

**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' SECOND MOTION TO COMPEL
DEFENDANTS LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN
TO COMPLY WITH PLAINTIFFS' REQUESTS FOR PRODUCTION**

Pursuant to Rules 26, 34, and 37 of the Federal Rules of Civil Procedure and Local Rule 26, Plaintiffs Janet Jenkins and Isabella Miller-Jenkins move to compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen (“Defendants”) once again to comply with Plaintiffs’ First Requests for Production of Documents (“the Requests”).

FACTUAL BACKGROUND

This action arises out of the September 2009 kidnapping of then-seven-year-old Isabella Miller-Jenkins by one of her mothers, Lisa Miller, to avoid compliance with Vermont and Virginia court orders granting her other mother, Janet Jenkins, parental rights and responsibilities over Isabella.

Plaintiffs served the Requests on the Liberty Counsel Defendants on June 27, 2018. *See* Pls’ Mot. to Compel Liberty Counsel & Rena Lindevaldsen, at 1, ECF 361 (hereinafter “Pls’ 1st Mot. to Compel”). After more than a year of negotiations in which Defendants produced only 571 pages—539 of them grayscale printouts from the internet—Plaintiffs moved to compel Defendants to comply with the Requests on July 23, 2019. *See id.* at 2. The Court granted Plaintiffs’ motion in substantial part on October 29, 2019. Op. & Order, ECF 395. Specifically,

the Court ordered Defendants to comply with all of the Requests with the sole exception of limiting Requests 4, 5, and 6 from “all documents and communications” to “all communications” concerning Janet Jenkins, Isabella Miller-Jenkins, and Lisa Miller, respectively. *See id.* at 7–8.

On October 31, 2019, Plaintiffs proposed a deadline of November 30, 2019, for Defendants’ compliance with the Court’s order. Decl. of J. Tyler Clemons (“Clemons Decl.”), ¶ 2. After receiving no response, Plaintiffs followed up with Defendants via email on November 6, 2019. *Id.* ¶¶ 3–4; Email from J. Tyler Clemons to Horatio Mihet (Nov. 6, 2019), Ex. 1, at 1. In that email, Plaintiffs also suggested various times to meet and confer about other discovery matters. *Id.* Defendants proposed November 25, 2019, for the meet and confer, “by which time we [Defense counsel] should be able to fully digest the Court’s order on the motion to compel and have a good indication of how long it will take to review the extensive file and catalogue the various privileges.” Email from Horatio Mihet to J. Tyler Clemons (Nov. 10, 2019), Ex. 2, at 1.

Plaintiffs conferred with Liberty Counsel, on behalf of itself and Lindevaldsen, via telephone on November 25, 2019. Clemons Decl., ¶ 6. The conclusions of that conference are memorialized in the December 3, 2019 email from Plaintiffs’ counsel Tyler Clemons to Defendants’ counsel, Horatio Mihet, attached as Exhibit 3. As that email notes, Defendants agreed to produce paper documents and corresponding privilege logs by December 23, 2019. Email from J. Tyler Clemons to Horatio Mihet (Dec. 3, 2019), Ex. 3, at 1. Defendants also agreed to work toward producing electronic documents and corresponding privilege logs on that date, contingent upon Plaintiffs’ suggestion of workable search terms, which Plaintiffs also provided in the December 3 email. *Id.*

On December 23, 2019, Defendants granted themselves an extension to January 10, 2020, to produce paper documents. Email from Horatio Mihet to J. Tyler Clemons (Dec. 23, 2019), Ex.

4, at 1. On January 6, 2020, Plaintiffs informed Defendants that Plaintiffs would agree to no further extensions and would seek relief from the Court if Defendants failed to meet the January 10, 2020 deadline. Email from J. Tyler Clemons to Horatio Mihet (Jan. 6, 2020), Ex. 5, at 1.

On January 10, 2020, Liberty Counsel produced 13,261 pages of documents from its paper files. Although Plaintiffs have repeatedly informed Defendants that it is not necessary to produce documents that are in the public record, the entirety of Defendants' production consists of documents in the public record. Clemons Decl., ¶ 10; *see also* Email from Horatio Mihet to J. Tyler Clemons (Jan. 10, 2020), Ex. 6, at 1. Liberty Counsel also produced a privilege log, attached as Exhibit 7. Further communication clarified that the January 10 production was also intended to represent the full paper production for Lindevaldsen. *See* Email from Horatio Mihet to J. Tyler Clemons (Jan. 16, 2020), Ex. 8, at 1.

Between January 6 and January 16, 2020, Plaintiffs and Defendants refined the search terms for Requests 64 through 67. Clemons Decl., ¶¶ 6, 13. On January 16, 2020, Defendants informed Plaintiffs that the refined search terms were acceptable and agreed to produce electronic documents and a corresponding privilege log on February 14, 2020. *See* Email from Horatio Mihet to J. Tyler Clemons (Jan. 16, 2020), Ex. 8, at 1; Email from Horatio Mihet to J. Tyler Clemons (Jan. 16, 2020), Ex. 9, at 1.

On February 14, 2020, Defendants attempted to grant themselves yet another two-week extension, to February 28, 2020, to produce the electronic documents. Email from Horatio Mihet to J. Tyler Clemons & Diego Soto (Feb. 14, 2020), Ex. 10, at 1. Plaintiffs instead gave Defendants a one-week extension, to February 21, 2020, to make a full production, including privilege logs. Email from J. Tyler Clemons to Horatio Mihet (Feb. 14, 2020), Ex. 11, at 1.

On February 21, 2020, Defendants informed Plaintiffs that they would not produce any documents that day. Email from Horatio Mihet to J. Tyler Clemons (Feb. 21, 2020), Ex. 12, at 1.

Thus, nearly four months after the Court ordered Defendants to comply with the Requests, and fully 20 months since the Requests were served, Defendants have still produced only five pages of documents that are not webpages, communications with Plaintiffs' own counsel, or copies of documents in the public record. Defendants' delays, obfuscation, and stonewalling have crossed the line into foot-dragging and bad faith. Accordingly, Plaintiffs move this Court to compel Defendants (1) to produce the entirety of their paper and electronic litigation files regarding Lisa Miller, irrespective of their privilege claims, by March 31, 2020; (2) to produce documents, irrespective of form or privilege claims, from all other locations that reasonably might contain documents responsive to Plaintiffs' Requests as compelled by the Court's order, ECF 395, by March 31, 2020; (3) to file sworn affidavits that enumerate the locations, both electronic and digital, into which Defendants have conducted reasonable inquiries for responsive documents, and that certify that there are no other locations in which such documents reasonably might exist, no later than March 31, 2020; and (4) to pay Plaintiffs' costs and fees caused by the delay in discovery, including those incurred in preparing both this motion and Plaintiffs' first Motion to Compel, ECF 361.

ARGUMENT

I. Defendants' January 10, 2020 Production Does Not Satisfy the Court's Order

On October 29, 2019, the Court ordered Defendants to comply with twenty separate Requests. *See generally* Op. & Order, ECF 395. These Requests solicited, in brief, all communications with Janet Jenkins, Isabella Miller-Jenkins, and Lisa Miller; all communications with Lisa Miller's two known email addresses; all documents and communications concerning the Dispute and the Court Orders; all communications, and all documents and communications

concerning events scheduled, on the dates surrounding crucial events in this case; and all documents and communications concerning Defendants' positions on a number of subjects related to homosexuality and compliance with secular law. *Id.*

Instead of complying with the Court's order to produce documents responsive to each of these Requests, Defendants produced photocopies of various filings from the custody dispute in the state courts of Vermont and Virginia. Indeed, every single page of Defendants' 13,261-page January 10, 2020 production is part of a court filing and therefore available in the public record. Clemons Decl., ¶ 10. There are no phone records, no letters, no calendar pages, no pamphlets or mission statements—in short, no documents that suggest that Defendants made a good-faith effort to comply with the Court's order rather than simply photocopying their publicly available court filings.¹

Perhaps most tellingly, the production contains no documents regarding Lindevaldsen's book *Only One Mommy*, which Plaintiffs specifically cited as an example of nonprivileged documents that would be responsive to Request 8 (seeking all communications with Lisa Miller), Requests 11 and 12 (seek all communications with Lisa Miller's known email addresses) and Requests 17 and 18 (seeking all documents and communications concerning the Dispute and Court Orders). *See* Pls' 1st Mot. to Compel, at 6–7, 8–9. It is inconceivable that Lindevaldsen does not retain a single paper document from the years-long process of writing and publishing a book about Lisa Miller's life; at the very least the book itself would be responsive.

