UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL., Plaintiffs, v. KENNETH L. MILLER, ET AL., Defendants.	Case No. 2:12-cv-184

PLAINTIFFS' OPPOSITION TO THE DEFENDANTS' MOTIONS TO STAY DISCOVERY

NOW COME Plaintiffs Janet Jenkins, et al., by and through undersigned counsel, Sarah R. Star, Esq., Frank Langrock, Esq., and David Dinielli, Esq., and hereby oppose the Motions To Stay filed by Defendants Response Unlimited, Inc., Philip Zodhiates, Victoria Hyden, Liberty University, Liberty Counsel, Mathew Staver, Rena Lindevaldsen, and Linda Wall.

I. Introduction

On March 20, 2017, this Court granted Plaintiffs' motion to lift the stay of this case that had been in effect since July 2014. ECF 220. This Court also permitted Plaintiffs to amend the complaint to add additional allegations demonstrating personal jurisdiction over Response Unlimited, Inc. ("RUL") (with respect to which the Court had permitted limited jurisdictional discovery) and Liberty University (previously dismissed without prejudice), and to add additional defendants Liberty Counsel (a law firm affiliated with Liberty University) and two lawyers, Rena Lindevaldsen and Mat Staver (both of whom are

affiliated with Liberty University and Liberty Counsel). Defendants opposed the motion to amend on the grounds that the amendment would be "futile," and argued that this Court lacked personal jurisdiction over any of them. This Court rejected Defendants' arguments, allowed the amendment, and lifted the stay. ECF 220. Now, after being given two months to file answers to the amended complaint, Defendants raise those same arguments once again in Motions To Dismiss, essentially asking the Court to reconsider the same issues that were recently decided in Plaintiffs' favor. This new round of filings raising rehashed arguments should not result in further delay of a case that has not proceeded past limited jurisdictional discovery since it was filed in 2012. As this Court ruled, Jenkins and the public "have an interest in ensuring that these claims are resolved expeditiously." ECF 220, at 16. Re-staying discovery for yet another round of motions would not further this important public and private interest. Allowing discovery to continue while the Court considers whether to re-dismiss some defendants and dismiss the added and related Defendants moves this case toward a trial.

II. Argument

Local Civil Rule 26(a)(3) provides that "[d]iscovery, including the obligation to file a Discovery Schedule, *shall not* be stayed during the pendency of a Fed. R. Civ. P. 12(b) or (c) motion." L.R. 26(a)(3) (emphasis added). On June 1, 2017, Plaintiffs' counsel contacted Defendants' counsel with proposed dates for a conference to be held pursuant to L.R. 26(f). Defendants did not agree to discuss dates or hold a conference; instead, Defendants filed motions to stay the case yet again, despite this Court's local rule clearly providing that discovery generally shall not be stayed due to the filing of motions to dismiss. Although this Court permits stays of discovery that would "help to secure the just, speedy, and inexpensive

determination of the action," *id.* (citing Fed. R. Civ. P. 1), Defendants' apparent motivation is to prejudice Plaintiffs by further delaying this case. The Motions should be denied.

A. Defendants Fail to Show Good Cause for a Stay of Discovery

It is "well-settled" in this Circuit "that the issuance of a stay of discovery pending the outcome of a motion to dismiss is 'by no means automatic,'" *Integrated Sys. & Power, Inc. v. Honeywell Int'l, Inc.*, No. 09 CV 5874, 2009 WL 2777076, at *1 (S.D.N.Y. Sept. 1, 2009) (quoting *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002)), and that "discovery should not be routinely stayed simply on the basis that a motion to dismiss has been filed," *Spencer Trask Software & Info. Servs., LLC*, 206 F.R.D. at 368 (quoting *Moran v. Flaherty*, No. 92 Civ. 3200, 1992 WL 276913, at *1 (S.D.N.Y. Sept. 25, 1992)).

