UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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

DEFENDANTS LIBERTY COUNSEL, MATHEW D. STAVER, AND RENA M. LINDEVALDSEN'S MOTION TO STAY DISCOVERY PENDING RESOLUTION OF THEIR MOTIONS TO DISMISS

Pursuant to Fed. R. Civ. P. 26(c) and L.R. 26(a)(3), Defendants Liberty Counsel, Mathew Staver ("Staver"), and Rena Lindevaldsen ("Lindevaldsen"), by and through the undersigned counsel, hereby move this Court for an Order staying discovery pending resolution of Defendants' dispositive motions to dismiss. (Dkt. 238, 239).

MEMORANDUM OF LAW IN SUPPORT

I. INTRODUCTION

On June 5, 2017, Liberty Counsel, Staver, and Lindevaldsen submitted a Motion to Dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim (dkt. 238), as well as a Special Motion to Dismiss pursuant to Vermont's anti-SLAPP statute. (Dkt. 239). In their motions, Liberty Counsel, Staver, and Lindevaldsen present substantial arguments challenging this Court's exercise of jurisdiction over them. These Defendants also demonstrate that Plaintiffs' claims are time barred, that venue is improper in this district, and that Plaintiffs' ("Jenkins") Revised Second Amended Complaint (dkt. 223, "RSAC") fails to state any claim for relief as a

matter of settled law. Other Defendants in this action have also submitted motions to dismiss based on lack of jurisdiction, improper venue, and failure to state a claim. (*See* Dkt. 228, 237, 242). Other Defendants have also submitted requests to stay discovery until the pending motions to dismiss are adjudicated. (Dkt. 241).

Liberty Counsel, Staver, and Lindevaldsen have raised substantial arguments in their Motions to Dismiss (dkt. 238, 239) that articulate serious deficiencies in this Court's jurisdiction, that implicate their constitutional right to due process, that involve their constitutional right to free speech, and that eviscerate the ability of Jenkins to state any claim against them. Requiring Liberty Counsel, Staver, and Lindevaldsen to submit to any discovery or be forced to litigate in any manner imposes an extraordinary and unconscionable burden upon them, particularly given the serious due process implications of subjecting them to discovery. Given the magnitude of the issues presented to this Court in Defendants' motions to dismiss and the dispositive impact that resolution of those motions will have, a stay of discovery is warranted and should be granted.

II. ARGUMENT

Under Fed. R. Civ. P. 26(c), "a district court may stay discovery during the pendency of a motion to dismiss for good cause shown." *Chesney v. Valley Stream Union Free Sch. Dist. No. 24*, 236 F.R.D. 113, 115 (E.D.N.Y. 2006). Under this Court's local rules, a stay is not automatic upon the filing of a motion to dismiss, but a party may request a stay pending resolution of the motions to dismiss if a stay "will help secure the just, speedy, and inexpensive determination of the action." L.R. 26(a)(3). And, under Vermont's anti-SLAPP statute, which governs one of the motions to dismiss filed by these Defendants, a stay of discovery is **required** pending resolution of that motion. *See* 12 V.S.A. § 1041(c)(1) ("The filing of a special motion to strike under this section **shall** stay all discovery proceedings in the action. … [T]he stay of discovery shall remain in effect

until the court rules on the special motion to strike." (emphasis added)). Finally, in addition to the authority granted to this Court under the federal rules, the anti-SLAPP statute, and this Court's local rules, courts also have the inherent authority to stay an action to ensure that litigants are not burdened by unnecessary discovery. *See, e.g.*, *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) ("the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 96 (2d Cir. 2012) (same). Thus, this Court has plenary authority to stay the discovery proceedings until Defendants' motions to dismiss are decided.

The Second Circuit has specifically noted that a stay of discovery is appropriate in matters where significant motions to dismiss are pending. *Transunion Corp. v. PepsiCo, Inc.*, 811 F.2d 127, 129 (2d Cir. 1987) (district courts are well within their authority to stay discovery during the pendency of a motion to dismiss). Courts in the Second Circuit look to a number of factors to determine whether a stay is appropriate while motions to dismiss are pending, including "(1) whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay." *Chesney*, 236 F.R.D. at 115. All three factors militate in favor of a stay of discovery in this matter. Liberty Counsel, Staver, and Lindevaldsen have presented substantial grounds for dismissing Jenkins' RSAC, and all their defenses are well-grounded in settled law. Liberty Counsel, Staver, and Lindevaldsen would suffer tremendous burden by being forced to submit to discovery in a matter where jurisdiction is so clearly lacking, and where the claims are so obviously time barred. Jenkins would not suffer any undue prejudice as a result of the stay.

