

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

KENNETH L. MILLER, et al.,

Defendants.

No. 2:12-cv-184-WKS

PLAINTIFFS' MOTION FOR A STATUS CONFERENCE

Plaintiffs Janet Jenkins et al. respectfully move this Court for a status conference to set a discovery schedule. Despite Plaintiffs' efforts to schedule a Rule 26(f) conference and commence discovery, Defendants refuse either to participate in discovery, to participate in a Rule 26(f) conference, or in some cases even to respond. Defendants point to two motions pending since November 2017 (ECF 278 and ECF 280) regarding the Court's denial of Defendants' motions to dismiss, but the Court has not granted any stay of discovery pending resolution of those two motions.

Rule 26 of the Federal Rules of Civil Procedure requires Plaintiffs to confer with Defendants before they can take discovery. Thus, Defendants' refusal to participate has stymied Plaintiffs' efforts to move the case along. The pendency of the motions is not a basis for a refusal to participate in discovery because no stay has been granted. L.R. 26(a)(3) ("Discovery, 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."). Plaintiffs most recently emailed all parties on March 8, 2018, asking to schedule a Rule 26(f) conference or a status conference with the Court. *See* Ex. A. Defendant Liberty University is willing to attend a Rule 26(f) conference, but will not participate in discovery pending decision on its motion. *See* Ex. B. Defendants Liberty Counsel

and Rena Lindevaldsen refused a Rule 26(f) conference. *See* Ex. C. The remaining defendants have not responded. Plaintiffs also attempted to schedule a Rule 26(f) conference in the summer of 2017, but Defendants refused because of the motions to dismiss pending at that time.

For the foregoing reasons, Plaintiffs respectfully move for a status conference to set a discovery schedule.

March 15, 2018

Respectfully submitted.

/s/ Diego A. Soto

/s/ Frank Langrock

David C. Dinielli*

Frank Langrock

Beth D. Jacob†

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* *Admitted Pro Hac Vice*

† *Pro Hac Vice Application Pending*

Counsel for Plaintiffs

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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Daniel J. Schmid
Roger K. Gannam
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Counsel for Defendant Liberty University, Inc.

I further certify that the foregoing document was sent via United States mail to the last known address of the following:

Timothy D. Miller
1380 Girl Scout Road
Denver, Pennsylvania 17517

March 15, 2018

/s/ Diego A. Soto
Diego A. Soto

Exhibit A

Email from Sarah R. Star, Counsel for Plaintiffs,
to Counsel for Defendants (Mar. 7, 2018)

From: [Sarah Star](#)
To: ["Ritchie Berger"](#); ["Robert B. Hemley"](#); [flangrock](#); [bmcarthur@jarvismcarthur.com](#); [nc.smith@myfairpoint.net](#); [anthony@ndp-law.com](#); [dschmid@lc.org](#); [hmihet@lc.org](#); [rgannam@lc.org](#); [David Dinielli](#); [Diego Soto](#); [Tyler Clemons](#); [jswift](#); [Rachel Grossman](#); [Beth Jacob](#); [timjomiller@gmail.com](#)
Subject: Jenkins v. Miller et al
Date: Wednesday, March 07, 2018 10:35:41 AM

Counsel,

As you are aware, this matter has not been stayed while motions are pending, and our client is eager to move forward at this time. While I understand that some of you may wish to wait until motions are decided, we do need to begin the discovery process. Would you agree to schedule a conference for the first week in April? If we cannot agree to hold a conference, I will write to the Court asking for a status conference.

Thank you.

