

**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' EMERGENCY MOTION FOR RECONSIDERATION OF [411] THE  
COURT'S NOVEMBER 18, 2019 ORDER GRANTING IN PART AND DENYING IN  
PART PLAINTIFFS' MOTION TO MODIFY THE DISCOVERY SCHEDULE/ORDER**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins, through undersigned counsel, move for reconsideration of the Court's November 18, 2019 order denying Plaintiffs' alternative motion to modify the Discovery Schedule/Order to extend discovery to March 2, 2020, and instead extending discovery to January 2, 2020 ("November 18 Order"). *See Op. & Order*, ECF 411. The Court clearly erred by inferring from Plaintiffs' just-recent request for clarification of the discovery deadline that they likely were not under the genuine misunderstanding that the Court had granted a six-month extension. Moreover, given that Plaintiffs have until recently proceeded in good-faith under a discovery schedule extended by six months, a discovery deadline of January 2, 2020, provides an insufficient amount of time to complete document production and to schedule and conduct meaningful depositions, which could severely prejudice Plaintiffs' ability to collect the evidence necessary to prove their case. The Court should grant this motion and order the attached proposed Discovery Schedule/Order extending discovery to March 2, 2020. Defendants Liberty Counsel, Inc., Rena Lindevaldsen, Philip Zodhiates, Victoria Hyden, Response Unlimited, Inc., and Linda Wall oppose this motion. The remaining Defendants have not yet responded.

## PROCEDURAL BACKGROUND

### I. Discovery Commenced Six Years After this Case Was Filed

This case was filed on August 14, 2012. After an initial round of eight motions to dismiss, *see* Op. & Order, ECF 115, two motions for certification for interlocutory appeal, *see* Mem. & Order, ECF 125; Op. & Order, ECF 166, a petition for writ of mandamus, Mandate, ECF 165, a nearly two-year stay pending Defendant Philip Zodhiates's criminal trial, *see* Mem. & Order Re: Mot. To Stay, ECF 192, two more motions to dismiss, *see* Op. & Order, ECF 161, six more motions to dismiss and two motions to strike, *see* Op. & Order, ECF 277, a motion for reconsideration and two more motions for certification for interlocutory appeal, *see* Op. & Order, ECF 302; Op. & Order, ECF 328, another petition for writ of mandamus, *see* Mandate, ECF 332, at least eight motions to stay discovery pending those dispositive motions and petitions, *see* Order, ECF 301; Op. & Order at 7, ECF 302, and Defendants' general refusal, with limited exception, to engage in discovery pending resolution of those motions despite the Court not staying discovery, *see* Pls.' Mot. for a Status Conference, ECF 298, discovery formally commenced on August 29, 2018, *see* Order, ECF 329.

The Court approved and ordered Plaintiffs' proposed Discovery Schedule/Order, ECF 320, which set the following discovery deadlines:

Initial disclosures	Set by Court	October 1, 2018
Affirmative expert witness reports	4 months before close of discovery	April 29, 2019
Responding expert witness reports	6 weeks after service of affirmative expert reports	
Depositions of all witnesses	1 year from start of discovery on August 29, 2018	August 29, 2019
Close of discovery	Set by Court	August 29, 2019
Requests for admission	4 weeks after close of discovery	September 26, 2019
Motions, including summary judgment motions but excluding motions relating to the conduct of trial	6 weeks after close of discovery	October 10, 2019

Motions for joinder of parties and amendments to the pleadings	3 months after start of discovery on August 29, 2018	November 29, 2018
Trial readiness	Set by Court (first Monday 15 months after start of discovery on August 29, 2018)	December 2, 2019

## II. The Parties at First Agreed to Extend Discovery by Six Weeks

On April 29, 2019, before the deadline to serve affirmative expert reports had expired, Plaintiffs moved to modify the Discovery Schedule/Order to extend discovery by six weeks. *See* Mot. to Modify Disc. Schedule/Order, ECF 348. At the time, some defendants and nonparty Liberty University had yet to produce documents, the document production of other defendants was incomplete, and some defendants opposed discovery on First and Fifth Amendment grounds. *See id.* at 1–2. Defendants Zodhiates, Victoria Hyden, and Response Unlimited, Inc. (“RUL”) (collectively, “RUL Defendants”) and Defendants Linda Wall and Kenneth Miller consented. *See id.* at 1. Defendants Liberty Counsel, Inc. and Rena Lindevaldsen (collectively, “Liberty Counsel Defendants”) and Defendant Timothy Miller had not responded to Plaintiffs’ request for consent before filing. *See id.*

A six-week extension would have resulted in the following deadlines:

Initial disclosures	Set by Court	October 1, 2018
Motions for joinder of parties and amendments to the pleadings	3 months after start of discovery on August 29, 2018	November 29, 2018
Affirmative expert witness reports	4 months before close of discovery	June 10, 2019
Responding expert witness reports	6 weeks after service of affirmative expert reports	
Depositions of all witnesses	1 year and 6 weeks from start of discovery on August 29, 2018	October 10, 2019
Close of discovery	6 weeks after prior close of discovery on August 29, 2019	October 10, 2019
Requests for admission	4 weeks after close of discovery	November 7, 2019
Motions, including summary judgment motions but excluding motions relating to the conduct of trial	6 weeks after close of discovery	November 21, 2019

Trial readiness	First Monday 15 months and 6 weeks after start of discovery on August 29, 2018	January 13, 2020
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### III. The Parties Instead Agreed to Extend Discovery by Six Months

On May 9, 2019, before the Court addressed the motion for a six-week extension of discovery, counsel for the RUL Defendants emailed counsel for Plaintiffs indicating that a six-week extension of the discovery deadline would not suffice because Jenkins, in their view, had not adequately responded to the RUL Defendants' discovery requests. Ex. A at 5. Counsel for the RUL Defendants offered to negotiate a sufficient discovery schedule, and Plaintiffs' counsel expressed a willingness to do so. *Id.* at 4–5. The next day, May 10, 2019, Plaintiffs, the RUL Defendants, the Liberty Counsel Defendants, and Wall agreed to a six-month extension of discovery. *Id.* at 1–2; Ex. B. Defendants Lisa Miller (who remains a fugitive), Kenneth Miller, and Timothy Miller did not respond. Soto Decl. ¶ 2.

On May 13, 2019, still before the Court addressed Plaintiffs' original motion for a six-week extension of discovery, the RUL Defendants filed a response to that motion informing the Court that the parties had instead agreed to a six-month extension. *See* Resp. of RUL Defs.' to Pls.' Mot. to Modify Disc. Schedule/Order Reflects Agreement of Pls.' Counsel to Six-Month Extension, ECF 349. The RUL Defendants explained that the originally agreed-upon six-week extension was “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.” *Id.* at 2. No party filed an opposition. Because the RUL Defendants' response accurately represented Plaintiffs' consent to the new agreement to a six-month extension, Plaintiffs did not file a reply. Soto Decl. ¶ 3.

A six-month extension would have resulted in the following deadlines:

Initial disclosures	Set by Court	October 1, 2018
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Motions for joinder of parties and amendments to the pleadings	3 months after start of discovery on August 29, 2018	November 29, 2018
Affirmative expert witness reports	4 months before close of discovery	November 1, 2019
Responding expert witness reports	6 weeks after service of affirmative expert reports	
Depositions of all witnesses	1 year and 6 months from start of discovery on August 29, 2018	March 2, 2020
Close of discovery	6 months after prior close of discovery on August 29, 2019	March 2, 2020
Requests for admission	4 weeks after close of discovery	March 30, 2020
Motions, including summary judgment motions but excluding motions relating to the conduct of trial	6 weeks after close of discovery	April 13, 2020
Trial readiness	First Monday 21 months after start of discovery on August 29, 2018	June 1, 2020

#### **IV. The Court Entered a Text-Only Order on the Motion**

On June 26, 2019, a month-and-a-half after the RUL Defendants' response, the Court entered a text-only order stating, in its entirety:

ORDER granting [338] Motion to Continue the Early Neutral Evaluation Deadline; granting [348] MOTION to the Discovery Schedule/Order. Signed by Judge William K. Sessions III on 6/26/2019. (This is a text-only Order.) (eae)

Text-Only Order, ECF 355.

#### **V. Plaintiffs Proceeded with Discovery, Believing It Would Close on March 2, 2020**

Plaintiffs proceeded through discovery believing the Court had approved the parties' agreement to a six-month extension and that discovery would therefore close on March 2, 2020. They diligently pursued documents from the Liberty Counsel Defendants and, on July 23, 2019, filed a motion to compel their production of documents. *See* Pls.' Mot. To Compel Liberty Counsel Defs.' to Comply with Pls.' Reqs. for Produc., ECF 361. Timothy Miller, who had filed a motion to dismiss on October 1, 2018, ECF 337, did not respond to Plaintiffs' discovery requests.

In the meantime, briefing continued on the RUL Defendants' June 20, 2019 motion to compel, among other things, Jenkins's answers to their contention interrogatories. *See* Mot. to Compel, ECF 352. In response to Jenkins's argument that those contention interrogatories were premature because no significant discovery had taken place, *see* Pl. Janet Jenkins's Resp. in Opp'n to RUL Defs.' Mot. To Compel at 13–14, ECF 358, the RUL Defendants argued that Jenkins had more than enough information from the related criminal trials and RUL's discovery production to state her contentions. *Id.* at 9–10. At no point between the filing of the motion on June 20, 2019, through the RUL Defendants' final response on October 14, 2019, *see* RUL Defs.' Resp. to Pl. Janet Jenkins's Suppl. Resp. to Mot. To Compel, ECF 387, did the RUL Defendants even imply that discovery was about to close on October 10, 2019, or had already closed on that date.

