

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,
Plaintiffs,

v.

KENNETH MILLER, ET AL.,
Defendants.

Docket No. 2:12-cv-184-wks

PLAINTIFFS' COMBINED REPLY TO RESPONSE OF LIBERTY UNIVERSITY, INC.,
AND THOMAS ROAD BAPTIST CHURCH, INC. TO PLAINTIFFS' MOTION TO
AMEND COMPLAINT AND RESPONSE OF DOUGLAS WRIGHT TO PLAINTIFFS'
MOTION TO AMEND COMPLAINT

NOW COME Plaintiffs, by and through their attorneys, Langrock Sperry & Wool, LLP, and Sarah R. Star, Esq., and hereby reply to the Response of Liberty University, Inc., and Thomas Road Baptist Church, Inc., to Plaintiffs' Motion to Amend Complaint (Dkt. #129) and the Response of Douglas Wright to Plaintiffs' Motion to Amend Complaint (Dkt. #134).

Respondents Liberty University, Thomas Road Baptist Church, and Douglas Wright (together, "Respondents") lack standing to object to the pending Motion to Amend. It is undisputed that Respondents have been dismissed from this action. The proposed Second Amended Complaint does not include any claims against Respondents, nor is it ambiguous in that regard. Judicial efficiency and common sense require that dismissed parties be precluded from filing dilatory pleadings. *See also Dail v. City of Goldsboro*, 2011 WL 2293904, at *2 (E.D.N.C. June 9, 2011) ("As a mere non-party, Neal has no standing to file pleadings or

motions in this lawsuit.”). For this reason alone, Plaintiffs ask that the Court disregard or strike the Respondents’ briefs.¹

Even if the Respondents had standing, leave to amend “should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” *Milanes v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001). The federal rules liberally allow for amendments in light of the “principle that the purpose of pleading is to facilitate a proper decision on the merits,” and the principle that if the underlying facts relied upon by a party might be a proper subject of relief, that party should have the opportunity to test its claims on the merits. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Indeed, “amendment should normally be permitted.” *Rachman Bag Co. v. Liberty Mut. Ins. Co.*, 46 F.3d 230, 234 (2d Cir. 1995) (citing *Foman*, 371 U.S. at 182). There is no evidence here of delay, bad faith, prejudice, or futility, and Plaintiffs therefore respectfully request that the Court grant their motion to amend.

Plaintiffs filed the motion to amend within the time limit set by the Court in its October 24, 2013 Order and thus have not unduly delayed seeking leave to amend. Before filing the motion, Plaintiffs made a good faith effort to file an unopposed amendment by distributing a red-lined draft complaint and a proposed motion to amend. Plaintiffs’ intention was to facilitate resolution of any issues regarding the Second Amended Complaint without using the Court’s time. When it became clear that the Motion would not be unopposed because the Respondents continually insisted that Plaintiffs delete facts that provide necessary

¹ It is also for this reason that Plaintiffs’ counsel did not send a red-lined copy of the proposed Second Amended Complaint to counsel for Douglas Wright. As Respondents are no longer parties, they are not an “opposing party” for purposes of pre-filing conferrals. *See* Local Rule 7(a)(7). Plaintiffs’ counsel sent a red-lined copy of the proposed Second Amended Complaint to Attorney Ritchie Berger in an abundance of caution because he remained on the docket as counsel for Defendant Victoria Hyden, not in his status as counsel for Liberty University or TRBC. If Douglas Wright wishes to resume his status as an “opposing party” in this case and thus submit to the jurisdiction of this Court, Plaintiffs would have no objection.

context for their complaint, the Motion was timely filed. Thus, there is no evidence of undue delay.

Plaintiffs have made all of their allegations and claims in good faith. This case is still at the pleading stage, and the Court will ultimately determine whether the claims will succeed. Although the Court has made some jurisdictional rulings, Plaintiffs' factual allegations have not yet been adjudicated. Janet Jenkins is entitled to tell the story of what has happened to her and her daughter. Liberty University and its related ministries provided the environment and context in which certain of the Respondents' employees and members (including Defendants Victoria Hyden, Linda Wall and Lisa Miller) met, formed a conspiratorial agreement, and then acted with discriminatory animus to deprive Janet Jenkins and Isabella Miller-Jenkins of their civil rights and parent-child relationship. Allegations regarding Liberty University and TRBC are therefore directly relevant to this case. While this Court determined that the employment relationships alleged did not bind the Liberty Defendants jurisdictionally, the facts alleged in the proposed Second Amended Complaint are still relevant to the claims against the remaining Defendants, particularly those that are employed by or closely associated with Liberty and Thomas Road Baptist Church. Respondents cite no law that would prohibit allegations regarding a non-party, as this would be an absurdly overbroad rule. All of the allegations in the Second Amended Complaint are relevant and pertinent to the claims asserted, and Plaintiffs have alleged them in good faith to explain the wider context of their claims.