A. Liberty Counsel, Staver, and Lindevaldsen Have Made a Strong Showing That Jenkins' Claims Are Deficient and Must Be Dismissed.

Where, as here, a defendant makes a substantial showing that a plaintiff's claims may potentially warrant dismissal, courts have routinely stayed discovery pending potentially dispositive motions to dismiss. Indeed, courts in the Second Circuit have routinely held that "a stay of discovery is appropriate pending resolution of a potentially dispositive motion where the motion appeared to have substantial grounds or, stated another way, does not appear to be without foundation in law." *Johnson v. N.Y. Unic. Sch. of Educ.*, 205 F.R.D. 433, 434 (S.D.N.Y. 2002) (internal citations and quotations omitted); *Niv v. Hilton Hotels Corp.*, No. 06 Civ. 7839(PKL), 2007 WL 510113, *1 (S.D.N.Y. Feb. 15, 2007) ("a court should also consider the strength of the dispositive motion that is the basis of the application"); *Gandler v. Nazarov*, No. 94 Civ. 2272(CSH), 1994 WL 7022004, *4 (S.D.N.Y. Dec. 14, 1994) (stay of discovery is appropriate where motion to dismiss has potentially dispositive arguments grounded in the law). Particularly in the context of significant questions going to the Court's jurisdiction or questions concerning Jenkins' ability to state a claim, courts have consistently held that a stay of discovery is appropriate.

1. Liberty Counsel, Staver, and Lindevaldsen's Strong Showing That Jenkins' RSAC Is Grossly Untimely Warrants a Stay of Discovery.

Numerous courts have held that a stay of discovery is appropriate where, as here, there are significant questions concerning the timeliness of a plaintiff's claim. *See, e.g.*, *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209 (S.D.N.Y. 1991) (staying discovery is appropriate where motion to dismiss on statute of limitations grounds could be case-dispositive or at least significantly narrow the scope of discovery against defendants); *Bibbs v. Sayre*, No. C 13-1570 (CW)(PR), 2014 WL 2196223, *1 (N.D. Cal. May 27, 2014) (staying discovery pending resolution of a motion to dimiss based on the statute of limitations); *Alexander v. Foegen*, No. 10-cv-01993-

LTB-MEH, 2011 WL 683813 (D. Colo. Feb. 17, 2011) (stay of discovery is appropriate where statute of limitations defense may resolve entire case against defendant); *Videojet Tach., Inc. v. Eagle Inks, Inc.*, No. 8:09-cv-1810-T-26MAP, 2009 WL 3617806, *1 (granting stay of discovery while motion to dismiss on statute of limitations grounds is pending because it "could be truly case dispositive").

Here, Liberty Counsel, Staver, and Lindevaldsen have submitted compelling arguments for why Jenkins' claims are time barred. Indeed, all of the claims Jenkins brings in this action are grossly untimely as it relates to these Defendants:

- Jenkins' custodial interference claim is barred by Vermont's three-year statute of limitations (Dkt. 240, Memorandum in Support of Motion to Dismiss, at 14-16);
- Jenkins' conspiracy claim under Section 1985(3) is barred by Vermont's three-year statute of limitations (*see id.* at 16-18);
- Jenkins' purported claims as next-friend of Isabella are time barred under both the custodial interference claim and Section 1985(3) conspiracy claim (*see id.* at 20-24).

Jenkins' strategic decision not to sue these Defendants in 2012, when she initially sued the other defendants, even though she had the same information available to her then, bars her late claims at this juncture. Requiring Liberty Counsel, Staver, and Lindevaldsen to submit to discovery pending a motion to dismiss on timeliness grounds that could dispose of all claims against them is inappropriate. Staying discovery during the pendency of their motions to dismiss is warranted.

