

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, <i>et al.</i> ,)	
Plaintiffs)	
)	
v.)	Docket No. 2:12-cv-184
)	
KENNETH L. MILLER, <i>et al.</i> ,)	
Defendants)	

**RESPONSE OF DEFENDANTS ZODHIATES, HYDEN
AND RESPONSE UNLIMITED TO PLAINTIFFS' MOTION
TO MODIFY DISCOVERY SCHEDULE/ORDER REFLECTS
AGREEMENT OF PLAINTIFFS' COUNSEL TO SIX-MONTH EXTENSION**

Defendants Philip Zodhiates, Victoria Hyden and Response Unlimited, Inc. ("RUL"), through their attorneys, Gravel & Shea, P.C., respond to Plaintiffs' Motion to Modify Discovery Schedule/Order ("Plaintiffs' Motion") as follows. While these Defendants do not oppose an extension of the discovery schedule, they do not agree to the specific extension being requested. After conferring with Plaintiffs' counsel, these Defendants and Plaintiffs' counsel agree that a six-month extension of the discovery schedule is appropriate. We understand that Defendants Liberty Counsel, Rena Lindevaldsen and Linda Wall have also agreed. The remaining Defendants in the case, Kenneth Miller, Timothy Miller and Lisa Miller have not taken a position.

1. ZODHIATES, HYDEN AND RUL AGREE THE DISCOVERY SCHEDULE SHOULD BE MODIFIED, BUT THE SIX-WEEK EXTENSION PLAINTIFFS HAVE REQUESTED IS UNREALISTIC.

The current discovery order (ECF No. 329) provides that discovery shall be completed by August 29, 2019. Other deadlines are keyed off this date. As set forth in Plaintiffs' Motion,

discovery has not proceeded “as expeditiously as anticipated by the discovery schedule.”

Plaintiffs’ mutual suggestion of an extension of six weeks, however, is unrealistic, and would only guarantee that the parties return to the Court with additional extension requests. After conferring, Plaintiffs’ counsel agrees that an extension of six months is appropriate.

II. ZODHIATES, HYDEN AND RUL ANTICIPATE MOTION PRACTICE FOLLOWING RECEIPT OF DISCOVERY RESPONSES FROM PLAINTIFFS.

Zodhiates, Hyden and RUL issued their first set of discovery requests to Plaintiffs on February 25, 2019.¹ On March 13, 2019, Plaintiffs’ counsel asked for an extension of an additional 60 days, until May 27, 2019. The Defendants, on March 15, 2019, agreed to a 30-day extension, and invited Plaintiffs’ counsel to ask for additional time if necessary, noting that a 60-day extension would likely result in a need to adjust other deadlines. Then, on April 25, 2019, Plaintiffs’ counsel asked for, and were given an additional extension, until May 3, 2019. Plaintiffs’ discovery responses were served by mail on May 3, 2019, and e-mailed on May 6, 2019. Unfortunately, after having the requests for more than ten weeks, Plaintiffs provided responses that contained little substantive information and numerous objections. In addition to the predictable boilerplate (“vague and ambiguous,” “cumbersome,” “outside the scope,” “embarrassing,” “annoying,” etc.), Plaintiffs assert that certain inquiries are “irrelevant,” and remarkably, after seven-plus years during which this suit has been pending and there have been two trials addressing the same fact pattern, the inquiries are “premature at this stage of the litigation,” or that no answer can be provided in the absence of a protective order, or that

¹ It should be noted that until then, discovery had been entirely one-sided. This case was originally filed in August 2012. RUL provided discovery responses to Plaintiffs as early as November 2013, and more recently, Zodhiates and Hyden have timely responded to Plaintiffs’ discovery requests without seeking extensions of time.

“discovery is ongoing,” so a response will be provided later. No documents were produced. In response to these answers, Zodhiates, Hyden and RUL have requested a meet-and-confer, which due to scheduling conflicts among Plaintiffs’ counsel, will not occur until May 24. The likelihood of a motion to compel is high, despite what we expect will be good faith efforts to resolve conflicts. Preliminary discussion to reach agreement on certain fundamental issues have been unsuccessful. Anticipating briefing, argument and consideration by the Court, an extension of six weeks is unrealistic. Rather, the extension should be in the order of six months so that meaningful discovery can be completed. Plaintiffs’ counsel agrees.

Conclusion

Defendants Zodhiates, Hyden and RUL agree that a modification of the current discovery schedule is necessary and appropriate, and propose that the extension be for six months, making the discovery completion date February 28, 2020, and trial readiness July 1, 2020.

Dated: Burlington, Vermont
May 13, 2019

/s/ Robert B. Hemley
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CERTIFICATE OF SERVICE

I, Robert B. Hemley, Esq., attorney for Defendants Philip Zodhates, Victoria Hyden and Response Unlimited, Inc., certify that, on May 13, 2019, I caused to be served Response of Defendants Zodhates, Hyden and Response Unlimited to Plaintiff's Motion to Modify Discovery Schedule/Order Reflects Agreement of Plaintiffs' Counsel to Six-Month Extension, through the CM/ECF system on the following individuals:

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