

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

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JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 2:12-CV-00184
	)	
KENNETH L. MILLER, ET AL.	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANT LIBERTY UNIVERSITY’S MOTION TO STAY DISCOVERY PENDING  
DECISION ON ITS MOTION TO DISMISS**

NOW COMES Defendant Liberty University, by and through its attorneys, Dinse, Knapp & McAndrew, P.C., and moves, pursuant to Fed. R. Civ. P. Rule 26 and Local Rule 26(a)(3), to stay discovery in this matter until the Court decides Liberty University’s pending Motion to Dismiss.

**MEMORANDUM**

In support of this Motion, Liberty University states as follows:

- Over three and a half years ago, after Liberty University incurred considerable litigation expense, this Court granted Liberty University’s motion to dismiss this action. Now, once again, Liberty University has been required to move to dismiss Plaintiffs’ suit against it. Liberty University’s Motion to Dismiss was filed on June 5, 2017, and briefing is not yet complete. In order to avoid the unnecessary expenditure of time and resources, Liberty University submits that the Court should stay discovery pending decision on that motion.

- Liberty University's Motion is based, in part, on Plaintiffs' failure to make a prima facie showing that venue and personal jurisdiction over the University are proper in Vermont. Liberty University will be greatly burdened if it is forced to undergo discovery in a state in which it lacks minimum contacts, only to later have its motion granted dismissing it from the action. The Court should, therefore, decide whether it may constitutionally assert personal jurisdiction over Liberty University before the University is subject to the time, expense, and burden of discovery in Vermont. *See Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 255 (2d Cir. 2007) (holding that district court was "well within its discretion in declining to permit discovery because the plaintiff had not made out a prima facie case for jurisdiction"). Indeed, the Amended Complaint is devoid of allegations of *fact* connecting Liberty University with the State of Vermont. As such, even jurisdictional discovery is unnecessary and would be inappropriate. *See Stutts v. De Dietrich Grp.*, 45 F.Supp. 2d 156, 169 (E.D.N.Y. 2006) ("District courts in this circuit routinely reject requests for jurisdictional discovery where a plaintiff's allegations are insufficient to make out a prima facie case of jurisdiction.").
- The Amended Complaint also fails to state a legally sufficient claim against Liberty University. *See* Def's Motion to Dismiss. A "stay of discovery should be granted where [a] motion to dismiss is potentially dispositive, and appears to be not unfounded in the law." *Spencer Trask Software and Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (quotation omitted) (holding that stay of discovery pending disposition of 12(b)(6) motion warranted

where defendants “do appear to have substantial arguments for dismissal of many, if not all, of the claims asserted in this lawsuit.”); *see also Mann v. Brenner*, 375 F. App’x 232, 239 (3d Cir. 2010) (“[T]he idea that discovery should be permitted before deciding a motion to dismiss ‘is unsupported and defies common sense because the purpose of Fed. R. Civ. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery’” (citing *Rutman Wine Co. v. E&J Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987)).

- Liberty University’s Motion to Dismiss raises and comprehensively addresses several affirmative defenses, any one of which, if granted, would result in the dismissal of this action against it. Accordingly, this case is squarely within the scope of Local Rule 26(a)(3) and discovery should be stayed so as to “secure the just, speedy, and inexpensive determination of this action.”

WHEREFORE, Liberty University requests that the Court grant this Motion and stay discovery pending the Court’s decision on its Motion to Dismiss.

Respectfully submitted,

**Liberty University**

By its Attorneys,

DINSE, KNAPP & MCANDREW, P.C.

Dated: June 8, 2017

By: /s/ Ritchie E. Berger  
Ritchie E. Berger, Esq.  
209 Battery Street  
Burlington, VT 05401  
[rberger@dinse.com](mailto:rberger@dinse.com)

**LOCAL RULE 7(A)(7) CERTIFICATION AND CERTIFICATE OF SERVICE**

Pursuant to Local Rule 7(a)(7), I hereby certify that I conferred with counsel for Plaintiffs and attempted in good faith to resolve or narrow the issues involved in this motion. Plaintiffs object to the relief requested in this motion.

I hereby certify that a true and correct copy of the foregoing was filed electronically with the Court on June 7, 2017. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

Dated: June 8, 2017

By: /s/ Ritchie E. Berger  
Ritchie E. Berger, Esq.  
209 Battery Street  
Burlington, VT 05401  
[rberger@dinse.com](mailto:rberger@dinse.com)