University at the time they practiced

in Vermont, that conclusion is simply not correct. According to her own affidavit, Attorney Lindevaldsen has been a fulltime professor at Liberty University from 2006 onwards (and was an adjunct professor before then) and she represented Lisa Miller beyond the time when Lisa Miller disappeared in September of 2009. In fact, Lindevaldsen sought and obtained readmission *pro hac vice* (over Janet Jenkins' objection) in June of 2010 in order to continue to press Lisa Miller's appeals in Court several months after Lisa Miller left the United States. (Plaintiffs' Ex. F, Lindevaldsen *pro hac vice* motion, June 2010). In addition, on numerous occasions Lindevaldsen corresponded with Janet Jenkins' attorney using an email address of "rlindevaldsen@liberty.edu" and with a signature block identifying her only as a faculty member at Liberty University, not "Special Counsel" at Liberty Counsel as Defendants' motion would have the Court believe. (Plaintiffs' Ex. G, Lindevaldsen Emails to Attorney Sarah Star.) Dean Staver also regularly gave public statements on the Lisa Miller litigation in his capacity of "Dean of the University School of Law." (Plaintiffs' Ex. H, Staver Press Statement.) Further, although Liberty Defendants do not mention his role at all, David Corry, the General Counsel of Liberty University, whose role includes representing "the University in all legal matters" (Plaintiffs' Ex. D, web biography of David Corry), also appeared in the Vermont Superior Court on Lisa Miller's behalf. In addition, Defendant Victoria Hyden is an employee of Liberty University, and Plaintiffs allege that Defendant Hyden aided and abetted Lisa Miller in fleeing the country with Isabella Miller-Jenkins. (Amended Complaint ¶ ¶ 64, 72, 75) Therefore, through the direct actions of its agents which relate to the substance of the allegations in this lawsuit, Liberty University is subject to specific jurisdiction in Vermont.

Even if the Court were to disregard Plaintiffs' allegations and the facts set forth above and find that Lindevaldsen and Staver only acted on behalf of Liberty Counsel in their

representation of Lisa Miller and involvement in the Vermont court system, Liberty University is still subject to specific jurisdiction in Vermont through the acts and contacts of Liberty Counsel. Liberty Counsel is an "agent" or mere "department" of Liberty University. *Koehler v. Bank of Bermuda Ltd.*, 101 F.3d 863, 865 (2d Cir. 1996). In assessing whether one company acts as the agent of another for jurisdictional purposes, "'the inquiry should not be limited to traditional alter-ego jurisprudence but should encompass whether or not there is a single functional and organic identity.'" *Mansfield Heliflight, Inc. v. Heli-One Canada Inc.*, 2012 WL 4479851, *6 (D. Vt. Sept. 28, 2012) (quoting *In re Latex Gloves Product Liability Litigation*, No. MDL 1148, 2001 WL 964105, * 3 (E.D.Pa. Aug. 22, 2001)). Liberty Counsel and Liberty University are such a "single functional and organic identity." High-ranking employees serve both entities and have intermingling duties. For example, the General Counsel of Liberty University who represents the University "in all legal matters" has appeared in litigation supposedly funded and sustained entirely by Liberty Counsel. (Plaintiffs' Ex. D.) Dean Staver has made public pronouncements on litigation between Plaintiff Jenkins and Lisa Miller in his capacity as Dean of the Liberty University School of Law. (Plaintiffs' Ex. H, Press Release.) In addition, in her capacity as attorney for Lisa Miller, Professor Lindevaldsen at Liberty University corresponded with opposing counsel as "Assistant Professor of Law, Liberty University School of Law" with a physical mailing address at Liberty University (Plaintiffs' Ex. G, Lindevaldsen emails to Sarah Star) despite later asserting that she had been acting only as "Special Counsel" to Liberty Counsel. (Defendants' Ex. 5). Also, Liberty Counsel's physical office is actually located in the Liberty University School of Law, on Liberty University's campus, and is listed on the Campus Map under "Administrative Office 1800." (Plaintiffs' Ex. I, Liberty University Campus Map.) Liberty University and Liberty Counsel also jointly operate the Liberty Center for Law and

Policy and hold themselves out to the public as "partners" and "affiliates." (Plaintiffs' Ex. J, Liberty Center for Law and Policy website). As this Court found in *Mansfield Heliflight*, the unity reflected in the entities' public pronouncements about their affiliated status is borne out by the conduct of Defendants' agents in holding themselves out to Plaintiffs and others as representing both entities. *See Mansfield Heliflight, Inc.*, 2012 WL 4479851 at *7. Given the interconnectedness of Liberty University and Liberty Counsel, both generally and in the circumstances of this case, Plaintiffs have made a *prima facie* case that the actions of Liberty Counsel should be attributed to Liberty University for the purposes of assessing the Liberty University's contacts with Vermont, and that those contacts are sufficient to maintain personal jurisdiction over Defendant Liberty University in this action.

D. Victoria Hyden's Intentional Acts Directed At Vermont Are Sufficient To Establish Jurisdiction Under *Calder v. Jones.*

Plaintiffs allege in their Amended Complaint that Victoria Hyden aided and abetted Isabella's kidnapping and that she participated in a RICO conspiracy to kidnap Isabella and conspired to violate Plaintiff's civil rights. (Amended Complaint ¶¶ 64, 72, 75.) The purpose of these actions was to intentionally harm Plaintiff Jenkins by depriving her of custody of her daughter, causing both emotional and financial damage, and depriving her right to equal protection under the law. Plaintiffs' Amended Complaint states that Victoria Zodhiates (now Hyden) knew of the Vermont Superior Court's order for Plaintiff Jenkins to have parent-child contact with Isabella. Nonetheless, Defendant Hyden aided and abetted Lisa Miller in evading that order and kidnapping Isabella. Specifically, Victoria Hyden solicited donations for supplies to send to Lisa Miller to enable her to stay out of the country, and also she assisted in arranging Lisa Miller's transportation when Lisa Miller left the country with Isabella in 2009. (Amended

Complaint ¶ 41.) These actions contributed to Isabella's kidnapping – which was an intentional tort directed at Plaintiff Jenkins, a Vermont resident. (Amended Complaint ¶ 41.)

When a plaintiff has alleged that a defendant has committed intentional torts, "minimum contacts" for purposes of jurisdiction exists "when a defendant has purposefully directed the harmful effects of his activities at the forum State" and the litigation results from alleged injuries that arise or relate to those activities. *LiButti v. United States*, 178 F.3d 114, 123 (2d Cir. 1999) (citing *Calder*, 465 U.S. at 789-90). This Court has found minimum contacts to exist where foreign defendants engaged in intentional and allegedly tortious actions expressly aimed at Vermont. *Stuart v. Federal Energy Systems, Inc.*, 596 F. Supp. 458, 462 (D.Vt. 1984) (minimum contacts exist in Vermont over employees of California corporation who committed fraud aimed at plaintiff in Vermont); *Real Good Toys, Inc.*, 163 F. Supp. 2d at 424-425 (minimum contacts exist where foreign defendants knowingly and willfully infringed on the copyright and trade dress of a Vermont corporation, while knowing that the "brunt of the injury" would be sustained in Vermont); *Audsley*, 2011 WL 1397312 at *4 (minimum contacts over foreign defendants found where foreign defendants committed intentional torts aimed at Vermont resident and her business with knowledge that brunt of harm would be felt in Vermont). Here, there is no doubt that the torts alleged by Plaintiffs, in which Victoria Hyden is alleged to have participated, were intentional and calculated to injure Plaintiff Jenkins in Vermont by depriving her of her parental rights in Vermont. In aiding and abetting Isabella's kidnapping, Defendant Hyden knew that the "brunt of the injury" would be sustained in Vermont where Plaintiff Jenkins resides and where the Vermont Superior Court ordered Plaintiff Jenkins to have parent-child contact with Isabella.

For the foregoing reasons, Defendant Hyden's intentional conduct, known and intended to cause injury in Vermont, is sufficient to give the Court jurisdiction over her. *See Real Good Toys, Inc.*, 163 F. Supp. 2d at 424-425.

E. Thomas Road Baptist Church's Intentional Acts Directed At Vermont Are Sufficient To Establish Jurisdiction Under *Calder v. Jones*.

This Court has specific jurisdiction over Defendant TRBC. Specific jurisdiction relies upon an activity or occurrence that takes place in the forum state and is therefore subject to the State's regulation. *Goodyear Dunlop Tires Operations, S.A,* 131 S. Ct. at 2846. In this case, TRBC, through its members, voluntarily attended and publicly demonstrated at hearings involving the custody of Isabella before the Vermont Superior Courts. The Amended Complaint alleges that TRBC's members traveled to Vermont specifically to attend hearings on Isabella's custody and would hold prayer meetings in Vermont or near the Vermont courthouses. (Amended Complaint ¶ 16.) Debbie Thurman, a member of TRBC (Plaintiffs' Ex. K, Stipulation) who ran a women's group at TRBC, provided internet updates of TRBC members who were traveling to Vermont for the hearings. (Plaintiffs' Ex. L, internet posting.) Plaintiff Jenkins saw TRBC members praying in the hallways of courthouses at Vermont hearings on Isabella's custody. (Plaintiffs' Ex. M, Jenkins Affidavit ¶10.) Through its members' voluntary involvement in custody proceedings in Vermont, TRBC has "purposefully directed [its] activities at residents of the forum" and this litigation results from alleged injuries that 'arise out of or relate to' those activities." *Sollinger*, 655 F. Supp. at 1388 (quoting *Burger King*, 471 U.S. at 472-472).

In addition, like Victoria Hyden, Defendant TRBC, through its members, committed intentional acts aimed at causing injury to Plaintiffs in Vermont and is subject to jurisdiction on the basis of those acts. *See Calder*, 465 U.S. at 788. The Amended Complaint alleges that

TRBC elders aided and abetted Lisa Miller in kidnapping Isabella and keeping her out of the country by packing her personal belongings to send to her in Nicaragua. (Amended Complaint ¶ 42.) Plaintiffs' Amended Complaint also alleges that TRBC members aided and abetted Lisa Miller by maintaining a post office box for "Friends of Lisa Miller" through which donations were accepted to assist Lisa Miller. (Amended Complaint ¶ 54.) TRBC members had knowledge of the Vermont Superior Court Order transferring legal and physical parental rights to Plaintiff Jenkins in Vermont and aided and abetted Defendant Lisa Miller in evading the Vermont Superior Court's Order. (Amended Complaint ¶ 43.) Plaintiffs' Amended Complaint alleges that TRBC members and pastors also went on television and publicly endorsed the kidnapping of Isabella and, thereby, the flagrant evasion of Vermont Superior Court Orders (Amended Complaint ¶ 51), and made threats on the internet, which were viewed by Plaintiff Jenkins in Vermont, to continue the abduction of Isabella and similarly situated children (Plaintiffs' Ex. M, Jenkins Aff ¶11).

