

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, *et al.*,  
Plaintiffs

v.

KENNETH L. MILLER, *et al.*,  
Defendants

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Docket No. 2:12-cv-184

SUPPLEMENTAL REPLY IN SUPPORT OF MOTION TO COMPEL

Defendants Philip Zodhiates, Victoria Hyden and Response Unlimited, Inc. (collectively “Defendants”), by their attorneys, Gravel & Shea PC, submit this supplemental reply in support of their motion to compel.

Preliminary Statement

Defendants submit this memorandum in order to inform the Court of recent factual developments which may impact the Court’s consideration of Defendants’ Motion to Compel, filed June 20, 2019 (“Defendants’ Motion to Compel”). The Court is authorized to admit and consider this newly discovered evidence based on the broad authority vested in it through the Federal Rules of Civil Procedure. *See e.g.*, F.R.C.P. 1.

Argument

Defendants’ Motion to Compel requests that Plaintiff be ordered to provide complete and responsive answers to Defendants’ First Set of Interrogatories (“Interrogatories”) 2, 4, 5, 6, 9, 10, 13, 14, 19 and 25 and Defendants’ First Set of Document Requests (“Document Requests”) 1-19. Plaintiff maintains in her opposition that a protective order is necessary before she produces the requested documents, in part because third party Christian Aid Ministries (“CAM”) requested that a

protective order apply to a portion of their documents. On July 29, 2019, at the request of Defendant Liberty Counsel, Plaintiff's counsel produced communications between Plaintiff's counsel and two third-parties to whom Plaintiff served subpoenas pursuant to F.R.C.P. 45 ("Third-Party Production"), including CAM. These communications directly contradict statements made by Ms. Jenkins and her counsel in their efforts to avoid production of documents without a blanket protective order. Specifically, Plaintiff entered into an agreement with CAM that provides for the production of documents without a protective order. The documents produced on July 29, 2019 also reveal additional discovery violations indicative of Ms. Jenkins' larger failure to act in good faith during the discovery process.

I. MS. JENKINS CONCEALED AN AGREEMENT WITH THIRD-PARTY CHRISTIAN AID MINISTRIES WHICH, IF DISCLOSED, COULD HAVE NEGATED THE NECESSITY OF PLAINTIFF'S PROPOSED PROTECTIVE ORDER.

Ms. Jenkins' counsel has repeatedly asserted that a protective order is necessary in this case because, in part, third party CAM provided confidential documents on the condition that those documents would not be produced to the Defendants without a protective order. For example, on May 3, 2019, Plaintiff stated that she would not produce certain documents provided by an unnamed third-party because such documents were produced in reliance on the entry of a confidentiality order. *See* Motion to Compel, Exhibit B at p. 23. On May 23, 2019, during a meet-and-confer regarding Defendants' anticipated Motion to Compel, Plaintiff's counsel stated that counsel was in possession of third-party documents that required a protective order prior to production. *See* Affidavit of Hillary A. Borcharding, Esq. ("Borcharding Aff."), ¶ 3 attached hereto. In Plaintiff Janet Jenkins' Response in Opposition to Defendants Philip Zodiates, Victoria Hyden, and Response Unlimited, Inc.'s Motion to Compel ("Opposition Motion to Compel"), Plaintiff wrote that "[o]n April 12, 2019, counsel for non-party [CAM]

agreed to produce documents responsive to a subpoena from Plaintiffs based on Plaintiffs commitment to treat documents produced by [CAM] as subject to the proposed stipulated protective order even prior to its entry by the Court.” Opposition Motion to Compel, p. 4. On July 12, 2019, during a call with defense counsel Horatio Mihet, Brooks G. McArthur, Norman C. Smith and Hillary A. Borcharding, Plaintiff’s counsel explained that while they do not possess any confidential documents related to Ms. Jenkins, they do possess confidential documents produced by CAM. *See Borcharding Aff.*, ¶¶ 4-5. It was on this call and in the subsequent e-mails that Defendants learned that CAM produced only 14 pages designated confidential. The remaining 130 pages of CAM’s production were not designated confidential. In reliance on Plaintiff’s counsel’s representation that a protective order was necessary to view the CAM confidential documents, Defendants agreed to collaborate on a limited protective order related to those documents. *Borcharding Aff.*, ¶ 6, Ex. 3.

Unbeknownst to Defendants, a protective order was not required at all, because CAM does not consider the responsive portions of their document production confidential. Instead, Plaintiff’s Third-Party Production revealed that CAM and the Plaintiff agreed to a less restrictive arrangement that would have avoided the need for a protective order related to the CAM confidential documents. Specifically, the Third-Party Production establishes that on April 1, 2019, CAM’s counsel stated

I’m fine making production [*sic*] subject to a not-yet-entered protective order, but I’d like to see the proposed order before doing so. Has a draft been circulated yet? We don’t have a lot of things which would need to be marked confidential, so redacting unrelated information might also be an option.

*See Borcharding Aff.*, ¶ 8, Ex. 5 at JENKINS00109. Plaintiff’s counsel replied, “We haven’t circulated a draft yet but should do so within the week. Happy to share with you when we do.

Alternatively, we're fine with y'all redacting unrelated information." *Id.* at JENKINS00108. Notwithstanding this exchange, CAM's documents were produced without redactions and Plaintiff's counsel vigorously pursued their proposed protective order from Defendants while concealing the less restrictive arrangement she had reached with CAM. Plaintiff continues to use the existence of confidential CAM documents as proof of the necessity of a protective order. Plaintiff's concealment of her arrangement with CAM appears to be a strategic decision that should not be permitted to justify her failure to produce documents prior to a blanket protective order. Defendants have offered to consider whether specific documents should be legitimately protected as confidential, but resist a blanket protective order, sure to be overbroad, and which is totally unnecessary.

II. PLAINTIFF'S DISCOVERY VIOLATIONS ILLUSTRATE HER UNWILLINGNESS TO COOPERATE IN A STANDARD DISCOVERY PROCESS.

A. Plaintiff's Counsel Narrowed The Scope Of A Third-Party Subpoena Without Notice To Defendants.

In addition to revealing Plaintiff's counsel's misrepresentations related to CAM's production, Plaintiff's Third-Party Production reveals that Plaintiff's counsel has impermissibly narrowed the scope of F.R.C.P. 45 subpoenas without giving notice of such changes to the Defendants. Rule 45(a)(4) of the Federal Rules of Civil Procedure provides that prior to issuing a third-party subpoena for documents the issuing party must serve "a notice and a copy of the subpoena [on] each party." Fed. R. Civ. P. 45(a)(4). Rule 45(a)(4) is intended to "enabl[e] other parties to object or to serve a subpoena for additional materials" (F.R.C.P. 45(a)(4) Reporter's Notes to 2013 amendment) and "has important underpinnings of fairness and efficiency." *See Mirra v. Jordan*, No. 13-CV-5519, 2014 U.S. Dist. LEXIS 77065, at \*9-10 (S.D.N.Y. May 28, 2014).