On October 9, 2019, Wall sent Jenkins a letter following up on Jenkins's responses to Wall's discovery requests. Ex. C. Wall noted that she was continuing to review Jenkins's discovery responses and reserved her right to enforce them. *Id.* at 3. Wall did not mention that discovery would close the next day. *Id.*

On October 28, 2019, Plaintiffs emailed the RUL Defendants a letter regarding the RUL Defendants' responses and objections to Plaintiffs' first set of requests for production. Ex. D. The RUL Defendants asked to schedule a phone call to discuss the issues raised in the letter, and a call was scheduled for November 6, 2019. *Id.*

On October 29, 2019, the Court granted in part and denied in part Plaintiffs' motion to compel the Liberty Counsel Defendants, *see* Op. & Order, ECF 395, granted in part and denied in part the RUL Defendants' motion to compel, *see* Op. & Order, ECF 394, and denied Timothy Miller's motion to dismiss, *see* Op. & Order, ECF 396. In denying the RUL Defendants' motion

to compel, the Court explained that “it would be more appropriate to delay contention interrogatories until the completion of discovery, when their answers can reflect a fuller scope of discovered information.” Op. & Order at 10, ECF 394. The Court also described the “discovery process” as “not yet fully underway.” *Id.* at 18.

**VI. Plaintiffs Learned Defendants Either Had a Different Understanding of, or Had Changed Their Position on, the Discovery Schedule This Month**

On November 1, 2019, Plaintiffs served on all parties their affirmative expert witness reports. *See* Disc. Certificate, ECF 399. That same day, the RUL Defendants asked Plaintiffs to explain why the reports were timely and should not be stricken because the RUL Defendants had calculated that affirmative expert reports were due June 19, 2019. Nov. 7, 2019 Soto Decl. ¶ 4, ECF 401-1. During the meet-and-confer on November 6, 2019, Plaintiffs learned that, despite the unopposed agreement of nearly all parties that the discovery deadline should be extended by six months, the RUL Defendants were taking the position that the Court’s June 26, 2019 text-only order to have granted only a six-week extension. *Id.* ¶ 6. Therefore, according to the RUL Defendants, discovery had already closed, Plaintiffs’ affirmative expert witness reports were untimely, and Hyden and RUL were preparing motions for summary judgment. *Id.*

**VII. The Court Clarified that It Had Indeed Extended Discovery by Only Six Weeks**

On November 7, 2019, Plaintiffs’ filed a motion to clarify, or in the alternative to modify, the Discovery Schedule/Order, explaining with supporting declaration that they had in good faith understood the Court to have extended discovery to March 2, 2020. *See* Resp. of RUL Defs.’ to Pls.’ Mot. to Modify Disc. Schedule/Order Reflects Agreement of Pls.’ Counsel to Six-Month Extension, ECF 349.

On November 18, 2019, the Court clarified that it had, in a text-only order, instead granted Plaintiffs' earlier motion for a six-week extension, meaning that discovery had in fact closed on October 10, 2019. *See* Op. & Order, ECF 411. The Court granted in part and denied in part Plaintiffs' alternative motion to extend the discovery deadline, resetting it to January 2, 2020. *Id.* The Court explained:

Plaintiffs are only now raising this issue of alleged ambiguity in November of 2019, a month after the six-week extension deadline, and nearly four and a half months after the Court's order. Such a lengthy delay suggests that any genuine confusion that arose out of the June 26<sup>th</sup> text-only order was likely minimal.

...

Plaintiffs have made a showing of exceptional circumstances that would allow them to move for an extension for good cause at this point in the case. This court just recently granted both parties' motions to compel additional discovery, which will require additional time to properly produce materials.

*Id.* at 3–4. The Court ordered Plaintiffs to submit a modified discovery schedule within ten days.

*Id.* at 4. The Court also granted Hyden and RUL's motion to stay the November 21, 2019 summary judgment motion deadline and extended that deadline to December 2, 2019—one month before discovery closes. *Id.* On November 20, 2019, the RUL Defendants moved for reconsideration of the Court's order, so that the summary judgment deadline conforms with the Discovery Schedule/Order, which sets that deadline to six weeks after the close of discovery. Defs.' Unopposed Mot. to Reconsider the Court's Op. & Order Regarding the Mot. to Stay Summ. J. Deadline (Doc. 411), ECF 413.

On November 20, 2019, Plaintiffs noticed four depositions for the week of December 2, 2019, *see* Disc. Certificate, ECF 414, and dispatched process servers on an expedited basis. Soto Decl. ¶ 5. Plaintiffs intend to notice more depositions. *Id.* The RUL Defendants, Liberty Counsel Defendants, and Wall have indicated an intent to participate in those depositions. Ex. E; Ex. F.

Defendants have raised scheduling conflicts. Ex. E. Mathew Staver, for example, is not available for a deposition until January 2, 2020. *Id.* at 2. On November 21, 2019, Plaintiffs noticed Staver's deposition. *See* Disc. Certificate, ECF 415. The Liberty Counsel Defendants also indicated an intent to depose Jenkins, Jenkins's wife, and Plaintiffs' four expert witnesses during the week of December 16, 2019. *Id.* Plaintiffs are scheduled to meet and confer with the Liberty Counsel Defendants about their document production on November 25, 2019. Soto Decl. ¶ 5.

### **VIII. Plaintiffs Now Move for Reconsideration**

In compliance with the Court's November 18 Order, Plaintiffs have contemporaneously submitted a proposed modified Discovery Schedule/Order in which discovery ends January 2, 2020. Plaintiffs now seek reconsideration of the Court's decision to deny their request to extend discovery until March 2, 2020, in order to avoid undue prejudice.

### **SUMMARY OF ARGUMENT**

The Court should grant Plaintiffs' motion for reconsideration of its November 18 Order and extend discovery to March 2, 2020, for two primary reasons:

*First*, the Court clearly erred by inferring from Plaintiffs' just-recent request for clarification of the discovery deadline that they likely were not under the genuine misunderstanding that the Court had granted a six-month extension. Plaintiffs' good-faith belief that the Court had granted a six-month extension is evidenced by: (1) their diligent efforts to obtain documents from the Liberty Counsel Defendants so they could proceed to depositions; (2) their argument that answers to contention interrogatories should be delayed to the end of discovery because significant discovery had not yet taken place, the RUL Defendants' failure to raise the impending October 10, 2019 discovery deadline, the Court's order, nineteen days after discovery had apparently closed, delaying answers until the end of discovery and characterizing

discovery as “not yet fully underway”; (3) their recent follow-up with Defendants’ responses to Plaintiffs’ discovery requests; (4) their retaining of four expert witnesses and serving of expert witness reports on the day they were due under a discovery schedule extended by six months; and (5) their counsel’s declarations submitted with this motion. The correct inference from Plaintiffs’ actions is exactly the reverse of the one the Court made: Plaintiffs would not have waited until after discovery closed to seek clarification of the discovery deadline had they not genuinely believed the discovery deadline had been extended to March 2, 2020, in accordance with the parties’ stipulation.

*Second*, the Court’s extension of discovery only to January 2, 2020, creates a serious risk of manifest injustice to Plaintiffs by severely prejudicing their ability to collect the evidence necessary to prove their case. Forty-five days—with a number of intervening holidays for which many witnesses presumably have pre-existing arrangements—is an insufficient amount of time for Plaintiffs to notice the necessary number of depositions, for the Liberty Counsel Defendants to search for and produce responsive documents, for Plaintiffs to collect and review those documents, for Plaintiffs to follow up on any deficiencies in the production, for the parties to brief and the Court to decide any motions to compel, for the Court to review documents *in camera* to decide inevitable privilege disputes, and for Plaintiffs to depose witnesses with those documents. The parties’ inability to adequately depose witnesses could require the parties to call numerous witnesses at trial without knowing what they know or what they might say. Furthermore, it could require the parties to call more witnesses to testify live at trial than necessary had they had the opportunity to adequately depose them with the benefit of a complete documentary record.

## ARGUMENT

Reconsideration should be granted because of “the need to correct a clear error or prevent manifest injustice.” Op. & Order at 5, ECF 328 (quoting *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust*, 729 F.3d 99, 104 (2d Cir. 2013)); accord *Vaughan v. Vt. Law Sch., Inc.*, No. 2:10-cv-276, 2011 WL 1085659, at \*1 n.2 (D. Vt. Mar. 23, 2011) (Sessions, J.) (“[A] motion for reconsideration should be granted where it becomes necessary to remedy a clear error of law or to prevent obvious injustice.” (internal quotation marks omitted)). The Court clearly erred by inferring that Plaintiffs likely were not under the genuine misunderstanding that the Court had granted a six-month extension, and the Court’s limited extension of discovery to January 2, 2020, creates a serious risk of manifest injustice to Plaintiffs by severely prejudicing their ability to collect the evidence necessary to prove their case.

### **I. The Court Clearly Erred by Inferring that Plaintiffs Likely Were Not Under the Genuine Misunderstanding that the Court had Granted a Six-Month Extension**

The Court incorrectly inferred from Plaintiffs’ just-recent request for clarification of the Discovery Schedule/Order that they likely were not under the genuine misunderstanding that the Court had granted a six-month extension. To the contrary, Plaintiffs’ actions show that they genuinely believed discovery had been extended by six months. For example, they made diligent efforts to obtain documents from the Liberty Counsel Defendants so they could proceed to depositions; they argued that answers to contention interrogatories should be delayed to the end of discovery because significant discovery had not yet taken place; they recently followed up on Defendants’ responses to Plaintiffs’ discovery requests; and they retained four expert witnesses and served expert witness reports on the day they would have been due under a discovery schedule extended by six months. Plaintiffs would have operated entirely differently or, if

necessary, sought to modify the discovery schedule further had they believed the Court had extended discovery only to October 10, 2019.

