

**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' MOTION TO EXCUSE CASE FROM
EARLY NEUTRAL EVALUATION REQUIREMENT**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins, through undersigned counsel, move the Court to excuse this case from the requirement to conduct Early Neutral Evaluation (ENE) pursuant to Local Rule 16.1. Good cause exists to excuse this case from ENE due to the low likelihood of settlement, as demonstrated by the parties' inability to reach agreement as to the purpose or scheduling of ENE for more than a year.

As discussed below, Plaintiffs have been unable to ascertain the positions of Defendants regarding this motion.

PROCEDURAL BACKGROUND

On August 30, 2018, the Court ordered the parties to engage in an ENE session by October 31, 2018. Order, ECF 330. On September 17, 2018, Plaintiffs informed the Court that all counsel agreed to Michael Marks as the ENE administrator, Letter to the Court from Fritz Langrock, ECF 333, whom the Court formally assigned on September 26, 2018, Letter to the Parties from Emerson Howe, ECF 334.

Attempts to schedule the ENE session revealed fundamental differences in the positions of the parties regarding ENE. Defendants Liberty Counsel, Inc., and Rena Lindevaldsen (Liberty

Counsel Defendants) advocated skipping ENE altogether “[g]iven that there is a less than zero chance for a mediated resolution at this juncture.” Email from Horatio Mihet to All Counsel, Ex. 1. Defendants Response Unlimited, Inc., Philip Zodhiates, and Victoria Hyden (RUL Defendants) believed that ENE could be useful but argued that it should be postponed until later in the discovery period. To that end, the RUL Defendants filed a motion to continue the ENE deadline to September 16, 2019. Mot. to Modify Order Setting Scheduling Order Deadlines, at 4, ECF 338. Plaintiffs filed a response in opposition to this motion requesting that the deadline instead be extended to January or February 2019. Resp. in Opp. To Mot. to Modify Order Setting Scheduling Order Deadlines, at 1, ECF 344.

On June 26, 2019, the Court granted the RUL Defendants’ motion to continue the ENE deadline to September 16, 2019. Order, ECF 355. Thereafter, no party took action regarding ENE until the Court issued a letter on November 5, 2019, indicating that the session was past due. Letter from Emerson Howe to All Parties, ECF 400.

Since November 5, 2019, Plaintiffs have contacted Defendants multiple times to solicit their current positions on ENE. *See* Email from J. Tyler Clemons to All Counsel, Ex. 2. As of this filing, no Defendant has provided Plaintiffs with a position. Clemons Decl., ¶ 5.

ARGUMENT

Local Rule 16.1(b)(1) requires the parties to engage in ENE “[u]nless the court exempts them for good cause.” As the above background demonstrates, the parties have been unable to agree regarding the purpose or scheduling of ENE for more than a year. Moreover, at various points during the process multiple parties have expressed serious doubts as to whether ENE would be productive. Given Defendants’ unwillingness even to share their current positions on

ENE, Plaintiffs share these doubts. Good cause exists to excuse the parties from engaging in ENE.

CONCLUSION

For these reasons, the Court should excuse the parties from the requirement to engage in ENE in this case.

December 10, 2019

Respectfully submitted.

/s/ Frank H. Langrock

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

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

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

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

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

Adam S. Hochschild
Hochschild Law Firm, LLC
Counsel for Defendant Linda M. Wall

Robert B. Hemley
Gravel & Shea PC
*Counsel for Defendants Philip Zodhiates, Victoria
Hyden, and Response Unlimited, Inc.*

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

December 10, 2019

/s/ J. Tyler Clemons

J. Tyler Clemons
Counsel for Plaintiffs

Exhibit 1

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Tuesday, October 16, 2018 11:10 AM
To: flangrock; 'Hillary A. Borcharding'; Beth Jacob; Diego Soto; srs; David Dinielli; Tyler Clemons
Cc: bmcarthur@jarvismcarthur.com; 'nc.smith@myfairpoint.net'; Roger Gannam; Daniel Schmid; David J. Williams; Norman C Smith; 'mtierney@wadleighlaw.com'; Kathy A. Hatch
Subject: RE: Jenkins et al. v. Miller et al. - ENE Session Deadline

Given that there is a less than zero chance for a mediated resolution at this juncture (as far as my two clients are concerned), we would be in favor of a joint request to the Court to allow us to skip the exercise. But if there is not unanimous consent for that, we'll participate as required by the Court and as mutually agreed by the parties. Given our current commitments, we'd prefer to push this to January, and in no event earlier than December.

