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

PLAINTIFF JANET JENKINS'S RESPONSE IN OPPOSITION TO DEFENDANTS PHILIP ZODHIATES, VICTORIA HYDEN, AND RESPONSE UNLIMITED, INC.'S MOTION TO COMPEL

Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc.'s ("RUL") (collectively, "RUL Defendants") motion to compel, ECF 352 ("Mot."), should be denied.

STATEMENT OF THE CASE

This case arose from the international kidnapping of then-seven-year-old Isabella Miller-Jenkins by one of her mothers, Lisa Miller, and others to keep her away from her other mother, Janet Jenkins. Criminal cases against Defendants Philip Zodhiates, Kenneth Miller, and Timothy Miller uncovered that Lisa kidnapped Isabella to Nicaragua with the encouragement and help of, among others, Zodhiates, the owner of RUL; his daughter, Hyden; Kenneth Miller; Timothy Miller; Lisa's attorneys at Defendant Liberty Counsel, who included Defendant Rena Lindevaldsen; and Defendant Linda Wall. Zodhiates, Kenneth Miller, and Timothy Miller each were convicted for their involvement in the kidnapping.

Jenkins filed this action on August 14, 2012, for herself and as next friend of Isabella. Jenkins seeks compensatory and punitive damages, *see* Revised Second Am. Compl. ("Compl.") ¶ 72, ECF 223 (May 4, 2017), for "extreme emotional distress and the loss of her daughter's companionship," *id.* ¶ 68, for "legal fees and lost business as a result of having to close her

daycare center," *id.* ¶ 69, and for being "unable to collect court ordered fines," *id.* Isabella seeks compensatory and punitive damages, *id.* ¶ 72, for "emotional distress as a result of the abduction," *id.* ¶ 70, for "the loss of emotional and financial support from her mother," *id.* ¶ 71, and for the deprivation "of an education, medical and dental care and the support of her extended family," *id.* Jenkins and Isabella also seek compensatory and punitive damages "for the intentional tort of kidnapping Isabella," as well as for violations of their civil rights. *Id.* ¶ 72.

Other than jurisdictional discovery of RUL, *see* Op. & Order at 77, ECF 115 (Oct. 24, 2013) (allowing jurisdictional discovery of RUL); Mem. & Order Re: Mot. to Stay at 4–6, ECF 192 (Apr. 6, 2015) (ordering RUL's production of documents subpoenaed by government in Zodhiates's criminal case), discovery in this case did not effectively commence until the parties conferred pursuant to Rule 26(f) of the Federal Rules of Civil Procedure on May 3, 2018—over five-and-a-half years after the case was filed.[1]

Only two sets of merits discovery requests have been served and no depositions have occurred. Plaintiffs served their first set of document requests on the merits in June 2018. On February 25, 2019, each of the RUL Defendants served interrogatories and document requests on Jenkins. *See* Mot. Ex. A, ECF 352-2.

The RUL Defendants' discovery requests seek information and documents concerning, among other things, Isabella, a minor, *see, e.g.*, Interrog. 8; Reqs. to Produc. 6–7, 16; Jenkins's and Isabella's medical and mental health history, including the identities of providers and dates of treatments, *see, e.g.*, Interrogs. 4, 8, 25; Reqs. to Produc. 2, 15; Jenkins's personal financial records and those of her family members, including income, expenditures, sources of money,

[1] Discovery on the merits did not officially commence until August 29, 2018. *See* Order, ECF 329 (Aug. 29, 2018).

assets, tax returns, balance sheets, bank statements, and loan applications, *see, e.g.*, Interrogs. 2, 28; Reqs. to Produc. 3, 20–21; Soto Decl. ¶¶ 9–10 (Attach. 1); Jenkins's business records, including financial statements, tax returns, balance sheets, details of complaints, and income, *see, e.g.*, Interrog. 26; Reqs. to Produc. 4, 13, 15; and documents produced to Plaintiffs in response to a subpoena, *see, e.g.*, Req. to Produc. 19. Plaintiffs agreed to produce certain sensitive information and documents once the Court enters an appropriate confidentiality order. *See* Mot. Ex. B, ECF 352-3.