¹ An untold percentage of the “over 300 hours of attorney time” that Defendants have spent on document production since the Court's order was undoubtedly spent photocopying 13,261 pages of documents that Defendants knew there was no need to produce. *See* Email from Horatio Mihet to J. Tyler Clemons, Ex. 12, at 1.

II. Defendants' Privilege Log Is Inadequately Detailed to Permit A Fair Evaluation of Their Privilege Claims

The privilege log accompanying Defendants' January 10, 2020 production is also insufficient. Because Defendants bear the “demanding” burden of proving their privilege assertions, their privilege log must be “adequately detailed”—that is, “it must include a description of the document in question in enough factual detail to enable the adverse party or reviewing court to understand why a particular privilege is being claimed, and the legal basis for the privilege's application.” *Jansson v. Stamford Health, Inc.*, 312 F. Supp. 3d 289 (D. Conn. 2018) (citing *Constr. Prods. Research*, 73 F.3d at 473).

The Second Circuit has elaborated on the “adequately detailed” requirement further, holding that

The privilege log should: identify each document and the individuals who were parties to the communications, providing sufficient detail to permit a judgment as to whether the document is at least potentially protected from disclosure. Other required information, such as the relationship between individuals not normally within the privileged relationship, is then typically supplied by affidavit or deposition testimony. Even under this approach, however, if the party invoking the privilege does not provide sufficient detail to demonstrate fulfillment of all the legal requirements for application of the privilege, his claim will be rejected.

Constr. Prods. Research, 73 F.3d at 473 (internal alterations omitted).

Defendants' privilege log falls far short of this standard. Based on its meager eight pages, Defendants purport to assert privileges over “**17 bankers' boxes** of paper files, comprising **over 42,500 pages.**” Defs' Resp. to Pls' Mot. to Compel, at 4, ECF 374 (emphasis original). Even allowing for the 13,261 pages of court filings that Defendants produced on January 10, 2020, Defendants assert that the eight-page privilege log justifies the extension of evidentiary privileges to nearly 30,000 pages of paper documents. It is physically impossible that the 71 rows in the eight-page log “identify each document,” in these 30,000 pages, as Second Circuit case law requires, *Constr. Prods. Research*, 73 F.3d at 473, and therefore impossible for

Plaintiffs or the Court to know what those pages contain or whether the documents are actually privileged.² Notably absent from Defendants' privilege log is any correspondence with Lisa Miller herself or any documents from the crucial dates that are the explicit subject matter of Requests 19, 35, 36, 47, and 48.

Yet even the information included in the log for the identified documents is insufficient to permit a fair evaluation of Defendants' privilege assertions as to them. The categories listed—"document type," "date," "author(s)," "recipients," "subject," and "privilege asserted"—are essentially the same as those of privilege logs repeatedly rejected by courts as insufficient. *See Jansson*, 312 F. Supp. 3d at 295 (finding privilege log insufficient in part because its categories aligned with those rejected by Second Circuit in *Construction Products Research*). Moreover, the description in the "subject" category is vague and often repeated verbatim for multiple documents. To give but one example, the first description, "Facsimile letter between counsel discussing strategy, research, and impression for legal briefing in Miller/Jenkins Vermont litigation," is applied to four separate documents and once to a fifth document in which "Facsimile letter" is simply replaced with "Electronic mail communication with letter." *See* Privilege Log, Ex. 7, at 1–2. Names are included—"Mary McAlister," "Erik Stanley," "Kevin Blier,"—with no explanation as to who these individuals are. Several lines contain no name but only the descriptor, "Law Clerk." *Id.* at 2, 3, 5.

² In an effort to reduce Defendants' burden in responding to the Requests, Plaintiffs previously discussed the possibility of accepting "a block privilege log for [certain] request[s] that indicated beginning and end dates, broad subject matter, and method(s) of communication (e.g., 'Emails between Lisa Miller and Rena Lindevaldsen concerning the Vermont litigation from August 13–17, 2006')." Letter from J. Tyler Clemons to Horatio Mihet (Apr. 17, 2019), at 2, Ex. 5 to Pls' 1st Mot. to Compel, ECF 361. A cursory comparison between Plaintiffs' proffered example and Defendants' actual privilege log shows that Defendants' log stretches this offer beyond all reasonable limits.

Defendants' privilege log is replete with precisely the kind of cursory descriptions and ipse dixit privilege assertions that courts of this circuit have repeatedly rejected. "The descriptions and comments simply do not provide enough information to support the privilege claim, particularly in the glaring absence of any supporting affidavits or other documentation. A privilege log should provide a specific explanation of why the document is privileged." *Constr. Prods. Research*, 73 F.3d at 474.

III. Waiver of Defendants' Privilege Claims Is Warranted By Defendants' Misconduct

Defendants' inadequate privilege log is but the latest example of their persistent unwillingness to engage in the discovery process in good faith. That unwillingness is highlighted by Defendants' outright refusal to produce any form of privilege log at all until explicitly ordered to do so by this Court, more than a year after Plaintiffs served the Requests. *See* Pls' 1st Mot. to Compel, at 3, ECF 361.

The history of Defendants' misconduct is detailed in the factual background to Plaintiffs' first Motion to Compel, ECF 361, as well as the factual background to this motion. Defendants did not respond to Plaintiffs' Requests until four months after they were served and did not produce documents until six months after they were served. Those documents consisted of 346 pages, 315 of which were grayscale printouts from Facebook. It took Defendants another six months, including two hour-long conferences with Plaintiffs, to produce another 225 pages, 224 of which consisted of grayscale printouts from the internet. Neither of these productions included a privilege log. Plaintiffs were forced to file a motion to compel Defendants' compliance, which this Court granted in substantial part. Defendants then took more than two months to produce 13,261 pages of documents in the public record, and have taken an additional six weeks (and counting) to produce any electronic documents.

In short, over the year and a half since discovery began, Defendants have done the bare minimum to foster the appearance of engaging in discovery while delaying, obfuscating, and stonewalling at every turn. By itself, the fact that Defendants have produced only five pages that are not webpages, communications with Plaintiffs' own counsel, or copies of documents in the public record proves the stridency of Defendants' obstinacy.

In light of Defendants' ongoing misconduct, waiver of their privilege claims is an appropriate sanction. *See Aurora Loan Servs. v. Posner, Posner, & Assocs.*, 499 F. Supp. 475, 479 (S.D.N.Y. 2007) (citing *United States v. Constr. Prods. Research, Inc.* 73 F.3d 464, 473 (2d Cir. 1996) ("Failure to furnish an adequate privilege log is grounds for rejecting a claim of attorney client privilege.")). Although waiver is harsh sanction, it appropriate where there is "evidence of foot-dragging or a cavalier attitude toward adhering to court orders and the discovery rules." *Ritacca v. Abbott Labs.*, 203 F.R.D. 332, 335 (N.D. Ill. 2001) .

In *Ritacca v. Abbot Laboratories*, the district court imposed waiver as a sanction on a party that had delayed production for a mere nine months—less than half the 20 months through which Defendants have dragged this dispute. *Id.* Moreover, the sanctioned party in *Ritacca*, like Defendants, unreasonably delayed its privilege assertions.³ *Id.* at 336. Also like Defendants, the *Ritacca* sanctioned party failed to include documents specifically identified by the requesting party in its production or privilege log. *Id.* And finally, like Defendants, the sanctioned party made no more than a "slipshod attempt" at a privilege log. *Id.*

Defendants' conduct, like that of the sanctioned party in *Ritacca*, is "a clear case of foot-dragging." *Id.* Defendants have shown time and again that they will take as much time as

³ Notably, the district court disregarded the blanket privilege assertions in the sanctioned party's initial discovery responses because "blanket objections are patently improper." *Ritacca*, 203 F.R.D. at 336 n.4. This Court held that Defendants' initial privilege assertions were similarly inadequate. Op. & Order, at 10, ECF 395.

possible to produce as little as possible in response to Plaintiffs' Requests. But "[d]iscovery is not supposed to be a shell game, where the hidden ball is moved round and round and only revealed after so many false guesses are made and so much money is squandered." *Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1322 (10th Cir. 2011) (per Gorsuch, J.). Plaintiffs respectfully urge the Court to hold that Defendants have waived their privilege claims.