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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From: Fritz Langrock <FLangrock@langrock.com>
Sent: Tuesday, October 16, 2018 12:03 PM
To: 'Hillary A. Borcharding' <hborcharding@gravelshea.com>; 'beth.jacob@splcenter.org' <beth.jacob@splcenter.org>; 'diego.soto@splcenter.org' <diego.soto@splcenter.org>; 'srs@sarahstarlaw.com' <srs@sarahstarlaw.com>; david.dinielli@splcenter.org; 'tyler.clemons@splcenter.org' <tyler.clemons@splcenter.org>
Cc: bmcarthur@jarvismcarthur.com; 'nc.smith@myfairpoint.net' <nc.smith@myfairpoint.net>; Roger Gannam <rgannam@lc.org>; Horatio Mihet <hmihet@lc.org>; Daniel Schmid <daniel@lc.org>; David J. Williams <dwilliams@jarvismcarthur.com>; Norman C Smith <nc.smith@myfairpoint.net>; 'mtierney@wadleighlaw.com' <mtierney@wadleighlaw.com>; Kathy A. Hatch <khatch@gravelshea.com>
Subject: RE: Jenkins et al. v. Miller et al. - ENE Session Deadline

Hillary and all,

I agree that we cannot get it scheduled by then. By adjourning do you mean abandoning it, or working to schedule it and letting the court know that it will not be done by 10/31. I also know that Michael Marks schedule fills up and as there are more defendants' schedules to fit, if we are moving forward it would make sense for you folks to work out dates and then let us know.

Fritz .

From: Hillary A. Borcharding [<mailto:hborcherding@gravelshea.com>]
Sent: Tuesday, October 16, 2018 11:22 AM
To: 'beth.jacob@splcenter.org'; 'diego.soto@splcenter.org'; 'srs@sarahstarlaw.com'; david.dinielli@splcenter.org;
'tyler.clemons@splcenter.org'; Fritz Langrock
Cc: bmcarthur@jarvismcarthur.com; 'nc.smith@myfairpoint.net'; 'rgannam@lc.org'; 'hmihet@lc.org'; 'dschmid@lc.org';
David J. Williams; Norman C Smith; 'mtierney@wadleighlaw.com'; Kathy A. Hatch
Subject: Jenkins et al. v. Miller et al. - ENE Session Deadline

Counsel,

We've noticed that the deadline for completion of an ENE session is 10/31/18. Obviously, that deadline is unrealistic. Are you agreeable to adjourning this session? If so, we should notify the Court before it begins inquiring about the results of our mediation.

Thank you,
Hillary

Hillary A. Borcharding | *Associate*
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Exhibit 2

Tyler Clemons

From: Tyler Clemons
Sent: Monday, December 9, 2019 9:40 AM
To: 'Robert B. Hemley'; 'Adam Hochschild'
Cc: Horatio Mihet; Brooks G. McArthur; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding; Matthew D. Preedom; Linda Bradford Barron; Claudia Huerta; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie
Subject: RE: Jenkins: Deposition Notices

Good morning Bob,

Thanks for getting back to me. At this point, Plaintiffs and Defendants have been unable to agree regarding the scheduling or even the purpose of ENE for more than a year. Throughout that period, various parties have express doubts regarding the effectiveness of ENE for this case, and Plaintiffs share those doubts.

That said, Plaintiffs are willing to engage in ENE if Defendants would like to do so.