When a plaintiff has alleged that a defendant has committed intentional torts, "minimum contacts" for purposes of jurisdiction exists "when a defendant has purposefully directed the harmful effects of his activities at the forum State" and the litigation results from alleged injuries that arise or relate to those activities. *LiButti*, 178 F.3d at 123 (citing *Calder*, 465 U.S. at 789-90). This Court has found minimum contacts to exist where foreign defendants engaged in intentional, and allegedly tortious actions, expressly aimed at Vermont. *Stuart*, 596 F. Supp. at 462; *Real Good Toys, Inc.*, 163 F. Supp. 2d at 424-425; *Audsley*, 2011 WL 1397312 at *4. Here, there is no doubt that the torts alleged by Plaintiffs, in which TRBC members participated, were intentional and calculated to injure Plaintiff Jenkins in Vermont by depriving her of her parental rights in Vermont. In aiding and abetting Isabella's kidnapping, Defendant TRBC, through its

members, knew that the "brunt of the injury" would be sustained in Vermont where Jenkins resides and where the Vermont Superior Court ordered Jenkins to have parent-child contact with Isabella.

For the foregoing reasons, both Defendant TRBC's purposeful actions within the forum during the custody litigation, *see Sollinger*, 655 F. Supp. at 1388, as well as its members' intentional conduct, known and intended to cause injury in Vermont, are sufficient to give the Court jurisdiction over TRBC in this action. *See Real Good Toys, Inc.*, 163 F. Supp. 2d at 424-425.

F. Asserting Jurisdiction Over the Liberty Defendants Complies With the Reasonableness Inquiry.

After determining that the exercise of jurisdiction over the Liberty Defendants is appropriate on the basis of Defendants' contacts with Vermont, the Court must assess whether the exercise of jurisdiction would be reasonable and in keeping with "traditional notions of fair play and substantial justice." *Mansfield Heliflight*, 2012 WL 4479851 at* 9, (quoting *Int'l Shoe*, 326 U.S. at 320). Where the requirement of minimum contacts has been met, "only the unusual case" will not satisfy the reasonableness inquiry. *Id*. (citing *Am. Greetings Corp.*, 839 F.2d at 1170); *Metropolitan Life*, 84 F.3d at 575 ("dismissals resulting from the application of the reasonableness test should be few and far between"). In making the reasonableness assessment, the Court looks to the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies and the shared interest of several states in furthering fundamental substantive social policies. *Burger King*, 471 U.S. at 477 (internal quotations omitted).

Applying these factors to the Liberty Defendants shows that exercising jurisdiction in Vermont will not violate notions of fair play and substantial justice. In *Tom and Sally's Homemade Chocolates*, the Court found that fair play and substantial justice were not offended when "the burden of litigating in an out of state forum would be no more for the defendant than it would be for Tom and Sally's [a Vermont Corporation] if the litigation were in [Defendant's home state]." 977 F. Supp. at 301. Here, litigation in Virginia would be an equal burden on Plaintiff Jenkins as litigation in Vermont would be on Defendants. Further, any burden on Defendants is mitigated because "[w]hile there are always costs to defending a lawsuit, particularly in a foreign state, that burden is far less today than it once was due to advances in communications and transportation." *Mansfield Heliflight*, 2012 WL 4479851 at *9 (quoting *Irving v. Revera*, 2011 WL 5329726, *4 (D. Vt. Nov. 4, 2011)). The Liberty Defendants' ability to litigate in Vermont is demonstrated by the fact that they have already taken the step of retaining Vermont counsel. *See id.* at *9. Plaintiff Jenkins, on the other hand, is a resident of Vermont who is a self-employed day-care provider and works from home. Requiring her to bring this litigation in another forum would be overly burdensome and would effectively require her to close her business. (Plaintiffs' Ex. M, Jenkins Aff. ¶ 1). *See Sollinger*, 655 F. Supp. at 1388 (Vermont craftsperson has interest in securing relief in a Vermont court).

With respect to Vermont's interest in having the dispute litigated here, Janet Jenkins, a Vermont resident, alleges that she was injured by the intentional actions of the nonresident defendants. As this Court has held, Vermont "has an interest in providing a forum for its citizens who have been injured by the intentional acts of nonresidents." *Audsley*, 2011 WL 1397312 at *5 (citing *McGee v. Intl. Life Ins. Co.*, 355 U.S. 220, 223 (1957)); *Retail Software Servs., Inc. v. Lashlee*, 854 F.2d 18, 24 (2d Cir. 1988). In addition, Vermont has an interest in seeing orders of

its own courts enforced. The Vermont Superior Court and Vermont Supreme Court have issued decisions regarding the custody of Isabella that are being consciously evaded by Defendant Lisa Miller with the assistance of the Liberty Defendants. Further, this Court is also where the criminal prosecutions of some of the individuals involved in the kidnapping of Isabella are pending, including Defendant Kenneth Miller.

In assessing whether litigation in Vermont would ensure the efficient administration of justice "courts generally consider where witnesses and evidence are likely to be located. *Metropolitan Life*, 84 F.3d at 574. Here, Plaintiff is a Vermont resident and her witnesses and evidence are located here. Defendants' witnesses are likely in Virginia so this factor does not favor either party.

Finally, the Court looks to the "common interests of the several states in promoting substantive social policies" to assess the reasonableness of the exercise of jurisdiction. *Metropolitan Life*, 84 F.3d at 575. Here, this factor weighs in favor of maintaining jurisdiction in Vermont as both Vermont and Virginia courts have repeatedly ruled since 2006 that Vermont has jurisdiction over the custody of Isabella. *See, eg.*, *Miller-Jenkins v. Miller-Jenkins*, 2006 Vt. 78, 912 A. 2d 951 (2006), *Miller-Jenkins v. Miller-Jenkins*, 49 Va. App. 88, 637 S.E.2d 330 (2006). The basis for this lawsuit arises in part from the Vermont custody order.

As these factors all weigh in favor of jurisdiction, Plaintiffs have made a prima facie showing of facts supporting the assertion of personal jurisdiction over the Liberty Defendants, such that maintaining this suit against them "does not offend the traditional notions of fair play and substantial justice." *See Int'l Shoe*, 326 U.S. at 316. Accordingly, the Liberty Defendants' Motion to Dismiss pursuant to F.R.C.P. 12(b)(2) should be denied.

II. VENUE IS PROPER IN THE DISTRICT OF VERMONT.

Under 28 U.S.C. § 1391(b)(2), venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . ." The Liberty Defendants wrongly contend that Vermont is not a viable venue for this action. On the contrary, a "substantial part" of the events underlying this suit occurred or were felt in Vermont, thus satisfying the venue requirements of § 1391(b)(2). In assessing venue, the Court should not be distracted by trying to determine whether more events occurred in Vermont or elsewhere. "Section 1391(b)(2) does not restrict venue to the district in which the 'most substantial' events or omissions giving rise to a claim occurred." *Daniel v. American Bd. of Emergency Medicine*, 428 F.3d 408, 432 (2d Cir. 2005).

The effects of Defendants' actions are felt in Vermont, as this is where Plaintiff Jenkins resides and where the Vermont courts ordered Plaintiff Jenkins to have custody of Isabella. These effects are a substantial part of the events alleged in the Amended Complaint and thus support venue in Vermont. *See Astor Holdings, Inc. v. Roski*, 2002 WL 72936, at *8 (S.D.N.Y. Jan. 17, 2002) ("Venue will usually exist where an act outside the district causes physical injury or other tortious effect inside the district."); *cf. State v. Doyen*, 165 Vt. 43 (1996); *State v. Wootten*, 170 Vt. 485 (2000). In addition, Defendant Lisa Miller actively litigated family law matters and subsequent appeals in Vermont, and in doing so she was represented by agents for Liberty University, as discussed in more detail above. Further, each of the actions by Defendants in planning the kidnapping of Isabella were intended to interfere with Plaintiff Jenkins' parental and custodial rights in Vermont.

Venue here is also proper under the more liberal RICO venue provision, 18 U.S.C. § 1965(a) and (b). "Congress intended the civil RICO venue provisions to be a liberalization to the federal venue statute. . . ." *City of New York v. Cyco.net, Inc.*, 383 F. Supp. 2d 544 (S.D.N.Y.

2005) (further noting that venue and personal jurisdiction merge into a single inquiry under the RICO venue provision). Indeed, "it is the policy in this Circuit to conflate personal jurisdiction and venue by reading the RICO venue provision to permit adjudication in any district where minimum contacts are established." *Id*. (citing *PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 71 (2d Cir. 1998)). Thus, for the reasons this Court has personal jurisdiction over the Liberty Defendants regarding the RICO claims, this Court is also the proper venue for this action.

III. PERSONAL JURISDICTION AND VENUE OVER ALL THREE LIBERTY DEFENDANTS ARE PROPER UNDER RICO.

Even if personal jurisdiction were not established as to each of the three Liberty Defendants under a traditional minimum contacts analysis, personal jurisdiction and venue would nonetheless be established over all three pursuant to 18 U.S.C. § 1965, the Racketeer Influenced and Corrupt Organizations Act ("RICO").[3]

Because RICO is a broadly remedial statute, Congress has included within the statutory framework a provision for extending personal jurisdiction and venue over individuals and entities which might not otherwise be subject to suit in a district. First, pursuant to § 1965(a), a civil RICO action may be instituted "against any person . . . in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." The Second Circuit has equated this standard with the traditional minimum contacts analysis:

> First, § 1965(a) grants personal jurisdiction over an initial defendant in a civil RICO case to the district court for the district in which that person resides, has an agent, or transacts his or her affairs. In other words, a civil RICO action can only be brought in

[3]As Liberty has correctly observed, Motion to Dismiss at p.23, n.10, in the Second Circuit personal jurisdiction and venue are merged into a single inquiry under the RICO jurisdiction statute, 18 U.S.C. § 1965, *see City of New York v. Cyco.Net, Inc.*, 383 F. Supp. 2d 526, 544 (S.D.N.Y. 2005)

> a district court where personal jurisdiction based on minimum contact is established as to at least one defendant.

PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71 (2d Cir. 1998).

It is § 1965(b) that gives the RICO jurisdiction statute its further power and reach, as § 1965(b) permits a single district to consolidate RICO litigation over numerous defendants in one district and one lawsuit. That subsection provides that in a civil RICO case when "the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States . . . ." 18 U.S.C. § 1965(b). The effect of this provision is that once the district has personal jurisdiction over any single defendant, it may also assert personal jurisdiction over every other defendant if required by the ends of justice.

> Section 1965(b) provides for nationwide service and jurisdiction over "other parties" not residing in the district, who may be additional defendants of any kind…. This jurisdiction is not automatic but requires a showing that the "ends of justice" so require.

PT United Can Co., 138 F.3d at 71. Thus, "when a civil RICO action is brought in a district court where personal jurisdiction can be established over at least one defendant, summonses can be served nationwide on other defendants if required by the ends of justice." *Corey v. Aztec Steel Building, Inc.*, 468 F.3d, 1226, 1231 (10th Cir. 2006).

A. Personal Jurisdiction is Proper Over the Liberty Defendants Under 18 U.S.C. § 1965(b) Because There is Personal Jurisdiction in Vermont Over Numerous Other Individual Defendants.

Even if personal jurisdiction were not available over all of the Liberty Defendants on a traditional minimum contacts analysis, it would nonetheless be available under § 1965(b) because several other defendants are clearly subject to minimum contacts jurisdiction in Vermont. If one of the defendants is subject to personal jurisdiction in Vermont, then § 1965(b)

permits the court to exercise personal jurisdiction over all "other parties," *see PT United Can Co.*, 138 F.3d at 71; *Corey*, 468 F.3d at 1231. Of course, jurisdiction over any one of the Liberty Defendants, as discussed above, would subject all other Defendants to jurisdiction in Vermont as well, pursuant to § 1965(b).

1. This Court Has Personal Jurisdiction Over Kenneth Miller.

Personal jurisdiction is easily established over Kenneth Miller. First of all, he was served personally while he was in Vermont. The Second Circuit's immunity from service based on attendance in court is inapplicable here, because the instant lawsuit involves "vindication of the same cluster of rights and interests" as the criminal case in which he appeared here. *Cabiri v. Assaie-Gyimah*, 921 F.Supp. 1189, 1194 (S.D.N.Y. 1996) (approving exception to immunity from service).

Moreover, Kenneth Miller was convicted of having aided and abetted an international parental kidnapping, pursuant to 18 U.S.C. § 1204. The same nexus of facts involved in his conviction supports the RICO predicate crime alleged here of kidnapping in violation of 13 V.S.A. § 2405(a)(2) and aiding in custodial interference in violation of 13 V.S.A. § 2451. It is well-established under Vermont law that custodial interference in violation of § 2451 can be prosecuted in Vermont despite the fact that the defendant performed no acts in Vermont, so long as the custodial parent improperly deprived of the child lives in Vermont. *State v. Doyen*, 165 Vt. 43 (1996) (Vermont has jurisdiction over defendant in prosecution for violation of 13 V.S.A. § 2451 where custodial parent resided in Vermont, even though defendant did not perform any acts in Vermont); *see also State v. Wootten*, 170 Vt. 485 (2000). Given Kenneth Miller's conviction in Vermont of a crime essentially identical to one of the three RICO predicate crimes alleged here, it is difficult to take seriously the Liberty Defendants' statement that "the Amended

Complaint does not and cannot allege that Kenneth Miller . . . performed 'some acts relevant to the RICO claim' in Vermont." (Motion to Dismiss at p. 25)

In any event, Kenneth Miller (along with the other defendants named herein) clearly participated in the common law tort of kidnapping Isabella Miller-Jenkins, a tort directed at a Vermont resident and whose effects are felt most keenly by Janet Jenkins, the custodial parent in Vermont. As discussed above, Kenneth Miller's participation in an intentional tort directed at Plaintiff Jenkins, a resident of Vermont, and the damaging effect of which is felt in Vermont subjects him to personal jurisdiction in the state.

Liberty's argument that Kenneth Miller cannot be subjected to personal jurisdiction in Vermont because § 1965(a) requires that a defendant's contacts be active at the time the suit is filed should be rejected. (Motion to Dismiss at p. 23.) First, Liberty's argument is incorrect as to § 1965(a). Liberty relies for this proposition on a single unpublished district court case, *Gates v. Wilkinson*, 2003 WL 21297296 (S.D.N.Y. June 4, 2003) (unpublished). However, that result flies in the face of the intent of the RICO statute, which was actually to *expand* the available bases for jurisdiction and venue. *City of New York v. Cyco.net, Inc.*, 383 F. Supp. 2d at 541 (18 U.S.C. § 1965 "allows[s] federal courts a more expansive jurisdictional reach than that permitted by Fed.R.Civ.P. 4(k)"). The Congressional directive with respect to RICO was to "liberally construe [it] to effectuate its remedial purposes." H.R.Rep. No. 91-1549 (1970), cited in *Corey*, 469 F.3d at 1231-32. In keeping with this directive, "Congress intended the civil RICO venue provisions to be a liberalization to the federal venue statute. . . ." *Cyco.net, Inc.*, 383 F. Supp. 2d at 544 (further noting that venue and personal jurisdiction merge into a single inquiry under the RICO venue provision). Personal jurisdiction based on minimum contacts does not require that the contacts be active when suit is filed; and courts have been clear that Congress intended

§ 1965 to expand, not shrink the available bases for asserting personal jurisdiction over a defendant in RICO cases. Even if the Liberty Defendants were correct that § 1965(a) failed to provide personal jurisdiction over Kenneth Miller, however, he would still be subject to suit in Vermont based on a traditional minimum contacts analysis, which does not require that a defendant be active in the jurisdiction at the very moment suit is filed.

Because the court has personal jurisdiction over Kenneth Miller, the court may also exercise personal jurisdiction over all Defendants, if the interests of justice require it.

2. This Court Has Personal Jurisdiction Over Lisa Miller.

Personal jurisdiction over Lisa Miller is easily established. She lived in Vermont between 2002 and 2003 and owned property in the state. (Plaintiffs' Ex. N, Complaint for Dissolution of Civil Union). Lisa Miller filed for dissolution of her civil union with Janet Jenkins in Vermont, sought child support and division of property, hired local counsel and out of state counsel to represent her in extensive litigation in Vermont, and participated actively in that litigation up until she fled the country in 2009. (Plaintiffs' Ex. E.) Clearly, like Kenneth Miller, she both committed a RICO predicate crime of custodial interference which could be prosecuted in Vermont, *see* 13 V.S.A. § 2451, and an intentional tort of kidnapping directed at a Vermont resident. Under either § 1965(a) or a minimum contacts analysis, Lisa Miller is subject to personal jurisdiction in Vermont, and therefore provides a basis for the other defendants to be sued here if the interests of justice require it.

3. This Court Has Personal Jurisdiction Over Timothy Miller.

Timothy Miller was charged by Criminal Complaint in the United States District Court for the District of Vermont with the crime of aiding an international parental kidnapping in violation of 18 U.S.C. § 1204, the same crime of which Kenneth Miller was ultimately convicted. (Plaintiffs' Ex. O, Criminal Complaint against Timothy Miller.) His participation in

that RICO predicate crime, like his participation in the intentional tort of kidnapping and the state crime of aiding in custodial interference, create personal jurisdiction over him in Vermont, just as they do for Kenneth Miller.

4. This Court Has Personal Jurisdiction over Response Unlimited, Inc.

General jurisdiction over Response Unlimited, Inc., can be established through Response Unlimited's active participation in the Vermont market. Response Unlimited is a direct mail company that manages and brokers contact lists (such as mailing lists, email address lists or phone number lists) for purchase by non-profits or businesses. Among the lists Response Unlimited sells is the "masterfile" for The Vermont Country Store, a business that is incorporated in and has its primary place of business in Vermont. (Plaintiffs' Ex. P, Response Unlimited Document, Vermont Secretary of State Document). Response Unlimited has continuously and systematically participated in the Vermont market through its business efforts, *see Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2851, and accordingly has subjected itself to general jurisdiction in the State.

B. The Ends of Justice Require Assertion of Personal Jurisdiction Over All Defendants in the District of Vermont.

The Second Circuit has not addressed the meaning of the "ends of justice" requirement in 18 U.S.C. § 1965(b), other than to note that "the statute does not specify what 'the ends of justice' are." *PT United Can Co.*, 138 F.3d at 71, n.5 (district court's interpretation of the phrase not challenged by the appellant); *see also Suarez Corp. Industries v. McGraw*, 71 F. Supp. 2d 769, 778 n.7 ("The Second Circuit expressed no opinion on the issue, as it was not raised in that case.").

The Tenth Circuit, however, has opined that the "ends of justice" requirement of § 1965(b) is a "flexible concept uniquely tailored to the facts of each case." *Corey*, 468 F.3d at

1232. In a lengthy analysis of the statute, *Corey* held that the flexible standard was mandated in part by the "congressional directive to 'liberally construe [RICO] to effectuate its remedial purposes.'" *Id.* (quoting H.R.Rep. No. 91–1549 (1970)).

Corey specifically rejected the restrictive "ends of justice" definition adopted by the Ninth Circuit in *Butcher's Union Local No. 498, United Food and Commercial Workers v. SDS Inv., Inc.*, 788 F.2d 535 (9th Cir. 1986). In *Butcher's Union*, the court held that the "ends of justice" inquiry is satisfied only if no other district court could exercise personal jurisdiction over all the defendants. *Id*. at 539. As *Corey* explained, the restrictive reading of "ends of justice" could mean that:

> some RICO violations would go unpunished whenever organized criminals operate within the same locale and cause harm in a distant state. Insulating such a criminal enterprise from liability, when, for instance, the victim is unable to finance long-distance litigation, is not consistent with RICO's purpose.

