

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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

DEFENDANT WALL’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR RECONSIDERATION AND TO PLAINTIFF’S PROPOSED SCHEDULE

Jenkins chose to conduct limited discovery before the October 10, 2019 discovery-completion deadline and belatedly sought extra time under the guise of a Motion to “Clarify,” or in the alternative to “Modify,” the scheduling order. Dkt. 401. The Court in part granted her modification request, extending the deadline to January 2, 2020. Dkt. 411. Now, in a 16-page motion for reconsideration (Dkt. 418), she repackages and attempts to relitigate arguments and issues already considered by the Court in deciding the original Motion to “Clarify” or “Modify.” As the Court has recognized, the standard for granting a motion for reconsideration is “**strict**, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” June 29, 2015 Order Re: Motions for Reconsideration, Dkt. 198 at 2 (quoting *Shrader v. CSX Transport, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)) (emphasis added).

Jenkins cannot satisfy this strict standard. Jenkins points to no controlling decisions or relevant data that the Court overlooked. “Reconsideration is not a proper tool to repackage and relitigate arguments and issues already considered by the court in deciding the original motion.”

Dkt. 198 at 2. For a variety of reasons, the Court should deny Jenkins's motion for reconsideration (Dkt. 418) and should reject the alternative schedule she proposes (Dkt. 418-10).

First, the Court did not commit "clear error," or any error whatsoever, in construing its June 26, 2019 order. Upon careful consideration of the record the Court held that "there should have been little ambiguity as to the effect of this order. Indeed, the Court granted Plaintiffs' motion to modify the discovery schedule, which explicitly asked for a six-week extension." Dkt. 411 at 3.

Second, Jenkins wrongly attempts to blame Defendants for putting her in the position in which she finds herself. The supposed prejudice to Jenkins, if any, is of her own making. In fact, the November 18 Order (Dkt. 411) now puts Jenkins in a better position; discovery had closed on October 10, and now it closes on January 2. Defendants have been diligently attempting to cooperate with Jenkins to schedule depositions before this deadline. *See, e.g.*, Dkt. 418-8; 418 at 8-9.

Third, Jenkins's putative expert disclosure was late (and is still late under the present schedule) and therefore, under the Federal Rules, she "is not allowed to use that information." Fed. R. Civ. P. 37(c)(1)). *See also* Fed. R. Civ. P. 26(a)(2)(D) ("A party must make these [expert] disclosures at the times and in the sequence that the court orders."). As Jenkins acknowledges, Defendants expressly objected to the untimely disclosure weeks ago. Dkt. 418 at 7. This objection immediately followed the untimely disclosure. *Id.* Jenkins never sought leave to disclose out of time. Even if Jenkins's disclosure were (erroneously) somehow deemed retroactively valid, the alternative schedule she proposes would unnecessarily require Defendants to disclose any responding experts on December 13 (Dkt. 418-10, ¶ 1), before Defendants have any realistic opportunity to depose Jenkins's putative experts and to consider, identify, and

obtain reports from any potential responding experts. This would be unfair and would prejudice Defendants.

Fourth, Defendant Wall believed (correctly) that the Court meant what it said in its June 26, 2019 Order. *See* Dkt. 404. Wall has consistently observed the Court's scheduling orders. *Id.* She has taken pains to do so. *Id.* For example, she timely served two sets of requests for production and two sets of interrogatories before the deadline to do so expired. *Id.*; Dkt. 376 & 419 (certificates of service of discovery requests). In the time it took Jenkins to prepare her 16-page motion, she could have prepared additional discovery requests of her own. Now that Defendants, in compliance with the Court-ordered deadlines, have revealed many of their cards, Jenkins wants more time. This too would prejudice Defendants.

Fifth, as one of Jenkins's own exhibits shows, before the October 10 discovery-completion deadline Wall expressly reminded Jenkins that discovery was closing "imminently" and pointed Jenkins to the "Court's scheduling orders." Dkt. 418-6 at 1. Wall did this even though Defendants have no obligation to remind Jenkins what the Court-mandated schedule is. *See, e.g., Amiri v. Omni Excavators, Inc.*, No. CV 18-586 (RMC), 2019 WL 5653622, *8 (D.D.C. Oct. 31, 2019) ("A plaintiff brings a lawsuit and has the responsibility to prosecute it; a defendant has no obligation to remind a plaintiff of her obligations.").

The Court should deny Jenkins's motion for reconsideration and should reject the schedule she proposes.

Dated: November 25, 2019

/s/ Adam S. Hochschild

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of November, 2019, the foregoing was filed electronically with the Court, to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Adam S. Hochschild