

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 ANDREW YODER

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 Andrew Yoder to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim.

I. THE COURT HAS PERSONAL JURISDICTION OVER ANDREW YODER.

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, the Court must assume all factual allegations in the Amended Complaint are true and only has to find that Plaintiffs have made a *prima facie* showing of jurisdiction over Defendant Yoder.

A. Intentional Acts by Andrew Yoder, Directed At Vermont Are Sufficient To Establish Jurisdiction Under *Calder v. Jones*.

Plaintiffs allege in their Amended Complaint that Andrew Yoder, field director for Christian Aid Ministries ("CAM") in Nicaragua, aided and abetted Isabella's ongoing kidnapping and that he participated in a RICO conspiracy to kidnap Isabella and

conspired to violate Plaintiffs' civil rights. (Amended Complaint ¶¶ 64, 72, 75.) The purpose of these actions was to intentionally harm Plaintiff Jenkins by continuing to deprive her of custody of her daughter, causing both emotional and financial damage, and depriving her of her right to equal protection under the law. Andrew Yoder knew of Janet Jenkins parental rights, told CAM of them, and nonetheless aided and abetted Lisa Miller in evading the orders of the Vermont Superior Court. Specifically, Andrew Yoder distributed funds to Timothy Miller in Nicaragua, when Yoder believed that the funds were for Lisa Miller to enable her to remain outside the country with Isabella, in violation of the orders of the Vermont Superior Court. (Amended Complaint ¶ 53.) Defendant Yoder's Exhibit 2 to his Motion to Dismiss also states that Mr. Yoder assisted Timothy Miller with the authentication of birth certificate documentation for Lisa Miller. (Defendant Yoder's Ex. 2 at 10-11.) These actions aided and abetted Isabella's kidnapping – which was an intentional tort directed at Plaintiff Jenkins, a Vermont resident. (Amended Complaint ¶ 53.)

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 from or relate to those activities. *LiButti v. United States*, 178 F.3d 114, 123 (2d Cir. 1999) (citing *Calder v. Jones*, 465 U.S. 783, 789-90 (1984)). 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. v. XL Machine Ltd.*, 163 F. Supp. 2d 421, 424-425 (2001) (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 v. RBS Citizen, N.A.*, 2011 WL 1397312, *4 (D.Vt. April 11, 2011) (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 Defendant Yoder 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 Yoder 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 Yoder’s intentional conduct, known and intended to cause injury in Vermont, is sufficient to give the Court jurisdiction over Defendant Yoder. *See Real Good Toys, Inc.*, 163 F. Supp. 2d at 424-425.

B. Asserting Jurisdiction Over Yoder Complies With the Reasonableness Inquiry.

After determining that the exercise of jurisdiction over Yoder is appropriate on the basis of his 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, Inc. v. Heli-One Canada Inc.*, 2012 WL 4479851, *9 (D. Vt. Sept. 28, 2012), (quoting *Int’l Shoe v. Washington*, 326 U.S. 310,

320 (1945)). Where the requirement of minimum contacts has been met, “only the unusual case” will not satisfy the reasonableness inquiry. *Id.* (citing *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1170 (6th Cir. 1988)); *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 575 (2d Cir. 1966) (“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 Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

Applying these factors to Yoder 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 Ohio would be an equal burden on Plaintiff Jenkins as litigation in Vermont would be on Defendant Yoder. Further, any burden on Defendant Yoder 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)). Yoder’s ability to litigate in Vermont is

demonstrated by the fact that he has 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. *See Sollinger v. Nasco Int'l, Inc.*, 655 F. Supp. 1385, 1388 (D.Vt. 1987) (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 Lisa Miller with the assistance of Andrew Yoder. 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. According to Exhibit 1 to Defendant Yoder's Motion, Andrew Yoder has already managed to travel to Vermont twice to participate in those proceedings.

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. Defendant Yoder's witnesses are likely in Nicaragua, although some may be in Ohio. Hence, this factor weighs in favor of Plaintiff.