468 F.3d at 1232. This concern is particularly apt in this case, where well-financed and organized conspirators acted out of state to frustrate the legitimate interests of a Vermont resident who lacks the resources to prosecute the case elsewhere.

Corey also referred to the antitrust legislation on which RICO is modeled, and noted that in that context, the United States Supreme Court has specifically "rejected the notion that a confluence of defendants within a single judicial district controls the 'ends of justice' analysis." *Corey*, 468 F.3d at 1232 (citing *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 46 (1911)).

Taken as a whole, the reasoning of the Tenth Circuit in *Corey* adopting a flexible and case-specific definition of § 1965(b)'s "ends of justice" requirement is persuasive and should be adopted here. *See also Rolls-Royce Corp. v. Heros, Inc.*, 576 F. Supp. 2d 765, 782 (N.D. Tex. 2008) ("The court agrees with the reasoning of *Corey* and declines to follow the Ninth Circuit's restrictive interpretation of § 1965(b)" with respect to the "ends of justice.").

Given the facts and circumstances of this case, the ends of justice require that jurisdiction be exercised over the Defendants in Vermont. Not only is Plaintiff Jenkins a Vermont resident and the victim in this case; in many ways, the State itself is an aggrieved party. Vermont's laws and court orders have been egregiously and contemptuously violated through the defendants' conspiracy, and the State has an interest in seeing justice done. Moreover, two co-conspirators have been prosecuted criminally in the District of Vermont for their related acts, and one of them has been found guilty after trial. The Court thus has a continuing interest in the facts of the conspiracy. Finally, while the co-conspirators performed many of their individual acts in Virginia, the entire impact of their conduct was felt in Vermont, and none of it in Virginia. Indeed, Lisa Miller and her counsel repeatedly attempted to thwart Vermont jurisdiction over the custody case involving Isabella, and asserted in the courts of both Vermont and Virginia that Virginia was the proper state to adjudicate Isabella's custody. *See, eg*., *Miller-Jenkins v. Miller-Jenkins*, 2006 Vt. 78, 912 A. 2d 951 (2006); *Miller-Jenkins v. Miller-Jenkins*, 49 Va. App. 88, 637 S.E.2d 330 (2006). However, both Vermont and Virginia's Supreme Courts rejected Lisa Miller's assertions, and held that Vermont had exclusive jurisdiction over matters involving Isabella's custody. *Id*. In effect, Virginia has already declared that Vermont has the greater interest here.

Even if this court were to adopt the restrictive definition of "ends of justice" proposed by the Ninth Circuit in *Butcher's Union*, that no other district has jurisdiction over all the defendants, Vermont would still properly exercise jurisdiction over the Liberty Defendants in this case. As the Liberty Defendants concede, Defendants Timothy Miller, Andrew Yoder and Christian Aid Ministries all lack contacts with Virginia. To the extent that those Defendants

conspired with other Defendants in racketeering activities, that conspiracy supports Vermont jurisdiction more readily than it does Virginia, as the conspiracy was directed toward Vermont.[4]

IV. THE AMENDED COMPLAINT STATES CLAIMS UPON WHICH RELIEF MAY BE GRANTED.

A. Standard of Review for a Motion to Dismiss Under Rule 12(b)(6).

The Liberty Defendants recognize, as they must, that under Rule 12(b)(6), the Court must accept as true all factual allegations, drawing all reasonable inferences in the plaintiff's favor. (Motion to Dismiss at p. 31). *Ball v. Metallurgie Hoboken–Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990) (stating that the court assumes the truth of the plaintiff's factual allegations for purposes of a Rule 12(b)(6) motion). Ultimately, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679 (brackets added; citation omitted).

B. Plaintiffs Have Properly Stated and Pled a Common Law Tort of Kidnapping.

The Liberty Defendants take the position that there is no private right of action for intentional tort of kidnapping, but they fail to point to any affirmative law saying this. Rather, the Liberty Defendants assert that since criminal statutes do not, in and of themselves, create private rights of actions and since kidnapping is a crime, there is no private right of action. This is a false syllogism. The mere fact that kidnapping is a crime does mean there is no separate

[4] Liberty suggests that Virginia could exercise jurisdiction even over non-residents because the Fourth Circuit, unlike the Second, finds nationwide service of process under § 1965(d), and therefore does not apply an "ends of justice" test at all as a prerequisite for nationwide service. In other words, Liberty invites this Court to find that Virginia has jurisdiction over all defendants based on a reading of 18 U.S.C. § 1965 that the Second Circuit has deemed to be erroneous. The Court should reject that suggestion.

tort.[5] In fact, the overwhelming majority of jurisdictions that have considered the question have found a common law tort for interference with parental rights. The Iowa Supreme Court determined that "the claim for interference with custody rights appears to have been recognized in every jurisdiction which has addressed the issue." *Wood v. Wood*, 338 N.W.2d 123, 124-125 (Iowa 1983). In *Wood*, the Court explicitly recognized that the tort claim was one of a number of tools in the arsenal against "child snatching," and that it was likely to be more effective than criminal prosecution to "prevent child snatching and to pick up the pieces when it does occur." *Id.* at 126.

Similarly, in *Wyatt v. McDermott*, 283 Va. 685 (2012) the Virginia Supreme Court recognized tortious interference with parental rights as a cause of action, stating that "[t]he overwhelming majority of the high courts of our sister states that have considered the issue have also recognized such a tort, many of them tracing its evolution in the common law."[6] The *Wyatt*

[5] Defendants rely on *Madden v. Abate*, 800 F. Supp. 2d 604, 606-07 (D. Vt. 2011) for the proposition that the existence of a criminal statute does not create a tort. It is true that in *Madden*, this Court did find that existence of a criminal statute prohibiting certain conduct does not in and of itself create a private right of action that may be brought by the victim of that conduct. However, in dismissing Madden's claim for sexual assault (the Court allowed plaintiff's claim for battery to continue), the Court stated that it was doing so because the plaintiff did not cite "other authority suggesting the existence of a civil action for 'sexual assault' under Vermont law" and did "not provide a substantive response to the lack of precedent supporting her position" or "provide the Court with any helpful suggestions as to what authority the Court should draw on to determine the elements of such a claim in the absence of any case law recognizing a civil action for sexual assault." *Id.* at 607.

[6] As cited in *Wyatt*: *See, e.g.*, *Anonymous v. Anonymous*, 672 So.2d 787, 789, (Ala.1995) (noting that the Restatement (Second) of Torts § 700 does not represent a new tort in Alabama but rather "accurately reflects the common law principle that parents have a right to the care, custody, services and companionship of their minor children, and [that] when they are wrongfully deprived thereof by another, they have an action therefor" (internal quotation marks omitted)); *Washburn v. Abram*, 122 Ky. 53, 90 S.W. 997, 998 (1906) (concluding that, although the common law right of action historically arose from the right of the father to recover for lost services of his child and such allegations are necessary for recovery, "[i]t matters not whether the child [actually] renders such services; and [the parent] is not confined in a recovery to the loss of services alone, but may recover damages for injury to his feelings and the loss of companionship of his child"); *Khalifa v. Shannon*, 404 Md. 107, 945 A.2d 1244, 1248-62 (2008) (recognizing a common law action of interference with parental-child relations against one who abducts and/or harbors a child, and, in a thorough discussion of the evolution of the common law, finding that loss of services was never a substantive element of the common law tort but rather tied to certain ancient English forms of remedy); *Plante v. Engel*, 124 N.H. 213, 469 A.2d 1299, 1302 (1983) (holding the intentional aiding and abetting in the interference of parental rights to be an actionable tort in New Hampshire); *Silcott v. Oglesby*, 721 S.W.2d 290, 293 (Tex.1986) (recognizing that the common law had evolved to substantially track the Restatement (Second) of Torts § 700); *Kessel v. Leavitt*, 204 W.Va. 95, 511 S.E.2d 720 (1998) (upholding a finding of tortious custodial

court recognized that the common law right of a parent to establish and maintain a relationship with a child "necessarily implies a cause of action for interference with that right. To hold otherwise in this case would be to recognize 'a right without a remedy – a thing unknown to the law." *Id*. at 693.

The Supreme Court of Florida has also recognized the tort of intentional interference with a custodial parent-child relationship. *Stone v. Wall*, 734 So. 2d 1038, 1047 (Fla. 1999) ("We find that present day conceptions of right and justice compel us to join the overwhelming majority of jurisdictions that have, through decisional law, recognized this common law tort."). At the time of the *Stone* decision, sixteen other states had recognized the tort of intentional interference with the custodial relationship. *See id*. at 1043 n.6.

Similarly, the Supreme Court of West Virginia set forth the following elements for the offense, which were cited with approval in *Stone*, 734 So. 2d at 1042:

> (1) the complaining parent has a right to establish or maintain a parental or custodial relationship with his/her minor child; (2) a party outside of the relationship between the complaining parent and his/her child intentionally interfered with the complaining parent's parental or custodial relationship with his/her child by removing or detaining the child from returning to the complaining parent, without that parent's consent, or by otherwise preventing the complaining parent from exercising his/her parental or custodial rights; (3) the outside party's intentional interference caused harm to the complaining parent's parental or custodial relationship with his/her child; and (4) damages resulted from such interference.

Kessel v. Leavitt. 511 S.E.2d 720, 765-66 (W. Va. 1998).

These cases all rely, at least in part, on the recognition of the tort of custodial interference in the Restatement (Second) of Torts § 700 (1977):

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interference against maternal grandparents, uncle, and mother's attorney, but not the child's mother, due to her equal parental rights).

> Causing Minor Child to Leave or Not Return Home
>
> One who with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him is subject to liability to the parent.

While the Vermont Supreme Court has not expressly weighed in on this question, it frequently cites the Restatement (Second) of Torts as persuasive authority. *See*, *e.g.*, *Lay v. Pettengill*, 191 Vt. 141, 150 (2011) (citing Restatement (Second) of Torts §§ 545 and 551); *Kennery v. State*, 191 Vt. 44, 51-52 (2011) (citing Restatement (Second) of Torts § 324A).

