

that Ms. Jenkins did provide are largely evasive and incomplete. Defendants accordingly request that this Court issue an order compelling Ms. Jenkins to supplement her Responses to Defendants' First Set of Interrogatories and Requests to Produce ("Responses") and to compensate Defendants for the cost of filing this motion.

Background

Ms. Jenkins filed her Complaint almost seven years ago on August 13, 2012, alleging among other things, that Defendants conspired to remove Isabella Jenkins-Miller ("Isabella") from the country and to prevent Ms. Jenkins from continuing a parental relationship with Isabella. The Complaint, as amended, further alleges that the Defendants conspired to violate Ms. Jenkins's civil rights and this conspiracy was guided by discriminatory animus against same-sex couples. Ms. Jenkins seeks substantial monetary damages based on: (1) extreme emotional distress, (2) legal fees and lost business, (3) closure of her daycare center, and (4) loss of court fines from her former spouse which are accruing at \$100 a day. The damages relating to Isabella are based on: (1) emotional distress, (2) lost child support from her non-custodial parent, (3) deprivation of an education, and medical and dental care, (4) deprivation of support from Isabella's extended family, and (5) injury to Isabella's property and future business and employment. In addition to compensatory damages, the Complaint seeks punitive damages from each Defendant.

Defendants served their first set of Interrogatories and Document Requests on February 25, 2019. After asking for, and receiving several extensions, Ms. Jenkins served her Responses on May 3, 2019. The Responses contain almost no substantive information, and fail to attach even a single document.

On May 23, 2019, Defendants' counsel conferred with Ms. Jenkins's counsel in an effort to resolve disagreements related to the Responses. *See* accompanying Affidavit of Robert B. Hemley, Esq. After a conversation that lasted an hour and thirty-three minutes, Ms. Jenkins's counsel agreed to supplement seven specific Interrogatories and to clarify several objections. Despite these undertakings, no additional information has been received, and the parties have been unable to reach agreement on many of the remaining Interrogatories and Document Requests.

Relief Requested

Defendants request that Ms. Jenkins supplement the following Interrogatories to include complete and responsive information: 2, 4, 5, 6, 9, 10, 14, 19 and 25. Additionally, Defendants request that Ms. Jenkins produce all non-privileged documents responsive to Document Requests 1-19.

Analysis

I. MS. JENKINS CANNOT ASSERT CONFIDENTIAL TREATMENT OVER ALL DOCUMENTS.

One objection consistently asserted by Ms. Jenkins is the absence of a confidentiality order between all parties. She does so without any explanation as to why the information sought requires that protection, and has never sought that protection from the Court as required by Rule 26. *See* Responses at pp. 4, 5, 6, 17, 18, 19, 20, 22 and 23. The overuse of the objection based on confidentiality is obvious and underscores the reasons why a general confidentiality agreement in this case would be cumbersome and burdensome. *See infra* note 1. For example, Ms. Jenkins refuses to even disclose the city where she lives, how and when she met Defendant Lisa Miller, the licenses held by a daycare center that Ms. Jenkins allegedly operated,

communications between Ms. Jenkins and Defendant Lisa Miller, and documents produced to Ms. Jenkins from third parties.

Federal Rule of Civil Procedure 26(c) permits a district court, for good cause shown, to issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. Ms. Jenkins has not sought such an order, likely because she recognized that her effort would be futile. The party seeking a protective order “must also show good cause for restricting dissemination on the ground that it would be harmed by its disclosure.” 8A Charles Alan Wright, Arthur Miller, and Richard L. Marcus, *Federal Practice and Procedure* § 2043 (3d ed. 2010). The showing of harm may not be couched in generalities; the party resisting unfettered disclosure must demonstrate a “clearly defined” and “specific” injury which is “serious” or “significant.” *See John Wiley & Sons, Inc. v. Book Dog Books, LLC*, 298 F.R.D. 184, 186-87 (S.D.N.Y.) (collecting cases). “The mere fact that some level of discomfort, or even embarrassment, may result . . . is not in and of itself sufficient to establish good cause to support the issuance of protective order. To rise to a level of good cause, any such embarrassment must be substantial.” *Flaherty v. Seroussi*, 209 F.R.D. 295, 299 (N.D.N.Y. 2001). In this case, Ms. Jenkins has not shown good cause why all documents in this case merit confidential treatment. Additionally, Ms. Jenkins has even declined to work with Defendants’ counsel to identify which documents may in fact require protection and which documents should be disclosed without a confidentiality provision. Ms. Jenkins should be compelled to produce all responsive documents and, if she persists in claiming they are confidential, show good cause as to why any such documents should receive confidential treatment.¹