On April 10, 2019, Plaintiffs' counsel delivered to all opposing counsel a proposed stipulated protective order to keep confidential certain documents, information, and other things produced or obtained by the parties, or by any nonparty, in the course of discovery. *See* Mot. Ex. C, ECF 352-4. Plaintiffs proposed a two-tier blanket protective order[2] limiting disclosure of information designated in good faith as confidential or highly confidential, subject to a party's objection and to judicial review if an objection cannot be resolved by agreement. Disclosure of information designated in good faith as confidential would be limited to the parties, counsel of record in this case and their staff, experts and consultants retained for this case and their staff, court reporters, deposition stenographers, videographers, and the Court and its staff. *Id.* at *3–4.[3] Disclosure of information designated as highly confidential would be further limited to counsel

[2] Plaintiffs use the term "blanket protective order" to refer to a protective order that "requires that counsel for a producing party review the information to be disclosed and designate the information it believes, in good faith, is confidential or otherwise entitled to protection," subject to objection by an opposing party and to judicial review "when there is such an objection which the parties cannot resolve by agreement." *Gillard v. Boulder Valley Sch. Dist. Re.-2*, 196 F.R.D. 382, 386 (D. Colo. 2000). Plaintiffs do not seek what is sometimes called an "umbrella protective order," "which designates all discovery as protected without any prior review whatsoever, by either a court or the parties." *Id.*

[3] Pincite pages preceded by an asterisk refer to the page numbers generated by the Court's CM/ECF system.

of record in this case and their staff, court reporters, deposition stenographers, and videographers, and the Court and its staff. *Id.* at *4–5. However, because Liberty Counsel is both a party and counsel of record in this case, disclosure of highly confidential information to Liberty Counsel would be limited to three natural persons, subject to objection by the parties. *Id.* at *4.

On April 12, 2019, counsel for nonparty Christian Aid Ministries agreed to produce documents responsive to a subpoena from Plaintiffs based on Plaintiffs' commitment to treat documents produced by Christian Aid Ministries as subject to the proposed stipulated protective order even prior to its entry by the Court. Soto Decl. ¶ 4 (Attach. 1).

The RUL Defendants did not agree to Plaintiffs' proposed stipulated protective order and instead insist on addressing each confidentiality issue that might arise individually by document or class of document. *Id.* ¶¶ 5, 8.[4] On May 24, 2019, the RUL Defendants expanded their discovery requests to include more of Jenkins's personal financial records and to include the personal financial records of Jenkins and Isabella's family members. *See id.* ¶¶ 9–10.

On June 20, 2019, the RUL Defendants moved to compel Jenkins to supplement her answers to interrogatories numbered 2, 4, 5, 6, 9, 10, 14, 19, and 25 and to produce all nonprivileged documents responsive to document requests numbered 1–19. Mot. at 3, ECF 352.

On June 27, 2019, Plaintiffs recirculated to all opposing counsel their proposed stipulated protective order and requested each party's position. Soto Decl. ¶ 11 (Attach. 1). Only the RUL Defendants responded, confirming their continued opposition. *Id.* On July 3, 2019, Plaintiffs requested that all parties meet and confer on the proposed stipulated protective order. *Id.* ¶ 12.

[4] Liberty Counsel and Lindevaldsen likewise did not agree to Plaintiffs' proposed stipulated protective order either. Soto Decl. ¶ 6 (Attach. 1). Defendants Kenneth Miller, Timothy Miller, and Linda Wall have not responded. *Id.* ¶ 7.

SUMMARY OF ARGUMENT

The RUL Defendants' motion to compel should be denied for three primary reasons:

First, the RUL Defendants demand that Jenkins produce sensitive information about herself and her daughter Isabella without an appropriate protective order in place. At the core of this case is the kidnapping of Isabella, who was and remains a minor, and how that kidnapping has damaged the relationship between Isabella and her mother Jenkins and their individual well-being. Discovery has solicited, and will continue to solicit, sensitive information about Isabella and Jenkins of the type that is normally subjected to a confidentiality order. Plaintiffs could not produce this sensitive information to all Defendants—as they are obligated to do—without an appropriate protective order governing its disclosure to, and use by, Defendants and their counsel. A motion for protective order is not ripe until Plaintiffs have conferred with all Defendants.

Second, the RUL Defendants demand irrelevant information about Jenkins's personal finances and her romantic relationships after her separation from Lisa six years before Isabella's kidnapping. The RUL Defendants are not entitled to irrelevant information.

Third, the RUL Defendants demand both that Jenkins and her attorneys disclose their assessments of the evidence just as discovery is taking flight and that they keep the RUL Defendants apprised of any developments to those assessments as discovery progresses. The RUL Defendants are not entitled to pierce the attorney–client and work product protections.

