

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

_____	)	
JANET JENKINS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	Docket No. 2:12-cv-00184
v.	)	
	)	
KENNETH L. MILLER, ET AL.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN’S  
MOTION FOR SANCTIONS AGAINST PLAINTIFF  
JANET JENKINS AND HER COUNSEL  
AND INCORPORATED MEMORANDUM IN SUPPORT**

Pursuant to Fed. R. Civ. P. 11, Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”), by and through the undersigned counsel, herby move the Court for an Order of sanctions against Plaintiff Janet Jenkins (“Jenkins”) and each of her counsel and their respective firms, jointly and severally, on the ground that their continued advocacy and maintenance of Jenkins’ purported next friend claims on behalf of Isabella Jenkins, who is now an adult, are: (1) being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) premised on factual contentions that have no evidentiary support, and are not likely to have evidentiary support after a reasonable opportunity for further discovery; and (4) premised on denials of factual contentions that are not warranted by the evidence nor

reasonably based on belief or lack of information; all of which violate the requirements of Fed. R. Civ. P. 11(b)(1)-(4). In further support of this motion, Defendants show the Court as follows:

1. As conclusively demonstrated in Defendants' Motion for Partial Summary Judgment As to All Claims Plaintiff Janet Jenkins Purports to Bring As Next Friend of Isabella Miller, dkt. 495, and in the Statement of Undisputed Materials Facts filed concurrently therewith, dkt. 494, on April 16, 2020 Isabella Miller reached the age of majority under Vermont law, and any purported authority or standing that Plaintiff Janet Jenkins might have had to bring or maintain claims on Isabella's behalf automatically expired. Jenkins has no standing to continue to assert those claims, and this Court lacks subject matter jurisdiction over those claims. (*Id.*)

2. Jenkins and her counsel know that Isabella Miller has reached the age of 18, because they themselves produced in this litigation all of the documents that establish this undeniable fact. (*See Exhibits A-H to Defendants' Statement of Undisputed Material Facts, dkt. 494-1 – 494-8.*)

3. Jenkins and her counsel know that the age of majority in Vermont is 18, and thus Isabella Miller is now an adult.

4. Jenkins and her counsel know that Jenkins' purported standing or authority to maintain next-friend claims automatically expired upon Isabella reaching the age of maturity, in accordance with settled law.

5. Jenkins and her counsel know that Jenkins' lack of standing to maintain next-friend claims deprives the Court of subject matter jurisdiction over those claims.

6. Jenkins and her counsel have no facts and no evidence that would justify their continued advocacy and maintenance of next friend claims on behalf of Isabella Miller, now that she is an adult.

7. Under these circumstances, the refusal of Jenkins and her counsel to voluntarily dismiss and withdraw Jenkin’s purported next friend claims on behalf of an adult, and their continued advocacy and maintenance of those claims, violate each of the requirements of Fed. R. Civ. P. 11(b)(1)-(4).

8. Pursuant to Fed. R. Civ. P. 11(c)(1) and (4), the Court should enter an appropriate sanction against Jenkins, her counsel, and their respective firms, jointly and severally, in a monetary amount that “suffices to deter repetition of the conduct or comparable conduct by others similarly situated,” and includes the reasonable fees and costs expended to (a) bring about this motion, and (b) obtain dismissal of the offending claims through summary judgment or otherwise. *Id.*

9. Pursuant to Fed. R. Civ. P. 11(c)(2), a substantially similar version<sup>1</sup> of this motion for sanctions was served upon Plaintiff and her counsel twenty-one days prior to filing (*e.g.*, on April 16, 2020), along with a demand that they voluntarily withdraw or dismiss Jenkins’ purported next-friend claims on behalf of an adult, but Plaintiff and her counsel have refused or have otherwise failed to comply.

10. Specifically, Plaintiff and her counsel responded to the withdrawal/dismissal demand by stating that they “will not at this time withdraw [Jenkins’] claim as next friend of Isabella.” (T. Clemmons Email to H. Mihet, attached hereto as **Exhibit A**). In declining to voluntarily dismiss or withdraw Plaintiff’s groundless next-friend claims, Plaintiff does not assert **any** factual or legal grounds upon which she could continue to maintain her next-friend claims on behalf of an adult. (*Id.*) Instead, Plaintiff refuses to withdraw her next-friend claims solely because

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<sup>1</sup> Defendants have updated this motion only to add paragraph 10, so as to include Plaintiff’s refusal to voluntarily withdraw or dismiss her groundless claims following Defendants’ demand.

she has purportedly not filed any offending pleading **since** Isabella reached adulthood, and because Plaintiff's response to Defendants' pending motion for summary judgment is not yet due. (*Id.*) Plaintiff therefore has not acknowledged or fulfilled her obligation to withdraw a pleading (*e.g.*, the Revised Second Amended Complaint) or claims (*e.g.*, the purported next-friend claims) which Plaintiff now knows to be groundless.

WHEREFORE, for good cause shown, Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen respectfully request that this motion be granted, that the Court enter an Order of sanctions against Plaintiff Janet Jenkins and each of her counsel and their respective firms, jointly and severally, as requested herein, and that the Court award such other and further relief to which Defendants may be entitled or which is just and proper.