2. Liberty Counsel, Staver, and Lindevaldsen's Strong Showing That Jenkins' RSAC Fails to State a Claim Warrants a Stay of Discovery.

The cases are legion where courts have held that discovery should be stayed pending

resolution of a defendant's motion to dismiss for failure to state a claim. *See, e.g.*, *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) ("Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should be resolved before discovery begins."); *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir. 1981) (discovery is unnecessary for a motion to dismiss for failure to state a claim, and a stay is appropriate when such a motion is filed); *id.* ("Discovery should follow the filing of a well-pleaded complaint. It is not a device to enable a plaintiff to make a case when his complaint has failed to state a claim."); *Mann v. Brenner*, 375 F. App'x 232, 239 (3d Cir. 2010) ("the 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'" (quoting *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987)); *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 211 (S.D.N.Y. 1991) (motions to stay discovery should be permitted when a motion to dismiss for failure to state a claim "does not appear to be without foundation in law" and presents "substantial grounds" for dismissal); *Richards v. North Shore Long Island Jewish Health Sys., Inc.*, No. CV 10-4544(LDW)(ETB), 2011 WL 4407518, *2 (E.D.N.Y. Sept. 21, 2011) (motion to stay discovery should be granted if defendant can make some showing that plaintiff's action is at least of "questionable merit"); *ITT Corp. v. Travelers Casualty & Surety Co.*, No. 2:12CV38(RNC), 2012 WL 2944357, *3 (D. Conn. July 18, 2012) (if motion to dismiss for failure to state a claim presents "substantial" arguments for dismissal, stay of discovery is appropriate); *Integrated Sys. & Power, Inc. v. Honeywell Int'l, Inc.*, No. 09 CV 5874(RPP), 2009 WL 2777076, *1 (S.D.N.Y. Sept. 1, 2009) (granting stay where defendant puts forth "multiple independent argument for dismissal and the motion appears not to be unfounded

in the law"); *Niv v. Hilton Hotels Corp.*, No. 06 Civ. 7839(PKL), 2007 WL 510113, *1 (S.D.N.Y. Feb. 15, 2007) (if motion to dismiss has basis in law, motion to stay discovery pending resolution of that motion should be granted).

Here, Liberty Counsel, Staver, and Lindevaldsen have raised substantial questions concerning Jenkins' ability to state any claim upon which relief can be granted against them. Indeed, Liberty Counsel, Staver, and Lindevaldsen have put forward well-grounded arguments concerning each of Jenkins' causes of action, and well-settled law requires dismissal of all of them. Liberty Counsel, Staver, and Lindevaldsen have shown that:

- Jenkins' custodial interference claims fail as a matter of law and must be dismissed. (*See* Dkt. 240, Memorandum in Support of Motion to Dismiss, at 62-76);
- Jenkins' civil conspiracy claim fails as a matter of law (*see id.* at 77-81);
- Jenkins' aiding and abetting claim fails as a matter of law (*see id.* at 81-100); and
- Jenkins' Section 1985(3) claim fails as a matter of law (*see id.* at 100-113).

Because Liberty Counsel, Staver, and Lindevaldsen have made a substantial showing that Jenkins' RSAC fails to state a claim upon which relief can be granted against these Defendants, staying discovery is necessary and appropriate. Indeed, the purpose of a Rule 12(b)(6) motion is to "streamline litigation by dispensing with needless discovery and factfinding." *Nietzke v. Williams*, 490 U.S. 319, 326-27 (1989). Requiring Liberty Counsel, Staver, and Lindevaldsen to submit to discovery before the resolution of their facially meritorious motions to dismiss would trample the purpose of such motions. Staying discovery is required.

3. Liberty Counsel, Staver, and Lindevaldsen's Strong Showing of the Absence of Personal Jurisdiction Warrants a Stay of Discovery.

It is axiomatic that a defendant should not and cannot be forced to litigate in a forum in which he lacks sufficient minimum contacts. *See, e.g.*, *Fox v. Boucher*, 794 F.2d 34, 37 (2d Cir.

1986). Indeed, it is black letter law that "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). Forcing a defendant to submit to discovery in a forum where personal jurisdiction is constitutionally suspect and the subject of merited dispute would violate this basic principle of due process.