Neither the Court nor Defendants gave Plaintiffs any reason to suspect the Court had rejected the six-month extension or that discovery might close in October such that Plaintiffs should have sought clarification before October 10, 2019. In fact, the Court and Defendants gave Plaintiffs the impression that the six-month extension had been granted. The RUL Defendants failed to raise an impending October 10, 2019 discovery deadline to support their motion to compel Jenkins's answers to their contention interrogatories, briefing for which concluded after discovery closed under an only six-week extension. They instead relied on how long the case as a whole had been pending, evidence introduced in the three related criminal cases, and RUL's discovery productions. The Court then denied that particular motion to compel and ordered that answers to contention interrogatories be delayed until the end of discovery. The Court's order even characterized discovery as "not yet fully underway"—nineteen days after it had closed under a six-week extension. Op. & Order at 18, ECF 394. The day before the Court's order on the motion to compel, when Plaintiffs attempted to follow up with the RUL Defendants' responses to Plaintiffs' discovery requests, the RUL Defendants did not at the time state that discovery had closed and that Plaintiffs' attempt to enforce their discovery requests was too little, too late; instead, they merely asked to talk by phone. The RUL Defendants did not explain their differing view of the discovery schedule until the November 6, 2019 meet-and-confer.

Plaintiffs always intended to take depositions of Defendants and others who have information about the kidnapping upon obtaining the documentary discovery to which the Court only recently ordered that Plaintiffs are entitled. That documentary evidence is essential to Plaintiffs' ability to conduct meaningful depositions before trial. It is inconceivable that Jenkins,

who has pursued justice for herself and her kidnapped daughter in this Court since 2012, would voluntarily choose not to notice a single deposition of the individuals who are responsible for the kidnapping, including those who last saw Isabella before she was unlawfully removed from the country and those who conspired to send aid to Lisa Miller in hiding in Nicaragua. Jenkins has always wanted answers about what happened to her daughter. It defies logic that she would knowingly forgo an opportunity to get those answers.

Moreover, the history of this case shows that Defendants, not Plaintiffs, have sought to delay this case. Defendants asked the Court to stay this case—ultimately for nearly two years—so as not to prejudice the outcome of related criminal cases. Defendants stalled the start of discovery despite the Court not staying discovery pending their dispositive motions. Defendants asked Plaintiffs to agree to a six-month extension of discovery. During this entire time, Isabella has remained missing, and the resolution of Plaintiffs’ claims have been delayed. The Court’s order now unfairly rushes this case to an end.

**II. The Court’s Extension of Discovery only to January 2, 2020, Creates a Serious Risk of Manifest Injustice to Plaintiffs**

The current expedited discovery deadline creates a serious risk of unfairly and unduly prejudicing Plaintiffs’ ability to effectively prosecute their case. It also is likely to expand the costs of litigation significantly and drain the Court’s resources.

The Court acknowledged in its order granting in part and denying in part Plaintiffs’ motion to compel the Liberty Counsel Defendants that “Liberty Counsel and Lindeval[d]sen have produced a combined total of 571 pages in response, of which 539 pages are printouts from publicly available websites.” Op. & Order at 2, ECF 395. Having obtained the Court’s order compelling further production, Plaintiffs are eager to review relevant documents at last that will aid in the prosecution of their case and help narrow the issues and witnesses necessary for trial.

Plaintiffs have alleged that the Liberty Counsel Defendants' role in the conspiracy to kidnap Isabella links many other Defendants—including Lisa Miller (their client), RUL (the marketing firm they used to assist in Lisa Miller's case), Hyden (an administrative assistant in Lindevaldsen's office), and Wall (Lisa Miller's and Lindevaldsen's friend who helped Liberty Counsel recruit Lisa Miller for representation). As the Court acknowledged, the Liberty Counsel Defendants' evidence and their documents are central to Plaintiffs' ability to further understand the conspiracy and prove their claims against Defendants. *See* Op. & Order at 6–7, 9, 11–12, 14–15, ECF 395.

The Liberty Counsel Defendants (who did not express the opinion that discovery would close or had closed in October until after the November 18 Order) have represented to the Court and Plaintiffs that it will take them a significant period of time to produce these documents based on their volume, the need to create privilege logs, and potentially to have the Court review documents *in camera* to resolve privilege disputes before turning them over to Plaintiffs. Given Thanksgiving, Christmas, New Years, and other holidays (and corresponding travel schedules), and Plaintiffs' obligation to give deposition witnesses reasonable notice, Defendants and nonparty witnesses are unlikely to agree to, and it would be unreasonable to expect to be able to schedule, depositions on November 28, 2019, or between December 23, 2019, and January 1, 2020. In effect, Plaintiffs have only until Friday, December 20, 2019, to depose witnesses—potentially without having received the documents the Liberty Counsel Defendants were ordered to produce. It would be highly prejudicial to require Plaintiffs to conduct depositions without first obtaining written discovery. *See, e.g., Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union*, 212 F.R.D. 178, 229 (S.D.N.Y. 2003) (noting prejudice to plaintiff who

was forced to take depositions without defendant's documents due to defendant's discovery failures).

Given the Court's order that discovery close on January 2, 2020, Plaintiffs have noticed depositions for early and mid-December. Without any substantive documentary discovery, it would be highly irregular and extremely prejudicial to Plaintiffs to proceed to depositions at this time without any sense of what evidence Defendants possess. Questioning of witnesses would be incomplete at best, and once documents are produced, there would almost certainly be the need to reopen discovery and for costly and time-consuming follow-up depositions. Indeed, multiple courts have held that production of compelled material is basis to reopen discovery specifically to allow for depositions. *See, e.g., Robbins & Myers, Inc. v. J.M. Huber Corp.*, 274 F.R.D. 63, 103 (W.D.N.Y. Mar. 21, 2011) (noting court had allowed 90 additional days for fact discovery following successful motion to compel); *Schiller v. City of N.Y.*, No. 4 Civ. 7922, 2007 WL 735010, \*4 (S.D.N.Y. Mar. 12, 2007) (reopening discovery to allow for depositions, follow-up depositions, and further document production because preclusion "would prevent a full legal analysis of important public issues"). Absent an opportunity to meaningfully depose Defendants based on documents they should have produced and have now been ordered to produce, Plaintiffs would likely be forced to seek additional time, request follow-up depositions, subpoena numerous other witnesses, and extend the trial calendar exponentially.

Moreover, because Plaintiffs were proceeding under the good-faith belief that discovery closed on March 2, 2020, they served four comprehensive expert witness reports on November 1, 2019, believing Defendants would then have four months before the close of discovery to depose Plaintiffs' experts. The Liberty Counsel Defendants have now requested to depose Jenkins, her wife, and all four of Plaintiffs' experts during the week of December 16, 2019. Allowing

sufficient time for depositions of fact and expert witnesses will benefit all parties, narrow issues and witnesses for trial, and streamline this complex matter.

### CONCLUSION

For these reasons, Plaintiffs' motion for reconsideration of the Court's November 18 Order, Op. & Order, ECF 411, should be granted, and the Court should approve and order Plaintiffs' proposed order extending the discovery deadline to March 2, 2020.

November 21, 2019

Respectfully submitted.

/s/ Frank H. Langrock

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**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:

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November 21, 2019

/s/ Diego A. Soto  
\_\_\_\_\_  
Diego A. Soto  
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**UNITED STATES DISTRICT COURT  
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No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

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**DECLARATION OF DIEGO A. SOTO, ESQ.  
IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR RECONSIDERATION  
OF [411] THE COURT'S NOVEMBER 18, 2019 ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS' MOTION TO MODIFY THE DISCOVERY  
SCHEDULE/ORDER**

I, Diego A. Soto, Esq., declare under penalty of perjury that the following is true and correct:

1. I am a Staff Attorney at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. On May 9, 2019, before the Court addressed Plaintiffs' original motion for a six-week extension of discovery, *see* Mot. to Modify Disc. Schedule/Order, ECF 348, counsel for Defendants Philip Zodiates, Victoria Hyden, and Response Unlimited, Inc. ("RUL") (collectively, "RUL Defendants") emailed counsel for Plaintiffs indicating that a six-week extension of the discovery deadline would not suffice because Jenkins, in their view, had not adequately responded to the RUL Defendants' discovery requests. Counsel for the RUL Defendants offered to negotiate a sufficient discovery schedule, and Plaintiffs' counsel expressed a willingness to do so. Exhibit A is a true and correct copy of that email exchange. The next day, May 10, 2019, Plaintiffs, the RUL Defendants, Defendants Liberty Counsel, Inc. and Rena Lindevaldsen (collectively, "Liberty Counsel Defendants"), and Defendant Wall agreed to a six-

month extension of discovery. Defendants Lisa Miller (who remains a fugitive), Kenneth Miller, and Timothy Miller did not respond. Exhibit B is a true and correct copy of that email exchange.

3. Because the RUL Defendants' response to Plaintiffs' motion for a six-week extension of discovery accurately represented Plaintiffs' consent to the new agreement to a six-month extension, Plaintiffs did not file a reply.

4. On October 9, 2019, Wall sent Jenkins a letter following up on Jenkins's responses to Wall's discovery requests. Wall noted that she was continuing to review Jenkins's discovery responses and reserved her right to enforce them. Wall did not mention that discovery would close the next day. Exhibit C is a true and correct copy of that letter.