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From: Robert B. Hemley [mailto:rhemley@gravelshea.com]
Sent: Monday, December 9, 2019 8:47 AM
To: Tyler Clemons; 'Adam Hochschild'
Cc: Horatio Mihet; Brooks G. McArthur; norman@normansmithlaw.com; 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; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie
Subject: RE: Jenkins: Deposition Notices

Tyler: I previously responded to your inquiries, except with regard to your position as to the ENE. As to that, can you explain why you believe that the case should be excused? An explanation will help me determine how to respond. Thanks.

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Tuesday, December 3, 2019 1:37 PM
To: Robert B. Hemley <rhemley@gravelshea.com>; 'Adam Hochschild' <adam@hochschildlaw.com>
Cc: Horatio Mihet <hmihet@lc.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@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>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Good afternoon counsel:

Before the holiday, we were in discussion about a number of clarifications regarding scheduling and the remainder of the discovery process. In the interest of moving things forward, I have summarized Plaintiffs' understanding of the issues and the parties' positions on them below.

- Defendants consent to Plaintiffs' motion for the Court to correct the deadline to serve written interrogatories and production requests to January 20, 2020 (from January 20, 2019) in the Court's new scheduling order, ECF 425.
- The RUL Defendants, Linda Wall, and the Liberty Counsel Defendants do not consent to Plaintiffs' motion to clarify the number of depositions each party is permitted to take under the Court's scheduling order. Plaintiffs plan to seek that clarification unilaterally.
- Plaintiffs' do not consent to Defendants' motion to extend the deadline to disclose responsive expert witnesses to February 13, 2020. Plaintiffs would consent to an extension to December 27, 2019. For any further extension, Defendants should seek relief from the Court.

There have also been some isolated discussions about what to do about ENE. Plaintiffs' position is that this case should be excused from ENE. If Defendants agree, we can include the motion for excusal from ENE in the consent motion to clarify the typo about the interrogatory deadline. If Defendants want to do an ENE, we should seek to extend the deadline to do so. Plaintiffs propose the summary judgment deadline, April 16, 2020, but we are open to alternatives.

Please let Plaintiffs know if these summaries misrepresent your positions, as well as your position on ENE, as soon as possible.

Best,

Tyler



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

Sent: Tuesday, November 26, 2019 5:06 PM

To: Tyler Clemons; 'Adam Hochschild'

Cc: Horatio Mihet; 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; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie

Subject: RE: Jenkins: Deposition Notices

Thanks for your response. I understand, but do not agree with, your position. While continued discussion is not going to lead to agreement, it is worth pointing out that I believe deposing your witnesses, and evaluating not only what they have to say but how they say it will inform our (or at least my) approach. Moreover, it is a rare occurrence that experts restrict their expression of opinions, if not the opinions themselves, to what has been written in a report. Have a good Thanksgiving.

From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Tuesday, November 26, 2019 5:08 PM

To: Robert B. Hemley <rhemley@gravelshea.com>; 'Adam Hochschild' <adam@hochschildlaw.com>

Cc: Horatio Mihet <hmihet@lc.org>; 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>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J.

Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: Re: Jenkins: Deposition Notices

Hi Bob,

I understood that to be Adam's concern as well, but I don't see how deposing Plaintiffs' experts could lead to information that would substantially alter Defendants' determination regarding whether to disclose rebuttal experts. Defendants have had our affirmative expert reports for nearly a month, and Rule 26(a)(2)(B) requires those reports to contain "all opinions the witness will express and the basis and reasons for them" as well as "the facts or data considered by the witness in forming them."

The December 27, 2019 deadline agreed to by Plaintiffs gives Defendants another month to read Plaintiffs' reports and determine whether to disclose rebuttal experts. That should be sufficient.

