

## Diego Soto

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**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

**EXHIBIT**

**1**

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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**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*  
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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*

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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](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto: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

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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-K4cvjnJJD1i>.

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*

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## Diego Soto

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**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  
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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

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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

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**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

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

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Cc:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Daniel Schmid <[daniel@lc.org](mailto: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

---



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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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---

**From:** Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

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

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Cc:** Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; jswift <[jswift@langrock.com](mailto:jswift@langrock.com)>; Julie Jackman <[jjackman@langrock.com](mailto:jjackman@langrock.com)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; srs <[srs@sarahstarlaw.com](mailto:srs@sarahstarlaw.com)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto: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

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## Diego Soto

---

**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**

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## Diego Soto

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**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*

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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

---



**J. Tyler Clemons** [they/them/mx](mailto:they/them/mx)  
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Southern Poverty Law Center  
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---

**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



**J. Tyler Clemons** [they/them/mx](mailto:they/them/mx)  
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## Diego Soto

---

**From:** Horatio Mihet <hmihet@lc.org>  
**Sent:** Monday, November 9, 2020 9:29 AM  
**To:** Diego Soto  
**Cc:** Daniel Schmid; Roger Gannam  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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Diego:

We have not been able to complete the privilege log project by the date you requested. We are continuing our work, and will provide it during the court-provided cure period after your motion to compel, and before our response. We understand you will identify the claimed-inadequacies in your motion, and would appreciate your mentioning of the items we have already agreed to address in order to narrow the issues for the Court. (The list of items we have agreed to address is not exclusive – we may decide to address additional items raised in your forthcoming motion as well in order to resolve or narrow issues for the Court).

With respect to privilege clawback, we are still reviewing the voluminous records at issue. If you do decide to attach any communications from Lisa Miller's seized email account to your motion to compel, we would not oppose your requesting leave to file those under seal, as you suggested, and indeed would request that you do so. Please confirm.

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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---

**From:** Diego Soto <Diego.Soto@splcenter.org>  
**Sent:** Friday, October 30, 2020 1:45 PM  
**To:** Horatio Mihet <hmihet@lc.org>  
**Cc:** Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Thanks, Harry. Some responses:

1. Because the Court ordered us to “identify sections of the privilege log which [we] claim to be inadequate,” we’d need the amended privilege logs on or before COB Wednesday, November 4. Please let me know if you will not be able to send them to us by then. To avoid the need for further supplements on the identifies of persons named and their relationships to the privileges claimed, we ask that you provide that information for all persons named.
2. We would oppose such a late attempt to claw back documents that have been in the parties’ possession since at least December 2018 and even earlier for the convicted defendants and the government. (We of course preserve all arguments against privilege assertions over those communications.) Please let us know how you intend to proceed. That said, at this time, we do not intend to attach any particular communication to our motion to compel, but it’s possible we would later decide to. Would your clients consent to a motion to file any such communications under seal should we decide to file them as exhibits to the motion to compel? We could agree to that without prejudice to our opposition to the privilege assertions.

Sincerely,  
Diego



**Diego Soto** *he/him/his*  
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---

**From:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Sent:** Friday, October 30, 2020 10:46 AM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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Diego:

We consent to the 11-day extension. Also:

- 1) Regarding our privilege logs, we intend to provide you with the number of pages in each entry and some expanded descriptions of the withheld documents. We will also include the redactions on the privilege log to resolve that dispute, even though we continue to believe that the redactions are self-explanatory in context. And we will provide you with an identification of any persons appearing on the privilege log, and their relationship to the privilege claimed, for which you do not already know this information. To that end, can you please let me know which particular individuals you do not already know this information about?
- 2) As we have been engaged in this exercise, it has come to our attention that the documents seized from Lisa Miller’s email account contain several communications that are privileged. We are undertaking a comprehensive review and will provide you with a list of communications which are privileged and which should be “clawed back.” In the meantime, if you intend to attach any of those communications to a filing with the Court before we have had a chance to complete this process, please let me know so that we can address it.



Regards,

**Horatio G. Mihet, Esq.\***

*Vice President of Legal Affairs and  
Chief Litigation Counsel*

**Liberty Counsel**

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Orlando, FL 32854

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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Friday, October 30, 2020 9:17 AM

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Harry,

We'll need the adjustment on the deadline for our revised motion to compel currently due tomorrow. Please confirm by COB today whether your clients still consent to an 11-day extension to and including Wednesday, November 11.