Numerous courts, including those in the Second Circuit, have found that when a defendant raises serious and substantial questions concerning personal jurisdiction in a dispositive motion, discovery should be stayed. *See, e.g.*, *Boelter v. Hearst Commc'ns, Inc.*, 15 Civ. 03934(AT), 2016 WL 361554, *5 (S.D.N.Y. Jan. 28, 2016) (if arguments questioning the court's jurisdiction are not frivolous, a stay of discovery pending resolution of the motion to dismiss is appropriate and warranted); *Kanotwitz v. Broadridge Fin. Solutions, Inc.*, No. CV 13-649(DRH)(AKT), 2014 WL 1338370, * 6 (E.D.N.Y. Mar. 31, 2014) (if a defendant makes some showing that the court's jurisdiction **may** be questionable, then a stay of discovery is appropriate pending resolution of defendant's potentially dispositive motion to dismiss); *Ameritel Inns . Moffat Bros. Plastering, L.C.*, No. CV 06-359-S-EJL, 2007 WL 1792323, *4 (D. Id. June 20, 2007) (if defendant shows that motion to dismiss for lack of personal jurisdiction "may be granted," a stay of discovery is appropriate); *Gandler v. Nazarov*, No. 94 Civ. 2272(CSH), 1994 WL 7022004, *4 (S.D.N.Y. Dec. 14, 1994) (staying discovery pending resolution of a motion to dismiss because the "motion to dismiss based on lack of personal jurisdiction is potentially dispositive, and appears to be not unfounded in the law").

Here, Liberty Counsel, Staver, and Lindevaldsen have made a substantial showing that this Court lacks jurisdiction over them and that forcing them to litigate in this forum would violate due

process. These arguments far exceed the minimal required showing of non-frivolousness, *see Boelter*, 2016 WL 361554, at *5, and have substantial foundation in law. *See Chrysler Capital*, 137 F.R.D. at 211. Liberty Counsel, Staver, and Lindevaldsen have presented substantial arguments dismantling Plaintiffs' assertion of jurisdiction, including that:

- This Court lacks jurisdiction over Lindevaldsen under the modified effects test outlined in *Walden v. Fiore*, 134 S. Ct. 1115 (2014), and that her representation of one client in a separate proceeding cannot justify the assertion of jurisdiction over her. (*See* Dkt. 240, Memorandum in Support of Motion to Dismiss, at 27-34);
- This Court lacks jurisdiction over Staver because his contacts with Vermont are fatally deficient and no legally cognizable agency theory warrants the exercise of jurisdiction over him (*see id.* at 34-43);
- This Court lacks jurisdiction over Liberty Counsel because it does not have the requisite minimum contacts with Vermont, because its alleged agents are not subject to jurisdiction in Vermont, and because the alleged actions of Response Unlimited cannot be attributed to Liberty Counsel (*see id.* at 43-49); and
- This Court's exercise of jurisdiction over Liberty Counsel, Staver, and Lindevaldsen would be unreasonable and violate traditional notions of fair play and substantial justice. (*See id.* at 49-54).

These arguments raise serious and substantial grounds for finding that this Court lacks jurisdiction over Liberty Counsel, Staver, and Lindevaldsen. Thus, forcing these Defendants to submit to discovery in a forum in which their contacts are constitutionally suspect would be a gross intrusion into their constitutional guarantee of due process. A stay of discovery is appropriate and warranted, and the instant motion must be granted.

B. Liberty Counsel, Staver, and Lindevaldsen Would Be Substantially Burdened by Being Forced to Submit to Discovery Prior to Resolution of Their Potentially Dispositive Motions to Dismiss.

The second factor courts use to determine whether a stay of discovery is warranted analyzes the burden imposed on a defendant in being subjected to discovery prior to the resolution of his potentially dispositive motion to dismiss. Where, as here, forcing a defendant to submit to discovery prior to the resolution of his motion to dismiss would violate due process and impose substantial expense and burden on the defendant, a stay of discovery is warranted. The burden on Liberty Counsel, Staver, and Lindevaldsen is substantial, and a stay of discovery should be granted.