Best,

Tyler



J. Tyler Clemons *they/them/mx*

Staff Attorney | LGBTQ Rights & Special Litigation

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From: "Robert B. Hemley" <rhemley@gravelshea.com>
Date: Tuesday, November 26, 2019 at 3:24 PM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>, 'Adam Hochschild' <adam@hochschildlaw.com>
Cc: Horatio Mihet <hmihet@lc.org>, "Brooks G. McArthur" <bmcarthur@jarvismcarthur.com>, "norman@normansmithlaw.com" <norman@normansmithlaw.com>, "cs.fergie@myfairpoint.net" <cs.fergie@myfairpoint.net>, "Hillary A. Borcharding" <hborcharding@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>, Daniel Schmid <daniel@lc.org>, Anthony Duprey <anthony@ndp-law.com>, "Michael J. Tierney" <mtierney@wadleighlaw.com>, "Celeste E. Laramie" <claramie@gravelshea.com>
Subject: RE: Jenkins: Deposition Notices

Tyler: The issue from my point of view is that we are at a significant disadvantage if required to disclose experts before yours are deposed. I am hopeful that Judge Sessions will agree that following the order that exists in just about every discovery order I have ever seen in this jurisdiction, and maybe all of them, makes sense in this case too. If you can sequence the disclosure of our experts to follow the deposition of yours, I expect we can reach agreement. If not, then, we will be left to ask Judge Sessions to make a decision. I am happy to discuss this if you like. Thanks.

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Tuesday, November 26, 2019 4:18 PM
To: Robert B. Hemley <rhemley@gravelshea.com>; 'Adam Hochschild' <adam@hochschildlaw.com>
Cc: Horatio Mihet <hmihet@lc.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@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>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>
Subject: Re: Jenkins: Deposition Notices

Thank you, Adam and Bob.

Plaintiffs would agree to a two-week extension of the deadline to disclose responding experts, up to and including December 27, 2019. We can include that updated deadline in our motion regarding the typo if that is acceptable to Defendants. Plaintiffs do not consent to an extension to February 13, 2020, two weeks before the close of all discovery.

Best,

Tyler



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From: "Robert B. Hemley" <rhemley@gravelshea.com>
Date: Tuesday, November 26, 2019 at 1:21 PM
To: 'Adam Hochschild' <adam@hochschildlaw.com>, Tyler Clemons <Tyler.Clemons@splcenter.org>
Cc: Horatio Mihet <hmihet@lc.org>, "Brooks G. McArthur" <bmcarthur@jarvismcarthur.com>, "norman@normansmithlaw.com" <norman@normansmithlaw.com>, "cs.fergie@myfairpoint.net" <cs.fergie@myfairpoint.net>, "Hillary A. Borcharding" <hborcharding@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>, Daniel Schmid <daniel@lc.org>, Anthony Duprey <anthony@ndp-law.com>, "Michael J. Tierney" <mtierney@wadleighlaw.com>, "Celeste E. Laramie" <claramie@gravelshea.com>
Subject: RE: Jenkins: Deposition Notices

Tyler: My clients adopt the positions expressed by Adam on behalf of his. Thanks.

From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Tuesday, November 26, 2019 2:19 PM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>
Cc: Horatio Mihet <hmihet@lc.org>; Robert B. Hemley <rhemley@gravelshea.com>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@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>; Daniel Schmid <daniel@lc.org>; Anthony Duprey <anthony@ndp-law.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; Celeste E. Laramie <claramie@gravelshea.com>
Subject: Re: Jenkins: Deposition Notices

Tyler:

My client consents to change "January 20, 2019" to "January 21, 2020" in yesterday's Order (Dkt. 425).

That order elsewhere says that the deadline to disclose responding experts is December 13, 2019. We objected to that date in our filing yesterday (Dkt. 423). So that defendants may have an opportunity to depose Jenkins's putative experts and to then consider, identify, and obtain reports from any potential responding experts, would you agree to change this date to February 13, 2020? Would you please include this issue in the motion you propose to file? To be clear, this is all without prejudice to our argument that plaintiff's putative experts were not timely disclosed.

My client disagrees with plaintiff's understanding of the number of permitted depositions and that a motion to clarify the number is necessary.

Thanks,
Adam

Adam S. Hochschild

Hochschild Law Firm, LLC

314.503.0326

adam@hochschildlaw.com

www.HochschildLaw.com

On Tue, Nov 26, 2019 at 12:57 PM Tyler Clemons <Tyler.Clemons@splcenter.org> wrote:

Counsel:

We have also noticed that the Court's discovery order entered yesterday, ECF 425, mistakenly listed "January 20, 2019" as the deadline to serve all interrogatories and requests for production instead of January 20, 2020.

