

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

**PLAINTIFFS' RESPONSE TO MOTION TO DISMISS BY PHILIP ZODHIATES AND
RESPONSE UNLIMITED, INC.**

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 Response Unlimited ("RUL") and Philip Zodhiates to Dismiss for Lack of Personal Jurisdiction and Venue.

I. THE COURT HAS PERSONAL JURISDICTION OVER EACH OF THE 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 RUL has submitted an affidavit 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.¹

The Defendants' contention that jurisdictional pleading is governed by the standards set forth in *Ashcroft v. Iqbal*, 556 U.S. 564 (2009) is unsupported by any circuit court precedent or any district court within this circuit. Even if those standards apply, however, the

¹ RUL's and Zodiates's contention, Motion to Dismiss of Defendants Philip Zodiates and Response Unlimited, Inc. for Lack of Personal Jurisdiction and Improper Venue ("Motion to Dismiss") at 5, that the Plaintiffs must at this stage prove jurisdictional allegations with extrinsic evidence is based on cases from other circuits that flatly contradict the clearly established precedent, cited herein, from the Second Circuit.

Plaintiffs here have pled jurisdictional allegations with sufficient detail to withstand scrutiny at this stage of the proceeding.

B. Defendants Philip Zoghiates and Response Unlimited have 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 action², 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. 1996). 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. *Metropolitan Life*, 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

² The same standard applies to 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).

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 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 (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. *Metropolitan Life*, 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, 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. Response Unlimited Inc.’s Contacts With Vermont Are Sufficient To Establish Both General and Specific Jurisdiction.

1. The Court Has General Jurisdiction Over Response Unlimited, Inc.

Defendant RUL’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.

General jurisdiction over RUL can be established through its active business participation in the Vermont market. RUL 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. A, Response Unlimited Document, Vermont Secretary of State Document). Thus RUL profits from the sale of a Vermont product. RUL’s insistence that it “does not send material to Vermont on behalf of clients” is immaterial, as Plaintiffs have never alleged otherwise. What RUL does do is profit by selling and/or renting the data of a Vermont business. By doing so, RUL continuously and systematically participates 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.

2. Intentional Acts of Philip Zodhiates and Agents of Response Unlimited, Inc. Directed At Vermont Are Sufficient To Establish Jurisdiction Under *Calder v. Jones*.

The intentional torts committed by Philip Zodhiates and by agents of RUL establish personal jurisdiction over both Zodhiates and RUL in Vermont.

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, the Plaintiffs allege that Philip Zodhiates and Victoria Hyden acted both on their own behalf and as agents of RUL when they aided and abetted Isabella’s kidnapping, and when they conspired to violate civil RICO and Plaintiffs’ civil rights. (Amended Complaint ¶¶ 12, 13, 64, 72, 75.) The tortious conduct in which Zodhiates and Hyden are alleged to have participated, individually and as agents of RUL, was clearly 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, Defendants Hyden and Zodhiates 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.

Victoria Hyden is alleged to have acted both as an employee and an agent of RUL throughout her tortious conduct. (Amended Complaint ¶¶ 12, 64, 72, 75.) 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. *Id.* 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 of her right to equal protection under the law.

Similarly, Zodiates participate in a direct and material way in the tortious conduct alleged here. His role, as he concedes (Motion at p. 9), is alleged to have been far more than peripheral: he is alleged to have driven Isabella and Lisa Miller to the Canadian border; conspired to purchase plane tickets for the two to travel to Central America without ever entering the United States again; and engaged in money laundering in order to fund Lisa Miller's continued flight. (*See e.g.* Amended Complaint ¶¶ 36, 37, 42, 53, 54, 59.) While Zodiates protests that he was not actually helping to kidnap Isabella, and therefore not behaving tortiously (let alone criminally), he has not alleged a failure to state a claim, and his substantive defense is not material at this stage. All that is material now is that the specific factual allegations, if true, establish personal jurisdiction over him based on his direct participation in tortious conduct.

The Amended Complaint also establishes a *prima facie* case that Zodiates and Hyden were acting as RUL's agents. At this stage, that is more than sufficient. Zodiates was not only an employee, as he emphasizes, but also allegedly the sole owner and president of RUL. (Amended Complaint ¶ 12.) Besides acting himself, he allegedly involved at least two other RUL employees in the conspiracy to kidnap Isabella. First, Victoria Hyden, who participated critically in the kidnapping scheme, was allegedly an employee of RUL (Amended Complaint ¶¶ 13, 41). Second, Zodiates was also accompanied by at least one other RUL employee

when he drove Lisa Miller and Isabella to the Canadian border (Amended Complaint ¶ 36). These allegations suffice to establish that RUL participated through its agents in the intentional torts described in the Amended Complaint, and accordingly that Vermont has jurisdiction over RUL.