Inherent in the Rule 45 notice requirement is an obligation that a party issuing a subpoena inform other parties should the scope of the subpoena change through negotiations. Such a requirement allows non-issuing parties to serve supplemental subpoenas for excluded information and to analyze the produced documents within the appropriate framework. In *Wilson v. Conair Corporation*, the court acknowledged this reality stating:

Defendant has a substantial need to understand the scope of the subpoenas to interpret the responsive documents that were produced. For example, if the subpoena requests production of documents for a specific time period and the subpoena has been narrowed to a different time period, Defendant would assume from the subpoena that no documents for the excluded time period existed. Therefore, the Court finds that Defendant is entitled to information regarding the actual scope of the subpoena. Finally, requiring Defendant to obtain the information by deposing each of the retailers on how the scope of the subpoena was narrowed would create an undue hardship given that Plaintiff can easily provide such information without requiring the additional expense of third party depositions.

*Wilson v. Conair Corp.*, 2015 U.S. Dist. LEXIS 121517, at \*9 (E.D. Cal. Sept. 11, 2015) (granting motion to compel).

In this case, Plaintiff provided an advance copy of the CAM subpoena, but failed to notify the Defendants when Plaintiff's counsel agreed to narrow that subpoena. The initial subpoena requested documents related to 11 topics from a time period beginning on June 1, 2008 and presumably extending to the present. *See Borcharding Aff.*, ¶ 7., Ex. 4. On April 1, 2019, Plaintiff's counsel agreed to narrow the CAM subpoena to include only documents previously produced by CAM in response to a criminal subpoena issued in 2011. *See Borcharding Aff.*, ¶ 8., Ex. 5. This agreement permitted CAM to forego a diligent search of their records for documents responsive to request numbers 4, 6, 7 or 8, which excluded the only request related to Defendant Philip Zodhiates. *See id.* Consequently, Mr. Zodhiates was told that CAM would

search for documents related to his alleged involvement, and was never notified that the documents produced by CAM did not reflect such a search. Plaintiff's backroom deal also narrowed the applicable timeframe of CAM's search and permitted CAM to omit any document created after 2011. *See id.*

Narrowing the CAM subpoena without notice to the Defendants was a violation of the notice requirement inherent in F.R.C.P. 45. More fundamentally, this type of gamesmanship is a strong signal that Plaintiff should not be permitted to implement a blanket protective order that permits her to designate any document as confidential without restraint.

B. Plaintiff Delayed In Disclosing Documents Obtained Pursuant To F.R.C.P. 45.

Plaintiff unnecessarily delayed production of documents obtained pursuant to F.R.C.P. 45 despite a direct request for such information. On February 26, 2019, Defendants requested “[a]ll documents produced to You by any third party to whom You have served a subpoena in this case.” *See* Motion to Compel, Ex. A at p. 12. On May 3, 2019, Plaintiff agreed to provide documents produced pursuant to F.R.C.P. 45, excluding documents withheld as confidential pending a protective order. Motion to Compel, Ex. B at p. 23. Despite this commitment and despite possessing documents produced by third-parties CAM, Internet Archives and Liberty University, by June 18, 2019, Plaintiff had not produced any documents.<sup>1</sup> Borcharding Aff., ¶ 11.

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<sup>1</sup> On February 26, 2019, the Internet Archives provided Plaintiff with three sets of documents. Borcharding Aff., ¶ 9, at Ex. 6 at JENKINS00323. It appears that Plaintiff had some technical difficulties accessing the full set of documents and did not receive all responsive documents until on or around March 18, 2019. *Id.* at JENKINS 00317. On April 24, 2019, Plaintiff received CAM's document production—including 130 pages of documents not marked confidential. Borcharding Aff., ¶ 10, at Ex. 7. It is not clear when Plaintiff received Liberty University's production, but it is clear that Defendants had to discover the existence of that production without notice from Plaintiff and specifically request those documents in order to ensure Plaintiff met her discovery obligations. Borcharding Aff., ¶ 11.

On June 18, 2019, Defendants again requested any document produced by a third-party to whom Plaintiff served a subpoena. In response, on June 21, 2019, Plaintiff provided links to documents produced by Internet Archives and Liberty University. It took an additional request on July 12, 2019 for Plaintiff to produce non-confidential documents from CAM. Defendants should not be required to police Plaintiff to ensure her compliance with basic discovery obligations. The current need to constantly remind Plaintiff of her obligations and request compliance when Defendants are made aware of violations is yet another indication that Plaintiff will not use a blanket protective order in a limited or good faith manner.

#### Conclusion

Plaintiff's Third-Party Production reveals Plaintiff's failures to comply with her discovery obligations and failure to accurately represent CAM's request for a protective order. Plaintiff's misrepresentations and gamesmanship are valuable pieces of information as this Court determines whether to permit Plaintiff to utilize a blanket protective order and whether to award Defendants attorneys' fees incurred in drafting Defendants' Motion to Compel, Reply in Support of Motion to Compel and this Supplemental Reply in Support of Motion to Compel.

Dated: Burlington, Vermont  
August 6, 2019

/s/ Robert B. Hemley  
Robert B. Hemley, Esq.  
Hillary A. Borcharding, Esq.  
Gravel & Shea PC  
76 St. Paul Street, 7<sup>th</sup> Floor, P.O. Box 369  
Burlington, VT 05402-0369  
(802) 658-0220  
rhemley@gravelshea.com  
hborcharding@gravelshea.com  
For Defendants



additional confidential documents. Ms. Jenkins' counsel did not mention the possibility of redacting the confidential, unrelated information.

6. In reliance on this representation, Defendants cooperated with Plaintiff to draft a limited protective order related to the CAM documents. Attached hereto as Exhibit 3 is a true and accurate copy of an e-mail from defense attorney Hillary A. Borcharding, Esq., dated July 23, 2019.

7. On October 31, 2018, Defendants received notice of Plaintiff's subpoena to CAM. Attached hereto as Exhibit 4 is a true and accurate copy of Plaintiff's subpoena to Christian Aid Ministries, excluding Exhibit 1, as it was provided to Defendants on October 31, 2018.

8. Thereafter, Plaintiff negotiated with CAM and agreed to narrow the CAM subpoena. Attached hereto as Exhibit 5 is a true and accurate copy of an e-mail exchange between Ms. Jenkins' counsel and CAM's counsel, as produced by Plaintiff on July 29, 2019.

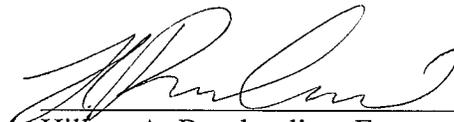
9. Also pursuant to a subpoena, on February 26, 2019, third party Internet Archives provided Plaintiff with three sets of documents. Attached hereto as Exhibit 6 is a true and accurate copy of an e-mail exchange between Ms. Jenkins' counsel and Internet Archives, as produced by Plaintiff on July 29, 2019.

10. On April 24, 2019, Plaintiff received CAM's document production. Attached hereto as Exhibit 7 is a true and accurate excerpt of an e-mail exchange between Ms. Jenkins' counsel and CAM's counsel, as produced by Plaintiff on July 29, 2019.

11. On or around June 18, 2019, Defendants' counsel became aware that Ms. Jenkins' counsel obtained, but did not produce, documents from third-party Liberty University. Defendants' counsel requested that Plaintiff produce the Liberty University documents and any other third-party production not yet provided.

12. On June 21, 2019, Ms. Jenkins' counsel provided documents produced by Internet Archives and Liberty University. Attached hereto as Exhibit 8 is a true and accurate copy of an e-mail from Ms. Jenkins' counsel dated June 21, 2019.

