

**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.

PLAINTIFFS' RESPONSE TO DEFENDANT PHILIP ZODHIATES, VICTORIA HYDEN, AND RESPONSE UNLIMITED, INC.'S MOTION TO STAY PROCEEDINGS AND EXTENSION OF TIME TO SECURE SUCCESSOR COUNSEL

Defendant Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc.'s ("RUL") (collectively, "RUL Defendants")¹ motion to stay proceedings and for an extension of time to secure successor counsel, ECF 458 ("Mot."), should be denied at least in part.

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins oppose a stay of these entire proceedings but do not oppose a stay of the proceedings as to the RUL Defendants specifically, if it is limited to the time that the Court provides them to obtain new counsel. Plaintiffs have already agreed, for example, to work with Defendants to schedule depositions after the RUL Defendants obtain new counsel or after the deadline to obtain new counsel expires without an

¹ The Court's docket states that this motion was filed by Zodhiates, but the motion itself states that it was filed by Zodhiates, Hyden, and RUL, *see* Mot. at 2, ECF 458, despite not fully complying with Local Rule 11(a), which requires *pro se* parties to "(1) declare *pro se* status in the initial filing or in the notice of *pro se* appearance form; (2) appear personally; (3) not authorize another person to appear on his or her behalf; and (4) include the words '*pro se*' after the party's signature on all filings." Plaintiffs assume RUL (acting through Zodhiates, an officer of the corporation) can act *pro se* for this limited purpose of seeking additional time to obtain new counsel in order to comply with Local Rule 11(b), which prevents corporations from appearing *pro se*.

appearance by new counsel. *See* Ex. 1 to Pls.’ Mot. for Clarification of [450] the Court’s January 7, 2020 Order that the Parties Submit One Proposed Modified Disc. Schedule at *2, ECF 454-1.

Plaintiffs defer to the Court on what would be a reasonable amount of time to give the RUL Defendants to obtain new counsel—whether that be the current February 5, 2020 deadline, *see* Order, ECF 449, the March 31, 2020 deadline the RUL Defendants request, *see* Mot. at 4, ECF 458, or a deadline somewhere in between.² On the one hand, the important questions of whether Zodiates can continue to assert a Fifth Amendment right against compulsory self-incrimination and whether summary judgment should be granted on Jenkins’s state-law claim against Zodiates would be better resolved if Zodiates were represented by counsel. On the other hand, the Court should hold the RUL Defendants to the deadline it sets for them to obtain new counsel and demand a showing of good cause from each of them before granting any extensions. Whatever effect Zodiates’s current incarceration might have on his own ability to obtain new counsel, *see* Mot. at 3, ECF 458, is offset by his ability to work with his daughter Hyden and his son William, who is CEO of RUL, to obtain joint representation. *See* Ex. 1 to Pls.’ Mot. for Leave to Serve Disc. Docs. on Def. Philip Zodiates Through Service on Defs. Victoria Hyden and RUL Until Def. Philip Zodiates Obtains New Counsel at 2, ECF 453-1.

CONCLUSION

For these reasons, the RUL Defendants’ motion to stay proceedings and for an extension of time to secure successor counsel, ECF 458, should be denied at least in part.

Respectfully submitted.

² It is unclear to Plaintiffs whether the RUL Defendants knew the Court, on January 6, 2020, had given them 30 days to obtain new counsel before Zodiates mailed this motion on January 9, 2020. *See* Mot. at 5, ECF 458.

January 16, 2020

/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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