IV. The Court Should Order Defendants to Pay Plaintiffs' Costs

Rule 37(b)(2) of the Federal Rules of Civil Procedure sets out possible sanctions that a district court may impose upon a party who "fails to obey an order to provide or permit discovery, including an order under . . . [Rule] 37(a)." Unlike the other possible sanctions, which are left to the district court's discretion, "the court *must* order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C) (emphasis added); *see also* 8B Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice & Procedure* § 2289 (3d ed. 2010) ("The 1970 amendment made the award [of expenses] mandatory, regardless of what other sanctions may be imposed."). Defendants' abuse of the discovery process, described above, was not substantially justified, and courts have awarded fees and expenses in similar circumstances. *See, e.g., Nat'l Fire & Marine Ins. Co. v. Robin James Constr., Inc.*, 478 F. Supp. 2d 660, 663 (D. Del. 2007) (failure to participate in discovery process despite court orders merited monetary sanctions).

CONCLUSION

For the foregoing reasons, Plaintiffs move this Court to compel Defendants (1) to produce the entirety of their paper and electronic litigation files regarding Lisa Miller,

irrespective of their privilege claims, by March 31, 2020; (2) to produce documents, irrespective of form or privilege claims, from all other locations that reasonably might contain documents responsive to Plaintiffs' Requests as compelled by the Court's order, ECF 395, by March 31, 2020; (3) to file sworn affidavits that enumerate the locations, both electronic and digital, into which Defendants have conducted reasonable inquiries for responsive documents, and that certify that there are no other locations in which such documents reasonably might exist, no later than March 31, 2020; and (4) to pay Plaintiffs' costs and fees in preparing both this motion and Plaintiffs' first Motion to Compel, ECF 361.

February 24, 2020

Respectfully submitted.



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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 and unrepresented parties through the Court's CM/ECF system:

Richard Boyer
Integrity Law Firm, PLLC
Counsel for Defendant Linda M. Wall

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

Roger K. Gannam
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

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

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

Horatio G. Mihet
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Daniel Joseph Schmid
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

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

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

Defendant Philip Zodhiates

and on the following unrepresented parties by United States mail:

Defendant Victoria Hyden
1212 Saint Cloud Avenue
Lynchburg, Virginia 24502

Defendant Response Unlimited, Inc.
c/o William Zodhiates
274 Shalom Road
Waynesboro, Virginia 22980

February 24, 2020

/s/ J. Tyler Clemons

J. Tyler Clemons

Counsel for Plaintiffs

Exhibit 1

Tyler Clemons

From: Tyler Clemons
Sent: Wednesday, November 6, 2019 10:49 AM
To: Horatio Mihet
Cc: Jessica Stone; Diego Soto; Claudia Huerta
Subject: Jenkins: Discovery Next Steps

Good morning Harry,

Just wanted to follow up to make sure you received Ms. Jenkins's responses to Liberty Counsel's interrogatories, Ms. Lindevaldsen's interrogatories, and Liberty Counsel's requests for production, which we sent by mail last Thursday (October 31).

I also wanted to flag my proposed November 30 deadline for Liberty Counsel and Ms. Lindevaldsen's compliance with the court's order on Plaintiffs' motion to compel. As I stated in my letter, please let me know as soon as possible if that date is not acceptable and propose a counter date-certain.

Finally, we need to schedule a conference to talk about Liberty Counsel's objections to Plaintiffs' subpoena to Mathew Staver. I'm available Monday, November 11, from 10 a.m. to 4:30 p.m. Eastern; on Friday, November 22, from 10 a.m. to 3 p.m. Eastern; and on Monday, November 25, from 10 a.m. to 4:30 p.m. Eastern. Please let me what time within those windows works for you. I'm also happy to talk to Daniel or Roger if you're busy during those times.

Best,

Tyler



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Exhibit 2

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Sunday, November 10, 2019 5:17 PM
To: Tyler Clemons
Cc: Jessica Stone; Diego Soto; Claudia Huerta; Roger Gannam; Daniel Schmid
Subject: RE: Jenkins: Discovery Next Steps

Tyler – we have been in a long-running trial since September. It is scheduled to end this coming Friday, or early the following week. Let’s have a meet and confer on Nov. 25 at 2 pm Eastern, by which time we should be able to fully digest the Court’s order on the motion to compel and have a good indication of how long it will take to review the extensive file and catalogue the various privileges. We can also discuss the Staver subpoena objections at that time. And, finally, we should also discuss at that time several issues related to Plaintiff’s discovery responses and document production.

Until then,

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: Friday, November 8, 2019 2:57 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: Jessica Stone <jessica.stone@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>
Subject: RE: Jenkins: Discovery Next Steps

Hi Harry,

Following up with you on this. My availability to discuss Liberty Counsel’s objections to Plaintiffs’ subpoena to Mathew Staver is the same as I indicated below.

Best,

Tyler



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Cc: Jessica Stone; Diego Soto; Claudia Huerta
Subject: Jenkins: Discovery Next Steps

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Finally, we need to schedule a conference to talk about Liberty Counsel's objections to Plaintiffs' subpoena to Mathew Staver. I'm available Monday, November 11, from 10 a.m. to 4:30 p.m. Eastern; on Friday, November 22, from 10 a.m. to 3 p.m. Eastern; and on Monday, November 25, from 10 a.m. to 4:30 p.m. Eastern. Please let me what time within those windows works for you. I'm also happy to talk to Daniel or Roger if you're busy during those times.

Best,

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Exhibit 3

Tyler Clemons

From: Tyler Clemons
Sent: Tuesday, December 3, 2019 12:09 PM
To: Horatio Mihet
Cc: Roger Gannam; dschmid@lc.org; Beth Littrell; Claudia Huerta; Diego Soto; Emily Joselson; flangrock; Jessica Stone; jsswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons
Subject: Jenkins: Meet & Confer Follow-up

Hi Harry,

Thanks for talking with me last Monday, November 25. This email is to memorialize our agreements and provide the information you requested. Apologies for the delay on this—I fell ill last Tuesday and am just now recovering.

First, you asked me to provide you with a list of topics for the 30(b)(6) of Liberty Counsel so that you could begin identifying (a) designee(s). Those topics are as follows:

- Supervision of attorneys
- Screening and selection of new clients
- Document—including but not limited to electronic documents, emails, and phone records—preservation and retention
- Phone logs and numbers, including assignment of phone numbers and access to calls made to those phone numbers
- Organizational position on same-sex marriage, same-sex civil unions, and same-sex relationships; parenting by gay or lesbian adults and same-sex couples; and the relative supremacy of secular law over religion, morality, or conscience
- Relationship with Liberty University

We will of course include these in a formal 30(b)(6) notice in the near future.

Second, you agreed to produce paper documents responsive to Plaintiffs' requests to Liberty Counsel and Lindevaldsen, together with a privilege log, by December 23. We also agreed to work toward that date as a goal for producing electronic documents. To that end, we agreed to engage in an iterative process using search terms to narrow the universe of responsive electronic documents. Specifically, I agreed to provide search terms for Plaintiffs' Requests 64 through 69:

- For Requests 64 and 65:
 - ("same-sex" or "same sex" or homosexual! or gay or lesbian or LGBT!) and (unnatural or abomination or abus! or damag! or destr! or molest! or pedophil! or disease or perver! or terror! or threat! or demon! or child!)
 - fag! or queer!
- For Requests 66 and 67:
 - "civil disobedience"
 - (disobe! or disregard or ignor!) /s (court or order)
 - (high! or God or heaven! or Bibl! or suprem! or moral! or conscience) /3 law
- Documents responsive to Requests 68 and 69 should be included in the results for Requests 4 (re: Janet Jenkins) and 18 (re: the Court Orders).

Note that these use Westlaw's terms and connectors; I don't know what kind of Boolean capabilities your search software has. These may need to be adjusted to account for that.

Third, we discussed Plaintiffs' subpoena to Mathew Staver. You agreed to ask Mr. Staver to conduct a search to whether he has any responsive documents that are not also in Liberty Counsel's possession and will let us know by December 4 (tomorrow).