Numerous courts have found that a substantial burden is placed on defendants in having to submit to discovery prior to the resolution of their motions to dismiss. *See, e.g.*, *Am. Booksellers Ass'n, Inc. v. Houghton Mifflin Co., Inc.*, 94 CIV. 8566 (JFK), 1995 WL 72376, *1 (S.D.N.Y. Feb. 22, 1995) (forcing defendants to respond to discovery when they have filed a motion to dismiss that may dispose of the entire action is "extremely burdensome" and warrants a stay); *Kanotwitz v. Broadridge Fin. Solutions, Inc.*, No. CV 13-649(DRH)(AKT), 2014 WL 1338370, *6 (E.D.N.Y. Mar. 31, 2014) (quoting *Gardner v. Major Auto. Co.*, No. 11-CV-1664(FB), 2012 WL 1230135 (E.D.N.Y. Apr. 12, 2012) ("Staying discovery pending judicial evaluation of the sufficiency of the complaint is consistent with the entire purpose of the stay provision, which is to avoid saddling defendants with the burden of discovery in meritless cases, and to discourage the filing of cases that lack adequate support for their allegations in the mere hope that the traditionally broad discovery proceedings will produce facts that could be used to state a valid claim."); *Spinelli v. Nat'l Football League*, No. 13 Civ. 7398 (RWS), 2015 WL 7302266, *2 (S.D.N.Y. Nov. 17, 2015) (if the number of defendants is large and the range of causes of action complex, discovery is likely

to be too burdensome on a defendant with a potentially dispositive motion pending); *Picture Patents, LLC v. Terra Holdings LLC*, No. 07 Civ. 5465(JGK)(HBP), 2008 WL 5099947, *3 (S.D.N.Y. Dec. 3, 2012) (if multiple defendants remain in the case, "discovery will necessarily be time consuming, burdensome, and expensive"); *see also Chudasama*, 123 F.3d at 1368 (resolution of a motion to dismiss should occur before discovery begins to ensure that a defendant is not forced to submit to a process that "does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system"); *id.* (noting the tremendous burden of forcing a defendant submit to discovery and stating that the court's burden to stay discovery "becomes all the more imperative when the contested claim is especially dubious").

Here, every factor the courts have considered in analyzing the burden on defendants in submitting to discovery prior to the resolution of a motion to dismiss mandates the grant of a stay. Indeed, as in *Spinelli* and *Picture Patents*, there are a large number of defendants involved in this litigation, which would substantially increase the burden and expense of discovery. (*See* RSAC ¶¶ 5-17) (11 defendants involved in this action). Additionally, the fact that Plaintiffs have sued several of the already numerous defendants in both individual and representative capacities exponentially increases an already significant burden on the discovery process. (*Id.*). And, if those burdens were not already significant enough to justify a stay, which they are, the nature of any potential discovery in this matter is going to be extraordinarily burdensome. Jenkins has sued Liberty Counsel, a law firm, and Staver and Lindevaldsen, two attorneys, based on nothing more than the actions they allegedly took during their representation of Miller in a state court custody matter. Any discovery propounded in such an action is likely to seek information unquestionably

covered by attorney-client privilege and thereby be extremely invasive of such privilege. Also, any such discovery is likely to present significant obstacles concerning work-product issues and other related matters. Permitting intrusive discovery on Jenkins' defective and time-barred RSAC while Defendants have significant and dispositive motions pending is simply too burdensome to Liberty Counsel, Staver, and Lindevaldsen.

Moreover, as demonstrated above and in their Motion to Dismiss, Liberty Counsel, Staver, and Lindevaldsen do not have the requisite minimum contacts to be subjected to litigation in this forum. *See supra* Section II.A.1; (*see also* Dkt. 240 at 24-54). Thus, the burden of submitting to discovery in a case where the Court's jurisdiction is lacking imposes an irreparable constitutional violation upon these Defendants. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). Such a loss of constitutional protections as fundamental as due process imposes an extraordinary, unconscionable, and unconstitutional burden on Liberty Counsel, Staver, and Lindevaldsen. Such an indisputable burden cannot be justified. If this Court's Local Rule is to have any meaning, certainly a stay of discovery while motions to dismiss are pending "help[s] to secure the just, speedy, and inexpensive determination of the action," where such a stay would protect the constitutional due process rights of the defendants involved. Indeed, forcing Liberty Counsel, Staver, and Lindevaldsen to submit to discovery in violation of their due process protections would represent a manifest injustice and fail to secure any just determination of the action. A stay of discovery is compelled be the weighty constitutional concerns at issue in the instant action.