¹ On April 10, 2019, Ms. Jenkins requested that Defendants agree to an extremely broad confidentiality order which would invite blanket over designations of all documents as *confidential*. *See* e-mails attached to the Affidavit of Robert B. Hemley, Esq. at Exhibit C. On

II. INTERROGATORY 2: MS. JENKINS MUST DISCLOSE PERSONAL FINANCES.

Interrogatory 2 requests Ms. Jenkins “[i]dentify each job, including the annual gross income of that job [Ms. Jenkins has], held from 2004 to the present.” Ms. Jenkins objects that this interrogatory is irrelevant, causing embarrassment and annoyance, and is unduly intrusive. The only substantive information provided in response to this interrogatory is that “since 2004, Plaintiff has been self-employed and operated a child care and preschool, or has been a stay-at-home parent.” Responses at pp. 4 and 5. This Response fails to provide sufficient information on Ms. Jenkins’s employment and the gross annual income of those positions.

Rule 26(b)(1) of the Federal Rules of Civil Procedure permits parties to obtain discovery:

... regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Courts broadly define relevance and have wide discretion when determining what is relevant in each individual case. *See Michael Kors, L.L.C. v. Su Yan Ye*, 2019 U.S. Dist. LEXIS 60057, at *4-5 (S.D.N.Y. Apr. 8, 2019). In this case, Ms. Jenkins claims that she is entitled to damages,

April 11, 2019, Defendants’ counsel indicated that he is not opposed in principal to some sort of protective order, but suggested that the order needed refinement because the order as proposed did not include any limitation on what could be classified as confidential. *Id.* On April 25, 2019, Defendants’ counsel again expressed concern that a protective order would lead to over-designation of documents as *confidential* and suggested that the parties deal with the confidentiality issue on a document-by-document or class-of-documents basis. *Id.* In May, Ms. Jenkins’ counsel and Defendants’ counsel again spoke on the phone regarding this issue. Ms. Jenkins’ counsel declined to work with Defendants’ counsel to identify specific documents or all classes of documents that might rightly deserve protection. While some commercial cases involving legitimate, proprietary information or trade secrets may lend themselves to broad protections, this case does not, and Ms. Jenkins has not suggested why it should, other than to vaguely suggest that discovery of highly personal information about the suit she chose to bring would be embarrassing to her.

because, among other reasons, her daycare center lost profits as a result of the Defendants' actions. Despite this claim, Ms. Jenkins refuses to disclose the name of that daycare center and the income she earned there. Instead, Ms. Jenkins maintains that her personal finances are irrelevant and only the financial losses of her daycare center (which she has not provided) are discoverable. Ms. Jenkins requests financial damages on behalf of herself and Isabella. Therefore, Defendants are entitled to investigate whether Ms. Jenkins truly sustained any financial losses. The only way to calculate Ms. Jenkins's losses is to compare her income before and after the events alleged in the Complaint. Without this information it is impossible to understand what damages, if any, Ms. Jenkins suffered. Ms. Jenkins must be compelled to provide complete information on her employment, including her gross income from each job held.

III. INTERROGATORIES 4 AND 25: MS. JENKINS HAS PLACED HER MENTAL HEALTH AT ISSUE IN THIS CASE.

Interrogatories 4 and 25 request information on Ms. Jenkins's mental health and mental health treatment. Even though she claims damages for emotional distress, Ms. Jenkins objects that these Interrogatories are irrelevant, causing embarrassment and annoyance, and are unduly intrusive. Responses at pp. 5 and 17. In order for Defendants to understand the extent of Ms. Jenkins's emotional distress they need to investigate her mental condition, before and after 2009, including any treatment that she obtained or sought. By including a claim for emotional damages, Ms. Jenkins opened the door to questions about her mental health. As the United States District Court, District of Vermont recognized, "seeking emotional distress damages is sufficient to bring the emotional condition into issue, opening the door for discovery into psychiatric records." *Rose v. Vt. Mut. Ins. Co.*, 2007 U.S. Dist. LEXIS 83029, at *8 (D. Vt.

Nov. 8, 2007) (quotation omitted) (determining that psychological records were relevant to damages claim). Ms. Jenkins must supplement Interrogatories 4 and 25 to include complete information regarding her mental health treatment before and after the events alleged in the Complaint.