ARGUMENT

I. Interrogatories 4 and 25 and Requests to Produce 1, 4, 5, 6, 7, 8, 13, 15, 16, and 19 Seek Sensitive Information Without an Appropriate Protective Order

The RUL Defendants seek answers to two interrogatories and production of documents responsive to ten requests to produce[5] that all seek sensitive information without an appropriate protective order in place. These discovery requests seek information about, among other things, Isabella, a minor, *see* Reqs. to Produc. 6–7, 16 (Mot. Ex. B at 19–20, 22, ECF 352-3); Jenkins's medical and mental health history, including the identities of providers and dates of treatments, *see* Interrogs. 4, 25 (Mot. Ex. B at 5, 17, ECF 352-3); Req. to Produc. 15 (Mot. Ex. B at 22, ECF 352-3); Jenkins's business records, including financial statements, tax returns, and balance sheets, *see* Reqs. to Produc. 4, 13, 15 (Mot. Ex. B at 19, 21–22, ECF 352-3); and documents produced to Plaintiffs in response to a subpoena, Req. to Produc. 19 (Mot. Ex. B at 23, ECF 352-3).

Jenkins objects to answering these discovery requests without a protective order in place that protects such confidential, and perhaps highly confidential, information. As the RUL Defendants would have it, Plaintiffs would be required to negotiate a stipulated protective order

[5] The RUL Defendants request (Mot. at 3, 11–12, ECF 352) that Jenkins "produce all non-privileged documents responsive to Document Requests 1-19." They do not, however, support that request with any argument, except for one citation, in their discussion of Jenkins's confidentiality-order objection, to pages of Jenkins's responses to their discovery requests. Mot. at 3, ECF 352 (citing Mot. Ex. B at 4–6, 17–20, 22–23, ECF 352-3)). The only document requests to which Jenkins objects because a confidentiality order is not in place and that appear within those page ranges are Requests to Produce 1, 4, 5, 6, 7, 8, 13, 15, 16, and 19. The Court should deny the RUL Defendants' motion to compel with respect to Requests to Produce 2, 3, 9, 10, 11, 12, 14, 17, and 18 for failure to comply with Local Rule 26(c)(3), which requires them to provide reasons why the requests should be allowed.

They also did not comply with Local Rule 26(c)(3)(B), which requires that a memorandum supporting a discovery motion "must include . . . a specific, *verbatim* listing of each discovery item sought or opposed." (emphasis added). Jenkins does not interpret that rule to apply to this memorandum opposing the motion.

with them each time sensitive information is to be produced in response to their discovery requests, and then negotiate stipulated protective orders with every other party before producing that same sensitive information to all parties as Plaintiffs are required to do under Rule 5(a)(1)(C) of the Federal Rules of Civil Procedure. Contrary to the RUL Defendants' assertion (Mot. at 4, ECF 352) that Jenkins has not sought a protective order "because she recognized that her effort would be futile," such a motion is not ripe until all parties have conferred, *see* L.R. 26(c)(1), which is not possible when some Defendants do not respond.

Plaintiffs' proposed blanket protective order would allow for the efficient production of sensitive information with minimal judicial intervention. "'Blanket' protective orders are essential to the functioning of civil discovery," *Bayer AG & Miles, Inc. v. Barr Labs., Inc.*, 162 F.R.D. 456, 465 (S.D.N.Y. 1995); they "serve the interests of a just, speedy, and less expensive determination of complex disputes by alleviating the need for and delay occasioned by extensive and repeated judicial intervention," *Gillard v. Boulder Valley Sch. Dist. Re.-2*, 196 F.R.D. 382, 386 (D. Colo. 2000); *accord United States ex rel. Rubar v. Hayner Hoyt Corp.*, No. 5:14-cv-830, 2018 WL 5811427, at *9 (N.D.N.Y. Nov. 5, 2018) (granting motion for blanket protective order, instead of allowing parties "to consider protective provisions with respect to individual documents on a case-by-case basis," given "the age of this case and difficulties parties have encountered in proceeding through discovery expeditiously").