5. On November 20, 2019, Plaintiffs noticed four depositions for the week of December 2, 2019, *see* Disc. Certificate, ECF 414, and dispatched process servers on an expedited basis. Plaintiffs intend to notice more depositions. The RUL Defendants, Liberty Counsel Defendants, and Wall have indicated an intent to participate in those depositions. Defendants have raised scheduling conflicts. Mathew Staver, for example, is not available for a deposition until January 2, 2020. On November 21, 2019, Plaintiffs noticed Staver's deposition. *See* Disc. Certificate, ECF 415. The Liberty Counsel Defendants also indicated an intent to depose Jenkins, Jenkins's wife, and Plaintiffs' four expert witnesses during the week of December 16, 2019. Plaintiffs are scheduled to meet and confer with the Liberty Counsel Defendants about their document production on November 25, 2019. Exhibits E and F are true and correct copies of the email exchanges between counsel for all parties concerning deposition scheduling.

Executed on November 21, 2019

/s/ Diego A. Soto

Diego A. Soto

*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
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No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**DECLARATION OF FRANK H. LANGROCK, ESQ.  
IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR RECONSIDERATION  
OF [411] THE COURT'S NOVEMBER 18, 2019 ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS' MOTION TO MODIFY THE DISCOVERY  
SCHEDULE/ORDER**

I, Frank H. Langrock, Esq., declare under penalty of perjury that the following is true and correct:

1. I am an attorney in Middlebury, Vermont with Langrock Sperry & Wool, LLP ("Langrock"). Langrock has been representing Janet Jenkins, individually and on behalf of her daughter, Isabella, since 2012, in connection with her daughter's disappearance.

2. In 2012, Langrock and Sarah Star filed this lawsuit. Over the next several years, we litigated multiple motions to dismiss, sorting out the claims that have survived and the parties to the case. During 2015 to 2017, the case was stayed at the request of those Defendants facing simultaneous criminal prosecution. During that time, the Southern Poverty Law Center joined as additional counsel for Plaintiffs.

3. Over the past year discovery has begun, but has been delayed by parties' numerous objections to producing requested documents. Consequently, on April 29, 2019, we sought a six-week extension of time. *See* Mot. to Modify Disc. Schedule/Order, ECF 348.

4. After conferring with Defendants regarding our request for more time, Robert Hemley, attorney for Defendants Philip Zodhates, Victoria Hyden, and Response Unlimited, Inc., suggested that he would prefer a more realistic extension of six months, rather than six weeks, to complete discovery. Plaintiffs agreed.

5. On May 10, 2019, Attorney Hemley emailed the parties explaining that we had agreed “to seek a six month extension rather than a six week extension.” Ex. B at 3.

6. On June 26, 2019, this Court granted Plaintiffs’ request for an extension by a text-only order. ECF 355.

7. Based on the agreement with Attorney Hemley and the remaining Defendants, Plaintiffs have been proceeding under the understanding that, given the agreed-upon six-month extension, March 2, 2020, was the discovery deadline.

8. It was only on November 6, 2019, during a “meet and confer” regarding disputed discovery with Attorney Hemley, that for the first time he was taking the position that discovery had been extended only by six weeks, rather than six months, and therefore that discovery was over. It bears emphasizing that, during all of this time that the parties have been negotiating and litigating responses to written discovery, no attorney ever raised the issue that relevant discovery deadlines were based on a six-week extension.

9. As a result of Attorney Hemley’s position, Plaintiffs immediately sought clarification from this Court.

10. Discovery of written materials has not yet resolved. This Court has issued orders compelling discovery from both sides. Defendants have not yet produced hundreds of documents this Court has ordered to be produced. *See Op. & Order*, ECF 395. Depositions of parties and other key witnesses would be very difficult, if not pointless, without the production of written

materials. Therefore, although Plaintiffs are moving forward to schedule depositions as quickly as possible, it is very unlikely depositions can be completed within the current time frame of the close of discovery by January 2, 2020.

11. We respectfully ask the Court to reconsider and extend the discovery order as requested in Plaintiffs' motion for clarification.

Executed on November 21, 2019

/s/ Frank H. Langrock

Frank H. Langrock

*Counsel for Plaintiffs*

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

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**DECLARATION OF SARAH R. STAR, ESQ.  
IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR RECONSIDERATION  
OF [411] THE COURT'S NOVEMBER 18, 2019 ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS' MOTION TO MODIFY THE DISCOVERY  
SCHEDULE/ORDER**

I, Sarah R. Star, declare under penalty of perjury that the following is true and correct:

1. I am a family law attorney in Middlebury, Vermont and have been representing Janet Jenkins since 2008, first in family court, and then in connection with her daughter's disappearance. I continued to represent Janet Jenkins as a victim's attorney in the criminal prosecutions of several of the Defendants in this case.

2. I am not a civil litigator, but I have been working alongside experienced civil litigators from Langrock, Sperry & Wool and the Southern Poverty Law Center on the above entitled matter on behalf of Janet Jenkins and Isabella.

3. This case was filed in 2012, but it was stayed from 2015 to 2017 at the request of Defendants facing simultaneous criminal prosecution.

4. By the summer of 2019, discovery was underway, but was going slowly due to the Defendant's objections to producing requested documents. We sought a brief extension of time to allow for full discovery.

5. After conferring with the Defendants about our request for more time, Attorney Hemley suggested that he would prefer a more realistic extension of six months, rather than six weeks to complete discovery. This made more sense, he said, than asking for piecemeal extensions. Plaintiffs agreed.

6. On May 10, 2019, Attorney Hemley emailed the parties explaining that we had agreed “to seek a six month extension rather than a six week extension.” Ex. B at 3. I understood that Attorney Hemley opposed a six-week extension because it would lead to piecemeal filings. Attorney Hemley stated in this email chain that he would notify the court of the agreement, and he subsequently did so, noting the stipulation in the title of his pleading.

7. On June 26, 2019 this Court granted our request for an extension by a text-only order. Because I was only used to seeing text-only orders when stipulated or unopposed motions were granted, and Attorney Hemley had opposed our original request for a six-week extension as insufficient, I assumed that the motion was granted in light of the stipulation noted in the Defendants’ response.

8. Following that entry, I, along with my colleagues, continued to conduct discovery under a revised schedule with March 2, 2020 being the close of the discovery period. All of our internal notes and correspondence contain that deadline. Pursuant to this schedule November 1, 2019—four months before the close of discovery—was the deadline we provided to our retained expert witnesses.

9. Over the Summer and Fall of 2019, I worked with a local expert on Nicaragua John Maluccio, Ph.D. and Chair of Economics at Middlebury College, as well as Sharon Lamb, Ph.D., Tara Devine, Esq., and Patricia Apy, Esq. to prepare expert reports for disclosure to the

Defendants. We served those reports on November 1, 2019, as scheduled. This was a time-consuming process.

10. That same day, Attorney Hemley sent an email to Plaintiffs' counsel suggesting for the first time that our reports were untimely. During a November 6, 2019 meet-and-confer, he expressed his position that discovery had closed.

11. I was shocked, to say the least, at this position. It seemed very clear to me from the chain of events that we had stipulated to an extension to March 2020 and that the court had granted that extension. Moreover, Attorney Hemley was the one who suggested that very time frame.

12. We immediately informed the Court of our understanding and sought clarification. Our confusion was genuine and justified under the circumstances.

13. Now, having worked on this case on behalf of Janet Jenkins for eleven out of the thirteen years I have been practicing law, my ability to represent my client's interests is severely limited because of a misunderstanding that has persisted for just a few months and a mere fraction of the time that I have spent working on this case.

14. If no further extension is granted to allow Plaintiffs to conduct the discovery and depositions that we were long planning on, our client will be severely prejudiced. She will likely not have the answers that she has sought diligently for the past decade.

15. I respectfully urge the Court to reconsider the request and conform the discovery order to Plaintiffs' genuine and good-faith understanding. Janet Jenkins has not seen her daughter in ten years. Another two months to allow counsel to conduct depositions is necessary and in the interests of justice.

Executed on November 21, 2019



---

Sarah R. Star

*Counsel for Plaintiffs*

## Diego Soto

---

**From:** Tyler Clemons  
**Sent:** Friday, May 10, 2019 11:45 AM  
**To:** Robert B. Hemley  
**Cc:** Beth Jacob; Diego Soto; Hillary A. Borcharding  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

I think we can let your filing represent our agreement to the court. I worry that our (Plaintiffs) filing something in addition will be interpreted by other parties as renewing the period to oppose the motion.

### J. Tyler Clemons

Staff Attorney, LGBT Rights/Special Litigation  
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---

**From:** Robert B. Hemley [mailto:[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)]  
**Sent:** Friday, May 10, 2019 11:34 AM  
**To:** Tyler Clemons  
**Cc:** Beth Jacob; Diego Soto; Hillary A. Borcharding  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Unless you suggest something else, regardless of how other defendants respond, I will plan to file something on Monday indicating that you and I are in agreement that a six month extension is appropriate. I would think you should file something similar. Thanks.

**Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**  
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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Friday, May 10, 2019 12:24 PM  
**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>  
**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

<b>EXHIBIT</b> <b>A</b>
----------------------------

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Hi Bob,

Thanks for taking my call this morning. Plaintiffs agree with asking the Court for a six-month extension of the end-of-discovery deadline. Please reach out to the co-defendants to see if they do as well before we notify the Court.

Best,

Tyler

---

**J. Tyler Clemons**

Staff Attorney, LGBT Rights/Special Litigation

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**From:** Robert B. Hemley [<mailto:rhemley@gravelshea.com>]

**Sent:** Friday, May 10, 2019 10:02 AM

**To:** Tyler Clemons

**Cc:** 'Brooks G. McArthur'; 'Horatio Mihet'; Matthew B. Byrne; 'Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net))'; Hillary A. Borcharding; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))';

'mtierney@wadleighlaw.com'; Beth Jacob; flangrock; Sarah Star; Claudia Huerta; Diego Soto; Hillary A. Borcharding

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Tyler: I don't understand your e-mail. Feel free to call any time today.