Given the fundamental right of a parent to be free from unreasonable interference with the parent-child relationship, the overwhelming majority of jurisdictions that have found such interference to be actionable, and the long-standing position stated in Section 700 of the Restatement (Second) of Torts that an abduction is a tort, there can be no doubt that Plaintiffs may pursue a tort claim of kidnapping against Defendants here.

C. Plaintiffs Have Stated Claims under Civil RICO.

The RICO counts against the Liberty Defendants are adequately pled and Plaintiffs have standing to pursue those claims. Plaintiff Jenkins for herself and for her daughter Isabella are seeking to hold responsible the individuals and entities that were and are involved in conspiring to keep Plaintiff Jenkins from her daughter and, hopefully, to lead to Isabella's return.[7]

1. Substantive RICO Claim under 1962(c).

Under 18 U.S.C. § 1964(c),"Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court[.]" Here, Plaintiffs allege a violation of §1962(d) by the Liberty Defendants (and

[7] The Liberty Defendants' notion that it is an improper use of the courts to put pressure on individuals and entities to reveal the whereabouts of the kidnapped child is patently misguided. The point of a lawsuit involving child abduction is not to replace the child with money, but to make the kidnapper feel the financial pressure in order to achieve justice.

others who are not part of this Motion to Dismiss). A claim under §1962(d) is predicated upon a substantive violation of the RICO statute. Plaintiffs have clearly stated a claim that Kenneth Miller violated § 1962(c), and that the Liberty Defendants have conspired with him and others, including Lisa Miller in violation of §1962(d).

To establish a claim for a civil violation of section 1962(c), "a plaintiff must show that he was injured by defendants' (1) conduct (2) of an 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). A RICO enterprise is "a group of persons associated together for a common purpose of engaging in a course of conduct," the existence of which is proven "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *United States v. Turkette,* 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). Although the enterprise must be engaged in, or the activities of the enterprise must affect, interstate or foreign commerce, 18 U.S.C. § 1962, this element can be satisfied by showing only "a minimal effect on interstate commerce." *De Falco v. Bernas,* 244 F.3d 286, 309 (2d Cir.2001); *see also United States v. Barton,* 647 F.2d 224, 233 (2d Cir.1981) (noting that the "impact" on interstate commerce "need not be great"). RICO defines "racketeering activity" to include an array of criminal offenses, which are in turn defined by federal and state law and can include an act or threat involving kidnapping that is chargeable under state law. *See* 18 U.S.C. § 1961(1). Predicate acts or threats involving state law violations can include conspiracies to violate state laws. "Conspiracy can properly be charged as a predicate act of racketeering under RICO, at least when it involves any of the substantive offenses listed in section 1961(1)(D)". *U.S. v. Weisman*, 642 F. 2d 1118, 1124 (2nd Cir. 1980). Other courts have similarly held. *See U.S. v. Licavoli*, 725 F.2d. 1040(6th Cir. 1983) (because murder and conspiracy to commit

murder are separate offenses under state (and federal) law, and because both "involve" murder within the meaning of § 1961(1)(A), both are viable predicate acts.)

Further, RICO defines "pattern of racketeering activity" as requiring "at least two acts of racketeering activity" committed in a 10 year period. 18 U.S.C. § 1961(5); *see also Azrielli*, 21 F.3d at 520 ("In order to show such a pattern, a plaintiff must show at least two predicate acts committed in a 10–year period."). To establish a pattern, "a plaintiff must also make a showing 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." *Cofacredit, S.A. v. Windsor Plumbing Supply Co., Inc.*, 187 F.3d 229, 242 (2d Cir. 1999) (internal quotation, citation, and emphasis omitted). The pattern can be either open-ended or closed-ended, as discussed in greater detail below. *See id.*

Here, the Liberty Defendants do not contest that the majority of the substantive RICO elements are adequately alleged. The uncontested elements are that Kenneth Miller participated in the affairs of the Brotherhood, that the Brotherhood is an enterprise within the meaning of the RICO statute that is engaged in interstate commerce, and that Kenneth Miller committed a number of predicate acts. The predicate acts that are alleged include acts or threats involving kidnapping (including conspiracy) under state law, and federal crimes of money laundering and mail fraud. Specifically it is alleged that Kenneth Miller conspired with others, including Lisa Miller and the Liberty Defendants to 1) abduct Isabella in advance of September 25, 2009 in violation of the September 4, 2009 Interim Order of the Rutland Family Court (Amended Complaint ¶¶ 32, 36, 40); and then 2) keep Isabella away from Janet Jenkins after the January 1, 2010 transfer of custody date, in violation of the November 20, 2009 Order of the Rutland Family Court. (Amended Complaint ¶¶ 43) It is alleged that he accomplished this goal by

engaging and conspiring with others, including the Liberty Defendants, to engage in more racketeering acts, including violations of federal money laundering and mail fraud statutes. The Complaint specifically states in Count 2 that Kenneth Miller committed:

> Acts or threats involving kidnapping which are chargeable as such under Vermont law (13 V.S.A. 2451, 13 V.S.A. 2405(a)(2)) and many other state laws throughout the United States, including aiding and abetting kidnapping for the aforementioned purpose of violating the September 2009 custody order and the November 20, 2010 custody order.

(Amended Complaint ¶ 66a)

The only elements contested by the Liberty Defendants are that the racketeering acts alleged formed the requisite "pattern." and that the Plaintiffs have suffered cognizable RICO injuries. The Liberty Defendants do not challenge that the predicate acts alleged fall within the definitions of racketeering activity as defined in §1961(5). As discussed below, the Plaintiffs have adequately alleged both a pattern of racketeering activity and RICO injury.

(a) Plaintiffs Have Sufficiently Pled a Pattern of Racketeering Activity.

A pattern of racketeering activity under RICO can either be "open-ended" continuity or "closed-ended" continuity. *See Cofacredit*, 187 F.3d at 242-44. The Amended Complaint clearly alleges both an open ended and closed ended pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) in that these racketeering acts are continuous, have occurred over a period exceeding two years, will continue into the, future, and pose the threat of continuing for years. (Amended Complaint ¶ 67).

(i) Open-Ended Continuity is Adequately Alleged.

To satisfy open-ended continuity, the plaintiff need not show that the predicates extended over a substantial period of time but must show that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed. *Cofacredit* at 242–

43, 97 S.Ct. 441. However, "Where the enterprise primarily conducts a legitimate business, there must be some evidence from which it may be inferred that the predicate acts were the regular way of operating that business, or that the nature of the predicate acts themselves implies a threat of continued criminal activity." *Cofacredit, S.A.* at 229, 243; *see also Hj Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 243 (1989).

Plaintiffs agree that the Beachy Amish Mennonite Christian Brotherhood is not a primarily criminal enterprise – it is primarily a religious sect. However, the nature of the conspiracy to commit parental kidnapping by its very nature is a "continuing" activity. It started in 2008 when Lisa Miller first conspired with Linda Wall and it continues to this day.[8] These facts are sufficient to show that the predicate act of conspiracy is, by its very nature, continuing, and that it poses a risk of continuing into the future. The Brotherhood continues to aid and abet Lisa Miller's criminal activity. (Amended Complaint ¶ 61). Plaintiffs also adequately allege that the Defendants' actions and the actions of the enterprise pose a risk of other acts of parental kidnapping because this crime has been held out as an example of how same-sex parents and their children should be treated.[9] Linda Wall appeared on television to compare herself to Harriet Tubman, and took to Facebook to further promote and garner support for the illegal activities of Lisa Miller and others like her. (Amended Complaint ¶¶ 51, 52). Debbie Thurman, who ran a women's recovery group at TRBC, insisted that "there was no other way" to deal with the rights of same-sex parents than to break the law and commit "civil disobedience," that is,

[8] This Court has already recognized that the parental kidnapping of Isabella is a continuing offense in its decision on Kenneth Miller's motion to dismiss for lack of venue. *United States v. Miller*, 2012 WL 14353310 (D. Vt. 2012).

[9] While clearly there is First Amendment protection for speech, including reprehensible speech, the fact of the speech and what is said can still be used to show motive, knowledge, involvement, and approval of the scheme to abduct children of same-sex marriage. One can freely say without governmental interference that gays should not be allowed to have children and if they do, the children should be taken from them. However, the statement is also made with the risk that it can also be used as evidence of involvement and support.

kidnapping. (Amended Complaint ¶ 45) These agents and employees of Defendant TRBC, by their own actions and words more than "imply" a threat of continued criminal activity – they openly call for it. In addition, The Brotherhood has made statements in support of the continuing kidnapping of Isabella after January 1, 2010. The February 2012 statement released by the brotherhood, cited in part in paragraph 61 of the Amended Complaint is attached in full as Plaintiffs' Exhibit T, and additionally states:

> We cannot accept that a lesbian union is a binding one, even though man is trying to say it is. God's Word says that marriage consists of a union between a man and a woman (Genesis 2.24 with Mathew 19.3-6). Who is man to change God, our creator's, eternal laws? Therefore Lisa's ex-partner has no connection with Lisa's daughter.

Hence, the open-ended continuity requirement is met because of the duration and ongoing nature of this crime, as well as the risk that the Defendants and the Brotherhood will continue to engage in this type of criminal activity.

Most importantly, every day that Lisa Miller is helped in her abduction and concealment of Isabella the ongoing criminal activity continues. The Liberty Defendants do not set forth any case law or factual argument that the continued abduction and concealment of a child is not continuing criminal activity.[10] The most the Defendants could come up with is a case in which the court concluded that a criminal defendant did not adequately allege a RICO violation where he was properly extradited but claimed that he was kidnapped by the State of Arkansas. *Robbins v. Clinton*, 1994 WL 730423 (8th Cir. Nov. 14, 1994). Attempting to compare a legal extradition of a prisoner with the actual abduction and concealment of a child from her legal parent underscores the makeweight nature of the Defendants' argument.

[10] Plaintiffs do, however, concede that the single predicate act of parental kidnapping that occurred on September 25, 2009 did not continue between September 29, 2009 and January 1, 2010 because Lisa Miller was

On the other hand, numerous cases have found that kidnapping is a continuous crime that continues until the kidnapping victim is returned. This Court referred to a number of them in its decision on Kenneth Miller's motion to dismiss for lack of venue. *See United States v. Miller*, 2012 WL 1435310 (D. Vt. April 25, 2012); *see also United States v. Rodriguez-Moreno*, 526 U.S. 275 (1999) ("A kidnapping, once begun, does not end until the victim is free. It does not make sense, then, to speak of it in discrete geographic fragments."); *United States v. Saliba*, 2010 WL 680986 (E.D.N.Y. 2010) (holding that statue of limitations in parental kidnapping tolled because the kidnapping is a continuing offense); *United States v. Garcia*, 854 F.2d 340 (9th Cir. 1988) (concluding that federal offense of kidnapping was a continuing offense that lasted as long as the victim was held).