Thanks,

Diego



**Diego Soto** he/him/his

Staff Attorney | LGBTQ Rights & Special Litigation

Southern Poverty Law Center

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---

**From:** Diego Soto

**Sent:** Wednesday, October 21, 2020 7:17 AM

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Subject:** Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Plaintiffs do not oppose. I should note that, because the Court gave Plaintiffs ten days to reply and the reply is due the Thursday before the hearing on Monday, December 14, we would be unable to consent to an extension on your clients' November 30 deadline to respond.

Diego Soto he/him/his

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On Oct 21, 2020, at 6:42 AM, Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)> wrote:

**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.

Diego - because of circumstances out of our control, we must ask the court for a second and final short extension on the discovery affidavit, to and including this coming Monday. One of the attorneys on this task has had to travel unexpectedly out of state to visit with a seriously ill parent. And I have been delayed in my travel and depositions out of state this week as well. Please let me know ASAP today if we may represent that our request is unopposed. We will, of course, consent to a corresponding adjustment of your subsequent deadline.

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 Oct 15, 2020, at 10:25 AM, Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)> wrote:

Plaintiffs do not oppose the requested extension.



**Diego Soto** he/him/his

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---

**From:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Sent:** Thursday, October 15, 2020 9:12 AM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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Diego – we need a little more time to review the issues in your letter and the documents you provided. We will ask the Court today to briefly extend our deadline to provide the discovery affidavit until Wednesday, October 21. Please let me know, by early afternoon today if possible, whether we can represent that our request is unopposed. We will, of course, reciprocate if you need a similar extension on your submission.

Thanks,

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

**Liberty Counsel**  
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Orlando, FL 32854  
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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Monday, October 5, 2020 10:04 AM  
**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons

<[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Harry,

I've uploaded the documents to this folder:

<https://splc.box.com/s/dsd55iqampa6e1l65hqvm9askzu5h905>

I included the original MHTML files. For some reason, when you open the MHTML files, the email header information does not appear, but it did appear when we converted them to PDF. Those PDF versions are included too.

Let me know if anything is missing.

Diego



**Diego Soto** he/him/his  
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---

**From:** Diego Soto

**Sent:** Friday, October 2, 2020 5:30 PM

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Subject:** Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Sure, I'm away from my computer now, so I'll upload them to the cloud on Monday and send you a link. If I recall correctly, Mr. Miller produced a number of CDs in late 2018. After we couldn't get confirmation that he also produced them to the other parties too, Plaintiffs made copies and produced them to the parties. I'd have to look back at when that occurred.

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On Oct 2, 2020, at 5:24 PM, Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)> wrote:

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Thanks, that helps somewhat. I am out of the office for a bit, and do not recall at the moment where the Kenneth Miller production is. Presumably you have these documents handy, since you referenced them in your letter. Are you willing to upload to the cloud and send me a copy of all documents in your letter that do not have a Bates number?

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

**Liberty Counsel**

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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Sent:** Friday, October 2, 2020 6:18 PM  
**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Subject:** Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Harry, I think a footnote clarifying this might've accidentally been deleted during drafting: many of the cited documents were produced by Kenneth Miller without Bates stamp numbers. Given that, I included the file names as they were produced to us. For example, MSG\_20081005\_020350UTC\_146.mht. Let me know if that for some reason doesn't facilitate your review and we can try to find an alternative.

Sincerely,  
Diego

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On Oct 2, 2020, at 5:12 PM, Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)> wrote:

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Thanks Diego. On a quick initial read, your letter does not provide Bates numbers for a majority of the documents you claim exist but were not produced by our clients. In order for us to investigate your claims, we need to review the referenced documents and determine, among other things, whether they are responsive to Plaintiff's requests, whether they are privileged, whether they were produced by Defendants in some form, or whether they even exist in Defendants' custody, possession or control. I assume that Plaintiff has produced these documents herself, and that they have Bates labels that would allow us to locate and review them.

Please let me know ASAP if you are willing to provide the Bates numbers for all of these documents, and when we can expect to receive that.

Thanks,

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

**Liberty Counsel**

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---

**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Friday, October 2, 2020 5:25 PM

**To:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>

**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>

**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Harry, please see the attached letter with examples of known deficiencies in your clients' productions and privilege logs.