Fourth, with regard to that subpoena, you asked for Eleventh Circuit authority for the proposition that Mr. Staver has an affirmative obligation to request his phone records from his provider to comply with Request 20 of Plaintiffs' subpoena. The Eleventh Circuit defines "control" for the purposes of discovery as "the legal right to obtain the documents requested upon demand." *Sergeeva v. Triplton Int'l Ltd.*, 834 F.3d 1194, 1201 & n.6 (11th Cir. 2016) (quoting *SeaRock v. Stripling*, 736 F.2d 650, 653-54) (11th Cir. 1984)). For example, a party to a contract must produce a copy of it even if the party is not currently in possession of a copy, because the party has the legal right to request a copy from their contractual partners. *Mayan v. Mayan*, No: 6:15-cv-2183, 2017 WL 1426631, at *5 (M.D. Fla. Apr. 21, 2017). Because Mr. Staver has the legal right to obtain his cell phone records from his provider on command, they are within his control for the purposes of responding to Plaintiffs' subpoena.

Best,

Tyler



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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Exhibit 4

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Monday, December 23, 2019 3:14 PM
To: Tyler Clemons; Diego Soto
Cc: Daniel Schmid; Roger Gannam
Subject: document production

Tyler – we have made significant progress, but despite our best effort we have not been able to complete our review of the massive Miller paper file. Given the amount of documents we have left to review, and the intervening holidays, we believe we can have the document production and privilege log ready by January 10, if not earlier. We appreciate your patience during this process.

Merry Christmas!

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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Exhibit 5

Tyler Clemons

From: Tyler Clemons
Sent: Monday, January 6, 2020 12:36 PM
To: 'Horatio Mihet'
Cc: Diego Soto; Maya Rajaratnam; Roger Gannam; 'dschmid@lc.org'
Subject: RE: Jenkins: Meet & Confer Follow-up

Hi Harry,

Thanks for your email below and the one you sent December 23. Plaintiffs are amenable to the January 10 extension due to the holidays; please note, however, that Plaintiffs will agree to no further extensions and will seek relief from the Court if we do not receive Defendants' productions and privilege logs on Friday.

As for the search terms, Plaintiffs propose the following modifications:

- For Requests 64 and 65:
 - Replace [fag! or queer!] with [queers or fag! or dyke!]
- For Requests 66 and 67:
 - Replace [high! or God or heaven! or Bibl! or suprem! or moral! or conscience) /3 law] with the following terms:
 - "higher law"
 - "God's law"
 - "heaven's law"
 - "heavenly law"
 - "Biblical law"
 - "supreme law"
 - "moral law"

Please get back in touch with me as quickly as possible if these modifications are insufficient.

Best,

Tyler



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: Horatio Mihet [mailto:hmihet@lc.org]
Sent: Monday, January 6, 2020 10:11 AM
To: Tyler Clemons; Diego Soto; Maya Rajaratnam
Subject: RE: Jenkins: Meet & Confer Follow-up

Tyler:

On your proposed search terms below, we are not able to search by proximity (e.g. /s or /3) on our system. Thus, the search we can run for your last proposed terms on Requests 66/67 is (high! or God or heaven! or Bib! or suprem! or moral! or conscience) **AND** law. However, not surprisingly, this yields over 7,000 results and thus is not workable. Please provide a much narrower search for that, and we'll take a look to see what it yields.

Also, the term queer* yields over 1,000 results, and is unworkable. The term is widely used in non-derogatory fashion, and thus appears in our system in journal articles, books, pleadings etc., most of which were not even authored by Liberty Counsel personnel. If you want to submit a much narrower search term, we can run it and see what it yields, but we will not review all of the results for queer* alone.

We are reviewing results for the other terms you proposed, and will produced what is responsive and non-privileged (and log what is privileged).

Kind Regards,

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: Tuesday, December 3, 2019 1:09 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: Jenkins: Meet & Confer Follow-up

Hi Harry,

Thanks for talking with me last Monday, November 25. This email is to memorialize our agreements and provide the information you requested. Apologies for the delay on this—I fell ill last Tuesday and am just now recovering.

First, you asked me to provide you with a list of topics for the 30(b)(6) of Liberty Counsel so that you could begin identifying (a) designee(s). Those topics are as follows:

- Supervision of attorneys
- Screening and selection of new clients
- Document—including but not limited to electronic documents, emails, and phone records—preservation and retention
- Phone logs and numbers, including assignment of phone numbers and access to calls made to those phone numbers
- Organizational position on same-sex marriage, same-sex civil unions, and same-sex relationships; parenting by gay or lesbian adults and same-sex couples; and the relative supremacy of secular law over religion, morality, or conscience
- Relationship with Liberty University

We will of course include these in a formal 30(b)(6) notice in the near future.

Second, you agreed to produce paper documents responsive to Plaintiffs' requests to Liberty Counsel and Lindevaldsen, together with a privilege log, by December 23. We also agreed to work toward that date as a goal for producing electronic documents. To that end, we agreed to engage in an iterative process using search terms to narrow the universe of responsive electronic documents. Specifically, I agreed to provide search terms for Plaintiffs' Requests 64 through 69:

- For Requests 64 and 65:
 - ("same-sex" or "same sex" or homosexual! or gay or lesbian or LGBT!) and (unnatural or abomination or abus! or damag! or destr! or molest! or pedophil! or disease or perver! or terror! or threat! or demon! or child!)
 - fag! or queer!
- For Requests 66 and 67:
 - "civil disobedience"
 - (disobe! or disregard or ignor!) /s (court or order)
 - (high! or God or heaven! or Bib! or suprem! or moral! or conscience) /3 law
- Documents responsive to Requests 68 and 69 should be included in the results for Requests 4 (re: Janet Jenkins) and 18 (re: the Court Orders).

Note that these use Westlaw's terms and connectors; I don't know what kind of Boolean capabilities your search software has. These may need to be adjusted to account for that.

Third, we discussed Plaintiffs' subpoena to Mathew Staver. You agreed to ask Mr. Staver to conduct a search to whether he has any responsive documents that are not also in Liberty Counsel's possession and will let us know by December 4 (tomorrow).

Fourth, with regard to that subpoena, you asked for Eleventh Circuit authority for the proposition that Mr. Staver has an affirmative obligation to request his phone records from his provider to comply with Request 20 of Plaintiffs' subpoena. The Eleventh Circuit defines "control" for the purposes of discovery as "the legal right to obtain the documents requested upon demand." *Sergeeva v. Triplton Int'l Ltd.*, 834 F.3d 1194, 1201 & n.6 (11th Cir. 2016) (quoting *SeaRock v. Stripling*, 736 F.2d 650, 653-54) (11th Cir. 1984)). For example, a party to a contract must produce a copy of it even if the party is not currently in possession of a copy, because the party has the legal right to request a copy from their contractual partners. *Mayan v. Mayan*, No: 6:15-cv-2183, 2017 WL 1426631, at *5 (M.D. Fla. Apr. 21, 2017). Because Mr. Staver has the legal right to obtain his cell phone records from his provider on command, they are within his control for the purposes of responding to Plaintiffs' subpoena.

Best,

Tyler



J. Tyler Clemons they/them/mx
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Exhibit 6

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Friday, January 10, 2020 10:03 PM
To: Diego Soto; Brooks G. McArthur; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman C. Smith; Toddy Ferguson; Michael J. Tierney
Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons
Subject: Liberty Counsel Supplemental Document Production
Attachments: Privilege Log - LC and Lindevaldsen.pdf

Tyler and Company:

Liberty Counsel's supplemental document production consisting of documents bates stamped LC 00226 – LC 13261 can be accessed at this link: <https://drive.google.com/open?id=1st0YOdAxTzKGERbscUD-K4cvjniJD1i>.

Attached is LC's privilege log.

As discussed, additional documents will be produced after we complete our review of our electronic records, which is ongoing.