Cases dealing with statutes of limitations have also found that a conspiracy once commenced does not end until the subject of the conspiracy is over. *See e.g.*, *United States v. Eppolito*, 543 F.3d 25 (2d Cir. 2008) (reversing dismissal finding that the existence of the whether a racketeering conspiracy continued to exist within the five year statute of limitations).

The continued efforts of the Brotherhood to support the abduction and concealment, as well as Kenneth Miller's efforts to continue the concealment of his co-conspirators, establish an ongoing pattern of racketeering activity that continues to this day.

(ii) In Addition, Close Ended Continuity is Adequately Alleged.

Here, Plaintiffs have adequately alleged open-ended continuity, but the allegations also support a finding of closed-ended continuity.

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entitled to custody at those times. The conspiracy to ensure that Janet Jenkins could not have contact with Isabella, on the other hand, was clearly ongoing.

Closed-ended continuity is demonstrated by predicate acts that "amount to continued criminal activity," by a particular defendant. To satisfy closed-ended continuity, the plaintiff must prove "a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months ... do not satisfy this requirement." *Cofacredit* at 242, 109 S.Ct. 2893. Generally, the Second Circuit has held that a period of two years constitutes a substantial period of time. *See Metromedia Co. v. Fugazy*, 983 F.2d 350, 369 (2d Cir.1992) (finding closed-ended continuity when predicate acts occurred over a period of two years); *Jacobson v. Cooper*, 882 F.2d 717, 720 (2d Cir.1989) (finding closed-ended continuity when predicate acts occurred over a "matter of years").

Even though not necessary to the Plaintiffs' claims because of the continuing nature of the crime, the allegations are quite clear that the racketeering activities have persisted over a period exceeding two years, thus satisfying the requirements for closed-ended continuity. It is alleged that the conspiracy to abduct Isabella Miller-Jenkins, in which Kenneth Miller participated, began as early as the spring of 2008. (Amended Complaint ¶ 26) It is not clear at exactly what point Kenneth Miller joined in the conspiracy - it could have been as early as 2008, or it could have been later. This is irrelevant. It does not change the fact that he committed a predicate act involving an act or threat involving kidnapping, in this case, conspiring to kidnap Isabella Miller-Jenkins that began in the spring of 2008. "Conspiracy can properly be charged as a predicate act of racketeering under RICO, at least when it involves any of the substantive offenses listed in section 1961(1)(D)." *United States v. Weisman*, 642 F. 2d 1118, 1124 (2nd Cir. 1980). Other courts have similarly held. *See United States v. Licavoli*, 725 F.2d. 1040 (6th Cir. 1983) (because murder and conspiracy to commit murder are separate offenses under state (and federal) law, and because both "involve" murder within the meaning of § 1961(1)(A), both are

viable predicate acts). While the most significant over act in furtherance of the conspiracy was committed in September of 2009 – removing Isabella from the United States - other predicate acts extended into the spring/summer of 2010, when laundered money was sent to Timothy Miller in Nicaragua. Hence, even adopting the nonsensical argument that the ongoing kidnapping of Isabella is not an ongoing crime, the temporal requirement is met because the conspiracy to commit the predicate act began in the spring of 2008.

Plaintiff Isabella Miller-Jenkins continues to be kidnapped, and the harmful effects of this continue to be felt in Vermont. Moreover, as the Amended Complaint alleges, once Lisa Miller's location was determined in April of 2011, following the arrest of Timothy Miller, Isabella was once again snatched away and placed in hiding in another location. (Amended Complaint ¶ 55). It is ongoing to this day, and Defendant Kenneth Miller has gone and continues to go to great lengths to ensure that the conspiracy is able to continue, including risking contempt proceedings in to obstruct the investigation into where, and with whom Isabella is being hidden.

For all of the reasons described above, this conspiracy is not a discrete, narrowly circumscribed scheme targeting only Isabella Miller-Jenkins.

Here again, in repeating the claim that Jenkins is not a victim, Defendants fail to recognize that they have harmed Janet Jenkins as well as her daughter. Moreover, the RICO conspiracy does not only involve one person, but rather clearly there are numerous individuals and organizations involved, several of whom have engaged in more than one predicate act.

2. The RICO Conspiracy is Sufficiently Pled.

A claim for a civil violation of § 1962(d) is based on a conspiracy to violate RICO, specifically making it unlawful for any person to conspire to violate any of the provisions of 18 U.S.C. § 1962(a), (b), or (c). To establish the existence of a RICO conspiracy, a plaintiff must prove "'the existence of an agreement to violate RICOs substantive provisions.'" *United States v.*

Sessa, 125 F.3d 68, 71 (2d Cir.1997) (*quoting United States v. Benevento*, 836 F.2d 60, 73 (2d Cir.1987)), *cert. denied sub nom., Scarpa v. United States*, 522 U.S. 1065, 118 S.Ct. 731, 139 L.Ed.2d 669 (1998).

The requirements for RICO's conspiracy charges under § 1962(d) are less demanding than proving substantive RICO claims. A "conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Salinas v. United States*, 522 U.S. 52, 65 (1997). A plaintiff need not allege that a defendant committed two predicate acts of racketeering himself, however, the plaintiff must allege that a defendant agreed to the commission of two or more predicate acts by someone associated with the enterprise (in this case, Kenneth Miller). *Goren v. New Vision Int'l, Inc*. 156 F3d 721(7th Cir. 1998). If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators. *Salinas*, 522 U.S. 52 at 64. As the Court pointed out in *Salinas*, "Plainly a person may conspire for the commission of a crime by a third person." *Id., citing United States v. Holte*, 236 U. S. 140, 144 (1915).

In their Motion to Dismiss, Defendants claim that the conspiracy count must fail because there is no evidence of an agreement between Liberty and Kenneth Miller. As stated above, a person certainly "can conspire for the commission of a crime by a third person." *Id*. If this were not the case, then a conspiracy charge could always be avoided against the initial conspirator by using a "chain" organization, or a "middleman" between himself and the person actually carrying out the substantive offense.

The Amended Complaint states a clear conspiracy and agreement between the Liberty Defendants and others, especially Philip Zodhiates and Response Unlimited, Inc. for the

commission of Kenneth Miller's substantive crime. It is alleged that the Liberty Defendants, through their employees and agents, "conspired for the commission of a violation of 18 U.S.C. § 1962(c) through the pattern of racketeering." (Amended Complaint ¶ 72). The racketeering activity, which is uncontested in the instant Motion, includes two predicate acts of kidnapping Isabella Miller-Jenkins in advance of September 25, 2009, and keeping her away from Janet Jenkins after the January 1, 2010 transfer of custody through the use of mail fraud and money laundering, which are further predicate acts in and of themselves.

While the Liberty Defendants attempt to minimize their involvement in this conspiracy, a reading of the Amended Complaint as a whole clearly reveals that TRBC, Liberty University, and Victoria Hyden conspired with Kenneth Miller to commit the substantive RICO offence, and took several actions that shows that they adopted the common goal of the RICO conspiracy.

At this stage, Plaintiffs need only sufficiently allege factual support for their claims, and the Court must assume those allegations to be true. As set forth in the Amended Complaint, some of the facts showing the adoption of the goals of the criminal endeavor by the Liberty Defendants include:

- It is alleged that TRBC and Liberty University hold themselves out as "related ministries." (Amended Complaint ¶16).
- It is alleged that Linda Wall is an agent of TRBC (Amended Complaint ¶17), and that Victoria Hyden is an agent of both Liberty University and its related ministry, TRBC in relation to the claims set forth in the Amended Complaint. (Amended Complaint ¶13)

- It is alleged that TRBC member Linda Wall recruited Lisa Miller as a client for Rena Lindevaldsen, a professor of Law at Liberty University (Amended Complaint ¶ 22).
- It is alleged that Victoria Hyden was a "student worker" in the Liberty University law school that was run by Lisa Miller's attorneys in September 2009. (Amended Complaint ¶¶ 29, 41.)
- It is alleged that Linda Wall, as an agent of TRBC entered into an agreement with Lisa Miller in the Spring of 2008 to abduct Isabella. (Amended Complaint ¶ 26)
- It is alleged that Linda Wall took steps in furtherance of that agreement by directly attempting to interfere with law enforcement efforts to locate Lisa Miller and Isabella. (Amended Complaint ¶52)
- It is alleged that Wall sought donations for Lisa Miller after January 2010. (Amended Complaint ¶ 54)
- It is alleged that Victoria Hyden, as an agent of Liberty and TRBC assisted Lisa Miller leaving Lynchburg secretly by arranging transportation through Terry Miller, Lisa's father. (Amended Complaint ¶ 41)
- It is alleged that Victoria Hyden knew of Lisa Miller's whereabouts and solicited aid for her. (Amended Complaint ¶ 41)
- It is alleged that TRBC members packed supplies to send to Lisa Miller in Nicaragua to enable them to remain outside the country after January 1, 2010. (Amended Complaint¶ 42)

- It is alleged that said aid was sent with Victoria Hyden's brother's school teacher to Kenneth Miller's (who was Victoria's former school teacher) associate in the Nicaraguan Brotherhood. (Amended Complaint ¶ 42).
- It is alleged that Victoria Hyden's bridal flower arrangements were a "front" to launder money through Kenneth Miller's business in order to secretly send money to Lisa Miller in May of 2010, while Lisa Miller living among the Nicaraguan Brotherhood. (Amended Complaint ¶ 53)
- It is alleged that Victoria Hyden's father, Philip Zodhiates, drove Lisa Miller and Isabella to the Canadian Border, and that he was in phone contact with both Kenneth Miller, and with the Liberty University law school during the journey. (Amended Complaint ¶ 57).
- It is alleged that this transport occurred just days prior to when the September 4, 2009 order would take effect. (Amended Complaint ¶ 36)
- It is alleged that Lisa Miller continued to communicate with members of Thomas Road Baptist Church with the assistance of Mr. Zodhiates, Kenneth Miller and members of the Nicaragua Brethren (Amended Complaint ¶ 39)
- It is alleged that these unlawful activities with respect to same-sex families were ratified by the leadership of TRBC and its related ministry Liberty University. (Amended Complaint ¶ 48)

The above cited allegations of kidnapping Isabella Miller-Jenkins in September 2009, and ensuring her continued detention outside the country after January 1, 2010 are clearly sufficient to state a claim against all of the Liberty Defendants.