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, e.g., 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 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 Defendant Yoder in Vermont, such that maintaining this suit against him does not offend the traditional notions of fair play and substantial justice. *See Int'l Shoe*, 326 U.S. at 316. Accordingly, Defendant Yoder's Motion to Dismiss pursuant to F.R.C.P. 12(b)(2) should be denied.

II. PERSONAL JURISDICTION OVER DEFENDANT YODER IS PROPER UNDER RICO.

Even if personal jurisdiction were not established as to Defendant Yoder under *Calder v. Jones*, personal jurisdiction and venue would nonetheless be established

pursuant to 18 U.S.C. § 1965, the Racketeer Influenced and Corrupt Organizations Act (“RICO”).¹

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 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

¹In 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)

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

Personal jurisdiction is available under § 1965(b) because all of the other Defendants, in addition to Yoder, are clearly subject to minimum contacts jurisdiction in Vermont, including Kenneth Miller, Timothy Miller, Lisa Miller, all of the Liberty Defendants, and Response Unlimited, Inc. and CAM. 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.

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 (N.D. Ohio 1999) (“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, including Defendant Yoder, 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.

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 Yoder in this case because Andrew Yoder and CAM are the only two Defendants with ties to Ohio, and lack contacts with Virginia, the venue that the Liberty Defendants have suggested is the proper district. In addition, no other Defendants have claimed any contacts with

Ohio. Hence, even under the restrictive definition of the “ends of justice” this suit could not have been brought in any other district. In his Motion to Dismiss, Yoder suggests that the suit could have been brought in the Western District of Virginia, but if it were transferred to that district, there is nothing that would then prevent him from challenging personal jurisdiction there.

Moreover, to the extent that Defendant Yoder conspired with other Defendants in racketeering activities, that conspiracy supports Vermont jurisdiction more readily than it does any other district, as the conspiracy was directed toward Vermont, and the predicate acts of kidnapping are chargeable in Vermont. *See State v. Doyen*, 165 Vt. 43 (1996); *State v. Wootten*, 170 Vt. 485 (2000).

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

Under Rule 12(b)(6), the Court must accept as true all factual allegations, drawing all reasonable inferences in the plaintiff’s favor. *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).

Plaintiffs incorporate by reference the arguments set forth in section IV of the Plaintiffs’ Response to the Motion to Dismiss for Lack of Personal Jurisdiction, Lack of

Venue, and Failure to State a Claim on Behalf of Defendants Liberty University, Inc., et al. (ECF No. 74) (“Response to Liberty”) and the arguments set forth in Section I(A) and (B) of the Plaintiff’s Response to the Motion to Dismiss on Behalf of CAM (“CAM Response”).

Apart from the issues raised by the Liberty Defendants and CAM and addressed in those Motions and Responses, Andrew Yoder argues that his actions in aiding Lisa Miller did not constitute kidnapping or a RICO conspiracy because he was an “unwitting participant” and did not specifically agree to help Lisa Miller, but simply took actions, in concert with others, that he believed were for her benefit. This argument fails.

A. The Amended Complaint Adequately Alleges a Conspiracy to Kidnap Isabella by Yoder.

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, even at this early stage of the case, the evidence is fairly voluminous. 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 substantial allegations of Yoder's participation in an unlawful agreement. Plaintiffs clearly allege a well-coordinated effort by all the Defendants to 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 evidence of a conspiracy among the Defendants. Some of the activities alleged in the Amended Complaint, and in Defendant Yoder's Exhibit 2 (his trial testimony), which the Court may take judicial notice of, include:

- Yoder learned of Lisa Miller's travel to Nicaragua in a September 21, 2009 email, before she even arrived. (Yoder Ex. 2, at 7.)
- The September 21, 2009 email advised Yoder of Lisa Miller's custody battle and directed him to website where he could learn more about it. (*Id.* at 8-9.)
- Yoder later discussed the custody case with co-Defendant Timothy Miller. (*Id.* at 10.)
- On September 22, 2009, after Yoder learned about Lisa Miller's custody battle, he received communication from Timothy Miller, in his capacity as a CAM employee, seeking instruction for how to allow Lisa Miller to remain in Nicaragua and obtain residency. (*Id.* at 11.)
- Later, on October 26, 2009 Timothy Miller was in touch via email with Andrew Yoder's supervisor at CAM in Ohio about getting Lisa Miller residency in Nicaragua. (*Id.* at 12.)
- At no point did Yoder report the situation to the authorities. (Amended Complaint ¶ 53.)