Sincerely,  
Diego



**Diego Soto** he/him/his  
Staff Attorney | LGBTQ Rights & Special Litigation  
Southern Poverty Law Center  
T 334.956.8427 C 334.604.1414 F 334.956.8481  
[diego.soto@splcenter.org](mailto:diego.soto@splcenter.org) | [www.splcenter.org](http://www.splcenter.org)  
Admitted in Alabama and the District of Columbia

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**From:** Diego Soto  
**Sent:** Tuesday, September 29, 2020 5:13 PM  
**To:** 'Horatio Mihet' <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[scott.mccoy@splcenter.org](mailto:scott.mccoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

Harry, we've made progress on this but will need more time to get it to you. I apologize for that. We're aiming for no later than Friday.



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**From:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Sent:** Tuesday, September 22, 2020 11:56 AM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Beth Littrell <[beth.littrell@splcenter.org](mailto:beth.littrell@splcenter.org)>; Claudia Huerta <[claudia.huerta@splcenter.org](mailto:claudia.huerta@splcenter.org)>; Emily Joselson <[ejoselson@langrock.com](mailto:ejoselson@langrock.com)>; flangrock <[flangrock@langrock.com](mailto:flangrock@langrock.com)>; Jessica Stone <[jessica.stone@splcenter.org](mailto:jessica.stone@splcenter.org)>; Maya Rajaratnam <[maya.rajaratnam@splcenter.org](mailto:maya.rajaratnam@splcenter.org)>; Sarah Star <[sarahstar.esq@gmail.com](mailto:sarahstar.esq@gmail.com)>; Scott McCoy <[Scott.McCoy@splcenter.org](mailto:Scott.McCoy@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Subject:** Re: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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Thanks Diego. To be clear, my invitation extends only to deficiencies already alleged in your Second Motion to Compel, which you contend are still live after the briefing and productions that have taken place since its filing. It does not extend to any new issues not previously identified, because those would need to go through a separate meet and confer process.

To be useful for our Oct 15 submission, I will need your list prior to Sept 30, and hopefully sooner. Please let me know if you are unable to provide it by then.

Thanks,

Sent via mobile device. Please excuse typos or brevity.

**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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On Sep 22, 2020, at 12:45 PM, Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)> wrote:

Harry,

Thanks for your email. Although we do not share your interpretation of the Court's order, we appreciate your willingness to try to narrow the issues while you prepare the ordered affidavit due on October 15. We are willing to provide a nonexhaustive list of known deficiencies in your clients' productions and privilege log, with the understanding that other deficiencies might be uncovered in our negotiations, any supplemental productions, or the ordered affidavit. I'll get that list to you as soon as I am able.

Sincerely,  
Diego



**Diego Soto** *he/him/his*

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**From:** Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>  
**Sent:** Thursday, September 17, 2020 3:49 PM  
**To:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>; Tyler Clemons <[Tyler.Clemons@splcenter.org](mailto:Tyler.Clemons@splcenter.org)>  
**Cc:** Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>  
**Subject:** FW: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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Tyler or Diego:

I read the Court's order below, including procedures 1-3, to mean that the Court is not interested in the argument that Liberty Counsel and Lindevaldsen took too long to produce their documents, and that they will have a chance to cure any remaining alleged deficiencies. Given that so much of the motion and ensuing arguments focused on the timing of the production, I would request that you identify what, if any, substantive deficiencies alleged in your second motion to compel you believe are still unresolved. An informal and brief bullet point list would be sufficient. We will then examine that list to determine in a more focused manner whether we can resolve or narrow these issues without further court intervention.

Please let me know if you are willing to provide this, and when we should expect to receive it.

Thanks,

**Horatio G. Mihet, Esq.\***  
*Vice President of Legal Affairs and  
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Subject: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Order on Motion to Compel

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U.S. District Court

District of Vermont

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Case Name: Jenkins v. Miller et al

Case Number: [2:12-cv-00184-wks](#)

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Document Number: [563](#)

Docket Text:

**[ORDER denying \[472\] Second Motion to Compel \*Liberty Counsel, Inc., and Rena Lindevaldsen to Comply with Plaintiffs' Requests for Production\*; denying \[485\] Cross Motion for Sanctions of an Award of \\$10,650 Against Plaintiff and Her Counsel. Signed by Judge William K. Sessions III on 9/14/2020. \(law\)](#)**

**2:12-cv-00184-wks Notice has been electronically mailed to:**

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] [7f45355f7dd2901f7c28b255f92ebbab8f754daca7034c25cea76ed6804d56401c5  
11c9495abf746e1dec9e4a7f47574df863db320f3078fc742822d781b2dfe]]



