

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

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

**DECLARATION OF HORATIO G. MIHET
REGARDING DISCOVERY COMPLIANCE EFFORTS OF
DEFENDANTS LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN**

I, HORATIO G. MIHET, declare and state as follows:

1) I am Vice President of Legal Affairs and Chief Litigation Counsel at Liberty Counsel, and lead counsel in this case for Defendants Rena Lindevaldsen (“Lindevaldsen”) and Liberty Counsel, Inc. (“Liberty Counsel”) (collectively, “Defendants”).

2) I submit this Declaration in response to the Court’s September 14, 2020 Order denying Plaintiff’s second motion to compel, which required Defendants to “submit an affidavit ... describing efforts to comply with [Plaintiff’s] discovery requests, including their use of terms for ESI production.” (Dkt. 563 at 3).

3) I was personally involved in, and coordinated and supervised, Defendants’ search for documents responsive to Plaintiff’s document requests, Defendants’ document production to Plaintiff, and Defendants’ logging of privileged documents withheld from production. I submit this Declaration based on my personal knowledge and based upon information relayed to me in this process by the individuals I directed and supervised who assisted me in responding to Plaintiff’s document requests.

A. Defendants' Overall Efforts to Fully Comply with the Court's October 29, 2019 Order Resulted in a Production of 41,785 Pages of Documents, Three Privilege Logs Containing 280 Entries, and Required Over 492 Hours of Attorney and Staff Time Within Four-And-A-Half Months.

4) On June 27, 2018, Jenkins served an exceedingly broad set of sixty-nine document requests upon Lindevaldsen (dkt. 361-1), and a separate set of sixty-nine document requests upon Liberty Counsel. (Dkt. 361-2).

5) Counsel for Lindevaldsen and Liberty Counsel then spent over 65 hours searching for responsive documents (Mihet Decl. in Opp. to Pl. First Mot. to Compel, dkt. 375, ¶ 12), produced 571 pages of documents (dkt. 361 at 2), certified that no responsive documents were found in response to many requests (Mihet Decl., dkt. 375, ¶ 12), and objected on undue burden, lack of proportionality, and other grounds to conducting further searches or providing a privilege log, until Jenkins narrowed her requests.

6) After the parties could not resolve their disagreements, Jenkins filed her First Motion to Compel on July 23, 2019 (dkt. 361), to which Liberty Counsel and Lindevaldsen responded (dks. 374, 375), and Jenkins replied. (Dkt. 380).

7) On October 29, 2019, the Court resolved the parties' disagreements, entering an Order that substantially narrowed some of Jenkins' overbroad document requests (limiting them to "communications" instead of "all documents") and required Liberty Counsel and Lindevaldsen to search for and produce non-privileged documents responsive to only **twenty** out of the **sixty-nine** requests. (Dkt. 395).

8) Defendants took the Court's Order seriously and undertook the laborious task of searching for responsive documents within their internal files, reviewing tens of thousands of pages in paper and digital format, producing responsive non-privileged documents, and logging responsive privileged documents on privilege logs.

9) Over the next four-and-a-half months, attorneys and staff at Liberty Counsel expended 492.10 hours on this task, specifically 422.40 hours of attorney time, and 69.70 hours of staff time.

10) This significant effort yielded a total production of 41,785 pages of responsive, non-privileged documents. Among these, Defendants produced:

- a) on January 10, 2020: **Defendants' complete and entire paper file from the Miller-Jenkins custody litigation**, consisting of 13,261 pages of documents and a 71-entry privilege log;
- b) on March 9, 2020: 23,707 pages of documents from Liberty Counsel's electronic files, along with a supplemental privilege log containing 190 new entries (261 total entries, combined with the January 10, 2020 log); and
- c) also on March 9, 2020: 4,817 pages of documents from Lindevaldsen's files, along with a privilege log containing 19 entries.

11) Combined with the documents produced prior to Jenkins' First Motion to Compel, Defendants have now produced 42,356 pages of documents in this litigation.

12) The documents produced are responsive to the twenty document requests on which the Court ordered production, and/or contain search terms that the parties negotiated and agreed upon during the document review and production process.

13) Specifically, the documents produced by Defendants fully comply with and satisfy each of the twenty production requirements in the Court's October 29, 2019 Order (dkt. 395), as follows:

