

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JANET JENKINS, et al.,)	
)	Case No. 2:12-cv-184-WKS
Plaintiffs,)	
v.)	
)	
KENNETH L. MILLER, et al.,)	
)	
Defendants.)	

DEFENDANT WALL’S RESPONSE TO PLAINTIFF’S MOTION TO “CLARIFY” AND TO PLAINTIFF’S ALTERNATIVE MOTION TO “MODIFY” SCHEDULE

Plaintiff Jenkins filed this case seven years ago, in 2012, and discovery closed on October 10, 2019. *See* Dkt. 348 and 355. The Court’s June 26, 2019 Order setting the current schedule was clear and unambiguous. *Id.* The Court granted Jenkins’s Motion and thereby extended the discovery-completion deadline to October 10—exactly as Plaintiff requested in her Motion (*id.*)—and extended other deadlines tied to it, including the summary judgment deadline (now November 21, 2019, as extended). *Id.*; Dkt. 320 and 329. Given the clarity of its June 26 Order, the Court does not need to “clarify” anything. The Court should deny Jenkins’s motion to “clarify” (Dkt. 401).¹

Regarding Jenkins’s alternative motion to “modify” (*id.*), Defendant Wall and other defendants took pains, and continue to take pains, to comply with the discovery-completion deadline and other deadlines tied to it. For example, Wall (and other defendants) served discovery requests by the August 29, 2019 propounding deadline. *See, e.g.*, Dkt. 376 (certificate

¹ Even if the parties had all previously stipulated to a six-month extension of discovery—which they did not, as Jenkins’s acknowledges—the Court did not approve a six-month extension, and the current scheduling Order governs. “[A] stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery....” Fed. R. Civ. Pro. 29(b).

of service of discovery requests). Wall and, as Jenkins acknowledges, other defendants intend to file motions for summary judgment by the November 21, 2019 deadline.

Indeed, Jenkins makes no attempt to satisfy—and does not even acknowledge—the applicable legal standard for an untimely motion such as this. Local Rule 26(a)(7) provides:

If additional discovery time is required due to case complexity or other extraordinary circumstances, counsel may move for an extension of time for good cause. **Absent exceptional circumstances, requests must be made before the discovery deadline expires.**

(emphasis added). Federal Rule 6(b)(1)(b) provides:

When an act may or must be done within a specified time, the court may, for good cause, extend the time... **on motion made after the time has expired if the party failed to act because of excusable neglect.**

(emphasis added). Jenkins makes no mention of “exceptional circumstances” or “excusable” neglect, nor could she meet those standards had she tried. If Jenkins believed an extension were necessary, she long ago should have moved to modify the schedule.

Jenkins also failed to comply with Local Rule 7(a)(7), which provides: “A party filing a non-dispositive motion must **certify that the party has made a good faith attempt to obtain the opposing party’s agreement** to the requested relief.” (emphasis added). Jenkins did not attempt to obtain the agreement of Wall at the least, let alone certify that she made a good faith attempt to obtain all Defendants’ agreement to the requested relief. Local Rule 7(a)(7) is not a mere formality. “The purpose of Local Rule 7(a)(7) is to require the parties to explore issues and seek out compromise.” *Madden v. Abate*, No. 2:09-CV-145, 2011 WL 13281802, *1 (D. Vt. Sept. 22, 2011) (Sessions, J.). In *Madden*, this Court denied as premature a motion for failure to comply with Local Rule 7(a)(7). *Id.*

Under these circumstances, the Court should deny Jenkins’ motion to “modify,” *i.e.* to extend, the discovery deadlines.

Dated: November 8, 2019

/s/ Adam S. Hochschild

Adam S. Hochschild
Hochschild Law Firm, LLC
PO Box 401
Plainfield, VT 05667
Phone: 314.503.0326
Email: adam@hochschildlaw.com

Norman C. Smith
Norman C. Smith, PC
76 Lincoln Street
P.O. Box 24
Essex Junction, Vermont 05453-0024
Phone: (802) 288-9088
Fax: (802) 879-9640
Email: norman@normansmithlaw.com

Counsel for Defendant Linda Wall

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of November, 2019, the foregoing was filed electronically with the Court, to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Adam S. Hochschild