**Robert B. Hemley** | *Shareholder*

**Gravel & Shea PC**

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---

**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Sent:** Friday, May 10, 2019 10:37 AM

**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Cc:** 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; Matthew B. Byrne <[mbyrne@gravelshea.com](mailto:mbyrne@gravelshea.com)>; 'Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net))' <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; 'Daniel Schmid' <[daniel@lc.org](mailto:daniel@lc.org)>; 'Roger Gannam' <[rgannam@lc.org](mailto:rgannam@lc.org)>;

'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'mtierney@wadleighlaw.com' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>; Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Hi Bob,

Concerns about individual documents would be best to discuss at the meet and confer scheduled for May 23. Regardless, any confidentiality agreement we unilaterally negotiate would only apply to your clients and not to the other defendants, who would be entitled to any information we produce.

**J. Tyler Clemons**

Staff Attorney, LGBT Rights/Special Litigation

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---

**From:** Robert B. Hemley [<mailto:rhemley@gravelshea.com>]

**Sent:** Thursday, May 9, 2019 3:33 PM

**To:** Tyler Clemons

**Cc:** 'Brooks G. McArthur'; 'Horatio Mihet'; Matthew B. Byrne; 'Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net))'; Hillary A. Borcharding; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))'; 'mtierney@wadleighlaw.com'; Beth Jacob; flangrock; Sarah Star; Claudia Huerta; Diego Soto; Hillary A. Borcharding

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Tyler: I spoke to Beth about the issues you raise, and expect we have exhausted the subject, but I am happy to speak with you if you think it would be helpful. It is hard to agree to a specific date for end of discovery given the likelihood of motion practice. I twice extended the deadline for Jenkins' response to our discovery, and then after 75 days got a response which offered no substantive information. We will meet and confer as to the responses on May 23, but obviously, the late non-response throws the schedule off. If nothing were to be provided, whether because a protective order was deemed necessary, or for other reasons, it would have been better to address that earlier. As I wrote to you on April 25, copy attached, I have concerns about the protective order in general. If there are specific documents which you think need to be protected, we can deal with those as they come up. I just don't want to create a mechanism for endless litigation. Beth mentioned Jenkins' tax returns. She has put those in issue by claiming economic loss due to what she alleges in the complaint. That said, I am sure I can agree on behalf of my clients to keep them confidential. Are there other specific documents about which there is a concern? If so, let me know. I will be available to speak today and tomorrow. Thank you.

**Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Thursday, May 9, 2019 3:26 PM  
**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>  
**Cc:** 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; Matthew B. Byrne <[mbyrne@gravelshea.com](mailto:mbyrne@gravelshea.com)>; 'Norman C. Smith (nc.smith@myfairpoint.net)' <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; 'Daniel Schmid' <[daniel@lc.org](mailto:daniel@lc.org)>; 'Roger Gannam' <[rgannam@lc.org](mailto:rgannam@lc.org)>; 'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'mtierney@wadleighlaw.com' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>; Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Hi Bob,

We consider the pending motion concerning the date for the end of discovery (and thus opening expert reports) to be separate from courtesies extended among counsel extending deadlines for discovery responses.

That said, we are willing to consider a further extension of the end-of-discovery deadline. Please let us know what you have in mind, and whether you are speaking for your clients or for all defendants.

By the way, can you give us an idea of when you plan to get us specific comments on the protective order as you mentioned in your earlier email?

**J. Tyler Clemons**

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**From:** Robert B. Hemley [<mailto:rhemley@gravelshea.com>]  
**Sent:** Thursday, May 9, 2019 1:00 PM  
**To:** Tyler Clemons  
**Cc:** 'Brooks G. McArthur'; 'Horatio Mihet'; Matthew B. Byrne; 'Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net))'; Hillary A. Borcharding; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com))'; 'mtierney@wadleighlaw.com'; Beth Jacob; flangrock; Sarah Star; Claudia Huerta; Diego Soto  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Noted. Can you call me to discuss this? When we agreed to a six week extension, we expected Ms. Jenkins to offer substantive responses to discovery. She hasn't, and we are not going to meet and confer about that until May 23. I think it is as likely as not that we will end up in motion practice. The completion of discovery date will not work in that circumstance. We should see if we can agree on something that will. I am here all afternoon. Thanks.

**Robert B. Hemley** | *Shareholder*

**Gravel & Shea PC**

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Sent:** Thursday, May 9, 2019 1:40 PM

**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Cc:** 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; Matthew B. Byrne <[mbyrne@gravelshea.com](mailto:mbyrne@gravelshea.com)>; 'Norman C. Smith (nc.smith@myfairpoint.net)' <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; Hillary A. Borcherding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>; 'Daniel Schmid' <[daniel@lc.org](mailto:daniel@lc.org)>; 'Roger Gannam' <[rgannam@lc.org](mailto:rgannam@lc.org)>; 'Anthony R. Duprey (anthony@ndp-law.com)' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'mtierney@wadleighlaw.com' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>; Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Hi Bob,

The motion asks for a six-weeks extension of the deadline for the completion of discovery. The scheduling order approved by the Court sets all other deadlines by reference to that deadline—with the exception of the trial date, which we can address independently if the need arises.

The clerk has informed me that there is no need for a proposed order.

Best,

Tyler

---

**J. Tyler Clemons**

Staff Attorney, LGBT Rights/Special Litigation

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**Sent:** Thursday, May 9, 2019 12:31 PM  
**To:** Tyler Clemons  
**Cc:** 'Brooks G. McArthur'; Tyler Clemons; 'Horatio Mihet'; Matthew B. Byrne; 'Norman C. Smith' ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)); Hillary A. Borcharding; 'Daniel Schmid'; 'Roger Gannam'; 'Anthony R. Duprey' ([anthony@ndp-law.com](mailto:anthony@ndp-law.com)); 'mtierney@wadleighlaw.com'; Beth Jacob; flangrock; Sarah Star; Claudia Huerta; Diego Soto  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Tyler: I just left you a voice mail. You need to send me a proposed order. All dates need to slide by the same six-weeks you are seeking for submission of your expert reports. Our response to your motion is due Monday, and we will have to oppose if you don't make that adjustment. I suspect this is all an oversight on your part, but it needs to be addressed today. Thanks.

**Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**

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**From:** Robert B. Hemley  
**Sent:** Tuesday, April 30, 2019 11:31 AM  
**To:** 'Tyler Clemons' <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Cc:** 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Tyler Clemons <[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Matthew B. Byrne <[mbyrne@gravelshea.com](mailto:mbyrne@gravelshea.com)>; Norman C. Smith ([nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)) <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Anthony R. Duprey ([anthony@ndp-law.com](mailto:anthony@ndp-law.com)) <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; [mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com); Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

No problem. I did get it from ECF, but because my assistant serves as the one who gets free delivery of filed documents, the "as filed" copy gets to me sooner. I think you are going to need to submit a proposed amended order, with a new schedule, which I would like to see in advance.

**Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Tuesday, April 30, 2019 11:18 AM  
**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Good morning Bob,

The motion is attached. Apologies for not sending a courtesy copy last night—I was relying on the ECF listserv to get it to you promptly.

Best,

Tyler

---

**J. Tyler Clemons**

Staff Attorney, LGBT Rights/Special Litigation

[Southern Poverty Law Center](#)

201 St. Charles Avenue Suite 2000

New Orleans, Louisiana 70170

t (504)526-1530 c (504)258-4290 f (504)486-8947

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*Admitted to practice in Louisiana and Maryland.*

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**From:** Robert B. Hemley [<mailto:rhemley@gravelshea.com>]

**Sent:** Tuesday, April 30, 2019 7:18 AM

**To:** Tyler Clemons

**Subject:** FW: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

Please send me the motion. In the future, please send motions by e-mail to all counsel when filing. Thanks.

**Robert B. Hemley** | *Shareholder*

**Gravel & Shea PC**

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**From:** [cmecfhelpdesk@vtd.uscourts.gov](mailto:cmecfhelpdesk@vtd.uscourts.gov) <[cmecfhelpdesk@vtd.uscourts.gov](mailto:cmecfhelpdesk@vtd.uscourts.gov)>

**Sent:** Monday, April 29, 2019 8:22 PM

**To:** [Courtmail@vtd.uscourts.gov](mailto:Courtmail@vtd.uscourts.gov)

**Subject:** Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Amend/Modify the Discovery Schedule/Order

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**U.S. District Court**

**District of Vermont**

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**Case Name:** Jenkins v. Miller et al  
**Case Number:** [2:12-cv-00184-wks](#)  
**Filer:** Janet Jenkins  
Isabella Miller-Jenkins  
**Document Number:** [348](#)

### **Docket Text:**

**[MOTION to Modify the Discovery Schedule/Order filed by Janet Jenkins, Isabella Miller-Jenkins.\(Clemons, J. Tyler\)](#)**

**2:12-cv-00184-wks Notice has been electronically mailed to:**

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Sarah Star , Esq [srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)

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Thomas E. McCormick , Esq [tem@mc-fitz.com](mailto:tem@mc-fitz.com), [git@mc-fitz.com](mailto:git@mc-fitz.com)

**2:12-cv-00184-wks Notice has been delivered by other means to:**

Anthony R. Duprey , Esq  
Neuse, Duprey & Putnam, P.C.  
1 Cross Street  
Middlebury, VT 05753-1445

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] [6f60d6247eb29267e5ccec3f3dd2c15aa3bd56a865963c084d8c278a8c6531ff3da  
4d85beecdaa37ae7add52d52cb20a44274e3418084c17e0c0562c55f5e81f]]

## Diego Soto

---

**From:** Horatio Mihet <hmihet@lc.org>  
**Sent:** Friday, May 10, 2019 4:22 PM  
**To:** Robert B. Hemley; 'Norman Smith'; 'Brooks G. McArthur'; 'Norman C. Smith (nc.smith@myfairpoint.net)'; Daniel Schmid; Roger Gannam; 'Anthony R. Duprey (anthony@ndp-law.com)'; 'mtierney@wadleighlaw.com'; Claudia Huerta  
**Cc:** Beth Jacob; flangrock; Sarah Star; Tyler Clemons; Diego Soto; Hillary A. Borcharding  
**Subject:** RE: Jenkins v Miller, et. al. - Modification of Discovery Schedule

Liberty Counsel and Lindevaldsen consent as well.