Therefore, Defendants, who seek a discretionary stay of discovery, bear the burden of showing good cause, *Spencer Trask Software & Info. Servs., LLC*, 206 F.R.D. at 368 (quoting Fed. R. Civ. P. 26(c)), which "requires a showing of facts militating in favor of the stay," *In re Currency Conversion Fee Antitrust Litig.*, No. MDL 1409, 2002 WL 88278, at *1 (S.D.N.Y. Jan. 22, 2002) (quoting *Am. Booksellers Ass'n v. Houghton Mifflin Co.*, No. 94 Civ. 8566, 1995 WL 72376, at *1 (S.D.N.Y. Feb. 22, 1995)). This Court's local rules specifically require that Defendants show that a stay of discovery would "help to secure the just, speedy, and inexpensive determination of the action." L.R. 26(a)(3) (citing Fed. R. Civ. P. 1). That they cannot do.

Normally, a party that has filed a motion to dismiss may show good cause where "the stay is for a short period of time, and the opposing party will not be prejudiced by the stay." *Spencer Trask Software & Info. Servs., LLC*, 206 F.R.D. at 368 (citing *Anti-*

Monopoly, Inc. v. Hasbro, Inc., No. 94Civ.2120, 1996 WL 101277, at *2 (S.D.N.Y. Mar. 7, 1996)). But the first round of motions to dismiss in this case, in which "[a]ll of the served Defendants . . . moved to dismiss on various grounds," ECF 115, at 2, burdened the Court with nearly a year's worth of work reviewing and rejecting many of their arguments. Defendants further prolonged the case by filing lengthy motions for interlocutory appeals and opposing jurisdictional discovery—even filing a request for a Writ of Mandamus in the Second Circuit, which was denied. Despite those efforts, over a span of two years, the only successful motions by present parties were a request to stay the case because of parallel criminal proceedings, and to dismiss the Liberty Defendants from the case—both of which provided only temporary relief for the Defendants and substantial delay for the Plaintiffs.

In this second round of motions to dismiss, all served Defendants save one (Kenneth Miller) have moved to dismiss on various grounds, spanning over 200 pages of briefing. Plaintiffs have requested until August 7, 2017, to respond to Defendants' motions. ECF 247. Then, the Court will again face the burden of thoroughly reviewing and disposing of Defendants' arguments in light of the allegations against Defendants, which are more detailed and revealing than they were in 2012. This task could take the Court a substantial period of time, not "a short period of time." *Cf. Spencer Trask Software & Info. Servs., LLC*, 206 F.R.D. at 368. The purpose of the instant motions, like the previous filings in this case, certainly is not "to help to secure the just, speedy, and inexpensive determination of the action," L.R. 26(a)(3), but rather to drown the Plaintiffs and the Court in pleadings and to delay discovery of even more damaging and inculpatory material than what was discovered after the temporary dismissal of the Liberty Defendants.

Such a lengthy stay would further prejudice Plaintiffs. Janet Jenkins has already been prejudiced by the prior stay in this case, and her daughter is still missing. As "steward" of Jenkins's "clear[ly] confirm[ed]" rights, and in light of her "interest in ensuring that these claims are resolved expeditiously," Doc. 220, at 16, the Court should require Defendants to proceed with discovery in the normal course. In sum, there would be nothing "just, speedy, [or] inexpensive" about staying discovery pending the resolution of Defendants' motions. L.R. 26(a)(3).

Defendants' motions to dismiss lack the "substantial grounds" needed "to stay discovery." *Hong Leong Fin. Ltd. (Singapore) v. Pinnacle Performance Ltd.*, 297 F.R.D. 69, 72 (S.D.N.Y. 2013). Substantiality is not measured by number of pages. Defendants' motions are not "supported by 'substantial arguments for dismissal," or "a strong showing" that Plaintiffs' claims are "unmeritorious." *Id.* In order to make this "strong showing," it is not enough for Defendants to say that their motions might "not appear to be without foundation in law" because "[a]n overly lenient standard for granting motions to stay all discovery is likely to result in unnecessary discovery delay in many cases." *Id.* (first quoting *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 210 (S.D.N.Y. 1991); then quoting *Clemons v. Hayes*, No. 2:10-cv-01163, 2011 WL 2112006, at *3 (D. Nev. May 26, 2011)).