Kind Regards,

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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Exhibit 7

6.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen, Judy Barone	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
7	Correspondence	10/20/2004	Judy Barone	Rena Lindevaldsen	Facsimile letter between counsel discussing strategy, research, and impression for legal briefing on Uniform Parentage Act in Miller/Jenkins Vermont litigation	Work Product
8.	Research/Notes/ Strategy	Undated	Rena Lindevaldsen, David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
9.	Research/Notes/ Strategy	Undated	Rena Lindevaldsen, David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for upcoming briefing in Miller/Jenkins custody litigation in Vermont	Work Product
10.	Notes/Research/ Strategy/Impressions	Undated	David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
11.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
12.	Correspondence	1/25/2005	Kevin Blier	Rena Lindevaldsen	Electronic mail communication with letter between counsel discussing strategy, research, and impression for legal briefing in Miller/Jenkins Vermont litigation	Work Product
13.	Notes/Research/ Strategy/Impressions	Undated	David Corry		Attorney notes, thought, impressions and argument outline for oral argument in Miller/Jenkins litigation in Vermont	Work Product
14.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
15.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product

16.	Notes/Research/ Strategy/Impressions	Undated	David Corry	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
17.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
18.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
19.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
20.	Notes/Research/ Strategy/Impressions	Undated	David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
21.	Notes/Research/ Strategy/Impressions	Undated	David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
22.	Notes/Research/ Strategy/Impressions	Undated	Law Clerk	David Corry, Erik Stanley, Rena Lindevaldsen	Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning full faith and credit arguments in Miller/Jenkins custody litigation in Vermont	Work Product
23.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
24.	Notes/Research/ Strategy/Impressions	Undated	Law Clerk	Rena Lindevaldsen, Erik Stanley	Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments in Miller/Jenkins custody litigation in Vermont	Work Product

25.	Notes/Research/ Strategy/Impressions	Undated	Mathew Krause	David Corry	Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments concerning witness testimony in Miller/Jenkins custody litigation in Vermont	Work Product
26.	Correspondence	4/5/2007	Mathew Krause	David Corry	Legal research e-mail memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments in Miller/Jenkins custody litigation in Vermont	Work Product
27.	Notes/Research/ Strategy/Impressions	Undated	Law Clerk	David Corry	Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments in Miller/Jenkins custody litigation in Vermont	Work Product
28.	Notes/Research/ Strategy/Impressions	Undated	David Corry	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
29.	Notes/Research/ Strategy/Impressions	Undated	Law Clerk	David Corry	Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments concerning witness testimony in Miller/Jenkins custody litigation in Vermont	Work Product
30.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Vermont caselaw, statutes, and misc. research concerning attorney thoughts, impressions, highlights, notes, and comments for Miller/Jenkins custody litigation in Vermont	Work Product
31.	Correspondence	4/22/2009	Bonnie Gentry	Norm Smith, Stephen Crampton	Attorney research, notes, comments, discussion, and strategy re pleadings and briefings in Vermont trial court	Work Product
32.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, and strategy re pleadings and briefings in Vermont trial court	Work Product
33.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen, Norman Smith	n/a	Attorney research, notes, comments, discussion, and strategy re pleadings and briefings in Vermont trial court	Work Product
34.	Notes/Research/ Strategy/Impressions	April 2007	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, and strategy re pleadings and briefings in Vermont trial court	Work Product
35.	Correspondence	10/25/2004	Judy Barone	Rena Lindevaldsen	Facsimile letter between counsel discussing strategy, research, and impression for legal briefing in Miller/Jenkins Vermont litigation	Work Product

36.	Correspondence	1/25/2008	Stephen Crampton	Belinda Wetherington	Email correspondence from counsel to paralegal regarding motion to dismiss appeal with notes, comments, thoughts, and discussion of strategy	Work Product
37.	Correspondence	12/21/2007	Belinda Wetherington	Stephen Crampton, Rena Lindevaldsen, Mathew Staver	Email correspondence from legal staff to counsel memorializing instructions concerning motion to dismiss appeal with notes, comments, thoughts, and discussion of strategy	Work Product
38.	Correspondence	12/21/2007	David Corry	Belinda Wetherington	Email correspondence from counsel to paralegal providing instructions for finalizing motion to dismiss appeal and motions for pro hac vice issues with notes, comments, thoughts, and discussion of strategy	Work Product
39.	Notes/Research/Strategy/Impressions	5/8/2009	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, and strategy re hearing in Vermont trial court	Work Product
40.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, and strategy re briefs at the Court of Appeals of Virginia	Work Product
41.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, strategy, and oral argument outlines for argument at the Court of Appeals of Virginia	Work Product
42.	Correspondence	2/16/2010	Rena Lindevaldsen	Mathew Staver, Stephen Crampton, Mary McAlister, Bonnie Gentry	Email correspondence among counsel discussing subpoena issues and strategy and documentation for upcoming hearing	Work Product
43.	Correspondence	2/26/2010	Stephen Crampton	Mathew Staver, William McRorie, Rena Lindevaldsen	Email correspondence concerning discovery issues and strategy and discussion concerning response to same	Work Product
44.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, strategy, and argument impressions for motion to stay enforcement pending appeal in Virginia Trial Court parentage action	Work Product
45.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, strategy, and argument impressions for briefing on registration appeal in Virginia Trial Court	Work Product
46.	Notes/Research/Strategy/Impressions	2/2007	Rena Lindevaldsen, Mathew Staver, Mary McAlister	n/a	Attorney research, notes, comments, discussion, strategy, and argument impressions for Petition for Writ of Certiorari to U.S. Supreme Court	Work Product
47.	Correspondence	12/15/2009	Norman Smith	Bonnie Gentry	Attorney email correspondence concerning logistics and filing of Docketing Statement for appeal to Vermont Supreme Court	Work Product

48.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen, Mary McAlister	n/a	Attorney research, notes, comments, discussion, strategy, and argument impressions for Petition for Appeal to Virginia Supreme Court re registration action	Work Product
49.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/s	Attorney research, notes, comments, discussion, strategy, and argument impressions for oral argument at Virginia Supreme Court, attorney oral argument outline for same	Work Product
50.	Correspondence	11/5/2007	Rena Lindevaldsen	Stephen Crampton, Belinda Wetherington	Attorney research, notes, comments, discussion, strategy, and argument impressions for Petition for Writ of Certiorari to U.S. Supreme Court	Work Product
51.	Notes/Research/ Strategy/Impressions	Undated	Mathew Staver	n//a	Attorney thoughts, impressions, notes, comments, and edits on Petition for Writ of Certiorari to US Supreme Court	Work Product
52.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, discussion, strategy, and argument impressions for oral argument at Virginia Court of Appeals, attorney oral argument outline for same	Work Product
53.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, cases, thoughts, impressions, and strategy for pleadings in Virginia declaratory judgment action	Work Product
54.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, thoughts, impression, and oral argument preparation and outline for Vermont Supreme Court argument	Work Product
55.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, comments, thoughts, impression, and oral argument preparation and outline for Vermont trial court in custody litigation	Work Product
56.	Notes/Research/ Strategy/Impressions	2007	Rena Lindevaldsen	n/a	Attorney research, notes, comments, thoughts, impressions, pleadings binder, case law binder, and oral argument preparation and outline for Vermont Supreme Court argument	Work Product
57.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, statutes, caselaw, notes, comments, cases, thoughts, impressions, and strategy for pleadings in Vermont litigation	Work Product
58.	Notes/Research/ Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, highlighted pleadings, research, statutes, and working file for all Vermont and Virginia litigation and appeals	Work Product
59.	Notes/Research/ Strategy/Impressions	Undated	Mathew Staver	n/a	Attorney notes, highlighted pleadings, research, statutes, and working file for all Virginia litigation and appeals	Work Product