### **Horatio G. Mihet, Esq.\***

*Vice President of Legal Affairs and  
Chief Litigation Counsel*

#### **Liberty Counsel**

PO Box 540774  
Orlando, FL 32854  
(407) 875-1776 phone  
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**From:** Robert B. Hemley <rhemley@gravelshea.com>  
**Sent:** Friday, May 10, 2019 3:51 PM  
**To:** 'Norman Smith' <norman@normansmithlaw.com>; 'Brooks G. McArthur' <bmcArthur@jarvismcarthur.com>; Horatio Mihet <hmihet@lc.org>; 'Norman C. Smith (nc.smith@myfairpoint.net)' <nc.smith@myfairpoint.net>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Anthony R. Duprey (anthony@ndp-law.com)' <anthony@ndp-law.com>; 'mtierney@wadleighlaw.com' <mtierney@wadleighlaw.com>; Claudia Huerta <claudia.huerta@splcenter.org>  
**Cc:** Beth Jacob <beth.jacob@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons' <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Hillary A. Borcharding <hborcharding@gravelshea.com>  
**Subject:** RE: Jenkins v Miller, et. al. - Modification of Discovery Schedule

Correct. And trial readiness by July 1, 2020.

### **Robert B. Hemley | Shareholder Gravel & Shea PC**

76 St. Paul Street, 7th Floor | P. O. Box 369 | Burlington, VT 05402-0369  
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<b>EXHIBIT B</b>
----------------------

---

**From:** Norman Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>

**Sent:** Friday, May 10, 2019 3:48 PM

**To:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>; 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; 'Norman C. Smith (nc.smith@myfairpoint.net)' <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; 'Daniel Schmid' <[daniel@lc.org](mailto:daniel@lc.org)>; 'Roger Gannam' <[rgannam@lc.org](mailto:rgannam@lc.org)>; 'Anthony R. Duprey (anthony@ndp-law.com)' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'mtierney@wadleighlaw.com' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>

**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; 'Tyler Clemons' <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>

**Subject:** RE: Jenkins v Miller, et. al. - Modification of Discovery Schedule

Defendant Linda Wall Consents. Based upon my reading of the initial Discovery Order, this extends the Discovery deadline to February 29, 2020. I would appreciate it if someone would confirm.

Norm

**Please note that my email address has changed to [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com).**

Norman C. Smith, Esq.  
76 Lincoln Street  
P.O. Box 24  
Essex Junction, VT 05453  
802-288-9088  
802-879-9640 (fax)  
[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)

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**From:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>

**Sent:** Friday, May 10, 2019 12:32 PM

**To:** 'Brooks G. McArthur' <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>; 'Norman C. Smith (nc.smith@myfairpoint.net)' <[nc.smith@myfairpoint.net](mailto:nc.smith@myfairpoint.net)>; 'Daniel Schmid' <[daniel@lc.org](mailto:daniel@lc.org)>; 'Roger Gannam' <[rgannam@lc.org](mailto:rgannam@lc.org)>; 'Anthony R. Duprey (anthony@ndp-law.com)' <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; 'mtierney@wadleighlaw.com' <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>

**Cc:** Beth Jacob <[beth.jacob@splcenter.org](mailto:beth.jacob@splcenter.org)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; 'Tyler Clemons' <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>

**Subject:** Jenkins v Miller, et. al. - Modification of Discovery Schedule

All: Plaintiff has agreed with my clients, Defendants Zodiates, Hyden and Response Unlimited, to seek a six month extension rather than a six week extension. Let us know if you are in agreement as well, so the Court can be notified by Monday, the deadline for responding to Plaintiff's motion for a modification of the discovery schedule. Thanks.

**Robert B. Hemley** | *Shareholder*

**Gravel & Shea PC**

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Adam S. Hochschild  
Attorney at Law  
314.503.0326  
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October 9, 2019

**VIA EMAIL (tyler.clemons@splcenter.org)**

J. Tyler Clemons  
Southern Poverty Law Center  
201 St. Charles Ave., Suite 2000  
New Orleans, LA 70170

**RE:** *Jenkins v. Miller, et al.*, Case no. 2:12-cv-184-WKS, D.Vt.  
Jenkins's Responses to Wall's Requests for Production and Interrogatories

Dear Tyler:

I represent Defendant Linda Wall. I have completed an initial review of Plaintiff Janet Jenkins's September 30, 2019 discovery responses. We do not believe they are sufficient.

**Jenkins should immediately produce all documents she agreed to produce.**

In response to many Requests for Production (Nos. 1-20, 23-57, 59-60, 62-63), Jenkins states that "Plaintiff will produce responsive, nonprivileged documents in her possession, custody, or control." Please produce these documents now, identifying which documents correspond to which Request. If no such documents responsive to a given Request exist, then please so state.

**The Interrogatories are not premature.**

In response to many Interrogatories (Nos. 1-14), Jenkins objects that the Interrogatory is "premature at this stage of litigation." The case has been pending for many years. According to the Court's scheduling orders, discovery closes imminently. The Interrogatories are not premature. Please withdraw this objection and answer in full now (and of course, as applicable, please supplement in accordance with Federal Rule of Civil Procedure 26(e)(1) when and if appropriate).

**Jenkins should produce "emotional distress" documents (Request for Production 58).**

Wall seeks all documents supporting Jenkins's allegation that she has suffered "extreme emotional distress." Jenkins objects that all such documents are "irrelevant" and protected by the "psychotherapist-patient privilege," and that production of them would embarrass, annoy, and intrude. Jenkins is mistaken on each point.

- Even though Jenkins—on the same day she served her discovery responses—waived and abandoned her claim for all emotional distress *damages* except for "garden variety" distress damages (ECF 382), Defendant Wall is entitled to discovery regarding Jenkins's still-existing *allegation that she suffered "extreme emotional distress"* (Second Amended Complaint, ¶ 68), however Jenkins wishes to try to construe or contort the meaning of that term (see ECF 382

at 5 n.2). At the least Wall is entitled to discovery regarding Jenkins's allegation that she suffered "garden variety" emotional distress.

- To the extent the psychotherapist-patient privilege applies, it would protect only certain limited *communications* and *not all documents* supporting Jenkins's allegation that she suffered emotional distress.
- Jenkins chose to put at issue her emotional state. She cannot claim it is embarrassing, annoying, and intrusive to provide discovery responses directly related to her emotional state.

Please withdraw the irrelevance, embarrassment, annoyance, and intrusiveness objections and produce all responsive, non-privileged documents now.

**Jenkins should produce "lost business" documents and information (Request for Production 61; Interrogatory 15).**

Wall seeks all documents and information supporting Jenkins's allegation that she has incurred "lost business." Jenkins objects that all such documents and information are "irrelevant," that the Request and Interrogatory are unduly burdensome, disproportional, and harassing, and that responsive documents may be protected by attorney-client privilege or work-product. Jenkins is again mistaken on each point.

- Even though Jenkins—on the same day she served her discovery responses—waived and abandoned her claim for all lost-business *damages* (ECF 382), Defendant Wall is entitled to discovery regarding Jenkins's still-existing *allegation that she lost business* (Second Amended Complaint, ¶ 69). Depending on causes and other factors, Jenkins' financial history (*e.g.*, whether and to what extent she experienced financial distress, bankruptcy, etc.) could be relevant, for example, to Jenkins's claims for emotional distress and Wall's defenses to that claim. Moreover, Jenkins has agreed to produce certain tax records.
- Jenkins chose to put at issue, for example, her emotional state and circumstances, such as her financial history, that can have a direct bearing on emotional state. She cannot claim it is unduly burdensome, disproportional, and harassing to provide discovery responses directly related to her emotional state.
- Wall does not seek documents protected under a valid claim of attorney-client privilege or work-product.

Please withdraw the irrelevance, burden, disproportion, and harassment objections and provide all responsive, non-privileged documents and information now.

Please promptly confirm that Jenkins will fix all of the insufficiencies described in this letter. I'll plan to call you **tomorrow, October 10, at 3:00 p.m.** to discuss—or let me know if another time better suits you.

Please note that Wall's review of Jenkins's discovery responses is ongoing, and Wall reserves and does not waive the right to identify and seek relief with respect to any additional deficiencies when and as warranted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam S. Hochschild".

Adam S. Hochschild

cc: Diego Soto  
David Dinielli  
Sarah Star  
Frank Langrock  
Robert Hemley  
Hillary Borcharding  
Norman Williams  
Matthew Byrne  
Anthony Duprey  
Horatio Mihet  
Roger Gannam  
Brooks McArthur  
Michael Tierney  
Norman Smith

## Diego Soto

---

**From:** Hillary A. Borcharding <hborcharding@gravelshea.com>  
**Sent:** Thursday, October 31, 2019 12:00 PM  
**To:** Diego Soto; Tyler Clemons  
**Cc:** Robert B. Hemley; Claudia Huerta; Jessica Stone; Matthew D. Preedom; Celeste E. Laramie  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Defendants Philip Zodiates's, Victoria Hyden's, and Response Unlimited, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Production

Diego,

Let's plan on Wednesday at 4:30 Eastern. Someone from my office will circulate a calendar invitation with a call-in number.

