

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

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

**DEFENDANTS LIBERTY COUNSEL, INC. AND RENA M. LINDEVALDSEN'S  
EMERGENCY MOTION FOR EXTENSION OF TIME  
TO FILE RESPONSE TO PLAINTIFF'S REVISED SECOND MOTION TO COMPEL  
AND REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Local Rule 7, Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen (“Defendants”), by and through the undersigned counsel, respectfully move the Court for an extension of time to file their response in opposition to Plaintiff’s Revised Second Motion to Compel Discovery (dkt. 591), either for one week (to and including December 7, 2020), or in the alternative, and at a minimum, for two days (to and including December 2, 2020) for the response itself, and four days (to and including December 4, 2020) for Defendants to provide the amended privilege logs that they have already agreed to provide, and to provide any additional discovery documents. In support, Defendants show the Court as follows:

**REASONS WHY A BRIEF EXTENSION IS NECESSARY**

- 1) Plaintiff filed her Revised Second Motion to Compel on November 11, 2020. (Dkt. 591).

2) Pursuant to this Court's previous Order, Defendants' response is due **today, November 30, 2020**. (Dkt. 563 at 4). Plaintiff is then to file a reply by December 10, 2020, and the Court has scheduled a discovery hearing for December 14, 2020. (*Id.*)

3) Defendants have been working diligently on their Response, including throughout the Thanksgiving holiday last week, but, because of the **five** reasons outlined herein, have been unable to complete their Response and need a brief extension.

4) **First**, as will be shown more fully in Defendants' forthcoming Response, Plaintiff's Revised Second Motion to Compel raises many **brand new** factual claims and issues that Plaintiff has never raised in her previous discovery motions, and, more troublingly, that **Plaintiff has never raised in any pre-filing meet-and-confer with Defendants**, as she was required to do. Among these new claims and issues are:

- (a) new email accounts that Plaintiff claims should have been searched;
- (b) numerous additional ESI search terms that Plaintiff has never previously proposed and that she now proposes for the very first time; and
- (c) spoliation of evidence claims, with requested severe, potentially case-ending sanctions to include privilege waivers, adverse-inference instructions and preclusion of claims.

Defendants have been researching these new issues and claims, but need a little additional time to complete their research and response, especially given the weightiness of the issues and severity of what Plaintiff requests from this Court.

5) **Second**, as part of their research and preparation for the Response, Defendants have needed to run multiple additional ESI searches on their document databases, to address the unreasonableness of numerous brand new proposed ESI search terms that Plaintiff is now

identifying for the first time (and which, because of their unreasonableness, Defendants did not anticipate previously). However, Defendants have been hampered in their new ESI searches because:

- (a) Defendants' IT coordinator who was involved in the previous ESI searches has since retired, and Defendants needed to locate him and enlist his assistance with the new searches, because he possessed technical knowledge that his replacement did not yet have, and because Defendants wanted to ensure continuity and accuracy of the process. Defendants' enlisting of the retired individual's assistance was hampered by the holidays, by his pre-existing commitments, and by COVID restrictions and considerations; and
- (b) those searches that Defendants have finally been able to run have revealed **tens of thousands of results**, which Defendants are attempting to catalogue and categorize for the Court in their forthcoming Response.

6) **Third**, during the two-and-a-half weeks available to them for this Response, and all of the attendant searches and tasks, Defendants' time has been absolutely consumed with numerous other litigation tasks in this same case, and in other cases, including:

- (a) in this case, Defendants' depositions of Plaintiffs' **four** expert witnesses, which Defendants' counsel took the lead on, and which consumed four consecutive days during the week of November 16, 2020 (almost the entire week);
- (b) also in this case, a **fifth** deposition of a former defendant in this case, taking place **today** (November 30), which may last the entire day;