Many of the arguments Defendants make in their motions to dismiss are foreclosed by the law of the case doctrine. Prior to this round of motions to dismiss, the parties in this case "battled for the court's decision[;] they should neither be required, nor without good reason permitted, to battle for it again." *Zdanok v. Glidden Co.*, 327 F.2d 944, 953 (2d Cir. 1964) (Friendly, J.). "The law of the case doctrine commands that 'when a court has ruled

on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case' unless 'cogent and compelling reasons militate otherwise.'" *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009) (quoting *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002)).

The Court, for example, has already held that Plaintiffs alleged facts "sufficient to establish a prima facie showing of personal jurisdiction" over the Defendants who now again argue that the Court lacks personal jurisdiction over them. Doc. 220, at 28 (Staver and Lindevaldsen); *id.* at 40–42 (Liberty Counsel); *id.* at 45 (Liberty University); *id.* at 57 (RUL); Doc. 115, at 25 (Zodhiates, Hyden, and Wall). "Prior to discovery, a plaintiff challenged by a jurisdiction testing motion may defeat the motion by pleading in good faith legally sufficient allegations of jurisdiction." *Ball v. Metallurgie Hoboken-Overpelt, S.A.*, 902 F.2d 194, 197 (2d Cir. 1990). Plaintiffs have met their burden at this stage of the case. Defendants' jurisdictional arguments, then, cannot be deemed substantial enough to warrant a stay of discovery, and no cogent or compelling reason justifies reconsideration of the Court's rulings on personal jurisdiction before discovery commences.

Defendants' motions rely on facts in dispute and thus a stay of discovery pending disposition of those motions is inappropriate. "Discovery should be stayed . . . only when there are no factual issues in need of further immediate exploration, and the issues before the Court are purely questions of law that are potentially dispositive, such as where a challenge is directed to the Court's jurisdiction." *Hachette Distribution, Inc.*, 136 F.R.D. at 358 (internal citations omitted). An attorney arguing "pure[] questions of law" would not need to submit multiple exhibits, including numerous sworn affidavits by potential witnesses, ostensibly to be considered by the Court, for their truth, without any opportunity for

questioning by Plaintiffs in interrogatory requests or a deposition. The Liberty Defendants' motions proceed on the theory that their self-serving and highly selective affidavits should take the place of discovery.

Of course, "whether a stay of all discovery pending the outcome of a dispositive motion is warranted . . . is necessarily fact-specific and depends on the particular circumstances and posture of each case." *Id.* The circumstances and posture of this case counsel against a stay of all discovery. The Court should consider, for example, "the posture or stage of the litigation," *id.*—that there have already been significant delays prior to any general discovery commencing, and Plaintiffs have a strong interest in moving forward. Furthermore, only some Defendants have filed motions to dismiss, and only "some [not] all of the defendants join in the request for a stay." *Id.* As previously discussed, Defendants' motions are not "a challenge as a 'matter of law' or to the 'sufficiency' of the allegations," *id.*, given their reliance on affidavits. The Court is further guided by the clear fact that this case will go forward in the District of Vermont with or without the Defendants who now seek further delay. Because Plaintiffs allege that every one of the named Defendants conspired with the others, discovery as to one party will be relevant to all of the Defendants. For example, even if Liberty Counsel were to be dismissed from this action for lack of jurisdiction, Plaintiffs would still seek the same discovery regarding Liberty Counsel and its activities in relation to the claims against Liberty University, Lisa Miller, RUL, Victoria Hyden, Linda Wall, and Kenneth Miller. The information that Plaintiffs intend to seek through discovery will assist in moving this case toward resolution whether only some or all of the Defendants ultimately remain in the case.