Request Nos.	Production Ordered by the Court in the October 29, 2019 Order	Liberty Counsel's and Lindevaldsen's Full Compliance
4-7	"[A]ll 'communications' concerning Jenkins, Isabella Miller-Jenkins and Lisa Miller, as well as all communications with Isabella Miller-Jenkins." (Dkt. 395 at 8).	Defendants have produced all responsive, non-privileged communications in their custody, possession or control, ¹ and have catalogued all responsive privileged communications in their privilege logs.
8	"[A]ll communications between Defendants and Lisa Miller." (Dkt. 395 at 8-10).	Defendants have produced all responsive, non-privileged communications in their custody, possession or control, and have catalogued all responsive privileged communications in their privilege logs.
11-12	"[A]ll communications between Defendants and zeusdesfor@aol.com, an email address used by Lisa Miller, 'concerning ...' [five topics]" and "communications on the same subject from [god1ofchild@live.com], ² another address used by Lisa Miller." (Dkt. 395 at 10-12).	Defendants have produced all responsive, non-privileged communications in their custody, possession or control, and have catalogued all responsive privileged communications in their privilege logs.
17-18	"[A]ll documents and communications concerning the child custody dispute between Plaintiff Janet Jenkins and Defendant Lisa Miller concerning Isabella Miller-Jenkins ... as well as the Court Orders involved in that dispute." (Dkt. 395 at 12).	Defendants have produced all responsive, non-privileged documents and communications in their custody, possession or control, and have catalogued all responsive privileged communications in their privilege logs.
19, 35-36, 47-48	"[A]ll communications" on November 20, 2009, and "all communications from" and "all documents and communications concerning events that happened, or were planned or expected to happen" on September 20-22 and November 8-13, 2009. (Dkt. 395 at 12-14).	Defendants have produced all responsive, non-privileged documents and communications in their custody, possession or control, and have catalogued all responsive privileged communications in their privilege logs.

¹ Defendants did not separately search their publicly available websites and social media accounts, because the material available there is equally searchable by, and available to, Jenkins.

² The Court's Order refers to an incorrect email address. Defendants have searched for communications with the correct address, as requested by Jenkins.

64-69	“[A]ll documents and communications concerning Defendants’ policies or positions about same-sex marriage, civil unions, or relationships; whether homosexual persons should have custody of or visitation with children; the relative supremacy of secular law over religion, morality, ethics, or conscience, or vice versa; compliance with the Court Orders; and whether Janet Jenkins should have custody of or visitation with Isabella Miller-Jenkins.” (Dkt. 395 at 14-18).	Defendants have produced all responsive, non-privileged documents and communications in their custody, possession or control, which contain search terms negotiated and agreed upon by Defendants and Jenkins, and Defendants have catalogued all responsive privileged communications in their privilege logs.
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14) All told, in the four-and-a-half months between the Court’s October 29, 2019 Order and the March 9, 2020 completion date, Defendants expended 492.10 hours to review tens of thousands of pages, produce 41,785 pages, and log 280 privileged entries.

B. Defendants’ Efforts to Comply with the Court’s Order on Requests 4-7, 8, 11-12 and 17-18:

15) For Requests 4-7, 8, 11-12 and 17-18, the Court ordered Defendants to produce all of Defendants’ communications with Lisa Miller, all of Defendants’ communications about Lisa Miller, Isabella Miller and Janet Jenkins, and all of Defendants’ documents and communications about the Miller-Jenkins child custody dispute and the court orders in that dispute. (Dkt. 395 at 8-12).

16) In addition to producing all of the non-privileged documents in Defendants’ paper file for the Miller-Jenkins custody litigation (*see* paragraph 10(a), *supra*), Defendants searched both their email and electronic document databases for the following:

- a) All emails sent by anyone to, or received by anyone from, zeusdesfor@aol.com, one of Lisa Miller’s email addresses;
- b) All emails sent by anyone to, or received by anyone from, god1ofchild@live.com, another of Lisa Miller’s email addresses;

- c) All emails and documents containing the term “Lisa Miller”;
- d) All emails and documents containing the term “Janet Jenkins”; and
- e) All emails and documents containing the terms “Isabella Miller” and “Isabella Miller-Jenkins.”

17) These searches yielded many thousands of pages, which Defendants reviewed for privilege, produced the non-privileged documents and logged the privileged documents on their privilege log.

C. Defendants’ Efforts to Comply with the Court’s Order on Requests 19, 35-36 and 47-48:

18) For Requests 19, 35-36 and 47-48, the Court ordered Defendants to produce Defendants’ communications from, and documents and communications concerning events that happened, or were planned or expected to happen on September 20-22, November 8-13 and November 20, 2009.

19) Defendants searched both their email and electronic document databases for the following:

- a) all emails and correspondence from anyone to anyone on September 20, September 21, September 22, November 8, November 9, November 10, November 11, November 12, November 13 and November 20, 2009;
- b) all documents authored, dated or published on September 20, September 21, September 22, November 8, November 9, November 10, November 11, November 12, November 13 and November 20, 2009; and
- c) a master calendar showing all recorded appointments of all Liberty Counsel firm members on September 20, September 21, September 22, November

8, November 9, November 10, November 11, November 12, and November 13, 2009.

20) The results from these searches were searched for privilege. The non-privileged items were produced, and the privileged items were logged on Defendants' privilege log.

D. Defendants' Efforts to Comply with the Court's Order on Requests 64-69:

21) Because Defendants' electronic and email document database is massive and contains tens of thousands of documents, a manual search for documents responsive to Plaintiff's Requests 64 through 69, seeking Defendants' policies or positions on various policy topics, would have been impossible. In meet-and-confer discussions, Plaintiff's counsel agreed to provide Defendants with electronic search terms to narrow the universe of responsive documents, and agreed that Defendants would only need to search for and produce documents containing the agreed-upon search terms.