For those reasons, blanket protective orders "routinely are approved by courts in civil cases, frequently on the stipulated request of the parties." *Gillard*, 196 F.R.D. at 386. This Court has entered blanket protective orders allowing the parties to designate information as confidential. *See, e.g.*, Stipulated Protective Order, *Sullivan v. Saint-Gobain Performance Plastics Corp.*, No. 5:16-cv-125 (D. Vt. Apr. 4, 2017) (Crawford, J.) (ECF 58); *Jestings v.*

Christensen, No. 5:14-cv-238, 2016 WL 901258, at *1–2 (D. Vt. Mar. 3, 2016) (Crawford, J.); *Synventive Molding Sols., Inc. v. Husky Injection Molding Sys., Inc.*, No. 2:8-cv-136, 2009 WL 10678881, at *1 (D. Vt. Feb. 6, 2009) (Sessions, C.J.); *Nellson N. Operating, Inc. v. Elan Nutrition, LLC*, 238 F.R.D. 544, 545 (D. Vt. 2006) (Sessions, C.J.) (noting that the Court had entered a protective order permitting the parties to "designate information subject to discovery as 'confidential' or 'confidential-attorneys' eyes only'").

This Court could enter Plaintiffs' proposed blanket protective order in this case, even without "[t]he agreement of all parties," *Gillard*, 196 F.R.D. at 386, for three reasons: *First*, Plaintiffs can make a "threshold showing of good cause to believe that discovery will involve confidential or protected information," which "may be done on a generalized as opposed to a document-by-document basis." *Id.* (quoting *Parkway Gallery Furniture, Inc. v. Kittinger/Pa. House Grp., Inc.*, 121 F.R.D. 264, 268 (M.D.N.C. 1988)). *Second*, Plaintiffs have "agree[d] to only invoke the designation in good faith." *Id. Third*, Defendants would have "the right to contest those documents which [they] believe[] not to be confidential," which shifts only the burden of raising the objection, not the burden of proving confidentiality. *Id.*; *see also* Mot. Ex. C at *8, ECF 352-4 (providing that producing party would continue to bear burden of proving necessity of confidentiality designation).

Plaintiffs can make a "threshold showing of good cause to believe that discovery will involve confidential or protected information," *Gillard*, 196 F.R.D. at 386 (quoting *Parkway Gallery Furniture, Inc.*, 121 F.R.D. at 268), because discovery *already* involves confidential or protected information. The case arose from the kidnapping of Isabella, who was and remains a minor, and how that kidnapping has damaged the relationship between Isabella and her mother Jenkins and their individual well-being. Thus, as the RUL Defendants' first discovery requests

show, discovery has solicited, and will continue to solicit, sensitive information about Isabella and Jenkins, including medical, mental health, and financial records and, more generally, records concerning a minor child.[6]

Plaintiffs' proposed protective order would appropriately limit the disclosure and use of Jenkins's and Isabella's medical, mental health, and financial information and information concerning Isabella, a minor. This Court has entered orders protecting medical and mental health care information requested in discovery. *See, e.g.*, *Shovah v. Mercure*, No. 2:11-cv-201, 2013 WL 12226890, at *3 (D. Vt. Oct. 30, 2013) (Sessions, J.) (ordering defendant's medical and mental health records be surrendered subject to protective order that they be used for purposes of the litigation); *accord Johnson v. Fed. Bureau of Prisons*, No. 16-cv-3919, 2017 WL 5197143, at *2 (E.D.N.Y. Nov. 9, 2017) ("[F]ederal courts routinely issue protective orders to ensure the confidentiality of medical records. That is so even in proceedings such as this, where the plaintiff has put his medical condition at issue.").

This Court also has recognized that a protective order is appropriate for financial information, such as a business's net worth, which is "sensitive" information that a party "may legitimately desire . . . remain confidential." *Turner v. Vt. Ctr. for the Deaf & Hard of Hearing, Inc.*, No. 2:2-cv-251, 2003 WL 27380992, at *3 (D. Vt. Oct. 1, 2003) (Sessions, C.J.) (citing cases); *accord Philmar Dairy, LLC v. Armstrong Farms*, No. 2:18-cv-530, 2019 WL 2006181, at *3–4 (D.N.M. May 7, 2019) (holding tax returns, income statements, and balance sheets were relevant and not overbroad under circumstances, but ordering production subject to

[6] The RUL Defendants argue (Mot. at 3, ECF 352) that Jenkins's supposed "overuse" of the objection that a protective order is warranted in this case "underscores the reason why a general confidentiality agreement in this case would be cumbersome and burdensome." To the contrary, the nature of this case and the RUL Defendants' discovery requests underscore why a blanket confidentiality order is necessary.