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October 2, 2020

Horatio G. Mihet  
Liberty Counsel  
hmihet@lc.org

**Re: *Jenkins et al. v. Miller et al.*, No. 2:12-cv-184 (D. Vt.)  
Defendants Liberty Counsel, Inc. and Rena Lindevaldsen's Document  
Productions and Privilege Logs**

Dear Harry:

This letter is in response to your September 17, 2020 email requesting that Plaintiffs “identify what, if any, substantive deficiencies alleged in [their] second motion to compel [they] believe are still unresolved.” Plaintiffs agreed to provide “a nonexhaustive list of known deficiencies in your clients’ productions and privilege log, with the understanding that other deficiencies might be uncovered in our negotiations, any supplemental productions, or the ordered affidavit.”

**I. Defendants’ Document Production**

On October 29, 2019, the Court ordered Defendants to comply with Plaintiffs’ Requests for Production 4–8, 11–12, 17–19, 35–36, 47–48, and 64–69. *See* Op. & Order 4–18, ECF 395 [hereinafter Order on First Mot. to Compel]. In summary, these requests seek your clients’ communications concerning Janet Jenkins, Isabella Miller-Jenkins, Lisa Miller; their communications with Lisa Miller; their documents and communications concerning the Dispute and the Court Orders; their communications on September 20–22, 2009, November 8–13, 2009, and November 20, 2009; their documents and communications concerning events that happened, were planned to happen, or were expected to happen on September 20–22, 2009, and November 8–13, 2009; and their documents concerning their opinions, beliefs, policies, or positions concerning, in summary, homosexuality, the relationship between secular law and religion, and the Court Orders giving Jenkins visitation and custody rights.

Plaintiffs continue to have strong reason to believe Defendants have not produced or logged all documents in their possession, custody, or control that are responsive to those requests. *See* Pls.’ Second Mot. to Compel Defs. Liberty Counsel, Inc. and Rena Lindevaldsen to Comply with Pls.’ Reqs. for Produc. 4–5, ECF 472 [hereinafter Second Mot. to Compel];

Mihet  
October 2, 2020  
Page 2 of 10

Pls.’ Consolidated Reply in Supp. of Their Second Mot. to Compel and Resp. in Opp’n to Defs.’ Cross-Mot. for an Award of \$10,650 as and for Sanctions Against Pl. and Her Counsel 6–10, ECF 492 [hereinafter Reply in Supp. of Second Mot. to Compel].

Generally, Defendants’ productions suggest an unreasonable search for and review of responsive documents and communications. As highlighted in Plaintiffs’ reply in support of their second motion to compel, Defendants produced, for example, twelve copies of the complaint in this case, a report regarding Mexican–American heritage and contemporary issues, two copies of a document outlining Virginia’s curriculum standards for World History and Geography, a publication on Rhode Island’s emergency school planning, Human Rights Watch’s 2006 report, and the New England Primer. *See* Reply in Supp. of Second Mot. to Compel 7. Even if these documents contain one or more of the agreed-upon search terms, Defendants bear the responsibility of sifting out unresponsive documents from their production, especially because Defendants are unable to use more complex, targeted search terms.

Meanwhile, Plaintiffs currently are aware of the following documents and communications that Defendants should have produced or logged. I must stress, however, that these are only nonexhaustive examples; Plaintiffs do not bear the burden of proving the existence of specific documents Defendants have improperly withheld or failed to log.

**A. Requests for Production 4–8, 11–12, 17–18**

The Court ordered Defendants to produce all communications concerning Ms. Jenkins and all communications with or concerning Isabella or Lisa Miller, including her email addresses zeusdesfor@aol.com and god1ofchild@live.com. *See* Order on First Mot. to Compel 4–12. The Court also ordered Defendants to produce all documents and communications concerning the Dispute or the Court orders. *See* Order on First Mot. to Compel 12–13.