Thanks,  
Hillary



**Hillary A. Borcharding** | Associate  
**Gravel & Shea PC**

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---

**From:** Diego Soto <Diego.Soto@splcenter.org>  
**Sent:** Thursday, October 31, 2019 12:15 PM  
**To:** Hillary A. Borcharding <hborcharding@gravelshea.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>  
**Cc:** Robert B. Hemley <rhemley@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Defendants Philip Zodiates's, Victoria Hyden's, and Response Unlimited, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Production

Sure. I have availability next week on Wednesday as early as 3pm Eastern (2pm Central), any time Thursday, and any time Friday. I'll be out of the office on another matter most of Monday and all day Tuesday.



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
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[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
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**EXHIBIT  
D**

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**From:** Hillary A. Borcharding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>  
**Sent:** Wednesday, October 30, 2019 6:32 PM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Cc:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>  
**Subject:** RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Defendants Philip Zodiates's, Victoria Hyden's, and Response Unlimited, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Production

Hi Diego,

It may be easier to address the issues you raise in your letter on a call. Can you propose a few days and times that work for you?

Regards,  
Hillary



**Hillary A. Borcharding** | Associate  
**Gravel & Shea PC**

76 St. Paul Street, 7th Floor | P.O. Box 369 | Burlington, VT 05401  
T: 802-658-0220 | F: 802-658-1456  
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**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Monday, October 28, 2019 11:19 AM  
**To:** Hillary A. Borcharding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>; Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>  
**Cc:** Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Daniel J. Schmid <[dschmid@lc.org](mailto:dschmid@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger K. Gannam <[rgannam@LC.org](mailto:rgannam@LC.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman C. Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>; Toddy Ferguson <[cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Michael J. Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>  
**Subject:** Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Defendants Philip Zodiates's, Victoria Hyden's, and Response Unlimited, Inc.'s Responses and Objections to Plaintiffs' First Set of Requests for Production

Bob and Hillary,

Please find attached a letter regarding Defendants Philip Zodiates's, Victoria Hyden's, and Response Unlimited, Inc.'s responses and objections to Plaintiffs' first set of requests for production.

Sincerely,  
Diego



**Diego Soto** he/him/his

Staff Attorney | LGBTQ Rights & Special Litigation

Southern Poverty Law Center

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[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)

Admitted in Alabama and the District of Columbia

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## Diego Soto

---

**From:** Adam Hochschild <adam@hochschildlaw.com>  
**Sent:** Thursday, November 21, 2019 10:05 AM  
**To:** 'Horatio Mihet'; Tyler Clemons  
**Cc:** 'Robert B. Hemley'; 'Brooks G. McArthur'; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; 'Hillary A. Borcherding'; 'Matthew D. Preedom'; 'Linda Bradford Barron'; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; 'Roger Gannam'; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; 'Roger Gannam'; 'Daniel Schmid'; 'Anthony Duprey'; 'Michael J. Tierney'  
**Subject:** RE: Jenkins: Deposition Notices

Thanks, Harry. I agree counsel should try to coordinate deposition dates before noticing them unilaterally.

For the four depositions Tyler noticed, I'm not available December 10 or 11 (I'm traveling both days), but I propose December 2-3, 16-17 or 19-20.

Adam S. Hochschild  
Hochschild Law Firm, LLC  
314.503.0326  
[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)  
[www.HochschildLaw.com](http://www.HochschildLaw.com)

---

**From:** Horatio Mihet [mailto:hmihet@lc.org]  
**Sent:** Thursday, November 21, 2019 10:27 AM  
**To:** Adam Hochschild <adam@hochschildlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>  
**Cc:** Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcherding <hborcherding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Roger Gannam <rgannam@lc.org>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>  
**Subject:** RE: Jenkins: Deposition Notices

Tyler:

First, my clients consent to electronic service.

Second, please refrain from any further unilateral scheduling or noticing of depositions, without coordinating dates and locations with opposing counsel, because that is improper and unprofessional. We have communicated via email on numerous occasions until now, and there was no reason why you could not email or call me to coordinate the depositions you unilaterally noticed.

Third, we are unavailable for depositions in Virginia on Dec. 4-5. We can do December 9-10 or 10-11. Please confirm immediately that you do not intend to proceed with depositions on Dec. 4-5, failing which we will need to seek protection from the Court.

<b>EXHIBIT</b> <b>E</b>
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Fourth, please provide dates and locations for the depositions of Janet Jenkins, Carolyn Ceccotti Jenkins, and each of Plaintiff's four purported experts, during the week of December 16. We believe a half day with each witness may be sufficient, so we can schedule two per day in the same location, but reserve the right to go a bit longer if it proves necessary. The request for dates to depose the purported experts is made without prejudice to our argument that they were not timely disclosed.

Fifth, responding to the separate email from your office of yesterday afternoon, many months ago Mr. Staver planned travel and out of office activities between December 12 and January 1. The only remaining date for which he can be available for a deposition in Orlando is January 2. Please secure a location in Orlando. I am willing to accept a deposition subpoena for him, for the above date and location only.

**Horatio G. Mihet, Esq.\***

*Vice President of Legal Affairs and  
Chief Litigation Counsel*

**Liberty Counsel**

PO Box 540774

Orlando, FL 32854

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(407) 875-0770 fax

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**From:** Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>

**Sent:** Wednesday, November 20, 2019 5:51 PM

**To:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Cc:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Michael J. Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Subject:** Re: Jenkins: Deposition Notices

Tyler: I was in the email chain from the beginning; no apologies warranted there. I figured when you said you hadn't yet heard from any other counsel, that you had intended to email everyone. I'm including other counsel here and attaching your deposition notices.

Adam S. Hochschild

Hochschild Law Firm, LLC

314.503.0326

[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)

[www.HochschildLaw.com](http://www.HochschildLaw.com)

On Nov 20, 2019, at 5:15 PM, Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)> wrote:

Hi Adam,

Apologies for leaving you off this email chain. Some defendants have not consented to email service, however, and therefore must be served by mail.

These are not the only depositions that Plaintiffs intend to take.

Best,

[<image001.jpg>](#) **J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 504.526.1530 C 504.258.4290 F 504.486.8947  
[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Louisiana & Maryland

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---

**From:** Adam Hochschild [mailto:[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)]  
**Sent:** Wednesday, November 20, 2019 4:09 PM  
**To:** Tyler Clemons  
**Cc:** Robert B. Hemley; Brooks G. McArthur; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy  
**Subject:** Re: Jenkins: Deposition Notices

Tyler: It appears the deposition notices were not emailed to — and accordingly this email chain does not include — counsel for all parties. I suggest you include everyone.

Are these four depositions the only ones plaintiffs intend to take?

Thanks,

Adam

Adam S. Hochschild

Hochschild Law Firm, LLC

314.503.0326

[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)

[www.HochschildLaw.com](http://www.HochschildLaw.com)

On Nov 20, 2019, at 4:14 PM, Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)> wrote:

Hi Bob,

We are serving the witnesses this afternoon and have not yet heard from any other counsel. As you are aware, the court's most recent order gives us very little time to take these depositions. But we will of course keep you and all parties informed of any scheduling changes.

We have no objection to remote participation, either by video or phone. The deposition was scheduled through Legal Media Experts (919-682-7757 or [schedule@legalmediaexperts.com](mailto:schedule@legalmediaexperts.com)); you should contact them to set that up.

Best,

Tyler

---

<image003.jpg>

**J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center

T 504.526.1530 C 504.258.4290 F 504.486.8947  
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Admitted in Louisiana & Maryland

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---

**From:** Robert B. Hemley [mailto:[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)]  
**Sent:** Wednesday, November 20, 2019 2:33 PM  
**To:** Tyler Clemons; Brooks G. McArthur; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)  
**Cc:** [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy  
**Subject:** RE: Jenkins: Deposition Notices

Tyler: The dates you have selected, December 4 and 5, are unavailable for me, though we may be able to staff the depositions. Can you let me know if these dates have been agreed to by other counsel, or the witnesses, or if the witnesses have been served? Also, if the depositions do go forward, do you have any objection to participation by SKYPE, or other video hookup, and phone? I see the location you have chosen is a Fairfield Suites, so I assume you have made arrangements for a conference room. Please provide the details of that and a contact person. Please let me know as soon as possible so we can make necessary arrangements and/or approach the court if necessary. Thank you.

<image005.jpg>

**Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Wednesday, November 20, 2019 3:21 PM  
**To:** Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>;  
[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [adam@hochschildlaw.com](mailto:adam@hochschildlaw.com); Robert B. Hemley  
<[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>  
**Cc:** [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding <[hborcharding@gravelshea.com](mailto:hborcharding@gravelshea.com)>;  
Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Linda Bradford Barron  
<[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David  
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Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica  
Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman  
<[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Maya Rajaratnam  
<[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Scott  
McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>  
**Subject:** Jenkins: Deposition Notices

Counsel:

Please find attached deposition notices for Joleen Booth, William Sidebottom, Debbie Thurman, and Sandy Sturgill in *Jenkins v. Miller*, No. 2:12-cv-184 (D. Vt.).

Best,

<[image006.jpg](#)> **J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 504.526.1530 C 504.258.4290 F 504.486.8947  
[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Louisiana & Maryland

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## Diego Soto

---

**From:** Horatio Mihet <hmihet@lc.org>  
**Sent:** Thursday, November 21, 2019 10:53 AM  
**To:** Tyler Clemons; Adam Hochschild  
**Cc:** Robert B. Hemley; Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcherding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney  
**Subject:** RE: Jenkins: Deposition Notices

Tyler: the Court's extending of the discovery deadline, and Plaintiff's decision to wait until now to schedule depositions, are not a license to dispense with the rules and norms of courtesy and professionalism. Given your stated unwillingness to coordinate deposition dates and locations for depositions you are setting, and your unwillingness to re-schedule the Dec. 4-5 depositions for a date when we can attend (as is our right), we will promptly seek protection from the Court and advise the Court of these developments.