Sarah

Sarah R. Star, Esq.
Attorney & Counselor at Law, P.C.
P.O. Box 106
Middlebury, VT 05753
Ph. (802) 385-1023
Fax (802)419-3600

Exhibit B

Email from Ritchie E. Berger, Counsel for
Defendant Liberty University, to Sarah R. Star,
Counsel for Plaintiffs (Mar. 8, 2018)

From: [Ritchie Berger](#)
To: [Sarah Star](#)
Cc: [Fritz Langrock](#)
Subject: Re: Jenkins v. Miller et al
Date: Thursday, March 08, 2018 8:09:25 PM

Hi Sarah. I am glad to participate in a conference, but I believe it clear under the Constitution and established case law that the Court lacks jurisdiction over my client. I believe Judge Sessions will eventually recognize this and, if not, the Second Circuit will. As such, while I have no objection to you conducting discovery as to those defendants not challenging personal jurisdiction, I do object to my client being asked to take part in any discovery.

Thank you.

DINSE: R. Berger, Esq.
W: [802-859-7029](tel:802-859-7029) | M: [802-578-8877](tel:802-578-8877)
rberger@dinse.com | [Bio](#)

On Mar 7, 2018, at 12:06 PM, Sarah Star <srs@sarahstarlaw.com> wrote:

Counsel,

As you are aware, this matter has not been stayed while motions are pending, and our client is eager to move forward at this time. While I understand that some of you may wish to wait until motions are decided, we do need to begin the discovery process. Would you agree to schedule a conference for the first week in April? If we cannot agree to hold a conference, I will write to the Court asking for a status conference.

Thank you.

Sarah

Sarah R. Star, Esq.
Attorney & Counselor at Law, P.C.
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Fax (802)419-3600

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This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd.**

Exhibit C

Email from Daniel J. Schmid, Counsel for Defendants Liberty Counsel and Rena M. Lindevaldsen, to Sarah R. Star, Counsel for Plaintiffs (Mar. 8, 2018)

From: [Daniel Schmid](#)
To: [srs](#); ["Ritchie Berger"](#); ["Robert B. Hemley"](#); [flangrock](#); [bmcarthur@jarvismcarthur.com](#); [nc.smith@myfairpoint.net](#); [anthony@ndp-law.com](#); [Horatio Mihet](#); [Roger Gannam](#); [David Dinielli](#); [Diego Soto](#); [Tyler Clemons](#); [jswift](#); [Rachel Grossman](#); [Beth Jacob](#); [timjomiller@gmail.com](#)
Subject: Re: Jenkins v. Miller et al
Date: Thursday, March 08, 2018 10:26:32 AM

Sarah:

Our clients maintain their previous position that all discovery should not commence until threshold issues are determined.

Regards,

Daniel

Daniel J. Schmid, Esq.*

Senior Litigation Counsel

Liberty Counsel

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Orlando, FL 32854

407-875-1776 phone

434-592-7700 fax

Offices in CA, DC, FL, VA

[www.LC.org](#) • dschmid@LC.org

*Licensed in Virginia

From: Sarah Star <srs@sarahstarlaw.com> on behalf of Sarah Star <srs@sarahstarlaw.com>

Date: Wednesday, March 7, 2018 at 11:37 AM

To: 'Ritchie Berger' <rberger@DINSE.COM>, "'Robert B. Hemley'" <rhemley@gravelshea.com>, 'Fritz Langrock' <FLangrock@langrock.com>, "bmcarthur@jarvismcarthur.com" <bmcarthur@jarvismcarthur.com>, "nc.smith@myfairpoint.net" <nc.smith@myfairpoint.net>, "anthony@ndp-law.com" <anthony@ndp-law.com>, Daniel Schmid <daniel@lc.org>, Horatio Mihet <hmihet@lc.org>, Roger Gannam <rgannam@lc.org>, 'David Dinielli' <david.dinielli@splcenter.org>, 'Diego Soto' <diego.soto@splcenter.org>, 'Tyler Clemons' <Tyler.Clemons@splcenter.org>, "'James W. Swift'" <JSwift@langrock.com>, 'Rachel Grossman' <rachel.grossman@splcenter.org>, "beth.jacob@splcenter.org" <beth.jacob@splcenter.org>, "timjomiller@gmail.com" <timjomiller@gmail.com>

Subject: Jenkins v. Miller et al

Counsel,

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Thank you.

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