confidentiality order); *Linea Pelle, Inc. v. Omega Fashions Ltd.*, No. 95-cv-138, 1997 WL 13267, at *1 (S.D.N.Y. Jan. 15, 1997) (permitting deferral of production of financial statements until confidentiality order entered). Protective orders also are appropriate for bank statements in particular. *See, e.g.*, *Snider v. Lugli*, No. CV 10-4026, 2011 WL 5401860, at *5 (E.D.N.Y. Nov. 4, 2011); *A.I.A. Holdings S.A. v. Lehman Bros.*, No. 97-cv-4978, 2000 WL 763848, at *3 (S.D.N.Y. June 12, 2000).

Tax returns likewise contain "sensitive information" of a "private nature," which causes courts to be "reluctant to compel their disclosure." *Melendez v. Primavera Meats, Inc.*, 270 F.R.D. 143 (E.D.N.Y. 2010) (quoting *Carmody v. Vill. of Rockville Centre*, No. CV-5-4907, 2007 WL 2042807, at *2 (E.D.N.Y. July 13, 2007)); *accord Marsteller v. Butterfield 8 Stamford LLC*, No. 3:14-cv-1371, 2017 WL 5749662, at *4 (D. Conn. Nov. 28, 2017) (ordering disclosure of tax returns because they were relevant to the case and the information was not otherwise readily available, but requiring parties to propose "appropriate protective order"); *Sunrise Grp., Ltd. v. Kent King Sec. Co.*, No. 94-cv-5476, 1995 WL 322187, at *2 (S.D.N.Y. May 26, 1995) (same).

Therefore, the RUL Defendants' motion to compel answers to Interrogatories 4 and 25 and production of documents responsive to Requests to Produce 1, 4, 5, 6, 7, 8, 13, 15, 16, and 19 should be denied.

II. Interrogatories 2 and 6 Seek Irrelevant Information

The RUL Defendants seek supplemental answers to two interrogatories that seek irrelevant information about Jenkins's personal finances and romantic relationships.

A. Interrogatory 2: Jenkins's Personal Annual Gross Income Since 2004 Is Irrelevant to Her Claim for Damages to Her Business

Interrogatory 2 (Mot. Ex. B at 4–5, ECF 352-3) seeks information about Jenkins's personal annual gross income since 2004, even though she does not seek damages for any losses to her personal income; instead, Jenkins seeks compensatory and punitive damages, Compl. ¶ 72, ECF 223, for "extreme emotional distress," *id.* ¶ 68, for "legal fees and lost business as a result of having to close her daycare center," *id.* ¶ 69, and for being "unable to collect court ordered fines," *id.*

The RUL Defendants attempt to justify a need for this irrelevant information by arguing (Mot. at 5–6, ECF 352) that "[c]ourts broadly define relevance," that they "are entitled to investigate whether Ms. Jenkins truly sustained any financial losses," and that "[t]he only way to calculate Ms. Jenkins's losses is to compare her income before and after the events alleged in the Complaint." Jenkins's personal pocketbook has no bearing on whether or to what extent the RUL Defendants' actions caused her lost business. *See* Fed. R. Evid. 401. Jenkins has agreed to produce information about the daycare center for which she claims damages once an appropriate confidentiality order is entered. *See, e.g.*, Mot. Ex. B at 17, 19, ECF 352-3.

Therefore, the RUL Defendants' motion to compel a supplemental answer to Interrogatory 2 should be denied.

B. Interrogatory 6: Jenkins's Romantic Relationships After Separating from Lisa in 2003 Are Irrelevant to Her Emotional Distress from Isabella's Kidnapping in 2009

Interrogatory 6 (Mot. Ex. B at 5–6, ECF 352-3) seeks information about Jenkins's romantic relationships after her separation from Lisa, to which Jenkins objects as irrelevant, causing embarrassment and annoyance, and unduly intrusive. The RUL Defendants attempt to justify this request by arguing (Mot. at 7, ECF 352) that "[t]his 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."

