

**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 TO  
“CLARIFY” NUMBER OF DEPOSITIONS SHE IS PERMITTED**

In her motion to “clarify” the number of depositions she is permitted (Dkt. 432), Plaintiff Jenkins again<sup>1</sup> asks the Court to expand, in her favor, established discovery limitations. Federal Rule of Civil Procedure 30(a)(2)(A)(i) grants each side no more than 10 total depositions. Jenkins, however, seeks to take at least 18 total depositions, all in a short period of time: she seeks to depose at least eight Defendants *plus* 10 non-parties by March 2, 2020, the discovery-completion deadline. More than 16 months ago, in the summer of 2018, the parties previously proposed to the Court competing alternative limits on the number of depositions, and, as Jenkins concedes, “the Court’s order did not explicitly resolve the disagreement regarding the limit of Plaintiffs’ nonparty depositions.” Motion at 2. Accordingly, the default number of depositions under Rule 30 applies; each side gets to take no more than 10 total depositions. Fed. R. Civ. P. 30(a)(2)(A)(i). As the March 2 deadline approaches, Jenkins now seeks more depositions.

Granting Jenkins the right to depose eight or more Defendants *plus* 10 non-parties would prejudice Defendants, particularly at this late stage. Discovery closes on March 2, 2020, and no depositions have been taken yet. While Defendants could identify numerous potential

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<sup>1</sup> See, e.g., Jenkins’s November 7, 2019 Motion to Clarify Discovery Schedule/Order and Alternative Motion to Modify Discovery Schedule/Order, Dkt. 401.

deponents, they intend to stay within the 10-deposition limit, even though Defendants are limited, collectively, to 10 depositions while Jenkins, alone, gets 10.<sup>2</sup> *Id.* Jenkins still hasn't identified all 10 non-party deponents she claims she needs to depose. Jenkins offers no reason why she has waited so long—seven-plus years into the case and with the discovery-completion deadline imminent—to depose any witnesses. This further highlights the lack of importance, benefit, necessity, and proportionality of the additional non-party depositions she seeks. *See* Fed. R. Civ. P. 26(b)(1); Fed. R. Civ. P. 30(a)(2). Jenkins's accusations of "procedural chicanery" (Motion, p. 4) are misplaced.

For all of these reasons, the Court should deny Jenkins's motion. To the extent, however, that the Court agrees to permit Jenkins to depose all Defendants *plus* 10 non-parties (which, again, the Court should *not* permit), Defendant Wall requests that the Court (1) specify that nine of those non-parties must be the nine individuals Jenkins identifies in her Motion (pp. 5-7) and (2) direct Jenkins to promptly identify the tenth non-party deponent.

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<sup>2</sup> Defendant Wall at this time expects that Defendants will depose, for example, the four putative experts that Jenkins recently—and untimely—disclosed. Jenkins's putative expert disclosure was late, she never sought leave to disclose out of time, and, therefore, under the Federal Rules, she "is not allowed to use that information." Fed. R. Civ. P. 37(c)(1). *See* Dkt. 423 at 2-3; Dkt. 433-2 at 5-6. Defendants continue to reserve all rights with respect to Jenkins's late disclosure. *See id.*

Dated: December 24, 2019

/s/ Adam S. Hochschild

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 24th day of December, 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