Zodhiates and RUL cite the case of *In Re Terrorist Attacks on September 11, 2001*, 538 F.3d 71 (2nd Cir. 2008), in support of their argument that jurisdiction in this case is not available under *Calder v. Jones* because their intentional actions were not targeted to cause harm to Janet Jenkins in Vermont. However, the impact of the defendants' conduct in *In re Terrorist Attacks* was far more attenuated than that of Zodhiates and RUL. In *In re Terrorist Attacks*, the defendants were accused of donating money to various charities that in turn provided funding to a terrorist organization that had among its goals attacks against America, one of which attacks ultimately materialized as the September 11, 2001 attack that was the subject of the lawsuit. It was far from the case that the defendant Saudi princes in *In re Terrorist Attacks* singled out an individual family in New York as the victim of tortious conduct, let alone that the Saudi princes personally or directly participated in the details of the attacks. In this case, by contrast, Philip Zodhiates and Victoria Hyden, as employees and agents of RUL did far more than simply donate money to the Beachy Amish-Mennonite Brotherhood knowing that it was involved in various tortious or criminal activities. Rather, these Defendants personally took actions furthering a specific tort, against a specific family, that included providing transportation to the Canadian border, then sending supplies and laundered money to Lisa Miller directly through their connections to people within the Brotherhood. The singular purpose of their actions was to keep Isabella away from her mother,

Janet Jenkins. As a result, the holding of *In re Terrorist Attacks* is not applicable to the facts alleged in this case.

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

D. Asserting Jurisdiction Over these Defendants Complies With the Reasonableness Inquiry.

After determining that the exercise of jurisdiction over the 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 Philip Zodiates and Response Unlimited, Inc. shows that exercising jurisdiction in Vermont will not violate traditional 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 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. *See Sollinger v. Nasco Int'l, Inc.*, 655 F. Supp. 1385, 1388 (D.Vt. 1987) (Vermont craftsman 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 the Defendants. Further, this Court is also where the

criminal prosecutions of some of the individuals involved in the kidnapping of Isabella are pending.

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 Jenkins 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, 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 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 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 Defendants’ Motion to Dismiss pursuant to F.R.C.P. 12(b)(2) should be denied.

II. PERSONAL JURISDICTION OVER PHILIP ZODHIATES AND RESPONSE UNLIMITED, INC. IS PROPER UNDER RICO.

Even if personal jurisdiction were not established as to Zodhiates and RUL under a traditional minimum contacts analysis, personal jurisdiction would nonetheless be established

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

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 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 Philip Zodhiates and Response Unlimited, Inc. 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 the 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” when the ends of justice so require. *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, that 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, 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). 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 Philip Zodiates and Response Unlimited, Inc. in this case. Defendants Timothy Miller, Andrew Yoder and Christian Aid Ministries ("CAM") 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. Defendants' suggestion that CAM and Andrew Yoder would be subject to personal jurisdiction in Virginia because they are alleged to have taken part in a predicate act that could be prosecuted in Virginia more properly supports jurisdiction in Vermont; Vermont is the State where the two central predicate acts of custodial interference would be prosecuted. *See State v. Doyen*, 165 Vt. 43 (1996); *State v. Wootten*, 170 Vt. 485 (2000). The Court should reject these arguments and find that the ends of justice require all Defendants to be summoned to Vermont.

III. 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 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. 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.*, 138 F.3d at 71). Thus, for the reasons this Court has personal jurisdiction over the Defendants regarding the RICO claims, this Court is also the proper venue for this action.

IV. ALTERNATIVE MOTION FOR JURISDICTIONAL DISCOVERY.

In the event the Court finds that Plaintiffs have not presented sufficient allegations and evidence to establish personal jurisdiction over RUL and Philip Zodhiates, 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.

V. CONCLUSION

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

DATED AT Middlebury, Vermont this 14th day of March, 2013.

/s/ Frank H. Langrock, Esq.

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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,

Plaintiff,

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, Frank H. Langrock, Esq., attorney for Plaintiff, 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 Philip Zodhiaties and Response Unlimited, Inc., 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:

Ritchie E. Berger, Esq.
Brooks G. McArthur, Esq.
Joshua M. Autry, Esq.
Robert G. Cain, Esq.

Peggy J. Schmitz, Esq.
Steven J. Shrock, Esq.
Norman C. Williams, Esq.
Sophie E. Zdatny, Esq.

Robert G. Hemley, Esq.
Thomas E. McCormick, Esq.

Sarah Star, Esq.

DATED AT Middlebury, Vermont this 14th day of March, 2013.

/s/ Frank H. Langrock, Esq.