Plaintiffs believe Defendants have not produced or logged all responsive communications in their possession, custody, or control because Defendants did not produce or log these known examples of responsive communications:

1. Communications with Response Unlimited, including, for example:
  - a. Email from Bill Sidebottom (xelcomm@comcast.net) to Philip Zodhiates (Nov. 20, 2007) (Subject: “Lisa Miller Letter as Material for New Campaign(s)”) (RUL0799)
  - b. Emails Between Philip Zodhiates and Bill Sidebottom (xelcomm@comcast.net; xelcomm@verizon.net) (Feb. 11, 2008) (Subject: “Lisa Miller package”) (RUL0851)
  - c. Email from Philip Zodhiates to Bill Sidebottom (bill@lc.org) (Jan. 21, 2009) (Subject: “LISA MILLER”) (RUL0436–RUL0438)

Mihet  
October 2, 2020  
Page 3 of 10

- d. Email from Philip Zodiates to Bill Sidebottom (bill@lc.org), Bill Dolack, and Joel Baugher (Jan. 29, 2009) (Subject: “FW: Update on the Hearing in Lisa Miller’s Case”) (RUL0087–RUL0088)
2. Communications with Defendant Linda Wall, including for example:
    - a. Emails Between Janet Davis (jandavis25@verizon.net), Lisa Miller (zeusdesfor@aol.com), Linda Wall (wall4america@netzero.net), lvbrown@liberty.edu, Karl Lindevaldsen (krjlindev@yahoo.com), Rena Lindevaldsen (rena@lc.org), and Beth Ehrhorn (behrhorn@aol.com) (Oct. 4–5, 2008) (Subject: “meeting”) (MSG\_20081005\_020350UTC\_146.mht; MSG\_20081005\_022907UTC\_145.mht; MSG\_20081005\_115335UTC\_67.mht)
    - b. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Linda Wall (wall4america@netzero.net) (Feb. 13, 2009) (Subject: “Dear\_Delegate\_Marshall.doc”) (MSG\_20090213\_183455UTC\_96\_mht)
    - c. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com) (Feb. 19, 2009), and Linda Wall (wall4america@netzero.net) (Subject: “commercial”) (MSG\_20090219\_192752UTC\_93\_mht)
  3. Communications with Debbie Thurman
  4. Communications between Ms. Lindevaldsen and Lisa Miller, including for example:
    - a. Email from Rena Lindevaldsen (rlindevaldsen@liberty.edu) to Mathew Staver (mstaver@liberty.edu), Steve Crampton (scrampton@lc.org), Anita Staver (astaver@lc.org), and Lisa Miller (zeusdesfor@aol.com) (Oct. 3, 2008) (Subject: “article on WND re: Lisa!”) (MSG\_20081003\_135828UTC\_60\_mht)
    - b. Emails Between Janet Davis (janet.davis@areva.com), Linda Wall (wall4america@netzero.com), Beth Ehrhorn (behrhorn@aol.com), Lisa Miller (zeusdesfor@aol.com), Larry Brown (lvbrowne@liberty.edu), Karl Lindevaldsen (krjlindev@yahoo.com), and Rena Lindevaldsen (rlindevaldsen@liberty.edu) (Oct. 21, 2008) (Subject: “Kevin Jennings and Obama”) (MSG\_20081021\_125928UTC\_110\_mht)
    - c. Emails Between Mathew Staver (mat\_standalone@liberty.edu), Steve Crampton (scrampton@liberty.edu), Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Erin

Mihet  
October 2, 2020  
Page 4 of 10

- Harre, Administrative Assistant, Liberty Counsel (Nov. 26, 2008–Dec. 2, 2008) (Subject: “Miller VA registration documents received and attached”) (MSG\_20081202\_113141UTC\_21.mht)
- d. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Dec. 4–5, 2008) (Subject: “latest on photo release”) (MSG\_20081205\_144018UTC\_17\_mht)
- e. Emails Between Larry Brown (lrbrown@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Rena Lindevaldsen (rlindevaldsen@liberty.edu), and Renee Brown (rbbrown2@liberty.edu) (Dec. 13, 2008) (Subject: “Interviews/documentaries”) (MSG\_20081213\_214001UTC\_6\_mht; MSG\_20081213\_214331UTC\_5\_mht; MSG\_20081213\_214727UTC\_4\_mht; MSG\_20081213\_214831UTC\_3\_mht; MSG\_20081213\_214930UTC\_2\_mht; MSG\_20081213\_215025UTC\_1\_mht)
- f. Emails Between Steve Crampton (scrampton@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Rena Lindevaldsen (rlindevaldsen@liberty.edu), and Michelle Kenny (mkenny@kenlanlaw.com) (Jan. 14, 2009) (Subject: “Friday’s schedule”) (MSG\_20090114\_173136UTC\_6\_mht; MSG\_20090114\_173235UTC\_11\_mht; MSG\_20090114\_174456UTC\_12\_mht; MSG\_20090114\_203843UTC\_22\_mht)
- g. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Karl Lindevaldsen (krjlindev@yahoo.com) (Jan. 25–26, 2009) (Subject: “can you give this to rena?”) (MSG\_20090126\_135213UTC\_16\_mht)
- h. Emails Between Mathew Staver (mat\_standalone@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Steve Crampton (scrampton@liberty.edu), and Rena Lindevaldsen (rlindevaldsen@liberty.edu) (Jan. 26–27, 2009) (Subject: “consequences”) (MSG\_20090127\_201628UTC\_84\_mht)
- i. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Feb. 11, 2009) (Subject: “file away for the book”) (MSG\_20090211\_235722UTC\_154\_mht)
- j. Emails Between Tessa Sturgill (tsturgill@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Rena Lindevaldsen (rlindevaldsen@liberty.edu), Dean & Janet Welty (welty@alleyfamilyforum.org), Candy McGuire, and Cherry Chism (Feb. 16, 2009–Mar. 16, 2009) (Subject: “Follow-Up: TV