13. After another request on July 12, 2019, Ms. Jenkins' counsel finally produced the CAM documents not designated as confidential. *See* Defendants' Reply in Support of Motion to Compel, Ex. 2.

  
\_\_\_\_\_  
Hillary A. Borcharding, Esq.

Sworn to before me this  
5<sup>th</sup> day of August 2019.

  
\_\_\_\_\_  
Notary Public – State of Vermont  
Printed Name: Kathleen A Hatch  
Date: 8/5/19  
Commission No.: 0004378  
Commission Expires: 1/31/21

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, <i>et al.</i> ,	)	
Plaintiffs	)	
	)	
v.	)	Docket No. 2:12-cv-184
	)	
KENNETH L. MILLER, <i>et al.</i> ,	)	
Defendants	)	

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Exhibit No.	Description of Exhibit
3	E-mail from Hillary A. Borcharding, Esq., dated 7/23/19
4	Plaintiff’s Subpoena to Christian Aid Ministries (excluding Exhibit 1), as it was Provided to Defendants on 10/31/18
5	E-mail Exchange Between Ms. Jenkins’ Counsel and CAM’s Counsel, Produced by Plaintiff on 7/29/19
6	E-Mail Exchange Between Ms. Jenkins’ Counsel and Internet Archives, Produced by Plaintiff on 7/29/19
7	E-Mail Exchange Between Ms. Jenkins’ Counsel and CAM’s Counsel, Produced by Plaintiff on 7/29/19
8	E-mail from Ms. Jenkins’ counsel, dated 6/21/19

## Hillary A. Borcharding

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**From:** Hillary A. Borcharding  
**Sent:** Tuesday, July 23, 2019 9:50 AM  
**To:** 'Horatio Mihet'; Tyler Clemons  
**Cc:** Norman C. Smith (nc.smith@myfairpoint.net); Robert B. Hemley; Brooks G. McArthur (bmcarthur@jarvismcarthur.com); Daniel Schmid; Roger Gannam; mtierney@wadleighlaw.com; Diego Soto; flangrock; Emily Joselson; david.dinielli@splcenter.org; 'srs@sarahstarlaw.com'  
**Subject:** RE: Jenkins: CAM Production  
**Categories:** Saved to DM, #1453082  
**ProfileOnSend:** 1

Tyler,

Please note I removed Matt Byrne and Norman Williams from the email chain. These attorneys are no longer involved with this case.

Also, the RUL defendants are amenable to Harry's revised protective order relating to the CAM documents.

Hillary

**Hillary A. Borcharding** | Associate  
**Gravel & Shea PC**

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[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com) | [www.gravelshea.com](http://www.gravelshea.com)  
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**From:** Horatio Mihet <hmihet@lc.org>  
**Sent:** Friday, July 19, 2019 8:07 PM  
**To:** Tyler Clemons <Tyler.Clemons@splcenter.org>  
**Cc:** Norman C. Smith (nc.smith@myfairpoint.net) <nc.smith@myfairpoint.net>; Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur (bmcarthur@jarvismcarthur.com) <bmcarthur@jarvismcarthur.com>; Norman C. Williams <nwilliams@gravelshea.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; mtierney@wadleighlaw.com; Diego Soto <Diego.Soto@splcenter.org>; flangrock <flangrock@langrock.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Emily Joselson <ejoselson@langrock.com>; david.dinielli@splcenter.org; 'srs@sarahstarlaw.com' <srs@sarahstarlaw.com>  
**Subject:** RE: Jenkins: CAM Production

Tyler and other Counsel:

First, I was initially omitted from Tyler's email of last Friday (below), providing a link to the non-confidential CAM documents and a revised Stipulated Protective Order. To the extent you all have had any follow-up discussions on that thread, I would not have been included, and I ask that you forward same to me. Please be sure to use this thread instead going forward.

Second, please find attached a more simplified and specific version of a Protective Order that my clients would be willing to sign to receive the Confidential Documents from CAM. Please let me know promptly if everyone is on board, so that we can have access to those documents.

Regards,

**Horatio G. Mihet, Esq.\***  
*Vice President of Legal Affairs and  
Chief Litigation Counsel*  
**Liberty Counsel**  
PO Box 540774  
Orlando, FL 32854  
(407) 875-1776 phone  
(407) 875-0770 fax  
[LC.org](http://LC.org)  
Offices in DC, FL, and VA  
\*Licensed in Florida and Ohio

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Friday, July 12, 2019 2:56 PM  
**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Subject:** FW: Jenkins: CAM Production

Hi Harry,

You got left off this list somehow. Forwarding to make sure you receive this.

Best,



**J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 504.526.1530 C 504.258.4290 F 504.486.8947  
[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Louisiana & Maryland

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**From:** Tyler Clemons  
**Sent:** Friday, July 12, 2019 1:43 PM  
**To:** 'Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net))'; 'Robert B. Hemley'; 'Brooks G. McArthur ([bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com))'; 'Norman C. Williams'; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))'; 'mtierney@wadleighlaw.com'  
**Cc:** Diego Soto; srs; Fritz Langrock ([FLangrock@langrock.com](mailto:FLangrock@langrock.com)); 'Hillary A. Borcharding'; 'Matthew B. Byrne'; Emily Joselson; David Dinielli  
**Subject:** Jenkins: CAM Production

Good afternoon counsel:

Thank you to Harry, Brooks, Norm, and Hillary for joining Plaintiffs for a conference regarding a protective order this afternoon.

As promised during that call, you may find the portion of the 130-page production from Christian Aid Ministries that was not marked confidential at this link: <https://splc.box.com/s/zum6hqxlrpqonwxw99ywgo4bddxtjdtf>. This does not include the documents Bates Stamped CAM0000015-23 or CAM0000027-32 (a total of 14 pages), which were marked confidential.

I have also attached a draft protective order governing the disclosure of the CAM documents marked confidential. It is drafted in a manner to permit additional documents or categories of information to be easily added to it in the future should that become necessary. Please indicate your willingness to stipulate to such an order at your earliest convenience.

Best,



**J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 504.526.1530 C 504.258.4290 F 504.486.8947  
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Admitted in Louisiana & Maryland

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AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

# UNITED STATES DISTRICT COURT

for the  
District of Vermont

Janet Jenkins et al.

Plaintiff

v.

Lisa Miller et al.

Defendant

Civil Action No. 2:12-cv-00184-wks

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Christian Aid Ministries

(Name of person to whom this subpoena is directed)

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment.

Place: Southern Poverty Law Center 400 Washington Avenue Montgomery, Alabama 36104	Date and Time:  11/30/2018 5:00 am
--	--

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/31/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Beth Jacob

Attorney's signature



The name, address, e-mail address, and telephone number of the attorney representing (name of party) Janet Jenkins and Isabella Miller-Jenkins, who issues or requests this subpoena, are:

Beth Jacob | 400 Washington Ave., Montgomery, AL 36104 | beth.jacob@splcenter.org | (334)956-8224

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:12-cv-00184-wks

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**ATTACHMENT  
TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
TO CHRISTIAN AID MINISTRIES**

**DEFINITIONS**

1. “Aid” means help or assistance in any form, including but not limited to gifts, loans, advice, recommendations, suggestions, ideas, introductions, favors, and provision of services.

2. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), including but not limited to telephone calls, voice recordings, emails, text messages, letters, postcards, notes, cards, instant messages, text chats, voice chats, tweets, notes, memoranda, speeches, lectures, seminars, conferences, and conversations.

3. “Concerning” means relating to, referring to, describing, evidencing, or constituting.

4. “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). This definition includes archived copies. A draft or nonidentical copy is a separate document within the meaning of this term.

5. “Isabella Miller-Jenkins” means Plaintiff Isabella Miller-Jenkins, regardless of the name used by her or to refer to her, including but not limited to the name “Lydia.”

6. “Lisa Miller” means Defendant Lisa Miller, regardless of the name used by her or to refer to her, including but not limited to the names “Lisa Miller-Jenkins” and “Sarah,” who is a parent of Plaintiff Isabella Miller-Jenkins.

7. The terms “Plaintiff” and “Defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party as identified in the Revised Second

Amended Complaint, attached as Exhibit 1, regardless of the name used by the party or to refer to the party, and where applicable, the party's successors and predecessors in interest, and the party's current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on the party's behalf.

8. "You" and "Your" refer to Christian Aid Ministries, to whom this set of requests is directed, regardless of the name used by Christian Aid Ministries or to refer to Christian Aid Ministries, and where applicable, to Christian Aid Ministries' successors and predecessors in interest, and Christian Aid Ministries' current and former officers, directors, employees, partners, parents, subsidiaries, affiliates, agents, consultants, and others purporting to act on its behalf.

9. The term "or" means "and" and vice versa to bring within the scope of these Requests all documents or ESI that would be excluded absent this definition.

#### **INSTRUCTIONS**

1. Provide all information and documents in your possession, custody, or control in response to each Request.

2. Produce each document in its entirety and all drafts and non-identical copies of each document.

3. If you are able or willing to provide only part of the information and documents sought by a Request, provide that partial information and documentation and specify in writing the reason for your inability or unwillingness to provide the remainder.

4. When responding to these Requests, state in writing as to each Request either that:

- a. there are such documents and they will be produced;
- b. there are such documents, but you refuse to produce them because of a claim of privilege or for some other identified reason; or
- c. the documents requested do not exist.

5. For every objection to a Request, specify in writing the grounds for objecting to the Request, including the reasons, whether any responsive materials are being withheld on the basis of that objection, and the parts of the documents being withheld on the basis of that objection. Produce the parts of the document not being withheld on the basis of an objection.

6. For every document or part of a document withheld from production because of an assertion of privilege, identify the nature of the claimed privilege (including work product) and, if the privilege is governed by state law, identify the state's privilege rule being invoked. *See Fed. R. Civ. P. 26(b)(5).*

7. If any document sought by these Requests has been destroyed or no longer exists, state as to each such document its date, authors, recipients, contents, and the date and circumstances of its destruction or ceasing to exist.

8. Unless noted otherwise, produce ESI in the following format(s):

- a. Produce ESI in Tagged Image Format (TIF) with a Concordance delimited load file using Concordance standard delimiters. Maintain document breaks and parent-child relationships;
- b. Digitize and produce paper documents in Portable Document Format (PDF), OCR'd and unitized logically on the document level. Produce other documents (including Excel documents) in native, searchable format;
- c. Produce structured data in Comma Separated Values (CSV) file format; and
- d. Include metadata.

9. The applicable timeframe for these Requests begins on June 1, 2008.

**DOCUMENTS TO BE PRODUCED**

1. All communications with Defendant Lisa Miller.
2. All communications concerning Defendant Lisa Miller.
3. All communications concerning Plaintiff Isabella Miller-Jenkins.
4. All communications with Defendant Kenneth Miller.
5. All communications with Defendant Timothy Miller.
6. All communications with Defendant Philip Zodiates.
7. All communications with Defendant Rena Lindevaldsen.
8. All communications with Defendant Liberty Counsel.
9. All documents concerning requests for aid to Defendant Lisa Miller or Plaintiff Isabella Miller-Jenkins.
10. All documents concerning the decision by Christian Aid Ministries not to provide aid to Defendant Lisa Miller or Plaintiff Isabella Miller-Jenkins.
11. Documents sufficient to identify all people working at or for Christian Aid Ministries who participated in its response to any communication concerning Defendant Lisa Miller or Plaintiff Isabella Miller-Jenkins, including but not limited to its response to requests for aid to Lisa Miller and Isabella Miller-Jenkins.

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**From:** Steve Shrock <Shrock@ccj.com>  
**Sent:** Thursday, April 04, 2019 12:27 PM  
**To:** Tyler Clemons  
**Cc:** Beth Jacob;Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Hi Tyler,

We have everything Bates-stamped and downloaded onto a flash drive, with the appropriate documents marked Confidential. Before I send that out to you, I'd really prefer to review the PO you're expecting to be entered. I think the unavailability of that at present means this is going to run into next week, which I trust does not pose a problem.

I'm out tomorrow, and have a significant motion due Tuesday, but whenever you are in position to circulate that draft, I'll try to review it and get our documents out to you relatively promptly thereafter. Whenever you have a sense of when that draft will be available, please let me know.

Thanks,  
Steve

*Steven J. Shrock*

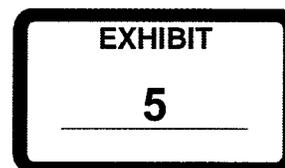
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(330) 674-3055  
(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

**From:** Tyler Clemons [mailto:[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)]  
**Sent:** Monday, April 1, 2019 11:14 AM  
**To:** Steve Shrock <Shrock@ccj.com>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

We haven't circulated a draft yet but should do so within the week. Happy to share with you when we do. Alternatively, we're fine with y'all redacting unrelated information.

**J. Tyler Clemons** (*he/him/his*)  
Staff Attorney, LGBT Rights/Special Litigation  
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**From:** Steve Shrock [<mailto:Shrock@ccj.com>]  
**Sent:** Monday, April 1, 2019 9:57 AM  
**To:** Tyler Clemons  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Thanks, Tyler. Everything was produced to the AUSA in hard copy form – we weren't doing much electronically yet in 2011 – but let me discuss with my assistant whether it would be easier to copy or just scan everything. There's a meaningful amount of documents, but not enough that we need to set up a dropbox or anything like that.

And yes, I'm fine making production subject to a not-yet-entered protective order, but I'd like to see the proposed order before doing so. Has a draft been circulated yet? We don't have a lot of things which would need to be marked confidential, so redacting unrelated information might also be an option.

Regards,  
Steve

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(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

---

**From:** Tyler Clemons [<mailto:Tyler.Clemons@splcenter.org>]  
**Sent:** Monday, April 1, 2019 10:53 AM  
**To:** Steve Shrock <[Shrock@ccj.com](mailto:Shrock@ccj.com)>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

Steve,

Sorry for the multiple emails, but I realized that I forgot to address your request for a protective order.

We're in the process of preparing a two-tiered protective order that would apply to all discovery. Would you be willing to produce these documents as confidential subject to the entry of that order on the condition that we agree not to disseminate them until the order is in place? We would not share with anyone except co-counsel and experts/consultants (if we hire them). And if we used them in a filing, we would treat them as confidential and file under seal until the order is in place.

Thanks,

Tyler

---  
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**From:** Tyler Clemons  
**Sent:** Monday, April 1, 2019 9:23 AM  
**To:** 'Steve Shrock'  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Good morning Steve,

Thanks for your thoroughness in responding to this. We are fine with accepting the production that CAM turned over to the government as outlined below, assuming that CAM is ok with us conducting focused follow-up if needed after review.