Plaintiffs request that discovery be permitted to proceed, and that the Court order the parties to confer in accordance with L.R. 26(f). Alternatively, the Court should at least permit partial discovery to proceed regarding the Defendants that were not recently joined because "'the discovery rules vest broad discretion in the trial court[,]' including the power to direct partial discovery limited to certain issues pending resolution of dispositive motions." *Bethpage Water Dist. v. Northrop Grumman Corp.*, No. 13-CV-6362, 2014 WL 6883529, at *2 (E.D.N.Y. Dec. 3, 2014) (quoting *H.L. Moore Drug Exch., Inc. v. Smith, Kline & French Labs.*, 384 F.2d 97, 97 (2d Cir. 1967)). However, because of the interrelated nature of the conspiracy claims, and the fact that Plaintiffs will be seeking information in the Liberty Defendants' possession regardless, a stay would be unlikely to limit their participation to any degree.

B. Vermont's Anti-SLAPP Statute Does Not Stay Discovery in this Case

1. The Statute Does Not Apply to Plaintiffs' Federal Cause of Action

Vermont's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute does not apply in this case. A state anti-SLAPP statute "does not apply to federal law causes of action" in federal court. *Hilton v. Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010) (citing *Bulletin Displays, LLC v. Regency Outdoor Advertising, Inc.*, 448 F. Supp. 2d 1172, 1180–82 (C.D. Cal. 2006)). Count II of Plaintiffs' RSAC alleges that Defendants are liable under federal law, namely 42 U.S.C. § 1985(3), by conspiring to violate Plaintiffs' equal protection rights under the Fourteenth Amendment to the U.S. Constitution. Applying Vermont's anti-SLAPP statute to Plaintiffs' federal cause of action "would frustrate substantive federal rights." *Bulletin Displays, LLC*, 448 F. Supp. 2d at 1180. It "would frustrate federal courts' interest in prescribing rules of procedure applicable to federal

claims, and in uniformity of federal law," and "would permit state law to affect and alter the substance of federal claims in violation of the Supremacy Clause of the Constitution." *Id.* at 1181. Vermont "has no interest in dictating rules of procedure or substance applicable to federal claims brought in federal court." *Id.* at 1182; *accord Ginx, Inc. v. Soho All.*, 720 F. Supp. 2d 342, 366 (S.D.N.Y. 2010) (holding that New York's anti-SLAPP statute does not apply to "a federal claim brought in a federal court"). Given that discovery in this case will be virtually identical under both counts of Plaintiffs' RSAC, Vermont's anti-SLAPP statute cannot automatically stay discovery under either count.

2. The Stay of Discovery Provision Does Not Apply to Plaintiffs' State Law Cause of Action in Federal Court

Even if Vermont's anti-SLAPP statute did apply with respect to the state law causes of action in this case,[1] its stay of discovery provision does not. Where a Federal Rule of Civil Procedure is "clearly applicable," the test is "whether the Rule [is] within the scope of the Rules Enabling Act, 28 U.S.C. § 2072, and if so, within a constitutional grant of power such as the Necessary and Proper Clause of Art[icle] I." *Walker v. Amrmco Steel Corp.*, 446 U.S. 740, 748 (1980) (citing *Hanna v. Plumer*, 380 U.S. 460, 470–72 (1965)); *accord Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 n.7 (1996) ("Concerning matters covered by the Federal Rules of Civil Procedure, the characterization question is usually unproblematic: It is settled that if the Rule in point is consonant with the Rules Enabling Act, 28 U.S.C. § 2072, and the Constitution, the Federal Rule applies regardless of contrary state law."). A rule is "clearly applicable" if it "is "'sufficiently broad' to cause a 'direct

[1] Plaintiffs do not at this time concede that Vermont's anti-SLAPP statute could apply to Count I; instead, Plaintiffs address the specific issue before this Court: whether the stay of discovery provision of Vermont's anti-SLAPP statute automatically stays discovery in this case.

collision' with the state law or, implicitly, to 'control the issue' before the court, thereby leaving no room for the operation of that law." *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 5 (1987) (citing *Walker*, 446 U.S. at 749–50 & n.9; *Hanna*, 380 U.S. at 471–72). The court must "determine whether the Federal Rule and the state law 'attempt[] to answer the same question.'" *Retained Realty, Inc. v. McCabe*, 376 F. App'x 52, 55 (2d Cir. 2010) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 399 (2010)). "When a situation is covered by one of the Federal Rules, the question facing the court is a far cry from the typical, relatively unguided Erie Choice: the court has been instructed to apply the Federal Rule . . . ." *Hanna*, 380 U.S. at 471.