If all counsel agree to file a joint motion for clarification on the depositions, we can include this clarification in that motion. If not, do your clients consent to filing a separate motion to clarify that the deadline is in fact January 20, 2020?

Best,



J. Tyler Clemons *they/them/mx*
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Admitted in Louisiana & Maryland

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Date: Tuesday, November 26, 2019 at 10:29 AM
To: Horatio Mihet <hmihet@lc.org>, "Robert B. Hemley" <rhemley@gravelshea.com>, Adam Hochschild <adam@hochschildlaw.com>
Cc: "Brooks G. McArthur" <bmcarthur@jarvismcarthur.com>, "norman@normansmithlaw.com" <norman@normansmithlaw.com>, "cs.fergie@myfairpoint.net" <cs.fergie@myfairpoint.net>, "Hillary A. Borcharding" <hborcharding@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>, "Celeste E. Laramie" <claramie@gravelshea.com>
Subject: Re: Jenkins: Deposition Notices

Good morning Harry,

That's correct: Plaintiffs are amenable to rescheduling the depositions already noticed for December (and the Staver deposition on January 2) and do not intend to notice any additional depositions for December.

I will gather the availability of Janet and Carolyn Jenkins and Plaintiffs' experts for January and February and let you and other defense counsel know as soon as I have it. I ask that defense counsel do the same for their clients. We agree that clustering depositions by geographic area and time is ideal.

Finally, given the Court's admonition in its order yesterday that we should have clarified the discovery deadline sooner, Plaintiffs intend to ask the Court for clarification on the number of depositions that each party is permitted to take. As we discussed yesterday, the proposed scheduling order (ECF 320, paragraph 8) reflected the parties' disagreement over whether Plaintiffs would be allowed to take 10 or 20 non-party witness depositions, and the Court did not resolve that dispute in adopting the schedule at ECF 329. The Court did not mention depositions in the discovery schedule issued yesterday (ECF 425). All counsel: Please let me know by **5 p.m. Eastern on Monday, December 2** whether your clients agree to file this as a joint motion for clarification or whether Plaintiffs should proceed unilaterally.

Best,

Tyler



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Admitted in Louisiana & Maryland

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From: Horatio Mihet <hmihet@lc.org>
Date: Tuesday, November 26, 2019 at 6:52 AM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>, "Robert B. Hemley" <rhemley@gravelshea.com>, Adam Hochschild <adam@hochschildlaw.com>
Cc: "Brooks G. McArthur" <bmcarthur@jarvismcarthur.com>, "norman@normansmithlaw.com" <norman@normansmithlaw.com>, "cs.fergie@myfairpoint.net" <cs.fergie@myfairpoint.net>, "Hillary A. Borcharding" <hborcharding@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>, "Celeste E. Laramie" <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Tyler:

With the Court having granted the discovery extension until March 2, let us confirm this morning that the depositions below will not go forward on this schedule, but will be rescheduled in January and February, so that we may complete document discovery first, and also return to our regularly scheduled Holiday Season.

If you'd like, we can begin (re) scheduling discussions promptly, and set deposition dates aside in January and February. We need to endeavor to lump depositions together by geographic area as much as possible, to minimize travel as much as possible.

I know from speaking with Ms. Thurman's counsel yesterday that he would appreciate confirmation this morning that the depositions are being rescheduled, as would I and other defense counsel. Thus, your soonest confirmation is appreciated.