Respectfully submitted,

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/s/ Horatio G. Mihet  
Horatio G. Mihet\*  
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*Attorneys for Defendants Liberty Counsel, Inc.  
And Rena M. Lindevaldsen*

\*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of May, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

I further certify that, pursuant to Fed. R. Civ. P. 11(c)(2), I served a substantially similar (*see n. 1, supra*) copy of this motion for sanctions upon Plaintiff and her counsel via electronic mail at the addresses below (pursuant to their consent to receive electronic service), along with a demand that they voluntarily withdraw or dismiss Jenkins' purported next-friend claims on behalf of Isabella Miller, but Plaintiff and her counsel have refused or have otherwise failed to comply.

Service List:

Diego A. Soto, Esq. (diego.soto@splcenter.org)  
J. Tyler Clemons, Esq. (Tyler.Clemons@splcenter.org)  
Maya G. Rajaratnam, Esq. (maya.rajaratnam@splcenter.org)  
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***Counsel for Plaintiff Janet Jenkins***

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

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***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*

**From:** [Horatio Mihet](#)  
**To:** [Tyler Clemons](#); [Diego Soto](#); [Maya Rajaratnam](#); [Scott McCoy](#); [flangrock](#); [Sarah Star](#)  
**Cc:** [Brooks G. McArthur](#); [Michael J. Tierney](#); ["nc.smith@myfairpoint.net"](#); [Adam Hochschild](#); [Daniel Schmid](#); [Roger Gannam](#); [Anthony Duprey](#)  
**Subject:** RE: Rule 11 Motion for Sanctions Against Jenkins and Counsel  
**Date:** Thursday, May 7, 2020 2:15:00 PM

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Tyler:

Thank you for your response. Because you have not identified any legal or factual grounds upon which Plaintiff could continue to maintain her purported next friend claims on behalf of Isabella, who is now an adult, we remain firm in our belief that no such grounds exist. And, we have a different understanding of the requirements of Rule 11, particularly regarding Plaintiff's obligation to withdraw a pleading (e.g., the Revised Second Amended Complaint) or claims (e.g., the purported next-friend claims) which Plaintiff now knows to be groundless.

We will update the Motion for Sanctions with this new information, attach this correspondence, and file shortly.

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:** Thursday, May 7, 2020 12:00 PM  
**To:** Horatio Mihet <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; flangrock <flangrock@langrock.com>; Sarah Star <sarahstar.esq@gmail.com>  
**Cc:** Brooks G. McArthur <bmcArthur@jarvismcarthur.com>; Michael J. Tierney <mtierney@wadleighlaw.com>; 'nc.smith@myfairpoint.net' <nc.smith@myfairpoint.net>; Adam Hochschild <adam@hochschildlaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Anthony Duprey <anthony@ndp-law.com>  
**Subject:** RE: Rule 11 Motion for Sanctions Against Jenkins and Counsel

Good morning Harry,

**EXHIBIT A**

Ms. Jenkins will not at this time withdraw her claim as next friend of Isabella. She has good-faith reasons for declining to do so.

First, Liberty Counsel and Ms. Lindevaldsen base their noticed Rule 11 motion on the same argument they make in their summary-judgment motion challenging the Court's subject-matter jurisdiction on Isabella's claim. Under Local Rule 7(a)(3)(A), Ms. Jenkins has 30 days to respond to the merits of that challenge. She is considering all good-faith options and will on May 18 respond accordingly to the summary-judgment motion.

Second, even assuming, without admitting, that Liberty Counsel and Ms. Lindevaldsen are correct in their summary-judgment motion, neither Ms. Jenkins nor her counsel has violated Rule 11 by declining to withdraw Isabella's claim at this time. Since Liberty Counsel and Ms. Lindevaldsen filed their summary-judgment motion on Isabella's 18th birthday, we have not "present[ed] to the court a pleading, written motion, or other paper[,] whether by signing, filing, submitting, or later advocating it," Fed. R. Civ. P. 11(b), that advances Isabella's claim. If anything, we have "appropriately corrected," Fed. R. Civ. P. 11(c)(2), the alleged issue by not advancing Isabella's claim in any paper presented to the court while the summary-judgment motion is pending.

We of course preserve, and do not waive, all other arguments against Liberty Counsel and Ms. Lindevaldsen's Rule 11 motion should they still decide to file it.

Best,



**Tyler Clemons** she/her/hers  
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**From:** Horatio Mihet [<mailto:hmihet@lc.org>]  
**Sent:** Thursday, April 16, 2020 4:01 PM  
**To:** Diego Soto; Tyler Clemons; Maya Rajaratnam; Scott McCoy; flangrock; Sarah Star  
**Cc:** Brooks G. McArthur; Michael J. Tierney; 'nc.smith@myfairpoint.net'; Adam Hochschild; Daniel Schmid; Roger Gannam; Anthony Duprey  
**Subject:** Rule 11 Motion for Sanctions Against Jenkins and Counsel

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Plaintiff's Counsel:

Because Isabella Miller has reached the age of majority, we believe that any further attempts by Janet Jenkins to maintain next friend claims on Isabella's behalf are frivolous. Demand is hereby made that you voluntarily withdraw or dismiss all such claims.

Pursuant to Fed. R. Civ. P. 11(c)(2), please find attached a Motion for Sanctions we will file with the Court on the morning of May 7, 2020, unless Jenkins' next friend claims are voluntarily withdrawn or dismissed before then.

HGM

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

**Liberty Counsel**

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