60.	Correspondence	10/11/2007	Rena Lindevaldsen	Stephen Crampton, Erik Stanley, Mathew Staver	Attorney impressions, thoughts, strategy, and discussion of fee dispute between Lisa Miller and former attorney in the Virginia in custody litigation in Virginia	Work Product
61.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney research, notes, thoughts, comments, impressions on matters concerning fee dispute between Lisa Miller and former attorney in custody litigation in Virginia	Work Product
62.	Notes/Research/Strategy/Impression	Undated	David Corry	n/a	Attorney research, notes, comments, thoughts, impression, and trial preparation and outline for Vermont trial court in custody litigation	Work Product
63.	Notes/Research/Strategy/Impression	4/2-5/2007	David Corry	n/a	Attorney handwritten trial notes, thoughts, comments, and strategy from trial in Vermont custody litigation	Work Product
64.	Notes/Research/Strategy/Impression	Undated	David Corry	n/a	Attorney highlights, notes, thoughts, impressions, comments, and strategy on Vermont Supreme Court briefs	Work Product
65.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning transcript of hearing in Miller/Jenkins custody litigation in Vermont	Work Product
66.	Notes/Research/Strategy/Impressions	Undated	Rena Lindevaldsen	n/a	Attorney notes, thoughts, comments, highlights, and impressions concerning Printed Case for Vermont Supreme Court in Miller/Jenkins custody litigation	Work Product
67.	Unsigned Attorney Draft Pleadings	Undated	Rena Lindevaldsen	n/a	Attorney draft pleadings concerning proposed orders in Miller/Jenkins custody litigation in Vermont	Work Product
68.	Unsigned Attorney Correspondence	7/31/2007	David Corry	n/a	Draft attorney correspondence memorializing telephone conferral regarding witnesses at August 3, 2007 hearing in Miller/Jenkins custody litigation	Work Product
69.	Unsigned Attorney Draft Pleadings	Undated	Rena Lindevaldsen	n/a	Attorney draft pleadings in Miller/Jenkins custody litigation in Vermont	Work Product
70.	Unsigned Attorney Draft Pleadings	Undated	Rena Lindevaldsen, Norman Smith	n/a	Attorney draft pleadings in Miller/Jenkins custody litigation in Vermont	Work Product
71.	Unsigned Attorney Draft Pleadings	Undated	Rena Lindevaldsen, Norman Smith	n/a	Attorney draft pleadings in Miller/Jenkins custody litigation in Vermont	Work Product

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/s/ Horatio G. Mihet
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Email: hmihet@lc.org

*Attorneys for Defendants Liberty Counsel, Inc.
And Rena M. Lindevaldsen*

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2020, a true and correct copy of the foregoing Privilege Log was served via electronic mail on all counsel of record for Plaintiff and Defendants, including:

Diego A. Soto, Esq. (diego.soto@splcenter.org)
J. Tyler Clemons, Esq. (Tyler.Clemons@splcenter.org)
Frank H. Langrock, Esq. (flangrock@langrock.com)
Sarah Star, Esq. (srs@sarahstarlaw.com)

Counsel for Plaintiff Janet Jenkins

Brooks G. McArthur, Esq. (bmcArthur@jarvismcarthur.com)

Counsel for Defendant Kenneth L. Miller

Michael J. Tierney, Esq. (mtierney@wadleighlaw.com)

Counsel for Defendant Timothy D. Miller

Norman C. Smith, Esq. (nc.smith@myfairpoint.net)
Adam Hochschild (adam@hochschildlaw.com)

Counsel for Defendant Linda Wall

/s/ Horatio G. Mihet
Horatio G. Mihet

*Attorney for Defendants Liberty Counsel
and Rena Lindevaldsen*

Exhibit 8

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Thursday, January 16, 2020 11:14 AM
To: Tyler Clemons; Diego Soto; Brooks G. McArthur; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman C. Smith; Toddy Ferguson; Michael J. Tierney
Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs
Subject: RE: Liberty Counsel Supplemental Document Production

Tyler:

To the extent the documents from LC's paper file which we produced last week can be said to also be in Ms. Lindevaldsen's custody, possession or control by virtue of her professional relationship with LC, then the production can also be regarded as hers.

Our ongoing review of the electronic documents encompasses both LC and Lindevaldsen records, and so a supplemental production should be forthcoming from both.

Speaking of which, in light of the voluminous number of hits and documents we are reviewing, and our other commitments, we believe that we can produce responsive, non-privileged documents and a privilege log by February 14.

Kind Regards,

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: Tyler Clemons <Tyler.Clemons@splcenter.org>
Sent: Monday, January 13, 2020 11:27 AM
To: Horatio Mihet <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael J. Tierney <mtierney@wadleighlaw.com>
Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy

<Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>

Subject: RE: Liberty Counsel Supplemental Document Production

Hi Harry,

I have successfully downloaded Liberty Counsel's production from Friday, January 10. Please let me know as soon as possible when Plaintiffs can expect to receive the remainder of Liberty Counsel's production (i.e., the electronic discovery). Unless you inform me otherwise, Plaintiffs will expect to receive these documents by Friday, January 31, at the latest.

Also: is the January 10 production intended to represent Ms. Lindevaldsen's production pursuant to the Court's October 29 order as well as Liberty Counsel's production? If not, when can Plaintiffs expect to receive Ms. Lindevaldsen's documents? Regardless, please plan to make complete productions for both Ms. Lindevaldsen and Liberty Counsel by January 31.

Best,

Tyler



J. Tyler Clemons they/them/mx
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: Friday, January 10, 2020 10:03 PM

To: Diego Soto; Brooks G. McArthur; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman C. Smith; Toddy Ferguson; Michael J. Tierney

Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons

Subject: Liberty Counsel Supplemental Document Production

Tyler and Company:

Liberty Counsel's supplemental document production consisting of documents bates stamped LC 00226 – LC 13261 can be accessed at this link: <https://drive.google.com/open?id=1st0YOdAxTzKGERbscUD-K4cvjnIJD1i>.

Attached is LC's privilege log.

As discussed, additional documents will be produced after we complete our review of our electronic records, which is ongoing.

Kind Regards,

Horatio G. Mihet, Esq.*

Vice President of Legal Affairs and

Chief Litigation Counsel

Liberty Counsel

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Exhibit 9

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Thursday, January 16, 2020 11:12 AM
To: Tyler Clemons
Cc: Diego Soto; Maya Rajaratnam; Roger Gannam; Daniel Schmid
Subject: RE: Jenkins: Meet & Confer Follow-up

Tyler, we have run the search you last suggested (below), and retrieved a more manageable set of results. We will review for responsiveness and privilege and produce/log as appropriate.

Kind Regards,

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: Wednesday, January 8, 2020 1:09 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>
Subject: RE: Jenkins: Meet & Confer Follow-up

Hi Harry,

For Requests 66 & 67, try the following:

- "higher law" AND ("secular law" or "man's law" or "law of man")
- "God's law" AND ("secular law" or "man's law" or "law of man")
- "heaven's law" AND ("secular law" or "man's law" or "law of man")
- "heavenly law" AND ("secular law" or "man's law" or "law of man")
- "Biblical law" AND ("secular law" or "man's law" or "law of man")
- "supreme law" AND ("secular law" or "man's law" or "law of man")
- "moral law" AND ("secular law" or "man's law" or "law of man")

This should weed out the results that aren't relevant to the thrust of the Requests.

Best,

Tyler



J. Tyler Clemons *they/them/mx*
Staff Attorney | LGBTQ Rights & Special Litigation
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T 504.526.1530 C 504.258.4290 F 504.486.8947
tyler.clemons@splcenter.org | www.splcenter.org
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From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Tuesday, January 7, 2020 11:22 AM
To: Tyler Clemons
Cc: Diego Soto; Maya Rajaratnam; Roger Gannam; Daniel Schmid
Subject: RE: Jenkins: Meet & Confer Follow-up

Tyler:

We are indeed still working towards completing our review of the voluminous papers file, and producing documents and a privilege log from it by this Friday. As previously discussed and agreed, the review of our electronic file and production therefrom will take longer, because we have been focusing on the paper file thus far, and because we are still working on search terms for the electronic file.

For requests 64 and 65, we will search for the plural of “queers,” and for the previously provided term “fag!”.

For requests 66 and 67, the revised terms below still produce thousands of hits, which is unworkable for us to review. The problem is that your proposed search terms are too general and do not target discussions where one law is favored over another. For example, “supreme law” results in hits of the Supremacy Clause of the U.S. Constitution, which divorced from any other context bears no relevance to this case. Please provide a more narrow search term proposal that actually targets the hierarchy of laws you are describing in your document requests.

HGM

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

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

Sent: Monday, January 6, 2020 1:36 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>

Subject: RE: Jenkins: Meet & Confer Follow-up

Hi Harry,

Thanks for your email below and the one you sent December 23. Plaintiffs are amenable to the January 10 extension due to the holidays; please note, however, that Plaintiffs will agree to no further extensions and will seek relief from the Court if we do not receive Defendants' productions and privilege logs on Friday.