Regards,

Horatio G. Mihet, Esq.*
Vice President of Legal Affairs and

Chief Litigation Counsel

Liberty Counsel

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From: Horatio Mihet

Sent: Monday, November 25, 2019 3:40 PM

To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Robert B. Hemley <rhemley@gravelshea.com>; Adam Hochschild <adam@hochschildlaw.com>

Cc: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@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>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Tyler: here is the deposition schedule we discussed and agreed upon this afternoon (perhaps with some follow up needed on the Lindevaldsen deposition):

DATE	TIME	LOCATION	DEPONENT
Dec. 4	9 am	Lynchburg	Joleen Booth
Dec. 4	1 pm	Lynchburg	Debbie Thurman
Dec. 5	9 am	Lynchburg	William Sidebottom
Dec. 5	1 pm	Lynchburg	Sandy Sturgill
Dec. 16	9 am	Vermont	Janet Jenkins
Dec. 16	1 pm	Vermont	Carolyn Jenkins
Dec. 17	9 am	Vermont	Tara Devine
Dec. 18	9 am	Vermont	John Malluccio
Dec. 18	1 pm	Vermont	Sharon Lamb
Dec. 19	10 am	Lynchburg	Victoria Hyden
Dec. 20	9 am	Lynchburg	Linda Wall
TBD	TBD	New Jersey	Patricia Apy
Jan. 2	8 am	Mathew Staver	Orlando
Jan. 2	2 pm	Rena Lindevaldsen	Orlando

Please provide us with Ms. Apy's availability today or tomorrow.

As discussed, if you need the full 7 hours with each of Mr. Staver or Ms. Lindevaldsen, and are not able to conclude their depositions back-to-back on Jan. 2, we will agree to conclude them on the morning of Jan. 3, without affecting or extending any other discovery deadline.

You indicated that you wish to take up to 6 additional depositions (Liberty Counsel, Response Unlimited, Yoder, K. Miller, T. Miller and Zodiates). We disagreed about whether or not the Scheduling Order (dkt. 320) permits Plaintiffs to take more than the 10 depositions allowed by the civil rules. I asked you to identify 2 additional depositions that would fit within the limit of 10, so that we can promptly attempt to schedule those.

I also asked you to provide me with a list of 30(b)(6) topics for Liberty Counsel as soon as possible, and you agreed to provide them no later than this Wednesday.

Horatio G. Mihet, Esq.*
Vice President of Legal Affairs and

Chief Litigation Counsel

Liberty Counsel

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(407) 875-0770 fax

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>

Sent: Monday, November 25, 2019 12:26 PM

To: Robert B. Hemley <rhemley@gravelshea.com>; Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>

Cc: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; norman@normansmithlaw.com; cs.fergie@myfairpoint.net; Hillary A. Borcharding <hborcharding@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>; Celeste E. Laramie <claramie@gravelshea.com>

Subject: RE: Jenkins: Deposition Notices

Thanks Bob, Harry and Adam: Please let me know Ms. Lindevaldsen and Ms. Wall's alternative availability by the end of the day.



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From: Robert B. Hemley [<mailto:rhemley@gravelshea.com>]
Sent: Saturday, November 23, 2019 9:30 AM
To: Tyler Clemons; Horatio Mihet; Adam Hochschild
Cc: Brooks G. McArthur; norman@normansmithlaw.com; 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; Roger Gannam; Sarah Star; Maya Rajaratnam; Beth Littrell; Scott McCoy; Roger Gannam; Daniel Schmid; Anthony Duprey; Michael J. Tierney; Celeste E. Laramie
Subject: RE: Jenkins: Deposition Notices

Tyler: I was tied up yesterday with an all day hearing, so am only now able to respond to your e-mails. I will check with Victoria and let you know of her availability during the week of December 23. Her deposition will have to be near her home in Lynchburg.

From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Friday, November 22, 2019 1:05 PM
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. Borcharding <hborcharding@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

Hi Harry,

The witness availability during the week of December 16 you requested is as follows:

- Janet and Carolyn Jenkins are available any time that week. Please notice their depositions in or around Fair Hope, Vermont.
- Tara Devine is available on Tuesday, December 17. Please notice her deposition in or around Rutland, Vermont.
- Dr. Sharon Lamb is available all day on Wednesday, December 18; from 2 p.m. on Monday, December 16; and before noon and after 2:30 p.m. on Thursday, December 19. Please notice her deposition in or around Shelburne, Vermont.
- Dr. John Maluccio is available any time that week except for Tuesday, December 17, after 3 p.m. Please notice his deposition in or around Middlebury, Vermont.