The Liberty Defendants suggest in a footnote that Victoria's Hyden could not have agreed for her bridal flower arrangements to serve as a front for laundering money to support Lisa Miller because she was not alleged to have created the fraudulent payroll check. (Motion to Dismiss at p. 43, footnote 17). The Court should reject this hypothesis, especially when it is clearly alleged that Hyden knew of and actively participated in at least two other schemes to aid to Lisa Miller (with supplies and transportation) in addition to the money laundering. In the same footnote, Liberty also suggests that its employee's long personal association with the man who was convicted of aiding and abetting the crime of their most high profile client is irrelevant. Case law suggests otherwise. While "[t]he inference of participation from presence and association with conspirators alone does not suffice to convict[,] . . . such an inference is permissible in evaluating the totality of the circumstances." *United States v. Perez-Tosta*, 36 F.3d 1552, 1557 (11th Cir. 1994) (citations omitted). Under the totality of the circumstances, Hyden's association with the Brotherhood, the involvement of her family members with the Brotherhood and both of her simultaneous employers' (Response Unlimited and Liberty) involvement with Lisa Miller's crime, taken together with her alleged knowledge of and participation in the conspiracy to kidnap Isabella, is very significant.[11]

Taking all of the allegations as true, as the Court must at this stage, Plaintiffs adequately allege that Defendants Liberty University, TRBC and Victoria Hyden knew of and assisted in the substantive violations of the RICO statute and carried out acts in furtherance of the crime, including the acts outlined above.

[11] Moreover, there is further circumstantial evidence that other, high ranking employees and agents of Liberty University were part of the conspiracy as well. Not only did Philip Zodhiates make a six minute phone call to Liberty Law School after dropping Lisa Miller and Isabella near the border, but he also called Liberty Counsel's Orlando-area cell phone used by Mathew Staver just minutes after speaking with Kenneth Miller. (Plaintiffs' Ex. R, Philip Zodhiates' phone records). Plus, Victoria Hyden's cell phone records reveal that she was in touch with her father and a companion who also travelled to the Canadian border with Philip Zodhiates, Lisa Miller, and Isabella. (Plaintiffs' Ex. S, Victoria Zodhiates phone records.).

Defendants also erroneously claim that Plaintiffs have to show direct evidence of an actual agreement to conspire to do the predicate acts. First, there is direct evidence of an agreement between Lisa Miller and TRBC agent Linda Wall, but secondly, there is simply no direct evidence of an agreement required under RICO. Even in criminal cases, where the government faces a much higher burden of proof, circumstantial evidence is sufficient to send a conspiracy case to a jury. *See, e.g.*, *United States v. Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998) ("The government is not required to prove a conspiracy through direct evidence. Because conspirators normally attempt to conceal their conduct, the elements of a conspiracy offense may be established solely by circumstantial evidence."). The same reasoning applies to civil RICO.

Here, the allegations describe a scheme among a number of individuals and entities that are all involved in a continuing conspiracy centered around a shared mission: getting Lisa Miller and Isabella out of the United States prior to September 25, 2009, illegally supporting Lisa Miller and Isabella in Nicaragua to enable them to remain there after January 1, 2010, and hiding them from the authorities all by infiltrating the Beachy-Amish Christian Brotherhood.[12] The allegations contain a plethora of circumstantial and direct evidence of an agreement by all participants to engage in two or more predicate acts.[13]

3. The Plaintiffs Have Suffered a RICO Injury.

18 U.S.C. § 1964(c) provides that " *[a]ny person* injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor and shall recover threefold the damages he sustains. The only standing requirement under § 1964(c) is that the plaintiff be

[12] It appears that Kenneth Miller is even willing to risk jail and contempt charges to further the conspiracy of hiding Isabella, rather than provide information about her whereabouts or the involvement of others in the abduction.

[13] It is not required the show that each defendant committed, or that he agreed that he would personally commit two or more predicate acts. Nevertheless, in this case, Plaintiff does allege sufficient facts to support that

"injured in his business or property by the conduct constituting the violation"), and that the injury be caused by defendants' RICO violation. *Sedima v. Imrex Co.*, 473 U.S. 479, 495, 105 S.Ct. 3275, 3284, 87 L.Ed.2d 346 (1985)

Plaintiffs have suffered cognizable RICO injuries. The term "injury" is given its plain meaning, that is, "the compensable harm caused by the predicate acts sufficiently related to constitute a pattern." *Sedima S.P.R.L. v. Imrex Co, Inc.*, 473 U.S. 479 (1985). The plaintiff must show a proprietary loss regarding property, meaning "anything of material value owned or possessed," including money. *Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 976 (9th Cir. 2008) *cert denied*, 129 S.Ct. 458 (2008). Plaintiff Jenkins has alleged a number of concrete, real and related losses that she and her daughter have incurred as a result of the kidnapping of Isabella. They are foreseeable, choate, ripe and causally related to the predicate acts of the kidnapping, money laundering and mail fraud.

These losses include the actual losses that Plaintiff Jenkins incurred when her daughter was taken from her, as follows:

1. Business loss. Plaintiff Jenkins shut down her day care business to instead spend her time trying to locate her daughter. It is certainly foreseeable that a parent whose child is abducted will put the rest of her life on hold and incur expenses to try to find her child. Plaintiff Jenkins initiated or participated in the legal proceedings that were necessary to attempt to locate Isabella and to obtain an arrest warrant for Lisa Miller. In doing so Plaintiff Jenkins incurred legal expenses and court costs. Such expenses are both proximately caused and "but for" caused by the acts of Defendants, and they can be proven by Plaintiff Jenkins.

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the Liberty Defendants, through their employees and agents, did agree to commit the two predicate acts of parental kidnapping as well as conspiracy to kidnap Isabella Miller-Jenkins.

2. Lost fines. The family court in Virginia ordered a fine of $100 per day payable directly from Lisa Miller to Janet Jenkins for her refusal to follow court orders regarding parent-child contact and for the failure to transfer custody. (Plaintiffs' Ex. Q, Contempt Order, p. 6). These losses exceed $70,000 at this point and are continuing to accrue. Plaintiff Jenkins is unable to collect these fines as a direct result of Defendants' racketeering activity, namely the kidnapping that leaves her unable to locate Lisa Miller or Isabella.

3. Child support. Plaintiffs are both entitled to child support from Lisa Miller. As a direct result of the abduction of Isabella, neither Plaintiff benefits from the child support.

4. Isabella's Personal Property. As a result of being hidden in Nicaragua, Isabella has lost most of her own personal property, including toys, pets, clothing, and other trappings of being a child living in Vermont.

The Liberty Defendants contend that these injuries were somehow not foreseeable. On the contrary, it is entirely foreseeable that a parent whose child is abducted will expend resources looking for her. Further, it was certainly foreseeable that Lisa Miller would not pay any court ordered fines once she had disappeared. Lisa Miller knew that she owed these fines, and in fact, the fines for missed visits were announced (albeit in a skewed manner) in a Liberty Counsel Press release shortly before her disappearance. (Plaintiffs' Ex. H, press release). Hence, it was foreseeable to all parties that these fines would not be paid to Janet Jenkins if Lisa Miller were able to avoid the visitation while evading the courts as well.

The Ninth Circuit has examined and concluded that false imprisonment (an act or threat involving kidnapping) that caused the victim to lose employment and employment opportunities constituted an injury to "business or property" within the meaning of RICO. *Diaz v. Gates*, 420 F. 3d 897 (9th Cir. 2005). Also, because "murder and kidnapping fall within the 'personal injury'

torts of 'wrongful death' and 'false imprisonment', there is no legitimate way to read the statute to exclude traditional personal injuries from actionable RICO racketeering conduct, because traditional personal injuries, including murder and kidnapping, are expressly listed in section 1961 as "racketeering" conduct that can give rise to claims under the statute." *Id*. concurring at 940.

Additionally, the Liberty Defendants make no mention of the claims of Isabella Miller-Jenkins, also a plaintiff in this case. As a result of being indefinitely kidnapped, Isabella has been deprived of personal property, including pets and personal items. Under Vermont law, Isabella entitled to child support and medical support from one or both of her parents. *See* 11 V.S.A. §§ 654 et seq. The Liberty Defendants do not explain why these injuries would not give Isabella standing under the RICO statute.

D. Plaintiffs Have Stated a Claim for Conspiracy to Violate Civil Rights.

Plaintiffs state a claim for a conspiracy by the Liberty Defendants and others to violate Plaintiffs' civil rights, in violation of 42 U.S.C. § 1985(3). The Amended Complaint adequately alleges a conspiracy, discriminatory animus, and state action to the extent required.

1. The Amended Complaint Contains Sufficient Facts Alleging a Conspiracy.

The facts alleged in the Amended Complaint in support of a conspiracy are far from vague or conclusory. While it is true that the Plaintiffs rely on some circumstantial evidence of the conspiracy, that evidence is fairly voluminous at this early stage of the case. As argued above, even in a criminal conspiracy, it is sufficient to "present some evidence from which it can reasonably be inferred that the person charged with conspiracy knew of the existence of the scheme alleged in the indictment and knowingly joined and participated in it." *United States v. Gore*, 154 F.3d 34, 40 (2d Cir. 1998) (internal quotation marks omitted). "The agreement

between the party charged and his co-conspirators is the gist of the crime of conspiracy," and while "[s]uspicious circumstances . . . are not enough to sustain a conviction," agreement may be inferred entirely from entirely circumstantial evidence. *United States v. Nusraty*, 867 F.2d 759, 763 (2d Cir. 1989).