As for the search terms, Plaintiffs propose the following modifications:

- For Requests 64 and 65:
 - Replace [fag! or queer!] with [queers or fag! or dyke!]
- For Requests 66 and 67:
 - Replace [high! or God or heaven! or Bib! or suprem! or moral! or conscience) /3 law] with the following terms:
 - "higher law"
 - "God's law"
 - "heaven's law"
 - "heavenly law"
 - "Biblical law"
 - "supreme law"
 - "moral law"

Please get back in touch with me as quickly as possible if these modifications are insufficient.

Best,

Tyler



J. Tyler Clemons they/them/mx

Staff Attorney | LGBTQ Rights & Special Litigation

Southern Poverty Law Center

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tyler.clemons@splcenter.org | www.splcenter.org

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From: Horatio Mihet [<mailto:hmihet@lc.org>]

Sent: Monday, January 6, 2020 10:11 AM

To: Tyler Clemons; Diego Soto; Maya Rajaratnam

Subject: RE: Jenkins: Meet & Confer Follow-up

Tyler:

On your proposed search terms below, we are not able to search by proximity (e.g. /s or /3) on our system. Thus, the search we can run for your last proposed terms on Requests 66/67 is (high! or God or heaven! or Bib! or suprem! or moral! or conscience) **AND** law. However, not surprisingly, this yields over 7,000 results and thus is not workable. Please provide a much narrower search for that, and we'll take a look to see what it yields.

Also, the term queer* yields over 1,000 results, and is unworkable. The term is widely used in non-derogatory fashion, and thus appears in our system in journal articles, books, pleadings etc., most of which were not even authored by Liberty Counsel personnel. If you want to submit a much narrower search term, we can run it and see what it yields, but we will not review all of the results for queer* alone.

We are reviewing results for the other terms you proposed, and will produced what is responsive and non-privileged (and log what is privileged).

Kind Regards,

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
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Liberty Counsel

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

Sent: Tuesday, December 3, 2019 1:09 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Roger Gannam <rgannam@lc.org>; Daniel Schmid <daniel@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: Jenkins: Meet & Confer Follow-up

Hi Harry,

Thanks for talking with me last Monday, November 25. This email is to memorialize our agreements and provide the information you requested. Apologies for the delay on this—I fell ill last Tuesday and am just now recovering.

First, you asked me to provide you with a list of topics for the 30(b)(6) of Liberty Counsel so that you could begin identifying (a) designee(s). Those topics are as follows:

- Supervision of attorneys
- Screening and selection of new clients

- Document—including but not limited to electronic documents, emails, and phone records—preservation and retention
- Phone logs and numbers, including assignment of phone numbers and access to calls made to those phone numbers
- Organizational position on same-sex marriage, same-sex civil unions, and same-sex relationships; parenting by gay or lesbian adults and same-sex couples; and the relative supremacy of secular law over religion, morality, or conscience
- Relationship with Liberty University

We will of course include these in a formal 30(b)(6) notice in the near future.

Second, you agreed to produce paper documents responsive to Plaintiffs' requests to Liberty Counsel and Lindevaldsen, together with a privilege log, by December 23. We also agreed to work toward that date as a goal for producing electronic documents. To that end, we agreed to engage in an iterative process using search terms to narrow the universe of responsive electronic documents. Specifically, I agreed to provide search terms for Plaintiffs' Requests 64 through 69:

- For Requests 64 and 65:
 - ("same-sex" or "same sex" or homosexual! or gay or lesbian or LGBT!) and (unnatural or abomination or abus! or damag! or destr! or molest! or pedophil! or disease or perver! or terror! or threat! or demon! or child!)
 - fag! or queer!
- For Requests 66 and 67:
 - "civil disobedience"
 - (disobe! or disregard or ignor!) /s (court or order)
 - (high! or God or heaven! or Bibl! or suprem! or moral! or conscience) /3 law
- Documents responsive to Requests 68 and 69 should be included in the results for Requests 4 (re: Janet Jenkins) and 18 (re: the Court Orders).

Note that these use Westlaw's terms and connectors; I don't know what kind of Boolean capabilities your search software has. These may need to be adjusted to account for that.

Third, we discussed Plaintiffs' subpoena to Mathew Staver. You agreed to ask Mr. Staver to conduct a search to whether he has any responsive documents that are not also in Liberty Counsel's possession and will let us know by December 4 (tomorrow).

Fourth, with regard to that subpoena, you asked for Eleventh Circuit authority for the proposition that Mr. Staver has an affirmative obligation to request his phone records from his provider to comply with Request 20 of Plaintiffs' subpoena. The Eleventh Circuit defines "control" for the purposes of discovery as "the legal right to obtain the documents requested upon demand." *Sergeeva v. Triplton Int'l Ltd.*, 834 F.3d 1194, 1201 & n.6 (11th Cir. 2016) (quoting *SeaRock v. Stripling*, 736 F.2d 650, 653-54) (11th Cir. 1984)). For example, a party to a contract must produce a copy of it even if the party is not currently in possession of a copy, because the party has the legal right to request a copy from their contractual partners. *Mayan v. Mayan*, No: 6:15-cv-2183, 2017 WL 1426631, at *5 (M.D. Fla. Apr. 21, 2017). Because Mr. Staver has the legal right to obtain his cell phone records from his provider on command, they are within his control for the purposes of responding to Plaintiffs' subpoena.

Best,

Tyler



J. Tyler Clemons they/them/mx
Staff Attorney | LGBTQ Rights & Special Litigation
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Exhibit 10

Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Friday, February 14, 2020 1:32 PM
To: Tyler Clemons; Diego Soto
Subject: RE: Liberty Counsel Supplemental Document Production

Tyler and Diego: we are continuing to make our way through the voluminous electronic documents. We anticipate our supplemental production to comprise several thousand pages, and perhaps be comparable in size to our last production. That said, we have made significant progress but are not finished with our review yet. At our current pace we think it will take us another two weeks or so. I hope to have this completed by February 28, or within a few days of that, depending on how the rest of it goes.

I'll keep you posted on our progress.

Kind Regards,

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

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Sent: Thursday, January 16, 2020 12:14 PM
To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael J. Tierney <mtierney@wadleighlaw.com>
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Subject: RE: Liberty Counsel Supplemental Document Production

Tyler:

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Our ongoing review of the electronic documents encompasses both LC and Lindevaldsen records, and so a supplemental production should be forthcoming from both.

Speaking of which, in light of the voluminous number of hits and documents we are reviewing, and our other commitments, we believe that we can produce responsive, non-privileged documents and a privilege log by February 14.

Kind Regards,

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To: Horatio Mihet <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael J. Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>

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Also: is the January 10 production intended to represent Ms. Lindevaldsen's production pursuant to the Court's October 29 order as well as Liberty Counsel's production? If not, when can Plaintiffs expect to receive Ms. Lindevaldsen's documents? Regardless, please plan to make complete productions for both Ms. Lindevaldsen and Liberty Counsel by January 31.

Best,

Tyler



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Sent: Friday, January 10, 2020 10:03 PM

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Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons

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Kind Regards,

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Exhibit 11

Tyler Clemons

From: Tyler Clemons
Sent: Friday, February 14, 2020 4:15 PM
To: 'Horatio Mihet'
Cc: Diego Soto
Subject: RE: Liberty Counsel Supplemental Document Production

Harry:

It has been more than three full months since the Court's order granting Plaintiffs' motion to compel, and your previous production consisted solely of documents in the public record. Plaintiffs will expect a full production, including privilege logs, from both Liberty Counsel and Ms. Lindevaldsen on or before Friday, February 21, 2020. Otherwise we will seek relief from the Court.

Best,

Tyler



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Sent: Friday, February 14, 2020 1:32 PM
To: Tyler Clemons; Diego Soto
Subject: RE: Liberty Counsel Supplemental Document Production

Tyler and Diego: we are continuing to make our way through the voluminous electronic documents. We anticipate our supplemental production to comprise several thousand pages, and perhaps be comparable in size to our last production. That said, we have made significant progress but are not finished with our review yet. At our current pace we think it will take us another two weeks or so. I hope to have this completed by February 28, or within a few days of that, depending on how the rest of it goes.

I'll keep you posted on our progress.

Kind Regards,

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

Sent: Thursday, January 16, 2020 12:14 PM

To: Tyler Clemons <Tyler.Clemons@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Brooks G. McArthur <bmcarthur@jarvismcarthur.com>; Anthony Duprey <anthony@ndp-law.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman C. Smith <norman@normansmithlaw.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael J. Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>

Subject: RE: Liberty Counsel Supplemental Document Production

Tyler:

To the extent the documents from LC's paper file which we produced last week can be said to also be in Ms. Lindevaldsen's custody, possession or control by virtue of her professional relationship with LC, then the production can also be regarded as hers.