C. Jenkins Would Suffer No Undue Prejudice By Staying Discovery Pending Resolution of Defendants' Motions to Dismiss.

The final prong of the analysis for determining the appropriateness of a stay of discovery also militates in favor of the requested stay. Numerous courts have found that where, as here, a defendant puts forward a motion to dismiss substantially grounded in the law and potentially

dispositive of the entire case, there is no impermissible burden on the plaintiff. *See, e.g.*, *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367 (S.D.N.Y. 2002) (staying discovery pending a potentially dispositive motion to dismiss does not prejudice plaintiff); *Rivera v. Heyman*, No. 96 Civ. 4489(PKL), 1997 WL 86394, *2 (S.D.N.Y. Feb. 27, 1997) (where, "upon preliminary examination" a motion to dismiss "appears to be substantially grounded . . . A stay pending a determination of a dispositive motion that potentially eliminates the entire action will neither substantially nor unduly delay the action, should it continue"); *United States v. Cnty. of Nassau*, 188 F.R.D. 187, 188 (E.D.N.Y. 1999) (absent a showing of undue prejudice to plaintiff in brief stay of discovery pending motions to dismiss, stay is appropriate.

While Jenkins may claim undue prejudice because this case has proceeded for many years without discovery, courts have routinely found that the delay in discovery while motions to dismiss are pending is not prejudicial. *See, e.g.*, *Spinelli v. Nat'l Football League*, No. 13 Civ. 7398 (RWS), 2015 WL 7302266, *2 (S.D.N.Y. Nov. 17, 2015) (fact that case was several years old does not warrant a finding that delay pending determination of the potentially dispositive motions would be prejudicial to the plaintiffs).

Jenkins first initiated this action in 2012 (dkt. 1), and, despite having the same knowledge back then that she possesses today concerning the allegations against Liberty Counsel, Staver, and Lindevaldsen, **Jenkins chose not to name them as defendants**. (*See* Dkt. 240, Memorandum in Support of Motion to Dismiss at 19). **As a result of Jenkins' own choice**, even though this litigation has proceeded for several years, **Liberty Counsel, Staver, and Lindevaldsen are brand new to this case**, and have had no opportunity whatsoever to respond to the fanciful allegations Jenkins makes in her RSAC. Their arguments concerning the gross untimeliness of Jenkins' RSAC, the lack of personal jurisdiction, and the inability of Jenkins to state a claim, are well-

grounded in the law. Accordingly, a stay will not unnecessarily prejudice Jenkins. *See Boelter v. Hearst Commc'ns, Inc.*, 15 Civ. 03934(AT), 2016 WL 361554 (S.D.N.Y. Jan. 28, 2016) (when motions to dismiss present substantial questions and potentially dispose of the entire action, it is "prudent to postpone the significant costs of discovery" and plaintiffs suffer no prejudice). The motion to stay discovery pending resolution of Defendants' motions to dismiss should be granted.

III. CONCLUSION

Because Liberty Counsel, Staver, and Lindevaldsen have put forward compelling and substantial arguments concerning the limitations bar to Jenkins' claims, this Court's lack of personal jurisdiction, and Jenkins' inability to state a claim, because the burden on Liberty Counsel, Staver, and Lindevaldsen would be unconscionable, unconstitutional, and inappropriate, and because Jenkins will suffer no prejudice as a result of a brief stay of discovery pending resolution of Defendants' motions to dismiss, a stay of discovery is warranted. Liberty Counsel, Staver, and Lindevaldsen therefore respectfully request that this Court enter an order staying all discovery until such time as this Court has adjudicated both of the pending motions to dismiss filed by these Defendants.

Respectfully submitted,

Dated: June 12, 2017

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CERTIFICATE OF GOOD FAITH CONFERRAL

Pursuant to L.R. 7(a)(7), I hereby certify that on June 7, 2017, Liberty Counsel, Staver, and Lindevaldsen made a good faith attempt to obtain Jenkins' agreement to the relief requested in the instant motion. Jenkins' counsel stated that Jenkins was opposed to the motion.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

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