IV. INTERROGATORY 6: MS. JENKINS'S ACTIONS AFTER ISABELLA'S DISAPPEARANCE ARE RELEVANT TO HER CLAIM FOR DAMAGES.

In interrogatory 6, Defendants ask how long after Ms. Jenkins's separation from Ms. Miller did Ms. Jenkins commence a dating or romantic relationship and the name of the person Ms. Jenkins was involved with. Ms. Jenkins objects that this interrogatory is irrelevant, causing embarrassment and annoyance, and is unduly intrusive. This area of inquiry will allow Defendants to determine how Ms. Jenkins moved on after the events alleged in the Complaint, and the full extent of any claimed emotional distress.

V. INTERROGATORIES 9 AND 10: AFTER SEVEN YEARS OF LITIGATION, MS. JENKINS MUST FINALLY ANSWER CONTENTION INTERROGATORIES.

In Interrogatories 9 and 10, Defendants ask Ms. Jenkins to set forth each and every occasion on which Ms. Jenkins contends that Zodhiates and/or Hyden met or communicated with Ms. Miller or any other Defendant in this action, and as to each such occasion, set forth where and when it occurred, and the content of any communications. Ms. Jenkins objects to these and other contention Interrogatories as premature. Ms. Jenkins further objects that Defendant Philip Zodhiates's ("Mr. Zodhiates") and Defendant Victoria Hyden's ("Ms. Hyden") contacts with Ms. Miller and other Defendants are known to the RUL Defendants. *See Responses at pp. 6-7.*

Ms. Jenkins's second objection appears to be based on the assumption that RUL as an employer is privy to every conversation or interaction had by every employee or officer of its

company. Aside from the fact that Ms. Hyden worked for RUL only as a part-time fill-in at times unrelated to the allegations in the Complaint, Ms. Jenkins's argument assumes employees and officers have no private life outside of their employment with RUL. Further, even if RUL was aware of every conversation by any employee, RUL is still entitled to discover what Ms. Jenkins knows about those conversations. "[O]ne of the purposes of discovery . . . is to ascertain the position of the adverse party on the controverted issues." *SEC v. Cymaticolor Corp.*, 106 F.R.D. 545, 549 (S.D.N.Y. 1985). "In order to defend itself, defendant must know the facts and evidence the plaintiff possesses to prove its allegations. The purpose of interrogatories is to enable the parties to prepare for trial." *Stabilus, Div. of Fichtel & Sachs Industries, Inc. v. Haynsworth, Baldwin, Johnson & Greave, P.A.*, 14 F.R.D. 258, 264 (E.D. PA 1992) (internal quotations and citations omitted). Therefore, "it is irrelevant that the party seeking discovery already knows the facts as to which he seeks discovery." *Id.* Ms. Jenkins should be compelled to provide the requested information.

When not offering a blanket objection, Ms. Jenkins nevertheless fails to provide the content of alleged communications. Instead, Ms. Jenkins states that the conversations inquired about concerned "the conspiracy described in the Revised Second Amended Complaint." Response at pp. 6-7. This answer is unresponsive and must be supplemented. Not only is the Response hopelessly vague, parties cannot answer Interrogatories with references to pleadings. Interrogatories are intended to provide sworn statements that allow defendants to craft a defense to the allegations in a complaint. *DiPietro v. Jefferson Bank*, 144 F.R.D. 279, 281-282 (E.D. PA. 1992) ("The general rule is that answers to interrogatories should be complete in and of themselves, and should not refer to pleadings . . ."). The prohibition on answering Interrogatories with citations to a complaint makes sense as "[a]nswers to interrogatories

should be in such form that they may be used upon a trial, as Rule 33 contemplates.” *Id.* (citing *International Mining Co., Inc. v. Allen & Co., Inc.*, 567 F.Supp. 777, 787 (S.D.N.Y. 1983) and Moore’s Federal Practice § 33.103). Ms. Jenkins’s Responses that direct Defendants to the unsworn Complaint are unresponsive and must be supplemented.

Ms. Jenkins’s Response as to Ms. Hyden provides even less information. Ms. Jenkins simply states “Ms. Hyden met or communicated with Lisa concerning the conspiracy described in the Revised Second Amended Complaint at times and locations expected to be determined during discovery.” Response at p. 7. To the extent this information is being withheld on the basis that this interrogatory is premature, such an objection is improper. To the extent Ms. Jenkins has no evidence of any communications between Ms. Hyden and Ms. Miller, which we believe is necessarily the case, Ms. Jenkins must clearly acknowledge this reality in a manner that can be cited at summary judgment or trial.