- Yoder met Lisa Miller through Timothy Miller in Managua. (Amended Complaint ¶ 53.)
- Yoder knew that Lisa Miller was using a false name and was in disguise as a Mennonite. (Yoder Ex. 2 at 12.)
- Yoder knew that Lisa and Isabella were living with Timothy Miller. (*Id.* at 25.)
- Yoder discussed Lisa Miller's custody case with her. (Amended Complaint ¶ 53.)
- In May 2010, knowing of the custody case, Yoder cashed a check that he received from Kenneth Miller's employer. (Amended Complaint ¶ 53.)
- Andrew Yoder knew he was not owed any money by Kenneth Miller's employer. (Amended Complaint ¶ 53.)
- Andrew Yoder transported the \$500 cash to Nicaragua, where he was going in his capacity as field director for CAM. (Amended Complaint ¶ 53.)
- Yoder gave the money to Timothy Miller, who he knew was conspiring with Kenneth Miller to hide and support Lisa Miller among the Brotherhood so that she could continue her abduction of Isabella. (Amended Complaint ¶ 53, Yoder Ex. 2, p. 26.)

The above facts alleged in the Amended Complaint, and submitted by Defendant Yoder in Exhibit 2, show an agreement and conspiracy by Andrew Yoder to join and to participate in the conspiracy to abduct Isabella and keep her away from Janet Jenkins. Yoder suggests, without citing any case law on point, that he could not have been part of a conspiracy because the most significant act in furtherance of the conspiracy (removing

Isabella from the United States) had already occurred when he became involved.

Kidnapping and conspiracy to kidnap are continuing offenses.² The point at which Yoder joined the conspiracy is irrelevant, although the information in Defendant Yoder's Exhibit 2 suggests that Yoder joined the conspiracy as early as September 21, 2009 when he first received a request for help from Timothy Miller, and before Lisa Miller was even in Nicaragua. (Yoder Ex. 2, p .8) The above cited allegations make it clear that Andrew Yoder knew of the existence of the scheme, and knowingly joined and participated in it.

The suggestion that Yoder was an unwitting participant in the scheme should also be disregarded. Yoder's testimony shows that he believed that the money he was transporting to Nicaragua was for Lisa Miller. The contention that he intentionally decided not to discuss the matter with Timothy Miller, despite knowing that what he was doing was illegal does not make him "unwitting." It means that he, like CAM, actively continued to turn a blind eye while engaging in conduct that aided and abetted Isabella's abduction. In fact, Yoder's deliberate decision not to ask any questions shows that he knew that what he was doing was illegal and should not be discussed. His testimony on this point shows guilty knowledge on his part, and he clearly agreed to carry out the acts that aided and abetted Lisa Miller despite his knowledge.

B. Plaintiffs have Sufficiently Pled the RICO Conspiracy against Yoder

Plaintiffs hereby incorporate by reference section I(C) of the CAM Response with regards to Yoder individually.

² 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 in his criminal case. *United States v. Miller*, 2012 WL 14353310 (D. Vt. 2012).

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

Plaintiffs hereby incorporate section IV of the Liberty Response with regards to Defendant Yoder, seeking jurisdictional discovery and/or leave to amend in the event the Court grants Defendant Yoder's motion.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant Yoder's Motion to Dismiss.

DATED at Middlebury, Vermont this 14th day of March, 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
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LISA MILLER-JENKINS, TIMOTHY D. MILLER,
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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.

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CERTIFICATE OF SERVICE

I, Frank H. Langrock, 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 March 14, 2013, I electronically filed with the Clerk of the Court Plaintiffs' Response to Motion to Dismiss By Andrew Yoder 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 Middlebury, Vermont this 14th day of March, 2013.

/s/ Frank H. Langrock, Esq._____

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