HGM

**Horatio G. Mihet, Esq.\***  
*Vice President of Legal Affairs and  
Chief Litigation Counsel*

**Liberty Counsel**

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---

**From:** Tyler Clemons <Tyler.Clemons@splcenter.org>  
**Sent:** Thursday, November 21, 2019 11:20 AM  
**To:** Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>  
**Cc:** Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcherding <hborcherding@gravelshea.com>; Matthew D. Preedom <mpreedom@gravelshea.com>; Linda Bradford Barron <lbarron@gravelshea.com>; Claudia Huerta <claudia.huerta@splcenter.org>; David Dinielli <David.Dinielli@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; jswift <jswift@langrock.com>; Julie Jackman <jjackman@langrock.com>; Roger Gannam <rgannam@lc.org>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>  
**Subject:** RE: Jenkins: Deposition Notices

<b>EXHIBIT</b> <b>F</b>
----------------------------

Good morning Harry,

Plaintiffs have multiple depositions to schedule between now and the new discovery closure date on January 2, with three legal holidays in between. Given the number of individual attorneys on this case and the substantial delay that attempts at coordination have caused in the past, it is not feasible to seek unanimous attorney availability for all of them. We will proceed with the noticed depositions as scheduled subject only to the availability of third-party witnesses. If you wish to coordinate remote participation, as Bob suggested, you should contact Legal Media Experts (919-682-7757 or [schedule@legalmediaexperts.com](mailto:schedule@legalmediaexperts.com)).

We are gathering the availability of Janet and Carolyn Jenkins and our experts and will get it to you as soon as we can.

We will send a deposition notice for Mr. Staver for January 2 in Orlando shortly.

Best,

Tyler

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**J. Tyler Clemons** [they/them/mx](mailto:they/them/mx)  
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T 504.526.1530 C 504.258.4290 F 504.486.8947  
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**From:** Horatio Mihet [<mailto:hmihet@lc.org>]  
**Sent:** Thursday, November 21, 2019 9:27 AM  
**To:** Adam Hochschild; Tyler Clemons  
**Cc:** Robert B. Hemley; Brooks G. McArthur; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borchering; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney  
**Subject:** RE: Jenkins: Deposition Notices

Tyler:

First, my clients consent to electronic service.

Second, please refrain from any further unilateral scheduling or noticing of depositions, without coordinating dates and locations with opposing counsel, because that is improper and unprofessional. We have communicated via email on numerous occasions until now, and there was no reason why you could not email or call me to coordinate the depositions you unilaterally noticed.

Third, we are unavailable for depositions in Virginia on Dec. 4-5. We can do December 9-10 or 10-11. Please confirm immediately that you do not intend to proceed with depositions on Dec. 4-5, failing which we will need to seek protection from the Court.

Fourth, please provide dates and locations for the depositions of Janet Jenkins, Carolyn Ceccotti Jenkins, and each of Plaintiff's four purported experts, during the week of December 16. We believe a half day with each witness may be sufficient, so we can schedule two per day in the same location, but reserve the right to go a bit longer if it proves

necessary. The request for dates to depose the purported experts is made without prejudice to our argument that they were not timely disclosed.

Fifth, responding to the separate email from your office of yesterday afternoon, many months ago Mr. Staver planned travel and out of office activities between December 12 and January 1. The only remaining date for which he can be available for a deposition in Orlando is January 2. Please secure a location in Orlando. I am willing to accept a deposition subpoena for him, for the above date and location only.

**Horatio G. Mihet, Esq.\***

*Vice President of Legal Affairs and  
Chief Litigation Counsel*

**Liberty Counsel**

PO Box 540774

Orlando, FL 32854

(407) 875-1776 phone

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\*Licensed in Florida and Ohio

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**From:** Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>

**Sent:** Wednesday, November 20, 2019 5:51 PM

**To:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Cc:** Robert B. Hemley <[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)>; Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>; Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Linda Bradford Barron <[lbarron@gravelshea.com](mailto:lbarron@gravelshea.com)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; David Dinielli <[David.Dinielli@splcenter.org](mailto:David.Dinielli@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Anthony Duprey <[anthony@ndp-law.com](mailto:anthony@ndp-law.com)>; Michael J. Tierney <[mtierney@wadleighlaw.com](mailto:mtierney@wadleighlaw.com)>

**Subject:** Re: Jenkins: Deposition Notices

Tyler: I was in the email chain from the beginning; no apologies warranted there. I figured when you said you hadn't yet heard from any other counsel, that you had intended to email everyone. I'm including other counsel here and attaching your deposition notices.

Adam S. Hochschild  
Hochschild Law Firm, LLC  
314.503.0326  
[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)  
[www.HochschildLaw.com](http://www.HochschildLaw.com)

On Nov 20, 2019, at 5:15 PM, Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)> wrote:

Hi Adam,

Apologies for leaving you off this email chain. Some defendants have not consented to email service, however, and therefore must be served by mail.

These are not the only depositions that Plaintiffs intend to take.

Best,

[<image001.jpg>](#) **J. Tyler Clemons** they/them/mx  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 504.526.1530 C 504.258.4290 F 504.486.8947  
[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
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**From:** Adam Hochschild [mailto:[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)]  
**Sent:** Wednesday, November 20, 2019 4:09 PM  
**To:** Tyler Clemons  
**Cc:** Robert B. Hemley; Brooks G. McArthur; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy  
**Subject:** Re: Jenkins: Deposition Notices

Tyler: It appears the deposition notices were not emailed to — and accordingly this email chain does not include — counsel for all parties. I suggest you include everyone.

Are these four depositions the only ones plaintiffs intend to take?

Thanks,

Adam

Adam S. Hochschild

Hochschild Law Firm, LLC

314.503.0326

[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)

[www.HochschildLaw.com](http://www.HochschildLaw.com)

On Nov 20, 2019, at 4:14 PM, Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)> wrote:

Hi Bob,

We are serving the witnesses this afternoon and have not yet heard from any other counsel. As you are aware, the court's most recent order gives us very little time to take these depositions. But we will of course keep you and all parties informed of any scheduling changes.

We have no objection to remote participation, either by video or phone. The deposition was scheduled through Legal Media Experts (919-682-7757 or [schedule@legalmediaexperts.com](mailto:schedule@legalmediaexperts.com)); you should contact them to set that up.

Best,

Tyler

---

<image003.jpg>

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**From:** Robert B. Hemley [mailto:[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com)]  
**Sent:** Wednesday, November 20, 2019 2:33 PM  
**To:** Tyler Clemons; Brooks G. McArthur; [norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)  
**Cc:** [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; David Dinielli; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy  
**Subject:** RE: Jenkins: Deposition Notices

Tyler: The dates you have selected, December 4 and 5, are unavailable for me, though we may be able to staff the depositions. Can you let me know if these dates have been agreed to by other counsel, or the witnesses, or if the witnesses have been served? Also, if the depositions do go forward, do you have any objection to participation by SKYPE, or other video hookup, and phone? I see the location you have chosen is a Fairfield Suites, so I assume you have made arrangements for a conference room. Please provide the details of that and a contact person. Please let me know as soon as possible so we can make necessary arrangements and/or approach the court if necessary. Thank you.

 **Robert B. Hemley** | *Shareholder*  
**Gravel & Shea PC**  
76 St. Paul Street, 7th Floor | P.O. Box 369 | Burlington, VT 05401  
T: 802-658-0220 | F: 802-658-1456  
[rhemley@gravelshea.com](mailto:rhemley@gravelshea.com) | [www.gravelshea.com](http://www.gravelshea.com)  
[Biography](#) | [Download vCard](#)

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---

**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Sent:** Wednesday, November 20, 2019 3:21 PM

**To:** Brooks G. McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>;  
[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com); [adam@hochschildlaw.com](mailto:adam@hochschildlaw.com); Robert B. Hemley  
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**Cc:** [cs.fergie@myfairpoint.net](mailto:cs.fergie@myfairpoint.net); Hillary A. Borcharding <[hborcherding@gravelshea.com](mailto:hborcherding@gravelshea.com)>;  
Matthew D. Preedom <[mpreedom@gravelshea.com](mailto:mpreedom@gravelshea.com)>; Linda Bradford Barron  
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<[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Scott  
McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>  
**Subject:** Jenkins: Deposition Notices

Counsel:

Please find attached deposition notices for Joleen Booth, William Sidebottom, Debbie Thurman, and Sandy Sturgill in *Jenkins v. Miller*, No. 2:12-cv-184 (D. Vt.).

Best,

<[image006.jpg](#)> **J. Tyler Clemons** they/them/mx  
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Southern Poverty Law Center  
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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' PROPOSED ALTERNATIVE DISCOVERY SCHEDULE/ORDER**

The discovery schedule/order, see ECF 320, 329, 355, 411, is hereby amended as follows:

1. The parties shall submit responding expert witness reports on or before six weeks after service of affirmative expert reports – Friday, December 13, 2019.
2. The parties shall serve all interrogatories and requests for production on or before six weeks before the close of discovery – Monday, January 20, 2020.
3. Depositions of all witnesses (fact and expert) shall be completed by Monday, March 2, 2020.
4. All discovery shall be completed by Monday, March 2, 2020.
5. The parties shall serve all requests for admission on or before four weeks after close of all discovery – Monday, March 30, 2020.

6. Motions, including summary judgment motions but excluding motions relating to the conduct of trial, shall be filed on or before six weeks after close of all discovery – Monday, April 13, 2020.

7. This case shall be ready for trial by Monday, June 1, 2020.

All other provisions of the discovery schedule/order remain unchanged.

DATED at Burlington, in the District of Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

William K. Sessions III  
District Court Judge