We prefer electronic production, particularly if the documents are already in that form for the production to the government. If not, please let me know how we can best facilitate production.

Best,

Tyler

---  
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**From:** Steve Shrock [<mailto:Shrock@ccj.com>]  
**Sent:** Friday, March 22, 2019 10:31 AM  
**To:** Tyler Clemons  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Tyler,

Thank you.

I have pulled my old closed file and reviewed CAM's prior document production to the government, for purposes of determining what we could produce in response to your current subpoena without incurring undue burden and expense. Here is what I have found:

1. The government issued subpoenas to (CAM employee) Kim Eichorn and to CAM in August 2011, to which we responded on September 1 and September 15, 2011, respectively. Both subpoenas requested production of the same documents: anything "related in any way to Lisa Miller, Isabella Miller-Jenkins, Sarah Beiler, and/or Lydia Beiler."
2. My two cover letters to Paul Van de Graaf are attached, which describe the production we made in response to those subpoenas. As you will see, although worded somewhat differently than your current subpoena, CAM's response to those subpoenas essentially would encompass all documents responsive to categories 1, 2, 3, 9, 10, and 11 of your current subpoena, and most likely all documents responsive to category 5 of your current subpoena (through that point in time).
3. The documents withheld from that production as "items which reference Timo Miller or his case without mentioning Lisa, Isabella, or their aliases" are truly innocuous. You need to understand that Timo was the pastor of the church in Managua which the CAM personnel serving there attended. Accordingly, there are many, many routine emails which merely *mention* Timo, and those were the ones which we did not produce. I do not believe, however, that any of the documents withheld from that earlier production would be "communications with Timo", as sought by your current subpoena. Thus, while I have not gone back through every document to confirm this, my belief is that CAM's prior production also would constitute a full response to category 5 of your current subpoena (through that point in time).
4. To the best of our knowledge, CAM would not have any documents after the date of its prior production which are responsive to your subpoena. Likewise, to the best of our knowledge, CAM would not have any documents from any point in time which are responsive to categories 4, 6, 7, or 8 of your subpoena. (I am not aware of any witness who has ever contended that CAM or any of its personnel were ever in contact with Ken Miller, Philip Zodhiates, Rena Lindevaldsen, or Liberty Counsel.)
5. As you know, Andy Yoder later was subpoenaed to testify at the criminal trial of Ken Miller, but he was not asked to produce any documents at that time. Likewise, CAM was dismissed from this action prior to being served with or responding to any discovery requests. Thus, the productions from September 2011 represent CAM's only document searches/productions made in connection with this matter.

After discussing this matter with my client, our position regarding your current subpoena is that we will re-produce everything that was previously produced to the government (which, as outlined above, represents at least substantial compliance with the subpoena, and to the best of our knowledge without further investigation represents complete compliance with the subpoena), but if you are going to insist on CAM doing more than that, then we object to the subpoena under FRCP 45(d)(2)(B) as unduly burdensome.

(As a practical matter, before we produce those materials, I need to ensure there is a protective order in place which limits the usage of such documents to purposes of this case only, and which prohibits further dissemination of them. Some of the responsive documents are minutes of CAM board meetings which reference numerous other topics. I trust that will not be a problem.)

While you are under no obligation to "take my word for it", I genuinely believe that anything you could possibly want from CAM is included within the documents we're willing to re-produce. CAM's connection to the events at issue in this case is very remote – Lisa and Isabella appeared one day at Timo's church, and came to be known by the CAM missionaries who were in Managua at the time because they were staying with Timo and attending his church; when Timo asked CAM to help them out, the local CAM personnel communicated with CAM headquarters about the matter and were advised not to get involved, and they did not; soon thereafter, Lisa and Isabella were gone. The pertinent

timeframe in which all this occurred was roughly September 2009 through March 2010, all of which time period was included within our prior production. I'm not aware of anyone who has contended that the facts relating to CAM are more involved than that, and all of the documents bear that out. If you have some reason to believe that CAM's involvement was greater than that, such that there may be additional responsive documents, please enlighten me, but for over 7.5 years now, I have been representing CAM and its employees in various proceedings somehow related to "the Lisa Miller situation", and I have never heard anything which contradicted the facts as I've summarized them.

Thank you for your attention to this matter. I will look forward to hearing from you soon. (Please note that I will be out of the office all next week, so the earliest I will be able to communicate with you about this further will be when I return on April 1<sup>st</sup>.)

Regards,  
Steve

*Steven J. Shrock*

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Millersburg, Ohio 44654  
(330) 674-3055  
(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

---

**From:** Tyler Clemons [<mailto:Tyler.Clemons@splcenter.org>]  
**Sent:** Tuesday, March 12, 2019 11:04 AM  
**To:** Steve Shrock <[Shrock@ccj.com](mailto:Shrock@ccj.com)>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

Hi Steve,

That's very strange—we will definitely follow up with our process server to figure out what happened here. In the meantime, thank you for your understanding. The April 5 date works just fine for us.

Best,

Tyler

---  
**J. Tyler Clemons** (*he/him/his*)  
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**From:** Steve Shrock [<mailto:Shrock@ccj.com>]  
**Sent:** Monday, March 11, 2019 8:59 AM

**To:** Tyler Clemons  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Tyler,

In discussing this matter with my client, I've run into something which I have never encountered before, which I thought I should bring to your attention.

The Return of Service completed by your process server appears to be incorrect. CAM did not have a Frida Yoder, nor anyone who meets that physical description, on its administrative office staff as of November 7, 2018, when the subpoena allegedly was served. We have tried to figure out what may have happened, since it seems unlikely that a process server would just make something up, but we cannot. I respectfully suggest that you reconsider using Ms. Nelson in the future. In any event, this explains why we had no record of receiving the subpoena prior to your email last week.

Regardless of that, we have no intention of making you formally serve the subpoena; we will accept your email service of last Wednesday, March 6, 2019, and will deem the desired production date as being 30 days thereafter, i.e., by April 5, 2019, in keeping with the original timeframe in the subpoena. If that creates an issue with anything that may be going on with your case schedule (I am still on the Court's service list, but, to be candid, I pay virtually no attention to the goings-on in the case), please let me know, and we will attempt to accommodate that.

Substantively, as I mentioned below, I still have to pull my old files and review our prior production. Once I do so, I will be in touch to address any substantive concerns we may need to work through.

Regards,  
Steve

*Steven J. Shrock*

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(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

**From:** Tyler Clemons [<mailto:Tyler.Clemons@splcenter.org>]  
**Sent:** Thursday, March 7, 2019 3:00 PM  
**To:** Steve Shrock <[Shrock@ccj.com](mailto:Shrock@ccj.com)>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

Excellent—thanks Steve. Please let me know if you need anything on our end in the meantime.

Best,

Tyler

---

**J. Tyler Clemons** (*he/him/his*)  
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**From:** Steve Shrock [<mailto:Shrock@ccj.com>]  
**Sent:** Thursday, March 7, 2019 1:33 PM  
**To:** Tyler Clemons  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Thanks, Tyler. I can understand that, with the time that has transpired. This case certainly seems to have a life of its own!