22) After some negotiation over the nature and scope of the search terms, Plaintiff and Defendants agreed upon the following search terms for these requests:

- a) ("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!);
- b) queers or fag!;
- c) "civil disobedience";
- d) (disobe! or disregard or ignor!) and (court or order);
- e) "higher law" and ("secular law" or "man's law" or "law of man");
- f) "God's law" and ("secular law" or "man's law" or "law of man");
- g) "heaven's law" and ("secular law" or "man's law" or "law of man");
- h) "heavenly law" and ("secular law" or "man's law" or "law of man");

- i) “biblical law” and (“secular law” or “man’s law” or “law of man”);
- j) “supreme law” and (“secular law” or “man’s law” or “law of man”);
- k) “moral law” and (“secular law” or “man’s law” or “law of man”);

23) Defendants ran the agreed-upon search terms on both their email and electronic document databases. The searches produced many thousands of pages, which Defendants reviewed for privilege. All documents retrieved by the search terms were produced, with the exception of a limited number of privileged documents which were included on the privilege log.

24) Because Plaintiff was imposing artificial deadlines for the completion of the document production and threatening to file a motion to compel, Defendants did not have the time or resources to check each page of each apparent duplicate document retrieved by the search terms, to determine whether they were indeed exact duplicates. Instead, out of an abundance of caution Defendants produced all non-privileged documents containing the search terms.

25) During the entirety of our discussion and negotiation of search terms to use for these requests, Plaintiff never indicated that she expected Defendants to review the retrieved documents for anything other than privilege, nor that she expected Defendants to exercise editorial control and to withhold documents containing the search terms if Defendants deemed that the documents did not otherwise respond to Plaintiff’s requests. Instead, Defendants’ understanding was that Plaintiff would deem all documents containing the agreed upon search terms as responsive to her requests, and that she expected all such documents that are not privileged to be produced. That is what Defendants did.

E. Plaintiff's Claim of Incompleteness Lacks Merit.

26) Following this Court's September 14, 2020 Order denying Plaintiff's second motion to compel (dkt. 563), I engaged in written correspondence with Plaintiff's counsel to determine what, if any, discovery issues are still outstanding and what, if any, deficiencies Plaintiff still contends to exist in Defendant's document production.

27) Plaintiff claimed that Defendants' document production is incomplete, because Defendants did not produce or log all responsive email communications that Defendants had with Lisa Miller, other Defendants, or non-parties. Plaintiff's counsel provided me with 49 emails apparently from Lisa Miller's AOL email account and non-party Beth Ehrhorn's AOL email account, which were apparently sent and received between October 3, 2008 and February 15, 2010,³ and which appear to include Defendants as senders or recipients. Plaintiff's counsel indicated that they received these emails from Defendant Kenneth Miller, who apparently received them from the federal prosecutor in his criminal case, who apparently obtained them through a search warrant on AOL.

28) Plaintiff contends that Defendants were required to produce or log these 49 email communications, but did not. However, Plaintiff's contention is premised on the incorrect assumption that all of these emails exist within Defendants' custody, possession or control.

29) During the period of these allegedly missing emails (2008-2010), Liberty Counsel attorneys (including Lindevaldsen) had very limited available space in their email inbox. Subfolders within their inbox counted against their inbox limit. Once an inbox reached its size limit, it would be locked automatically and the attorney would not be able to send or receive

³ The last email provided by Plaintiff purportedly from Lisa Miller's AOL account is dated September 9, 2009, prior to Lisa Miller's disappearance. The subsequent emails provided by Plaintiff that go into 2010 appear to be from non-party Beth Ehrhorn's account.

additional emails until the attorney deleted emails in the inbox (including subfolders) to create additional space. Liberty Counsel attorneys routinely received full inbox alerts and lock messages, requiring them to create space in their inbox.

30) If a Liberty Counsel attorney wanted to save an email received or sent for any case, the attorney would need to manually save the individual email from the inbox to Liberty Counsel's separate server for documents. This required time for each email individually, and a significant amount of time in the aggregate for multiple emails that an attorney would receive or send on any given day for any given case. Accordingly, during this time period, Liberty Counsel attorneys did not save every email in any of the cases they litigated, including in the Miller-Jenkins custody litigation.

31) After I received the 49 allegedly missing emails from Plaintiff's counsel, I coordinated searches for those specific emails on Liberty Counsel's email and electronic document database, and I asked Ms. Lindevaldsen to search her separate email accounts for those emails as well. No emails were found that were not already produced to Plaintiff or logged. This confirms that Defendants' initial search, document production and privilege logging covered all responsive emails within Defendants' custody, possession or control, and was therefore complete.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed on October 26, 2020.

/s/ Horatio G. Mihet
Horatio G. Mihet

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 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.

/s/ Horatio G. Mihet

Horatio G. Mihet