Mihet  
October 2, 2020  
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Interview re: Lisa Miller and "Freedom Roundtable" on May 28")  
(MSG\_20090316\_183003UTC\_109\_mht)

- k. Emails Between Steve Crampton (scrampton@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Rena Lindevaldsen (rlindevaldsen@liberty.edu) (Feb. 17, 2009) (Subject: "Final order from VT") (MSG\_20090217\_231731UTC\_20\_mht; MSG\_20090217\_231930UTC\_19\_mht)
- l. Emails Between Steve Crampton (scrampton@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Rena Lindevaldsen (rlindevaldsen@liberty.edu), Michelle Kenny, and Sarah Star (srs@sarahstarlaw.com) (Mar. 6, 2009) (Subject: "Isabella") (MSG\_20090306\_211924UTC\_32\_mht)
- m. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Mar. 19–20, 2009) (Subject: "job") (MSG\_20090320\_162157UTC\_1\_mht)
- n. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Apr. 17, 2009) (Subject: "hey") (MSG\_20090417\_190840UTC\_45\_mht; MSG\_20090417\_192503UTC\_46\_mht)
- o. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Horatio Mihet (hmihet@liberty.edu) (May 6, 2009) (Subject: "is God laughing?") (MSG\_20090506\_155037UTC\_19\_mht)
- p. Emails Between Steve Crampton (scrampton@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and Rena Lindevaldsen (rlindevaldsen@liberty.edu) (July 24, 2009) (Subject: "Hearing on Aug. 21") (MSG\_20090724\_192105UTC\_4\_mht)
- q. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (July 30–31, 2009) (Subject: "jobs") (MSG\_20090731\_143148UTC\_51\_mht)
- r. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Aug. 15, 2009) (Subject: "did you get it?") (MSG\_20090815\_162630UTC\_13\_mht; MSG\_20090815\_163912UTC\_12\_mht; MSG\_20090815\_171319UTC\_11\_mht), and communications referenced therein



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- s. Emails Between Stephen Crampton (scrampton@liberty.edu), Rena Lindevaldsen (rlindevaldsen@liberty.edu), and Lisa Miller (zeusdesfor@aol.com) (Aug. 21–22, 2009) (Subject: “review”) (MSG\_20090822\_175818UTC\_18.mht)
  - t. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), and scanadmin@liberty.edu (Sept. 7, 2009) (no subject) (MSG\_20090907\_185153UTC\_13\_mht)
  - u. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Candy McGuire, and Mathew Staver (Sept. 9, 2009) (Subject: “I understand Anthony got a media msg and emailed it to you...”) (MSG\_20090909\_205713UTC\_137\_mht)
  - v. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Beth Ehrhorn (behrhorn@aol.com) (Feb. 15, 2010) (Subject: “Book”) (MSG\_20100215\_142637UTC\_172\_mht; MSG\_20100215\_142811UTC\_858\_mht)
5. Communications between Liberty Counsel and Lisa Miller, including for example:
- a. Email from Lisa Rogers (lrogers@ilifetv.com) to Matt Barber (jmbarber@liberty.edu), Mathew Staver (mat@lc.org), and Lisa Miller (zeusdesfor@aol.com) (Oct. 15, 2008) (Subject: “information on your Speechless episode”) (MSG\_20081027\_131241UTC\_41)
  - b. Emails Between Tessa Sturgill (tsturgill@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Jan. 20–22, 2009) (Subject: “Interview on Liberty Counsel's new radio program...”) (MSG\_20090122\_224301UTC\_86)
  - c. Emails Between Steve Crampton (scrampton@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Jan. 27, 2009) (Subject: “Fwd: urgent”) (MSG\_20090127\_125550UTC\_21; MSG\_20090127\_160942UTC\_8)
  - d. Emails Between Steve Crampton (scrampton@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Mar. 23, 2009) (Subject: “Make up time”) (MSG\_20090323\_153749UTC\_105; MSG\_20090323\_200120UTC\_117)
  - e. Emails Between Tessa Sturgill (tsturgill@liberty.edu), Lisa Miller (zeusdesfor@aol.com), Mathew Staver, Anita Staver, and Beverly Smith (Mar. 23, 2009–Apr. 2, 2009) (Subject: “Interview with ABC Good Morning America re Lisa Miller”) (MSG\_20090402\_225757UTC\_116)