Let me follow up with my client and try to get to the bottom of why they have no record of receiving this.

My recollection is that CAM compiled everything it had relating to Lisa Miller years ago, for purposes of responding to the United States' subpoenas in the Timo and Ken Miller criminal cases. If I am correct, then we may be in position to respond to your subpoena relatively promptly, assuming that the reproduction of those materials is satisfactory, and in that case (since we may be able to respond without incurring significant expense) I am inclined to overlook some of my concerns touched upon below. (I doubt that our original search for materials went back as far as 2008, though, and I also doubt that CAM has retained electronic versions of these materials after its dismissal from this case and the conclusion of the criminal proceedings, so it may be impossible for CAM to strictly comply with your subpoena, although I trust that will not pose a problem to you.) If my recollection is incorrect, then we may need to discuss narrowing the scope of your subpoena to be more manageable – but we can cross that bridge if and when we get to it.

I'll plan to be back in touch with you at some point next week. Thanks again.

Regards,  
Steve

*Steven J. Shrock*

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138 East Jackson Street  
Millersburg, Ohio 44654  
(330) 674-3055  
(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

---

**From:** Tyler Clemons [<mailto:Tyler.Clemons@splcenter.org>]  
**Sent:** Thursday, March 7, 2019 1:43 PM  
**To:** Steve Shrock <[Shrock@ccj.com](mailto:Shrock@ccj.com)>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

Hi Steve,

Apologies for not contacting you about this first—Christian Aid Ministries was dismissed from the litigation several years before the Southern Poverty Law Center came into the case and I was unaware that you still represented CAM.

I have attached the affidavit of service on Frida Yoder at CAM's Millsersburg, Ohio, address on November 7, 2018, at 1:47 p.m. I have also attached the email notice (sent October 31, 2018—sorry for the mix up on the dates) to other counsel in the suit of the service of the subpoena. As the email indicates, notice was mailed the same day to counsel who have not consented to service via email.

Please let me know if you need additional information or have other questions.

Best,

Tyler

---

**J. Tyler Clemons** (*he/him/his*)  
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**From:** Steve Shrock [<mailto:Shrock@ccj.com>]  
**Sent:** Wednesday, March 6, 2019 4:05 PM  
**To:** Tyler Clemons  
**Subject:** FW: document request concerning Miller/Jenkins case

Tyler,

I am legal counsel to Christian Aid Ministries, which forwarded your below email to me.

Notwithstanding your contention that this Subpoena was served on CAM on October 31, 2018, my client has no record of receiving this prior to your email of this morning. (In addition, please note that I was counsel of record for CAM in the Jenkins v. Miller case, so I would have thought that any efforts by Plaintiff to obtain discovery in that case from my client would have been brought directly to my attention, and this is also the first which I have heard about this.) I also see no reference on the docket to any notice having been given to the remaining parties of the service of this subpoena pursuant to Rule 45(a)(4), although perhaps you gave such notice informally rather than filing a Notice of Service.

In any event, could you please provide me with further information on how, when, and upon whom this subpoena was served? If there was, indeed, proper service of the subpoena, that will enable me to address such matters with my client, to ensure that it adopts better procedures to avoid something such as this from slipping through the cracks unattended in the future. And, on the other hand, if it turns out that there has not yet been proper service of the subpoena upon CAM, then we can work through that. Thank you.

Once we run those service issues to ground, I will be in a better position to reply to your substantive question below about when you can expect a response from CAM. Initially, I note that I'm not sure your subpoena is valid, as it appears to violate Rule 45(c)(2)(A) by purporting to require production from my Ohio-based client in Alabama. In addition, I have a number of concerns about the breadth of your requests in light of the remaining parties and claims in this case, as well as the duplication of effort this seems to require in light of my client's extensive prior document production within the

criminal proceedings, all of which I understood had been provided to your client or her counsel. But I think any discussion of those or any other potential objections is premature at this point; please advise regarding service of the subpoena, and we will proceed from there. Thanks.

Regards,  
Steve

*Steven J. Shrock*

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(330) 674-3055  
(330) 674-4469 (fax)  
[shrock@ccj.com](mailto:shrock@ccj.com)

**From:** Paul Weaver [<mailto:pweaver@camoh.org>]  
**Sent:** Wednesday, March 6, 2019 11:30 AM  
**To:** Steve Shrock <[Shrock@ccj.com](mailto:Shrock@ccj.com)>  
**Subject:** FW: document request concerning Miller/Jenkins case

**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Wednesday, March 6, 2019 11:18 AM  
**To:** Paul Weaver <[pweaver@camoh.org](mailto:pweaver@camoh.org)>  
**Subject:** RE: document request concerning Miller/Jenkins case

Good morning Mr. Weaver,

My name is Tyler Clemons, and I represent Janet Jenkins and Isabella Miller-Jenkins in *Jenkins v. Miller*, No. 2:12-cv-184 (D. Vt.). As Mr. Miller indicated below, I have been attempting to communicate with Christian Aid Ministries regarding a subpoena that we served on CAM on October 31, 2018. I have attached the subpoena to this email for your convenience.

Please let me know as soon as possible when we can expect CAM's response to our subpoena. I'm also happy to discuss any questions or concerns you may have via email or phone.

Best,

**J. Tyler Clemons** (*he/him/his*)  
Staff Attorney, LGBT Rights/Special Litigation  
Southern Poverty Law Center  
201 St. Charles Avenue Suite 2000  
New Orleans, Louisiana 70170  
t (504)526-1530 c (504)258-4290 f (504)486-8947  
[LinkedIn](#) | [SSRN](#)

*Admitted to practice in Louisiana and Maryland.*

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**From:** Mark Miller [<mailto:Mark@camoh.org>]  
**Sent:** Thursday, February 28, 2019 2:06 PM  
**To:** Tyler Clemons  
**Cc:** Paul Weaver  
**Subject:** document request concerning Miller/Jenkins case

Hi Tyler,  
I received your message and am finally getting back to you concerning this. I have cc'd Paul Weaver (assistant director of Christian Aid Ministries) in this email. Feel free to reach out to him as he had originally worked on this case. Please let me know if you need anything in addition.

Sincerely,

*Mark Miller | Christian Aid Ministries  
Human Resources / Manager  
phone: 330.893.2428  
email: [mark@camoh.org](mailto:mark@camoh.org)*

---

**From:** Tyler Clemons  
**Sent:** Monday, March 18, 2019 9:08 AM  
**To:** Chris Butler  
**Subject:** RE: Motion to Compel

Hi Chris,

Those are the subfolders that are empty on our end as well—the others have content. Thanks for checking on this!

Tyler

**J. Tyler Clemons** (*he/him/his*)  
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---

**From:** Chris Butler [mailto:butler@archive.org]  
**Sent:** Monday, March 18, 2019 1:47 AM  
**To:** Tyler Clemons  
**Subject:** Re: Motion to Compel

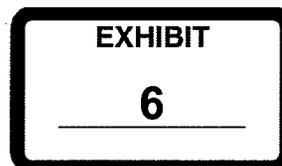
In my copy, I see that a series of folders 07501-07532 are empty, but the folders thereafter have PDF, mp3, or other media files. If you aren't seeing those, I wonder if the burning somehow failed and would encourage you to download that the zip for 3-c 07501-09000 at [https://archive.org/download/first\\_201902/3-c%2007501-09000.zip](https://archive.org/download/first_201902/3-c%2007501-09000.zip), which I have been able to do from my home connection and unzip to view the individual web files.