Federal Rule of Civil Procedure 33(a)(2) provides that “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact.” Courts have the option to delay answers to any such opinion or contention interrogatories until “after designated discovery has been completed or until a pre-trial conference or other later time.” *Id.* Such an election is inappropriate in this case. The allegations in Ms. Jenkins’s Complaint relate to actions taken in 2009. Since that time, Ms. Jenkins has completed jurisdictional discovery in this case and received hundreds of pages of exhibits from two related criminal cases. Materials available to Ms. Jenkins include phone and e-mail records from Mr. Zodiates and Ms. Hyden, as well as hundreds of documents from RUL including communications from its server relating to the allegations in Ms. Jenkins’s Complaint. In other words, there is nothing left to learn about the Defendants’ alleged involvement in the

conspiracy. With all this information at Ms. Jenkins's disposal, she must now support her Complaint with concrete facts or admit that none exist.

VI. INTERROGATORY 13: MS. JENKINS MUST GIVE MORE THAN CONCLUSORY STATEMENTS THAT DEFENDANTS HELPED WITH THE CONSPIRACY.

Turning to interrogatory 13, Defendants ask:

. . . which co-conspirators had 'devised a plan to kidnap Isabella . . .'; and whether You contend that Zodiates, Hyden and/or RUL played a role in devising the plan, and if so, how, when, and where they played such roles, and what You contend their roles, or any of them, were in fulfilling the plan, as devised.

In response, Ms. Jenkins provides only conclusory statements that Ms. Hyden "helped coordinate the transportation," "helped deliver communications," "helped coordinate the removal of belongings" and "helped arrange the payment of rent." Response at p. 11. These conclusory allegations do nothing to inform Defendants about the exact actions taken by Ms. Hyden to "help" in the conspiracy. Does Ms. Jenkins allege that Ms. Hyden bought the gas for the trip, drove the car to the border or provided the car? Without more information on the specific actions allegedly taken by Ms. Hyden, it is impossible for her to demonstrate her innocence. Ms. Jenkins must supplement this interrogatory to clearly state the actions that Ms. Hyden took in fulfilling the plan as devised.²

² In her Response to interrogatory 19, Ms. Jenkins directs the Defendants to her Response to interrogatory 13. Thus, Ms. Jenkins's Response to interrogatory 19 suffers from the same deficiencies as interrogatory 13 and must be supplemented.

VII. INTERROGATORY 14: MS. JENKINS MUST CLEARLY STATE WHEN NO EVIDENCE EXISTS.

Interrogatory 14 asks when Ms. Jenkins contends that Mr. Zodhiates and/or Ms. Hyden became acquainted with Kenneth Miller and whether Ms. Jenkins contends that Mr. Zodhiates or Ms. Hyden communicated with Kenneth Miller or Timothy Miller, and if so, when and the content of the communications. Ms. Jenkins objects that this interrogatory is premature and states that both Mr. Zodhiates and Ms. Hyden met Kenneth Miller in early 2009. Ms. Jenkins also states that Ms. Hyden communicated with Kenneth Miller and Timothy Miller at times expected to be determined during discovery. Response at p. 12. These Responses fail to provide any information relating to the content of these conversations and fail to admit that Ms. Jenkins has no evidence regarding Ms. Hyden's communications. As noted earlier, after seven years and two criminal trials, Ms. Jenkins had ample opportunity to investigate the claims in this case and yet refuses to acknowledge when no evidence exists to support the allegations in her Complaint. Ms. Jenkins must supplement this interrogatory to reflect complete information including the content of alleged communications and acknowledgment of what evidence currently exists.

Conclusion

After two extensions, Ms. Jenkins served Responses with little substantive information about the claims and damages alleged in her Complaint. What few documents Ms. Jenkins agrees are relevant she refuses to produce without a confidentiality order that Ms. Jenkins contends should apply to all documents and most information. Ms. Jenkins cannot bring a Complaint and at the same time refuse to provide any information that would permit the Defendants to defend against those claims or understand potential damages. Ms. Jenkins should be compelled to provide more substantive Responses to Interrogatories at pp. 2, 4, 5, 6, 9, 10, 14, 19 and 25 and produce all non-privileged documents responsive to the Defendants' Document

Requests 1-19. As Ms. Jenkins's oppositions to many of these Interrogatories and Document Requests were frivolous, Defendants ask for costs and fees associated with filing this motion and any reply.

Dated: Burlington, Vermont
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/s/ Robert B. Hemley

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