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- f. Email from Tessa Sturgill (tsturgill@liberty.edu) to Lisa Miller (zeusdesfor@aol.com) (May 13, 2009) (Subject: “FW: Confirmed for TV interview and for Freedom Roundtable/Dinner”) (MSG\_20090513\_185122UTC\_128.mht), and other communications regarding publicity

**B. Requests for Production 35–36**

The Court ordered Defendants to produce all communications on September 20–22, 2009, and all documents and communications concerning events that happened, or were planned or expected to happen, on September 20–22, 2009. *See* Order on First Mot. to Compel 13–14.

Plaintiffs believe Defendants have not produced or logged all responsive communications in their possession, custody, or control because Defendants did not produce or log these examples of known responsive documents and communications:

6. Emails Between Rena Lindevaldsen (rlindevaldsen@liberty.edu) and Lisa Miller (zeusdesfor@aol.com) (Sept. 4, 2009) (Subject: “Just in - Lisa Miller Update”) (MSG\_20090904\_191530UTC\_22\_mht)

**C. Requests for Production 19, 47–48**

The Court ordered Defendants to produce all communications on November 8–13 and 20, 2009, and all documents and communications concerning events that happened, or were planned or expected to happen, on November 8–13, 2009. *See* Order on First Mot. to Compel 12–14.

Plaintiffs believe Defendants have not produced or logged all responsive communications in their possession, custody, or control because Defendants did not produce or log known examples of responsive documents and communications:

7. Documents and communications notifying Lisa Miller of the November 20, 2009 decision transferring custody of Isabella to Ms. Jenkins, which would also be responsive to Requests for Production 4–8, 11–12, 17–18
8. Documents and communications concerning the Manhattan Declaration, issued on November 20, 2009, which would be responsive also to Requests for Production 64–69

**D. Requests for Production 64–69**

The Court ordered Defendants to produce all documents and communications concerning Defendants’ opinions, beliefs, policies, or positions concerning: same-sex marriage; same-sex civil unions; same-sex relationships; whether homosexual persons should have custody of or visitation with children; the relative supremacy of secular law (including but not limited

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to court orders and court opinions) over religion, morality, ethics, or conscience; the relative supremacy of religion, morality, ethics, or conscience over secular law (including but not limited to court orders and court opinions); compliance or noncompliance with the Court Orders; or whether Ms. Jenkins should have custody of or visitation with Isabella. *See* Order on First Mot. to Compel 14–18.

Plaintiffs believe Defendants have not produced or logged all responsive documents and communications in their possession, custody, or control because Defendants did not produce or log these known examples of responsive documents and communications:

9. Documents and communications concerning the annual Awakening conferences hosted by Liberty Counsel. *See, e.g.*, LC15361 (noting that The Awakening 2015 will have a session entitled “The History of Civil Disobedience”).
10. Documents and communications concerning the creation and operation of the Freedom Foundation chartered and led by Mr. Staver and Liberty Counsel
11. Documents (including recordings or transcripts) and communications concerning the launch and operation of the Liberty Live radio program on which Lisa Miller appeared as a guest and during which civil disobedience has been discussed. *See* LC28282–LC28284 (touting the show and that Lisa Miller would be a guest); LC17190 (noting that the propriety of civil disobedience will be a topic on the show).
12. Documents and communications concerning the creation and operation of [www.marriagesolidarity.com](http://www.marriagesolidarity.com) and the statement titled *We Stand in Solidarity to Defend Marriage and the Family and Society Founded Upon Them*. *See, e.g.*, LC28112–LC28118 (referencing both).
13. Documents and communications concerning the creation and distribution of the *Patriots’ Handbook*. *See, e.g.*, LC28112–LC28118.
14. Documents and communications concerning the creation and distribution of *Take Back America: Silence Is Not an Option* action packs. *See, e.g.*, LC28112–LC28118.
15. All years of Partners’ Reports. *See, e.g.*, LC28293–LC28296 (2009–2010).
16. Documents and communications concerning the Marriage Pledge (or Defend Marriage Pledge) co-drafted by Mr. Staver. *See, e.g.*, LC14342–LC14345 (referencing the pledge and its call for civil disobedience).
17. Documents and communications concerning the many Pastor’s Policy Briefings Liberty Counsel helped organize and produce in 2008 (and any other years they occurred). *See* LC28251.