-Chris

On 3/15/19 2:09 PM, Tyler Clemons wrote:

Hi Chris,

Sorry for the delay on this—this week has been rather hectic. We have now accessed the files and uploaded them onto our server. We did have one question, however: the disk labeled “3-c 07501-09000” has lots of subfolders but each subfolder is empty. Is that cause for concern?



Thanks,

Tyler

---

**J. Tyler Clemons** (*he/him/his*)  
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---

**From:** Tyler Clemons  
**Sent:** Monday, March 11, 2019 1:46 PM  
**To:** 'Chris Butler'  
**Subject:** RE: Motion to Compel

Hi Chris,

I received the DVDs. I will confirm with you once we have accessed the files.

Best,

Tyler

---

**J. Tyler Clemons** (*he/him/his*)  
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---

**From:** Tyler Clemons  
**Sent:** Thursday, March 7, 2019 5:36 PM  
**To:** 'Chris Butler'  
**Subject:** RE: Motion to Compel

Great! We will keep an eye out for them and let you know when they arrive.

**J. Tyler Clemons** (*he/him/his*)

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---

**From:** Chris Butler [<mailto:butler@archive.org>]  
**Sent:** Thursday, March 7, 2019 5:14 PM  
**To:** Tyler Clemons  
**Subject:** Re: Motion to Compel

they are shipping with Fedex tracking #7746 3668 7062 with ETA tomorrow.

-Chris

On 3/7/19 2:01 PM, Tyler Clemons wrote:

Thanks Chris. We'll keep an eye out for the DVDs.

**J. Tyler Clemons** (*he/him/his*)  
Staff Attorney, LGBT Rights/Special Litigation  
Southern Poverty Law Center  
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---

**From:** Chris Butler [<mailto:butler@archive.org>]  
**Sent:** Thursday, March 7, 2019 3:09 PM  
**To:** Tyler Clemons  
**Subject:** Re: Motion to Compel

Tyler, unfortunately, I was not able to get all of the files on physical media together yesterday to send. I am burning DVDs at present and anticipate they'll go out today. I also broke the files up into smaller batches (about 3gb or smaller), which may be easier to download. If you'd like to try getting them, here the links:

[https://archive.org/download/first\\_201902/3-a%2000001-05000.zip](https://archive.org/download/first_201902/3-a%2000001-05000.zip)

[https://archive.org/download/first\\_201902/3-b%2005001-07500.zip](https://archive.org/download/first_201902/3-b%2005001-07500.zip)

[https://archive.org/download/first\\_201902/3-c%2007501-09000.zip](https://archive.org/download/first_201902/3-c%2007501-09000.zip)

[https://archive.org/download/first\\_201902/3-d%2009001-09250.zip](https://archive.org/download/first_201902/3-d%2009001-09250.zip)

[https://archive.org/download/first\\_201902/3-e%2009251-09500.zip](https://archive.org/download/first_201902/3-e%2009251-09500.zip)

[https://archive.org/download/first\\_201902/3-f%2009501-10000.zip](https://archive.org/download/first_201902/3-f%2009501-10000.zip)

[https://archive.org/download/first\\_201902/3-g%2010001-43679.zip](https://archive.org/download/first_201902/3-g%2010001-43679.zip)

In any case, I'll get the physical media to you as quickly as possible.

-Chris

On 3/6/19 9:47 AM, Tyler Clemons wrote:

Excellent. Thank you Chris.

**J. Tyler Clemons** (*he/him/his*)  
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Southern Poverty Law Center  
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---

**From:** Chris Butler [<mailto:butler@archive.org>]  
**Sent:** Wednesday, March 6, 2019 11:45 AM  
**To:** Tyler Clemons  
**Subject:** Re: Motion to Compel

Yes, I will try to rush ship these and send you tracking info today.

-Chris

On 3/6/19 8:01 AM, Tyler Clemons wrote:

Hi Chris,

The downloads keep timing out for us, unfortunately. Would it be possible for you to mail us the files on CDs or a flash drive?

Sorry for the inconvenience.

Tyler

---

**J. Tyler Clemons** (*he/him/his*)  
Staff Attorney, LGBT Rights/Special Litigation  
Southern Poverty Law Center  
201 St. Charles Avenue Suite 2000  
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---

**From:** Chris Butler [<mailto:butler@archive.org>]  
**Sent:** Thursday, February 28, 2019 2:35 PM  
**To:** Tyler Clemons  
**Subject:** Re: Motion to Compel

Final two links to complete the docs are:

[https://archive.org/download/first\\_201902/lc.org%20media%2009001-10000.zip](https://archive.org/download/first_201902/lc.org%20media%2009001-10000.zip)

[https://archive.org/download/first\\_201902/lc.org%20media%2010001-43679.zip](https://archive.org/download/first_201902/lc.org%20media%2010001-43679.zip)

-Chris

On 2/28/19 11:58 AM, Chris Butler wrote:

Hmm, I was able to download and unzip that file, but it is very large, so I wonder if the download is timing out. I have broken the set 3 into subsets and have uploaded the first at [https://archive.org/download/first\\_201902/lc.org%20media%2000001-09000.zip](https://archive.org/download/first_201902/lc.org%20media%2000001-09000.zip)

Links to two more subsets to follow shortly.

-Chris

On 2/27/19 4:29 PM, Tyler Clemons wrote:

Thanks so much, Chris. We have successfully retrieved the first two sets, but we keep getting an error message that the "compressed folder is invalid" for the third. Can you check it and resend?

J. Tyler Clemons  
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Southern Poverty Law Center  
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\*This email was sent from my iPhone. Please excuse brevity and typos.\*

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recipient, please immediately inform the sender by phone or email and delete this email without reading, forwarding, copying, saving, or printing it or any attachments.

---

**From:** Chris Butler  
<[butler@archive.org](mailto:butler@archive.org)>  
**Sent:** Tuesday, February 26, 2019 1:52 PM  
**To:** Tyler Clemons  
**Subject:** re: Motion to Compel

Dear Mr. Clemons,  
Esq.,

Please find copies of archived web files from the domains lc.org and libertycounsel.com available to be downloaded at the following links. The files are broken down in three sets:

Set 1 - all files for libertycounsel.com:

[https://archive.org/download/first\\_201902/Set%201%20-%20libertycounsel.com.zip](https://archive.org/download/first_201902/Set%201%20-%20libertycounsel.com.zip)

Set 2 - HTML files for lc.org:

[https://archive.org/download/first\\_201902/Set%202%20-%20lc.org%20HTML](https://archive.org/download/first_201902/Set%202%20-%20lc.org%20HTML)

.zip

Set 3 - media (e.g.,  
audio, still images)  
and PDF files for  
lc.org:

[https://archive.org/  
download/first\\_201  
902/Set%203%20-  
%20lc.org%20media  
%20%26%20PDF.zi  
p](https://archive.org/download/first_201902/Set%203%20-%20lc.org%20media%20%26%20PDF.zip)

Please confirm after  
you have  
successfully  
downloaded these  
three zip files and  
we will disable the  
links.

These files were  
obtained from the  
Wayback Machine to  
be turned over to  
you by use of a script  
that automatically  
sends requests to  
download and save a  
specified list of  
archived files.