Jenkins's romantic relationships after separating from Lisa in 2003 are not relevant to any claim or defense and are disproportionate to the needs of the case. Jenkins seeks to hold the RUL Defendants liable for their involvement in separating her from Isabella, not from Lisa, in 2009. That Jenkins might have "commence[d] a dating or romantic relationship with another [p]erson" "after [her] separation from Lisa" in 2003 would have no tendency to make her claim of extreme emotional distress from Isabella's kidnapping in 2009 more or less probable than it would be without that evidence. *See* Fed. R. Civ. P. 26(b)(1). Even if the RUL Defendants narrowed their interrogatory to Jenkins's dating life after Isabella's kidnapping in 2009, that information too would have no effect on whether she suffered emotional distress from the kidnapping. *Cf. Painter v. Atwood*, No. 2:12-cv-1215, 2014 WL 5469155, at *6 (D. Nev. Oct. 28, 2014) (holding plaintiff's claim of extreme emotional distress from sexual harassment at work survived summary judgment even though she, among other things, "allegedly began a relationship shortly after resigning").

Therefore, the RUL Defendants' motion to compel an answer to Interrogatory 6 should be denied.

III. Interrogatories 9, 10, 13, 14, and 19 Prematurely Seek Contentions

The RUL Defendants demand supplemental answers to contention Interrogatories 9, 10, 13, 14, and 19, to which Jenkins objects as premature but still provided answers. *See* Mot. Ex. B at 6–7, 10–12, 14, ECF 352-3.[7] Jenkins objects to these interrogatories as premature contention

[7] The RUL Defendants concede that at least Interrogatories 9 and 10 are contention interrogatories. *See* Mot. at 7, ECF 352. Interrogatories 13, 14, and 19 also are contention interrogatories because they ask Jenkins "to indicate what [she] contends, to state all the facts on

interrogatories. She nonetheless answered with the dates, locations, and names of participants of the conversations, *see id.* at 7–9, 12, and actions, *see id.* at 11, 14, about which the RUL Defendants asked.

The RUL Defendants argue (Mot. at 9–10, ECF 352) that more detailed answers to their contention interrogatories should not be delayed until after discovery has been completed because Jenkins's claims relate to events in 2009, she has completed jurisdictional discovery of RUL, and she has received trial exhibits from Zodhiates's and Kenneth Miller's criminal cases. As the RUL Defendants would have it, Jenkins would be required now to disclose to all Defendants her attorneys' assessments of the evidence just as discovery is picking up speed—that is, her attorneys' work product and communications with her—and to keep all Defendants apprised of any developments to those assessments as discovery progresses. Jenkins would have to amend or supplement her answers to the RUL Defendants' contention interrogatories as her contentions, interpretations of the evidence, and strategy change throughout discovery.

Rule 33(a)(2) of the Federal Rules of Civil Procedure permits the Court to order that the RUL Defendants' contention interrogatories "need not be answered until designated discovery is complete, or until a pretrial conference or some other time." Rule 33 protects Jenkins "from being hemmed into fixing [her] position without adequate information.'" *Strauss*, 242 F.R.D. at 233 (quoting *Roth*, 1988 WL 43963, at *4). After all, "[t]he primary purpose of contention interrogatories . . . is to narrow the issues for trial." *Linde v. Arab Bank, PLC*, No. CV-4-2799, 2012 WL 957970, at *1 (E.D.N.Y. Mar. 21, 2012) (citing *Pasternak v. Dow Kim*, No. 10 Civ.

---

which [she] bases [her] contentions, [or] to state all the evidence on which [she] bases [her] contentions." *Strauss v. Credit Lyonnais, S.A.*, 242 F.R.D. 199, 233 (E.D.N.Y. 2007) (quoting *McCarthy v. Paine Webber Grp., Inc.*, 168 F.R.D. 448, 450 (D. Conn. 1996)); *accord Roth v. Bank of Commonwealth*, No. CIV-79-36E, 1988 WL 43963, at *4 (W.D.N.Y. May 4, 1988).

5045, 2011 WL 4552389, at *3 (S.D.N.Y. Sept. 28, 2011)). "Courts generally resist efforts to use contention interrogatories as a vehicle to obtain every fact and piece of evidence a party may wish to offer concerning a given issue at trial." *Id.* (citing cases).

