

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, for herself and as :
next friend of ISABELLA MILLER- :
JENKINS, a/k/a ISABELLA MILLER, :

Plaintiffs, :

v. :

Case No. 2:12-cv-184

KENNETH L. MILLER, LISA ANN MILLER :
f/k/a LISA MILLER-JENKINS, TIMOTHY :
D. MILLER, RESPONSE UNLIMITED, :
INC., PHILIP ZODHIATES, :
individually and as an :
agent for RESPONSE UNLIMITED, INC., :
VICTORIA HYDEN, f/k/a VICTORIA :
ZODHIATES, individually and as an :
agent for RESPONSE UNLIMITED, :
INC., LINDA M. WALL, :

Defendants. :

ORDER RE: MOTIONS FOR RECONSIDERATION AND FOR SANCTIONS

In a Memorandum and Order docketed April 6, 2015, the Court granted Defendants' motion to stay this case through the conclusion of Defendant Philip Zodhiates's criminal prosecution. In the same Memorandum and Order, the Court denied Defendants' motion for a protective order with regard to certain documents sought by the Plaintiffs. Those same documents were subpoenaed by the government in the criminal case, and the parties reported that a motion to quash the subpoena was denied.

Defendants agreed to produce the documents to the Plaintiffs subject to a protective order that would prohibit disclosure beyond this case. Ms. Jenkins responded that she cannot agree to such an order, as she anticipates being interviewed by the

government and called as a witness in the criminal matter. In the course of the criminal case, Ms. Jenkins might discuss or be compelled to testify about information that she obtained from the documents in question. The Court therefore declined to issue a protective order, and Defendants have now moved for reconsideration of that issue.

"The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court."

Shrader v. CSX Transport, Inc., 70 F.3d 255, 257 (2d Cir. 1995).

"The major grounds justifying reconsideration are an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice."

Hinds County, Miss. v. Wachovia Bank N.A., 708 F. Supp. 2d 348, 369 (S.D.N.Y. 2010) (citation and internal quotation marks

omitted). Reconsideration is not a proper tool to repackage and relitigate arguments and issues already considered by the court in deciding the original motion. *Id.*

Defendants contend that disclosure of the documents in question without a protective order would risk prejudicial pretrial publicity. The Court acknowledged this concern in its previous Memorandum and Order, but concluded that it "simply

cannot impose an order that would prevent Ms. Jenkins from speaking to prosecutors about documents in their possession.” ECF No. 192 at 5. Notwithstanding the stay of the instant civil case, that concern remains. Indeed, as Plaintiffs note in their opposition to reconsideration, upon questioning by the government Ms. Jenkins would be placed in the untenable position of having to show that her information and comments derived from her own life or previous litigation, and not from the produced documents. The Court is reluctant to put her in that position.

Defendants further argue that Ms. Jenkins’s testimony at the upcoming criminal trial will likely be brief, as it was in the trial of Kenneth Miller. While the two cases will certainly have parallels, the Court can only speculate as to the length or value of Ms. Jenkins’s testimony in the pending criminal proceeding. The motion for reconsideration (ECF No. 194) is therefore **denied**, and the requested documents shall be produced within seven days of the date of this Order.

Finally, Plaintiffs have moved for sanctions, arguing that instead of producing the documents as ordered by the Court the Defendants moved for reconsideration. Defendants were entitled to move for reconsideration, and the Court sees no evidence of bad faith in their motion. The motion for sanctions (ECF No. 196) is therefore **denied**.

Dated at Burlington, in the District of Vermont,
this 29th day of June, 2015.

/s/ William K. Sessions III
William K. Sessions III
Judge, United States District Court