Our ongoing review of the electronic documents encompasses both LC and Lindevaldsen records, and so a supplemental production should be forthcoming from both.

Speaking of which, in light of the voluminous number of hits and documents we are reviewing, and our other commitments, we believe that we can produce responsive, non-privileged documents and a privilege log by February 14.

Kind Regards,

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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Subject: RE: Liberty Counsel Supplemental Document Production

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I have successfully downloaded Liberty Counsel's production from Friday, January 10. Please let me know as soon as possible when Plaintiffs can expect to receive the remainder of Liberty Counsel's production (i.e., the electronic discovery). Unless you inform me otherwise, Plaintiffs will expect to receive these documents by Friday, January 31, at the latest.

Also: is the January 10 production intended to represent Ms. Lindevaldsen's production pursuant to the Court's October 29 order as well as Liberty Counsel's production? If not, when can Plaintiffs expect to receive Ms. Lindevaldsen's documents? Regardless, please plan to make complete productions for both Ms. Lindevaldsen and Liberty Counsel by January 31.

Best,

Tyler



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
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From: Horatio Mihet [<mailto:hmihet@lc.org>]

Sent: Friday, January 10, 2020 10:03 PM

To: Diego Soto; Brooks G. McArthur; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman C. Smith; Toddy Ferguson; Michael J. Tierney

Cc: Beth Littrell; Claudia Huerta; Emily Joselson; flangrock; Jessica Stone; jswift; Julie Jackman; Maya Rajaratnam; Sarah Star; Scott McCoy; srs; Tyler Clemons

Subject: Liberty Counsel Supplemental Document Production

Tyler and Company:

Liberty Counsel's supplemental document production consisting of documents bates stamped LC 00226 – LC 13261 can be accessed at this link: <https://drive.google.com/open?id=1st0YODAxTzKGERbscUD-K4cvjniJD1i>.

Attached is LC's privilege log.

As discussed, additional documents will be produced after we complete our review of our electronic records, which is ongoing.

Kind Regards,

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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Tyler Clemons

From: Horatio Mihet <hmihet@lc.org>
Sent: Friday, February 21, 2020 2:39 PM
To: Tyler Clemons
Cc: Diego Soto; Daniel Schmid; Roger Gannam
Subject: Re: Liberty Counsel Supplemental Document Production

Tyler,

We will need the additional week. I would ask that you not trouble the Court over a one-week difference, especially since there is no discovery cutoff deadline at the moment, but if you choose to do so, please prominently advise the Court: 1) that we have committed to providing the supplemental production and privilege log by Feb 28, before our response to your motion is due; and 2) that we have spent over 300 hours of attorney time since the Court's order on document production, including to provide you with documents which you insisted that we provide.

Thanks,

HGM

Sent via mobile device. Please excuse typos or brevity.

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

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On Feb 14, 2020, at 2:14 PM, Tyler Clemons <Tyler.Clemons@splcenter.org> wrote:

Harry:

It has been more than three full months since the Court's order granting Plaintiffs' motion to compel, and your previous production consisted solely of documents in the public record. Plaintiffs will expect a

full production, including privilege logs, from both Liberty Counsel and Ms. Lindevaldsen on or before Friday, February 21, 2020. Otherwise we will seek relief from the Court.

Best,

Tyler

 **J. Tyler Clemons** they/them/mx
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Southern Poverty Law Center
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From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Friday, February 14, 2020 1:32 PM
To: Tyler Clemons; Diego Soto
Subject: RE: Liberty Counsel Supplemental Document Production

Tyler and Diego: we are continuing to make our way through the voluminous electronic documents. We anticipate our supplemental production to comprise several thousand pages, and perhaps be comparable in size to our last production. That said, we have made significant progress but are not finished with our review yet. At our current pace we think it will take us another two weeks or so. I hope to have this completed by February 28, or within a few days of that, depending on how the rest of it goes.

I'll keep you posted on our progress.

Kind Regards,

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

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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' SECOND MOTION TO COMPEL DEFENDANTS
LIBERTY COUNSEL, INC., AND RENA LINDEVALDSEN TO COMPLY WITH
PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION**

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 31, 2019, Plaintiffs sent a letter to Liberty Counsel, Inc., and Rena Lindevaldsen ("Defendants") via U.S. mail, proposing a deadline of November 30, 2019, for Defendants to comply with the Court's order, ECF 395, for Defendants to respond to Plaintiffs' First Requests for Production of Documents ("the Requests").
3. Plaintiffs received no response to this letter.
4. On November 6, 2019, Plaintiffs sent an email to Defendants following up on the October 31 letter and suggesting various times to meet and confer about other discovery matters. A true and correct copy of this email is attached to this motion as Exhibit 1.
5. On November 10, 2019, after another follow-up email from Plaintiffs, Defendants responded via email and proposed a meet and confer for November 25, 2019. Defendants

indicated in that email that they “should be able to fully digest the Court’s order on the motion to compel and have a good indication of how long it will take to review the extensive file and catalogue the various privileges.” A true and correct copy of this email is attached to this motion as Exhibit 2.

6. On November 25, 2019, Plaintiffs conferred with Liberty Counsel, on behalf of itself and Lindevaldsen, via telephone. During the call, Defendants agreed to produce paper documents and corresponding privilege logs by December 23, 2019. Defendants also agreed to work toward producing electronic documents and corresponding privilege logs on that date, contingent upon Plaintiffs’ suggestion of workable search terms for Requests 64 through 67.

7. On December 3, 2019, Plaintiffs memorialized the conclusions of the November 25, 2019 conference in an email to Defendants. That email also proposed search terms for Requests 64 through 67. A true and correct copy of this email is attached to this motion as Exhibit 3.

8. On December 23, 2019, Defendants sent an email to Plaintiffs stating that Defendants would not produce documents until “January 10, if not earlier.” A true and correct copy of this email is attached to this motion as Exhibit 4.

9. On January 6, 2020, Plaintiffs sent an email to Defendants stating that Plaintiffs would accept the January 10, 2020 extension but would agree to no further extensions. This email also proposed refined search terms for Requests 64 through 67, which Defendants requested from Plaintiffs via email on January 6, 2020. A true and correct copy of this email is attached to this motion as Exhibit 5.

10. On January 10, 2020, Liberty Counsel produced 13,261 pages of documents from its paper files. This production consists entirely of photocopies of various filings from the

custody dispute between Janet Jenkins and Lisa Miller in the state courts of Vermont and Virginia. Although Plaintiffs have repeatedly informed Defendants that it is not necessary to produce documents in the public record, the entirety of Defendants' production consists of documents in the public record. A true and correct copy of the email by which Liberty Counsel served this production is attached to this motion as Exhibit 6.

11. Liberty Counsel's January 10, 2020 production also included a privilege log. A true and correct copy of this privilege log is attached to this motion as Exhibit 7.

12. On January 16, 2020, Defendants sent Plaintiffs an email clarifying that the January 10, 2020 production was also intended to represent Lindevaldsen's full paper production. In this email, Defendants also informed Plaintiffs that they would produce electronic documents by February 14, 2020. A true and correct copy of this email is attached to this motion as Exhibit 8.

13. Also on January 16, 2020, Defendants sent Plaintiffs an email agreeing to the refined search terms for Requests 64 through 67. A true and correct copy of this email is attached to this motion as Exhibit 9.

14. On February 14, 2020, Defendants sent Plaintiffs an email stating that Defendants would not produce electronic documents until "February 28, or within a few days of that." A true and correct copy of this email is attached to this motion as Exhibit 10.

15. The same day, Plaintiffs responded to Defendants' email stating that Plaintiffs expected full productions from both Liberty Counsel and Lindevaldsen on or before February 21, 2020. A true and correct copy of this email is attached to this motion as Exhibit 11.

16. On February 21, 2020, Defendants sent Plaintiffs an email stating that Defendants would not produce documents on February 21, 2020. A true and correct copy of this email is attached to this motion as Exhibit 12.

17. 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 24th day of February, 2020.

A handwritten signature in black ink, reading "Tyler Clemons", written over a horizontal line.

J. Tyler Clemons