I am still trying to get Patricia Apy's availability for that week and will pass it along as soon as I have it.

All counsel: Plaintiffs intended to notice the depositions of Rena Lindevaldsen, Victoria Hyden, and Linda Wall for December 16-18, but will refrain from doing so given Liberty Counsel's request to schedule multiple depositions that week. Please provide alternative dates for your client's depositions as soon as possible but by **5 p.m. Eastern on Monday, November 25, 2019**, at the latest. Otherwise we will need to notice these depositions without your input.

Best,



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Staff Attorney | LGBTQ Rights & Special Litigation
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tyler.clemons@splcenter.org | www.splcenter.org
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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; 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; 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
(407) 875-0770 fax

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*Licensed in Florida and Ohio

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From: Adam Hochschild <adam@hochschildlaw.com>

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

To: 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 <hborcharding@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>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Horatio Mihet <hmihet@lc.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: 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

www.HochschildLaw.com

On Nov 20, 2019, at 5:15 PM, Tyler Clemons <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 | www.splcenter.org
Admitted in Louisiana & Maryland

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From: Adam Hochschild [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; 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

www.HochschildLaw.com

On Nov 20, 2019, at 4:14 PM, Tyler Clemons <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); you should contact them to set that up.

Best,

Tyler

<[image003.jpg](#)>

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Admitted in Louisiana & Maryland

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From: Robert B. Hemley [mailto:rhemley@gravelshea.com]
Sent: Wednesday, November 20, 2019 2:33 PM
To: Tyler Clemons; Brooks G. McArthur; norman@normansmithlaw.com;
adam@hochschildlaw.com
Cc: 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 | www.gravelshea.com
[Biography](#) | [Download vCard](#)

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From: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Wednesday, November 20, 2019 3:21 PM
To: Brooks G. McArthur <bmcarthur@jarvismcarthur.com>;
norman@normansmithlaw.com; adam@hochschildlaw.com; Robert B. Hemley
<rhemley@gravelshea.com>
Cc: cs.fergie@myfairpoint.net; Hillary A. Borcharding
<hborcharding@gravelshea.com>; Matthew D. Preedom

<mpfreedom@gravelsthea.com>; Linda Bradford Barron <lbarron@gravelsthea.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
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<jjackman@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>; Maya Rajaratnam
<maya.rajaratnam@splcenter.org>; Beth Littrell <beth.littrell@splcenter.org>; Scott
McCoy <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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**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 J. TYLER CLEMONS
IN SUPPORT OF PLAINTIFFS' MOTION TO EXCUSE
CASE FROM EARLY NEUTRAL EVALUATION REQUIREMENT**

I, J. Tyler Clemons, declare under penalty of perjury that the following is true and correct:

1. My name is J. Tyler Clemons and I am counsel for Plaintiffs in the above-captioned action.
2. On October 16, 2018, Horatio Mihet, counsel for Defendants Liberty Counsel, Inc., and Rena Lindevaldsen, emailed all counsel informing them of his position that “[g]iven that there is a less than zero chance for a mediated resolution at this juncture (as far as my two clients are concerned), we would be in favor of a joint request to the Court to allow us to skip” Early Neutral Evaluation (ENE).
3. A true and accurate copy of this email is attached to this motion as Exhibit 1.
4. On December 3, 2019, I emailed defense counsel in this case to ascertain their clients’ position regarding ENE in this case.
5. The only response I received as of the swearing of this declaration was on December 9, 2019, from Robert Hemley, counsel for Defendants Response Unlimited, Inc., Philip Zodhiates, and Victoria Hyden, inquiring about Plaintiffs’ position.

6. A true and accurate copy of this email chain is attached to this motion as Exhibit
- 2.
7. I make this Declaration on my own knowledge, information, and belief.

DATED at New Orleans in the Parish of Orleans and State of Louisiana this 10th day of
December, 2019.

A handwritten signature in black ink that reads "Tyler Clemons". The signature is written in a cursive style and is positioned above a solid horizontal line.

J. Tyler Clemons