The stay of discovery provision conflicts with clearly applicable Federal Rules of Civil Procedure. "The restrictive standard for discovery under the anti-SLAPP law is oil to the water of Rule 56's more permissive standard." *Unity Healthcare, Inc. v. Cty. of Hennepin*, 308 F.R.D. 537, 541 (D. Minn. 2015). The Second Circuit has recognized that a stay of discovery provision in an anti-SLAPP statute might not apply in a federal case. In *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014), the court faced Nevada's anti-SLAPP statute, which stays discovery like Vermont's and California's statutes, in a diversity case. *See* Nev. Rev. Stat. § 41.660(3)(e)–(f). Although the court concluded that it "need not resolve this question," it acknowledged that "some federal courts have declined to apply anti-discovery provisions in statutes similar to Nevada's." *Adelson*, 774 F.3d at 809. The court cited *Metabolife International, Inc. v. Wornick*, 264 F.3d 832, 845–46 (9th Cir. 2001), which concluded that the California anti-SLAPP statute's stay of discovery provision could not apply in federal court because it "conflict[s] with discovery-permitting aspects of Federal [Civil] Rule [of Procedure] 56" and "order[ed] the district court to allow discovery"

on remand. This was so despite the Ninth Circuit's conclusion in an earlier case that other provisions of California's anti-SLAPP statute—the motion to strike provision itself, § 425.16(b), and the provision providing for fees and costs, § 425.16(c)—did apply in federal court. 264 F.3d at 845 (discussing *United States v. Lockheed Missiles & Space Co., Inc.*, 190 F.3d 963, 970–73 (9th Cir. 1999)).

Other courts have similarly held that anti-SLAPP stays of discovery do not apply in federal court. In *Unity Healthcare, Inc.*, the court held that "the limited discovery mandated" by Minnesota's anti-SLAPP statute, Minn. Stat. § 554.02, which like Vermont's stays discovery, "collides" with Rule 56. 308 F.R.D. at 541. The anti-SLAPP provision "makes discovery the exception" and "place[s] [a] hurdle in the path of a party seeking to obtain information to avoid pre-trial dismissal of its properly pleaded claims." *Id.* In *Henderson v. von Loewenfeldt*, No. CV414-187, 2015 WL 409656, at *2 n.7 (S.D. Ga. Jan. 29, 2015), the court held that the stay of discovery provision of Georgia's anti-SLAPP statute, Ga. Code Ann. § 9-11-11.1(d), was inapplicable in a diversity case removed to federal court. The court reasoned that, like the statute's verification requirement, § 9-11-11.1(b), which the Eleventh Circuit held was a procedural rule preempted by the Federal Rules of Civil Procedure, *see Royalty Network, Inc. v. Harris*, 756 F.3d 1351, 1361 (11th Cir. 2014), the statute's stay of discovery provision "is a state procedural law . . . likewise . . . inapplicable here." *Henderson*, 2015 WL 409656, at *2 n.7. The court compared the "automatic-stay" feature of Georgia's stay of discovery provision "with normal federal court practice, where one may move to dismiss a case but must *request* and receive a discovery stay." *Id.* Similarly, the court in *Containment Technologies Group, Inc. v. American Society of Health System Pharmacists*, No. 1:07-cv-0997, 2009 WL 2750093, at *4 (S.D. Ind. Aug. 26, 2009), held

that "after th[e] case was removed to federal court, federal law and rules governed procedural aspects of the case," so the timing requirements of Indiana's anti-SLAPP statute, including its stay of discovery provision, Ind. Code § 34-7-7-6, did not apply. *See also Nixon v. Haag*, No. 1:08-cv-00648, 2009 WL 2026343, at *2–3 (S.D. Ind. July 7, 2009) (holding that Fed. R. Civ. P. 26(b)(1) "provide[s] liberal discovery to promote accuracy and fairness in litigation" and supersedes Indiana's procedural rule restricting the scope of discovery).