The proposed Second Amended Complaint does not unduly prejudice Respondents because they have already been indisputably dismissed from this action. "In gauging prejudice, we consider, among other factors, whether an amendment would 'require the

opponent to expend significant additional resources to conduct discovery and prepare for trial’ or ‘significantly delay the resolution of the dispute.’” *Ruotolo v. City of New York*, 514 F.3d 184, 192 (2d Cir. 2008) (quoting *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993)). Because Respondents are no longer defendants to this action, the proposed amendment will not require them to expend any additional resources, and the dispute against them has been fully resolved in this forum. To the extent that Respondents argue that certain allegations are “immaterial, impertinent and scandalous,” this is both factually incorrect and the wrong legal standard. All of the remaining allegations in the proposed Second Amended Complaint are material and necessary context for what happened to Isabella Miller-Jenkins when she was abducted from Lynchburg, Virginia, to Nicaragua. Although Respondents raise a fuss about it, Respondents do not dispute that TRBC’s head pastor signed the Manhattan Declaration, and Rena Lindevaldsen’s affidavit filed in support of the Motion to Dismiss describes a discussion of civil disobedience. Thus, allegations such as these cannot be considered scandalous. At the pleading stage, Plaintiffs have control of the facts alleged, and at a later date the Court will adjudicate Plaintiffs’ claims on the merits – although, as everyone agrees, there are no claims here against Respondents.

Further, the facts alleged in the complaint are not futile. In determining the futility of a proposed amendment, the district court must apply the same standard of legal sufficiency as under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Johnson v. Geico Cas. Co.*, 673 F. Supp. 2d 244, 248. (D. Del. 2009). Respondents are not arguing that the claims against them will not succeed, because the claims have been dismissed. Plaintiffs carefully crafted the Second Amended Complaint to conform with the guidance of the Court’s October 24, 2013 Order, and Plaintiffs believe that the Second Amended Complaint will withstand any

Rule 12(b)(6) challenge. Regardless, it is undisputed that the Second Amended Complaint does not include any claims against Respondents and thus is not “futile.” The claims and allegations in the proposed amended complaint pertain to and are essential for understanding the torts of the remaining Defendants who have not opposed the amendment.

Respondents also argue that the Plaintiffs should have amended the caption *sua sponte*, or filed a Motion to Amend the Caption. Plaintiffs have no objection to amending the caption if the Court so orders. Under the Federal Rules, Plaintiffs cannot amend the caption without the Court’s permission. “A caption may of course be amended with the permission of the court.” *Hernandez-Avila v. Averill*, 725 F.2d 25, 28 (2d Cir. 1984). “[C]ourts routinely direct the clerk of the court to amend the caption and remove the names of parties that have been dismissed from the action. *Naughtright v. Weiss*, 2013 WL 1859221, at *2 (S.D.N.Y. May 2, 2013); *see also Bettinger v. Doueck*, 2011 WL 2419799, at *8 (S.D.N.Y. June 3, 2011) (directing the clerk of the court to amend the caption to remove the name of a defendant who had been dismissed from the action on Rule 12(b)(6) grounds). Plaintiffs have not thought it necessary to seek the Court’s permission to amend the caption. In ruling on the Motions to Dismiss, the Court opted not to remove the dismissed defendants from the caption, although it could have done so, and Plaintiffs followed the Court’s lead. Even according to caselaw cited by Respondents, it is not necessary to amend a caption to remove a dismissed defendant because the dismissal governs. *See Bare v. Federal Express Corp.*, 886 F. Supp. 2d 600, 606 (N.D. Ohio 2012) (finding that “the proposed amendment to ‘remove’ a previously dismissed party [from the caption] is wholly unnecessary” because the party “has already been dismissed with prejudice by Court order.”). Respondents could have taken action to amend the caption themselves but chose not to do so, for unexplained reasons. Instead, they

have objected to Plaintiffs' reasonable decision to follow the Court's lead regarding the caption, and then argued that they are entitled to attorney's fees as a result. The Court should reject this request. The Court should similarly reject the request for attorney's fees with regard to the factual allegations in the amended complaint because all allegations are made in good faith and are necessary to explain the events giving rise to this lawsuit.

DATED at Middlebury, Vermont this 2nd day of January, 2014.

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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JANET JENKINS FOR HERSELF AND
AS NEXT FRIEND OF ISABELLA
MILLER-JENKINS, A/K/A ISABELLA
MILLER,

Plaintiffs,

v.

KENNETH L. MILLER, LISA ANN
MILLER F/K/A LISA MILLER-
JENKINS, TIMOTHY D. MILLER,
ANDREW YODER, INDIVIDUALLY
AND AS AN AGENT FOR CHRISTIAN
AID MINISTRIES, INC., CHRISTIAN
AID MINISTRIES, INC., RESPONSE
UNLIMITED, INC., PHILIP
ZODHIATES, VICTORIA HYDEN,
F/K/A VICTORIA ZODHIATES
INDIVIDUALLY AND AS AN AGENT
FOR BOTH RESPONSE UNLIMITED,
INC., AND LIBERTY UNIVERSITY
AND ITS RELATED MINISTRY
THOMAS ROAD BAPTIST CHURCH,
INC., LIBERTY UNIVERSITY, AND ITS
RELATED MINISTRY THOMAS ROAD
BAPTIST CHURCH, INC., LINDA M.
WALL, INDIVIDUALLY AND AS
AGENT FOR THOMAS ROAD BAPTIST
CHURCH, INC., AND DOUGLAS
WRIGHT,

Defendants.

Civil Action

Docket No. 2:12-cv-00184-wks

CERTIFICATE OF SERVICE

I, Katherine B. Kramer, Esq., counsel for Plaintiff Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that I caused the foregoing *Plaintiff's Combined Reply to Response of Liberty University, Inc., and Thomas Road Baptist Church, Inc. to Plaintiffs' Motion to Amend Complaint and Response of*

Douglas Wright to Plaintiffs' Motion to Amend Complaint to be filed with the Court using the CM/ECF electronic filing system, which will provide electronic notification of such filing(s) to Counsel of Record for the Defendants, and to all other registered users.

Dated at Middlebury, Vermont, this 2nd day of January, 2014.

/s/ Katherine B. Kramer
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