The files are saved  
only as their simple  
file names, e.g.,  
archives of the  
HTML file for the  
homepage  
libertycounsel.com  
are saved as  
"index.html".

Each file is saved on  
its own in a  
numbered directory  
(e.g., Set 1 has  
directories 0001-  
7812), each  
directory

corresponding to a request made by our script to automatically download and save an archived file in it.

To confirm the original URL and timestamp denoting the time of preservation for each file, one should consult 1, a URL list and 2, a download log provided individually for each of the above-mentioned sets.

The URL list is comprised of “extended URLs” in the format [http://web.archive.org/web/\[14-digit timestamp\]/\[original URL\]](http://web.archive.org/web/[14-digit timestamp]/[original URL]) and a corresponding numbered directory for each extended URL. Please note that this is the list of URLs for which requests were sent by our script to the Wayback Machine servers to download and save the archived files into the corresponding numbered directories. Since a request for a given URL may, in some instances, be forwarded to another URL, one should consult the pertinent set's

download log to confirm the timestamp and URL that corresponds to the file that was downloaded and saved in a given numbered directory.

To highlight an example of consulting these files where the requested URL has been forwarded:

Set 1 (all files for libertycounsel.com) has a directory 0562, within which resides a file "index.html?p=10686"). Consulting the URL list for Set 1 shows that directory 0562 has a corresponding requested URL of <https://web.archive.org/web/20160827161903/libertycounsel.com/?p=10686>. Consulting the download log for Set 1, one can search for the this URL and find the log of the request for it:



From the log, it can be observed that the request was redirected to a new

URL (as indicated by the message/HTTP status code "301 Moved Permanently" prior to the request's resolution) and that the file for the new URL (<https://web.archive.org/web/20160827161903/http://libertycounsel.com/obama-military-desecration-today/>) is that which is downloaded and saved (as indicated by the message/HTTP status code "200 OK").

Hence, the file "index.html?p=10686" in directory 0562 of Set 1 is the Internet Archive's record for the HTML for URL <http://libertycounsel.com/obama-military-desecration-today/> and the date August 27, 2016 16:19:03 (in UTC time).

Thank you for your patience while I processed this request. Please feel free to contact me if you have questions about the provided documents or the request.

Sincerely,  
Chris Butler  
Office Manager

Internet Archive  
300 Funston Avenue  
San Francisco, CA  
94118  
415.561.6767  
archive.org

---

**From:** Tyler Clemons  
**Sent:** Wednesday, April 24, 2019 11:55 AM  
**To:** Steve Shrock  
**Cc:** Beth Jacob; Diego Soto  
**Subject:** RE: document request concerning Miller/Jenkins case

Hi Steve,

Just letting you know that I received CAM's response without issue--thanks for sending it.

Best,

Tyler

---  
J. Tyler Clemons (he/him/his)  
Staff Attorney, LGBT Rights/Special Litigation  
Southern Poverty Law Center  
201 St. Charles Avenue Suite 2000  
New Orleans, Louisiana 70170  
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-----Original Message-----

From: Steve Shrock [mailto:Shrock@ccj.com]  
Sent: Friday, April 12, 2019 12:27 PM  
To: Tyler Clemons  
Cc: Beth Jacob; Diego Soto  
Subject: RE: document request concerning Miller/Jenkins case

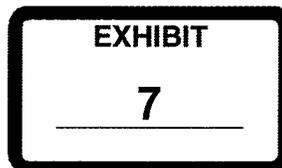
Thanks, Tyler. The SPO looks good to me. Based upon your commitment to treat documents produced by CAM as if this is in place even prior to its entry, we will proceed to send out our document production on Monday (I'm in a mediation out of the office today).

In the unlikely event the parties cannot agree upon this SPO, or something close to this, let's revisit how we want to proceed.

Regards,  
Steve

---

From: Tyler Clemons [Tyler.Clemons@splcenter.org]  
Sent: Wednesday, April 10, 2019 10:56 AM



**From:** Tyler Clemons <Tyler.Clemons@splcenter.org>  
**Sent:** Friday, June 21, 2019 10:41 AM  
**To:** Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Robert B. Hemley <rhemley@gravelshea.com>; Matthew B. Byrne <mbyrne@gravelshea.com>; Hillary A. Borcharding <hborcharding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>  
**Cc:** Beth Jacob <beth.jacob@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>  
**Subject:** Non-party Discovery Productions in Jenkins v Miller

Good morning counsel,

I write regarding the status of non-party discovery obtained by Plaintiffs in *Jenkins v. Miller*, No. 2:12-cv-184 (D. Vt.).

Please find the full production of Internet Archive in response to Plaintiffs' August 17, 2018 subpoena to Internet Archive at this link: <https://splc.box.com/s/nrawc5l09gv69s97l1tvnbop6vsdbcrz>.

Please find the full production of Liberty University in response to Plaintiffs' October 31, 2018 subpoena to Liberty University at this link: <https://splc.box.com/s/c1ykdfvh1nzccu2upptn087z1bimxlf>. Note that this folder does not contain the document Bates Stamped UNIV-00336–UNIV-00339, which was clawed back due to a claim of privilege asserted by Liberty Counsel on June 18, 2019.

Finally, Christian Aid Ministries' production in response to Plaintiffs' October 31, 2018 subpoena was made contingent on the guarantee that it would not be shared until a protective order governing confidentiality in discovery is entered in this case. Plaintiffs' counsel will provide access to that production once such an order is entered.

Please let me know if you have any questions or difficulty accessing any of these files.

Best,

**J. Tyler Clemons** (*they/them/mx*)  
Staff Attorney, LGBTQ Rights/Special Litigation  
Southern Poverty Law Center  
201 St. Charles Avenue Suite 2000  
New Orleans, Louisiana 70170  
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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JANET JENKINS, <i>et al.</i> ,	)	
Plaintiffs	)	
	)	
v.	)	Docket No. 2:12-cv-184
	)	
KENNETH L. MILLER, <i>et al.</i> ,	)	
Defendants	)	

CERTIFICATE OF SERVICE

I, Robert B. Hemley, Esq., attorney for Defendants Philip Zodhiates, Victoria Hyden and Response Unlimited, Inc., certify that, on August 6, 2019, I caused the Supplemental Reply in Support of Motion to Compel and Affidavit of Hillary A. Borcharding, Esq., to be served through the CM/ECF system on the following individuals:

Diego A. Soto, Esq.  
diego.soto@splcenter.org

Brooks G. McArthur, Esq.  
bmcarthur@jarvismcarthur.com

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Anthony R. Duprey, Esq.  
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Michael J. Tierney, Esq.  
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and by First-Class Mail, Postage Prepaid to:

Anthony R. Duprey, Esq.  
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1 Cross Street  
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Roger K. Gannam, Esq.  
Horatio G. Mihet, Esq.  
Daniel J. Schmid, Esq.  
Liberty Counsel  
P.O. Box 540774  
Orlando, FL 32854

Dated: Burlington, Vermont  
August 6, 2019

/s/ Robert B. Hemley

Robert B. Hemley, Esq.  
Gravel & Shea PC  
76 St. Paul Street, 7<sup>th</sup> Floor, P.O. Box 369  
Burlington, VT 05402-0369  
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For Defendants Philip Zodiates, Victoria  
Hyden and Response Unlimited, Inc.