Even if no Federal Rule of Civil Procedure applies, *Erie* does not command the application of the stay of discovery provision. "Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law." *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996) (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)); *accord Erie*, 304 U.S. at 78 ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."). To succeed at the "sometimes . . . challenging endeavor" of classifying a state law as "substantive" or "procedural" under *Erie*, a federal court "exercising jurisdiction *solely* because of the diversity of citizenship of the parties" must ask whether disregarding the state law would "significantly affect the result of a litigation." *Id.* at 427–28 (quoting *Guaranty Trust Co. v. York*, 326 U.S. 99, 109 (1945)) (emphasis added). This "outcome-determination" test "must be guided by 'the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws.'" *Id.* at 427 (quoting *Hanna*, 380 U.S. at 468).

This Court is not exercising jurisdiction "solely because of the diversity of citizenship of the parties" in this case. *Id.* at 428. "[T]he *Erie* doctrine applies, whatever the

ground for federal jurisdiction, to any issue or claim which has its source in state law. Likewise, the *Erie* doctrine is inapplicable to claims or issues created and governed by federal law, even if the jurisdiction of the federal court rests on diversity of citizenship." *Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 540 n.1 (2d Cir. 1956)); *accord Van Gemert v. Boeing Co.*, 553 F.2d 812, 813 (2d Cir. 1977). Although the Court has diversity jurisdiction over Count I, "which has its source in state law," namely Vermont common law, the Court has original and "arising under" jurisdiction over Count II, which is "governed by federal law," namely 42 U.S.C. § 1985 and, in turn, the Fourteenth Amendment to the U.S. Constitution. *See* RSAC at 2. Defendants Liberty Counsel, Mathew Staver, Rena Lindevaldsen, and Linda Wall challenge *both* counts in their respective motions to strike under Vermont's anti-SLAPP statute. "Because [a] Federal statute[] suppl[ies] the elements of" Count II, it "find[s] no 'source in state law' and *Erie* does not apply." *Cappetta v. GC Servs. Ltd. P'ship*, 654 F. Supp. 2d 453, 464 (E.D. Va. 2009) (citing *Maternally Yours*, 234 F.2d at 540 n.1).

Even if *Erie* did apply, the stay of discovery provision is a procedural rule rather than a substantive right. It provides that "[t]he filing of a special motion to strike under this section shall stay all discovery proceedings in the action . . . until the court rules on the special motion to strike" except that "[t]he court, on motion and for good cause shown, may order that limited discovery be conducted for the purpose of assisting its decision on the special motion to strike." Vt. Stat. Ann. tit. 12, § 1041(c). Vermont's statute is "based" on California's anti-SLAPP statute. *Ernst v. Carrigan*, 814 F.3d 116, 121 (2d Cir. 2016). Like California's statute, it "create[s] 'a procedure where the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation.'"

Liberty Synergistics Inc. v. Microflo Ltd., 718 F.3d 138, 148 n.9 (2d Cir. 2013) (quoting *Flatley v. Mauro*, 139 P.3d 2, 9 (Cal. 2006)). Although it "share[s] in the '*nature* of immunity,'" it "is *not* 'a substantive immunity from suit.'" *Id.* (quoting *Batzel v. Smith*, 333 F.3d 1018, 1025 (9th Cir. 2003)); *accord Ernst*, 814 F.3d at 121 (citing *Liberty Synergistics Inc.*, 718 F.3d at 148 n.9). It "neither constitutes—nor enables courts to effect—any kind of 'immunity.'" *Id.* (quoting *Jarrow Formulas, Inc. v. LaMarche*, 74 P.3d 737, 743–44 (Cal. 2003)).

In sum, the automatic stay of discovery provided by Vermont law cannot and does not displace this Court's discretion to deny the requested stay of discovery pending the disposition of Defendants' motions to dismiss.

III. Conclusion

For the foregoing reasons, this Court should deny the Defendants' motions to stay discovery, and allow the case to proceed.

DATED this June 22, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document was filed through the Court's CM/ECF filing system, and by virtue of this filing notice will be sent electronically to all counsel of record, including the following:

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