Here, the Amended Complaint offers a substantial amount of circumstantial evidence of the Liberty Defendants' participation in an unlawful agreement. Assuming the truth of the allegations in the Amended Complaint, as the Court must do at this stage, the Plaintiffs establish a well-coordinated effort by the defendants to illegally remove Isabella from the United States and frustrate the lawful custody order of the Vermont Family Court. That activity, undertaken by numerous individuals over a period of time in support of a common unlawful purpose, is adequate circumstantial evidence of a conspiracy among the defendants. Some of the activities by other defendants included:

- Douglas Wright's agreement to dispose of Lisa Miller's belongings when he said what he understood to be a final goodbye to her and Isabella. (Amended Complaint ¶ 35.)
- Philip Zodhiates's transportation of Lisa Miller and Isabella to the Canadian border so that they could fly out of Canada to a third country. (Amended Complaint ¶ 36.)
- Timothy Miller's, Kenneth Miller's and Philip Zodhiates's concerted activities to surreptitiously purchase airplane tickets for Lisa and Isabella and to hide them in an Ontario hotel while they waited for their flight. (Amended Complaint ¶ 37.)
- Victoria Hyden's and Philip Zodhiates's coordination with Lisa Miller's father to arrange transportation for Lisa Miller and Isabella from Lynchburg, Virginia to

Waynesboro, Virginia, the first leg of their unlawful journey. (Amended Complaint ¶ 41.)

- The arrangement by Philip Zodhiates, Victoria Hyden, and TRBC to transport Lisa Miller's personal belongings and supplies to Timothy Miller, so that Timothy Miller could deliver them to Lisa Miller in hiding in Nicaragua. (Amended Complaint ¶ 42.)

Throughout these illegal activities, it is alleged that TRBC and Liberty University, through their agents (including but not limited to Victoria Hyden, Matthew Staver, and Rena Lindevaldsen) participated in the conspiracy by encouraging members of their community to donate money to support Lisa Miller (Amended Complaint ¶ 43); encouraging "civil disobedience" in the face of the Vermont Family Court's order (Amended Complaint ¶¶ 27, 45-47, 60); and soliciting donations enabling Lisa Miller to remain out of the United States illegally (Amended Complaint ¶ 54).

The allegations in the Amended Complaint more than adequately support an inference that the defendants either tacitly or explicitly agreed to help remove Lisa Miller and Isabella from the United States and support them in hiding outside the country.

2. The Amended Complaint Properly Alleges Discriminatory Animus.

The Amended Complaint alleges that the Defendants worked in concert to deprive Plaintiff Jenkins of her lawful custodial rights because they did not accept that a child could lawfully have two mothers, rather than a mother and a father. (Amended Complaint ¶¶ 43, 60.) Had custody been awarded to a male ex-husband of Lisa Miller, regardless of his sexual orientation, the pronouncements of Lisa Miller and the Defendants (*see e.g.* Amended Complaint ¶ 43, 45, 48) would have been nonsensical. As it was, the fact that the Vermont Family Court awarded visitation and ultimately full custody to Isabella's second *mother* was the basis of the

Defendants' outrage and participation in the conspiracy. Taken together, the allegations establish that the Defendants took action because of the gender of Isabella's second parent, Janet Jenkins.

The Liberty Defendants acknowledge that the Amended Complaint "suggests that the defendants' alleged actions were taken because they opposed Plaintiff's court-determined status as a non-biological parent of a child born during a civil union. . . ." (Motion to Dismiss, at p. 55-56.) However, Liberty incorrectly concludes that that motivation was unrelated to Janet Jenkins' gender. The allegations of the Amended Complaint make it plain that the Defendants' concern was not the fact that Plaintiff Jenkins was a non-biological parent; for example, there is no suggestion that the Defendants would have acted similarly if she had been an adoptive father. Rather, the Defendants' activities were taken as a result of the fact that Ms. Jenkins was a second mother to the child. Thus the motivating animus of the Defendants was the gender of Isabella's second parent.

The Amended Complaint further alleges that Lisa Miller and her co-conspirators refused to obey court orders regarding Isabella because her religion, which she did not share with Janet Jenkins, dictated that Isabella be shielded from homosexuality. (Amended Complaint ¶¶ 20, 48.) The co-conspirators' animus based on religion is a separate basis for the conspiracy to violate the Plaintiffs' civil rights.

Finally, as the Liberty Defendants recognize, the Second Circuit has now held that homosexuality is a status entitled to heightened scrutiny under the Equal Protection Clause. *See Windsor v. United States*, 2012 WL 4937310 (2d Cir. Oct. 18, 2012). Even if the Amended Complaint did not adequately establish unlawful action based on gender, it certainly alleges unlawful action based on sexual orientation.

3. State Action is Not Required to State a Claim Under § 1985(3), And, To the Extent It Is Required, Plaintiffs Have Adequately Alleged State Action

Both purely private conspiracies and conspiracies involving state action may be unlawful under § 1985(3), so state action is not necessarily required to state a claim for violation of that statute. *See Griffin v. Breckenridge,* 403 U.S. 88, 102 (1971). Whether state action is needed depends on the nature of the right asserted. If the conspiracy involves a constitutional right that protects individuals from government action – such as First Amendment rights – then the claim must allege state action. *See, e.g., United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 830 (1983) (holding that a claim for conspiracy to violate First Amendment rights required state action). However, for constitutional rights that are protected against private impairment, a claim under § 1985(3) need not allege state action. The Supreme Court has recognized rights under the Thirteenth Amendment and the right to interstate travel as being actionable in purely private conspiracies. *See United States v. Kozminski*, 487 U.S. 931, 942 (1988); *United States v. Guest*, 383 U.S. 745, 759-60, n.17 (1966); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 274, 278 (1993).

Here, Plaintiffs have alleged a conspiracy to infringe upon Isabella's right to interstate travel to spend time with both her parents, in Virginia and in Vermont. Because Lisa Miller and Janet Jenkins resided in different states, interstate travel was necessary for compliance with the court's visitation and custody orders. (Amended Complaint ¶ 19) It is firmly established that "the right of interstate travel is constitutionally protected . . . and is assertable against private as well as governmental interference." *Griffin v. Breckenridge*, 403 U.S. 88, 106 (1971). *See also Guest*, 383 U.S. at 759-760, n.17 (recognizing a right of interstate travel as protectable under § 1985(3) against individuals as well as governments). The Amended Complaint makes clear that a foundation for this claim is the right to maintain a parent-child relationship, which, in this

case, requires interstate travel. As such, it is not necessary to allege state action to support this § 1985(3) claim regarding the rights of Isabella.

In addition, Plaintiffs have alleged that the Liberty Defendants and others interfered with her rights of equal protection. Conspiracy claims for violation of Fourteenth Amendment rights have often been found to require state action. *See, e.g., Edmond v. Hartford Ins. Co.,* 27 Fed.Appx. 51, 53 (2d Cir. 2001) ("[A] claim under § 1985(3) for conspiracy to deny equal protection in violation of the Fourteenth Amendment is not actionable in the absence of state action."). However, the state action requirement can be fulfilled in several ways. First, state action can be shown where "the state is involved in the conspiracy." *Carpenters*, 463 U.S. at 830. Second – and more applicable here – state action is shown where "the aim of the conspiracy is to influence the activity of the state." *Id*. In this context, "the conspirators do not need to be state actors in order for there to be state involvement." *Planned Parenthood Ass'n of San Mateo County v. Holy Angels Catholic Church*, 765 F. Supp. 617, 623, 624 (N.D. Cal. 1991). Here, among other actions, Defendants conspired to prevent the police from attempting to find Isabella. Plaintiffs have alleged, for example, that Defendant Linda Wall as an agent for TRBC urged others to contact the Vermont police, with the purpose of influencing the activity of Vermont state actors. (Amended Complaint ¶ 52) In addition, Defendants conspired to prevent the Vermont and Virginia courts from enforcing custody and visitation orders, thus seeking to influence state activity. Accordingly, insofar as Plaintiffs' § 1985(3) claims require state action, Plaintiffs have adequately alleged state action.

V. ALTERNATIVE MOTIONS FOR JURISDICTIONAL DISCOVERY AND LEAVE TO AMEND.

In the event the Court finds that Plaintiffs have not presented sufficient allegations and evidence to establish personal jurisdiction over the Liberty Defendants, Plaintiffs move, in the

alternative, for jurisdictional discovery. The Court has "considerable procedural leeway" in determining how to adjudicate a motion to dismiss under Rule 12(b)(2). *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981). The Court may make its determination on the "basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion." *Id*. Further, even if the Court determines that Plaintiffs have not made a prima facie showing of personal jurisdiction, it should find that Plaintiffs have at least made a sufficient start towards establishing jurisdiction, which is an adequate basis for granting jurisdictional discovery. *See Ayyash v. Bank Al–Madina*, 2006 WL 587342, at *6 (S.D.N.Y. Mar. 9, 2006) (limited discovery ordered before ruling on subject matter and personal jurisdiction where plaintiff had not made prima facie showing of jurisdiction, but had at least made a "sufficient start at making such a showing") (internal quotation marks omitted); *Uebler v. Boss Media AB*, 363 F. Supp. 2d 499, 506 (E.D.N.Y. 2005) (although plaintiff had not made prima facie showing of personal jurisdiction, discovery was appropriate). Where "the facts necessary to establish personal jurisdiction lie within [Defendants'] exclusive knowledge," jurisdictional discovery may be particularly warranted. *Uebler*, 363 F. Supp. 2d at 506.

In addition, if the Court grants the Liberty Defendants' Motion to Dismiss under Rule 12(b)(6), Plaintiffs request leave to amend. *See* FED. R. CIV. P. 15(a)(2) ("The court should freely give leave [to amend] when justice so requires.").

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Liberty Defendants' Motion to Dismiss.

DATED at Burlington, Vermont this 15th day of February, 2013.

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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.

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

Defendants.

Civil Action
Docket No. 2:12-cv-00184 WKS

CERTIFICATE OF SERVICE

I, Lisa B. Shelkrot, Esq., attorney for Plaintiffs, Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that on February 15, 2013, I electronically filed with the Clerk of the Court Plaintiffs' Response to Motion to Dismiss By Liberty University, Inc., Thomas Road Baptist Church, Inc., and Victoria Hyden using the CM/ECF electronic filing system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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DATED AT Burlington, Vermont this 15th day of February, 2013.

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