Frank H. Langrock, Esq.
Langrock Sperry & Wool, LLP
111 S. Pleasant St., PO Drawer 351
Middlebury, VT 05753-0351

EXHIBIT A



info@responseunlimited.com
 (540) 943-6721

VERMONT COUNTRY STORE MASTERFILE ENHANCED

Universe/Base Rate	1,322,016	\$110/M
12 Month Buyers	882,016	+\$12/M
6 Month Buyers	413,522	+\$17/M
3 Month Buyers	223,747	+\$22/M
1 Month Buyers	74,512	+\$27/M
FUNDRAISER RATE		\$75/M
PUBLISHER RATE		\$75/M

Since 1946, The Vermont Country Store has brought yesteryear's hard-to-find products to today's quality conscious consumer. Their catalog and website product categories include Apothecary, Apparel, Food & Candy and For The Home. The Vermont Country Store Masterfile is comprised of Voice of the Mountains, Goods & Wares and VermontCountryStore.com buyers.

Demographics:

Age 55+

Majority are college-educated

The majority own their own homes

Average HHI \$67,000

Voice of the Mountains and Goods & Wares titles available as subsets of Masterfile at \$16/M.

A sample mail piece is required for approval.

Payment is due 15 days from delivery.

ALL cancelled orders are subject to a \$100 cancellation fee, plus \$8/M run charges, and any applicable shipping and material fees.

SOURCE

Direct Mail Sold

AVG UNIT SALE

\$66

ADDRESSING

Cartridge	\$30/F
Diskette	\$75/F
Email	\$60/F
Magtape	\$40/F
PS Labels	\$7.50/M

KEYING: \$3/M

SELECTIONS

Geography	\$11/M
Gender	\$11/M
Age	\$11/M
Cash	\$11/M
Catalog Buyers	\$11/M
Ethnicity	\$10/M
Credit Card Buy	\$11/M
Gender	\$11/M
\$50+	\$26/M
\$75+	\$31/M
\$100+	\$36/M
\$150+	\$41/M
Religion	\$10/M
Title	\$16/M
Demographics	\$11/M
Recency	\$8/M
Frequency	\$8/M
Distinct Clients	\$8/M
# of Titles	\$8/M
Internet Buyer	\$11/M
Omit House File	\$50/F
2+ Zips	\$5/M
Run Charge	\$8/M

MAINTENANCE

Semi-annually

MINIMUM

10,000

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VERMONT SECRETARY OF STATE

Jim Condos

ARCHIVES

CORPORATIONS

ELECTIONS

OTHER
PROGRAMS

PROFESSIONAL
REGULATIONS

SECRETARY'S
DESK

Corporation Information

Corporation Name	VERMONT COUNTRY STORE, INC. THE
Corporation Status	Active
File No	V-10258-0
Type	Vermont
Incorporation Date	01/09/1961
Corporation Description	STORE
State of Incorporation	VT
Fiscal Month End	04
Registered Agent	PENNY JOHNSON
Address	5650 MAIN STREET
City State Zip	MANCHESTER CTR VT 05255
President	WILLIAM C SHOULDICE IV
Vice Pres	CHRIS VICKERS
Secretary	CABOT ORTON
Treasurer	GARDNER ORTON
Director1	MICHAEL SHERMAN
Director2	FRED LAGER/R. JEWETT
Director3	W.CRANSHAW/E.MESSINA
Principal Street Address	5650 MAIN STREET
City State Zip	MANCHESTER CTR VT 05255
Last Annual Report	04/30/2012

Above accurate as of: 02/08/2013

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EXHIBIT B

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

AFFIDAVIT OF SARAH R. STAR, ESQ., IN SUPPORT OF RESPONSE TO
MOTION TO DISMISS BY PHILIP ZODHIATES AND RESPONSE UNLIMITED, INC.

I, Sarah R. Star, Esq., being duly sworn, do hereby depose and say:

1. Plaintiffs' Exhibit A is a true and correct copy of the information for the Vermont Country Store masterfile enhanced as listed on www.responseunlimited.com, and a true and correct copy of the corporate information of The Vermont Country Store, Inc., as registered with the Vermont Secretary of State.

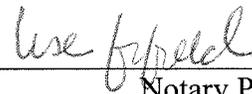
DATED at Middlebury, Vermont this 13th day of March, 2013.



Sarah R. Star, Esq.
Attorney for Plaintiffs

STATE OF VERMONT
ADDISON COUNTY, SS.

At Middlebury, Vermont this 13th day of March, 2013, personally appeared Sarah R. Star and she acknowledged that the information contained in the foregoing Affidavit is true and correct to the best of her knowledge and belief.

Before me, 

Notary Public
Commission Expires: 2/10/15

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