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18. Documents and communications concerning the conference Liberty Counsel hosted with Liberty University School of Law “regarding the threat of the homosexual agenda to freedom and conscience.” *See* LC28296.
19. Documents and communications concerning the Manhattan Declaration, issued on November 20, 2009, which would be responsive also to Request for Production 19.

## II. Defendants’ Privilege Logs

Aside from any missing entries, Defendants’ privilege logs do not provide Plaintiffs enough information to assess the claimed privileges.

*First*, Defendants appear to number each document without indicating, such as through Bates stamp numbers, the document’s page count, which prevents Plaintiffs from assessing the sufficiency of the other information provided in light of the extent of Defendants’ withholdings. *See* Pls.’ First Set of Reqs. for Produc. to Def. Liberty Counsel 6 (requesting first and last Bates stamp numbers).

*Second*, Defendants insufficiently identify individuals. Some names are omitted altogether. *See, e.g.*, Entry No. 22 (“Law Clerk”). Even when Defendants provide names of authors and recipients—some familiar, some not—Defendants often do not disclose the relationship between these individuals at the time, such as by firm and title. *Compare, e.g.*, Entry No. 25 (“Legal research memorandum with attorney highlights, comments, thoughts, and impressions concerning potential arguments concerning witness testimony in Miller/Jenkins custody litigation in Vermont”), *with, e.g.*, Entry No. 36 (“Email correspondence from counsel to paralegal ...”). These deficiencies prevent Plaintiffs from assessing, for example, whether the asserted privileges failed to attach because of disclosure to a third party. *See, e.g.*, S.D.N.Y. Loc. Civ. R. 26.2(a)(2)(B)(i) (requiring, “where not apparent, the relationship of the persons present to the person making the communication”).

*Third*, Defendants’ subject-matter descriptions often are too vague and insufficiently detailed for Plaintiffs to assess whether the documents are protectable or warrant *in camera* review. Defendants provide some helpful specificity—for example, “research on ... contempt issues,” Entry No. 2, “legal briefing on Uniform Parentage Act,” Entry No. 7, “research memorandum ... concerning full faith and credit arguments, Entry No. 22, and “correspondence ... regarding motion to dismiss appeal,” Entry No. 36—but Defendants otherwise unjustifiably leave Plaintiffs guessing to what “briefing,” “pleadings,” “hearing,” “witness testimony,” and “order,” for example, Defendants refer. *See, e.g.*, Entry Nos. 1, 2, 14, 25, 169. Many documents merely “concern[] ... [the] Miller/Jenkins custody litigation in Vermont.” *E.g.*, Entry No. 6.

*Fourth*, Defendants’ privilege logs do not include their redactions, which themselves seem inappropriate and often do not assert a basis for the redaction. For example, Ms. Lindevaldsen redacted as privileged attorney–client communications much of an email

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chain between her, Steve Crampton, and Lisa Miller between June 24, 2009, and June 25, 2009. *See* RL03681–RL03682. But the unredacted version of that email produced by Kenneth Miller reveals that much of those redacted communications are not privileged attorney–client communications. *See* MSG\_20090625\_125416UTC\_16\_mht. Liberty Counsel and Ms. Lindevaldsen also redacted certain information as privileged by the First Amendment, *see, e.g.*, LC28743; LC28964–LC28965; LC29232–LC29240; LC29328; LC29332; LC29333–LC29334; LC29335; LC36354–LC36356; RL01023–RL01027, despite the Court’s holding that they must at least explain how disclosure would encroach on First Amendment rights, *see* Order on First Mot. to Compel 15–18. These examples call into question the propriety of other redactions.

\* \* \*

Plaintiffs continue to expressly reserve and not waive their rights to identify and seek relief as to any additional deficiencies when and as warranted.

Sincerely,



Diego A. Soto  
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