The RUL Defendants' contention interrogatories are premature because "no 'significant discovery has taken place.'" *Strauss*, 242 F.R.D. at 233 (quoting *Cty. of Suffolk v. Lilco*, No. 87 CV 646, 1988 WL 69759, at *1 (E.D.N.Y. June 13, 1988) (noting that plaintiffs had not yet received documents nor had any depositions taken place)). Therefore, they "need not be answered until the substantial completion of pretrial discovery," *id.* at 234 (quoting *Roth*, 1988 WL 43963, at *5), because "[t]he burden imposed . . . in responding to these requests outweighs the likelihood that useful information will be produced," *id.* (quoting *Protex Int'l Corp. v. Vanguard Prods. Grp., Inc.*, No. CV 5-5355, 2006 WL 3827423, at *2 (E.D.N.Y. Dec. 27, 2006)). Merits discovery of Zodhiates, Hyden, and RUL is not meaningfully substituted by jurisdictional discovery of RUL and exhibits from Zodhiates's and Kenneth Miller's criminal trials.[8]

Therefore, the RUL Defendants' motion to compel supplemental answers to Interrogatories 9, 10, 13, 14, and 19 should be denied.

IV. Jenkins's Responses and Objections Were Substantially Justified

Even if the Court were to grant the RUL Defendants' motion to compel in part, the Court "must not order" Jenkins to pay the RUL Defendants' "reasonable expenses incurred in making the motion" to compel because Jenkins's responses and objections were "substantially justified."

[8] For example, Zodhiates's and Hyden's contacts with Lisa Miller and their communications with others about Lisa Miller were beyond the scope of jurisdictional discovery of RUL. *See* Mem. & Order: Mot. to Compel at 4–5, ECF 145 (Mar. 19, 2014) (denying Plaintiffs' motion to compel answers to interrogatories seeking that information).

Fed. R. Civ. P. 37(a)(5)(A). "[A] discovery dispute is 'substantially justified' if based on the parties' 'differing interpretations of the relevant law, unless it involves an unreasonable, frivolous, or completely unsupportable reading of the law.'" *Forauer v. Vt. Country Store, Inc.*, No. 5:12-cv-276, 2014 WL 2612044, at *8 (D. Vt. June 11, 2014) (Reiss, C.J.) (quoting *Comprehensive Habilitation Servs., Inc. v. Commerce Funding Corp.*, 240 F.R.D. 78, 87 (S.D.N.Y. 2006)); *accord id.* ("[S]ubstantial justification turns on whether 'there is a genuine dispute, or if reasonable people could differ as to the appropriateness of the contested action.'" (quoting *La Piel, Inc. v. Richina Leather Indus. Co.*, No. 10-cv-1050, 2013 WL 1315125, at *16 (E.D.N.Y. Mar. 29, 2013)). Jenkins has appropriately and reasonably taken the position that the RUL Defendants' discovery requests seek sensitive information that normally is protected by confidentiality orders, information irrelevant to any claim or defense, and contentions at this early stage of discovery.

CONCLUSION

For these reasons, the RUL Defendants' motion to compel should be denied.

July 3, 2019

Respectfully submitted.

/s/ Frank H. Langrock
Frank H. Langrock
Langrock Sperry & Wool, LLP
111 S. Pleasant Street
P.O. Drawer 351
Middlebury, Vermont 05753-0351
Phone: (802) 388-6356
Fax: (802) 388-6149
Email: flangrock@langrock.com

Sarah Star
Sarah Star, PL
P.O. Box 106
Middlebury, Vermont 05753
Phone: (802) 385-1023
Email: srs@sarahstarlaw.com

David C. Dinielli
Diego A. Soto
Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104
Phone: (334) 956-8200
Fax: (334) 956-8481
Email: david.dinielli@splcenter.org
Email: diego.soto@splcenter.org

J. Tyler Clemons
Southern Poverty Law Center
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Phone: (504) 526-1530
Fax: (504) 486-8947
Email: tyler.clemons@splcenter.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served on the following counsel of record through the Court's CM/ECF system:

Brooks G. McArthur
Jarvis, McArthur & Williams, LLC
Counsel for Defendant Kenneth L. Miller

Horatio G. Mihet
Roger K. Gannam
Daniel Joseph Schmid
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Anthony R. Duprey
Neuse, Duprey & Putnam, PC
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Norman C. Smith
Norman C. Smith, PC
Counsel for Defendant Linda M. Wall

Robert B. Hemley
Matthew B. Byrne
Norman C. Williams
Gravel & Shea PC
Counsel for Defendants Response Unlimited, Inc., Philip Zodhiates, and Victoria Hyden

Michael J. Tierney
Wadleigh, Starr & Peters, PLLC
Counsel for Defendant Timothy D. Miller

July 3, 2019

/s/ Diego A. Soto
Diego A. Soto
Counsel for Plaintiffs