- (c) also in this case, Defendants' research and drafting of a significant (19-page) response (dkt. 600) to Plaintiff's motion to compel production of 7,500 pages of ATT records (dkt. 582), which response Defendants completed and filed only late last week (dkt. 600);
- (d) oral argument in an important First Amendment appeal at the Seventh Circuit on November 12, 2020, with significant pre- and post-argument motion practice, which consumed many days of preparation and drafting;
- (e) responding to an emergency preliminary injunction in another First Amendment case in the Northern District of Indiana, filed on November 16, 2020, with continued significant briefing in the two weeks that followed; and
- (f) preparing and filing an emergency petition at the Supreme Court of the United States in another First Amendment case, which was filed on November 20, 2020 (docketed on November 23, 2020) and remains the subject of further emergency briefing even this week.

7) **Fourth**, during the response period the mother of one of Defendants' counsel passed away, which required a significant involvement by that counsel in family matters and arrangements, culminating in a memorial service on November 24, 2020.

8) **Fifth**, and finally, the Thanksgiving holiday last week presented scheduling and staffing challenges for Defendants' counsel as well. Defendants' counsel ended up working many hours during the holiday week and weekend on this case and on this Response, at great personal cost to family time and family obligations, but were still hampered in their efforts.

**REASONS FOR NEED OF EMERGENCY OR EXPEDITED CONSIDERATION**

9) Defendants did not file this motion prior to today, for several reasons. Defendants hoped to be able to avoid the extension motion, or to minimize the time they would request. However, Defendants did not know the progress they would be able to make over the Thanksgiving holiday weekend, and did not know when they might be able to coordinate with the now-retired individual the follow-up ESI searches occasioned by Plaintiff's brand new claims, nor how many hits those searches would retrieve and how long it would take to address them. Defendants' motion was then also delayed by the holiday week itself, and by the significant deposition that all parties are engaged in today.

10) Because this motion requests the Court's assistance with a deadline occurring today, and with further briefing and a forthcoming discovery hearing as well, Defendants respectfully request the Court's emergency or expedited consideration of this motion.

11) **Particularly, Defendants respectfully request the Court's soonest consideration between the two alternative forms of relief requested by Defendants herein, so that Defendants know whether they must work around the clock to attempt to file their Response this Wednesday evening, or whether Defendants will have one week, until next Monday, December 7, as they need and request.**

**RELIEF REQUESTED**

12) For the previously-detailed reasons, Defendants respectfully request that the Court extend the deadline for Defendants' Response to Plaintiff's Revised Second Motion to Compel by one week, to and including December 7, 2020; commensurately extend Plaintiff's Reply deadline by one week, to and including December 17, 2020; and continue the discovery hearing currently scheduled for December 14, 2020 by approximately one week, to a date and time of the Court's

convenience after briefing is complete.

13) Defendants respectfully submit that this brief extension and continuance would strike an appropriate balance between the scheduling concerns, the need to fully research and brief the multiple new and weighty issues and ESI search terms raised by Plaintiff's revised motion, and the need to move this case forward.

14) This relief would not only allow the parties to fully research and brief these issues, but would also allow the Court to have more time with the parties' briefs and supporting materials – which now appear will be voluminous – in advance of the discovery hearing. Otherwise, even without any extension, the Court's already limited time, (only one business day between the current December 10, 2020 Reply date and the current December 14, 2020 hearing date) may not be sufficient for a full examination and consideration of all issues.

15) Alternatively, if the Court is not inclined to grant a one-week extension, or to continue the hearing for about a week, Defendants respectfully request, at a minimum, that the Court at least extend Defendants' deadline by two days, to and including Wednesday, December 2, 2020, to file their Response, and by four days, to and including Friday, December 4, 2020, to provide amended privilege logs and any additional discovery materials to Plaintiff.

16) In this alternative, Defendants would need the four days for the amended privilege logs and any additional discovery materials because an extension of only two days for the Response would have them fully consumed – literally around the clock – with the Response itself, and Defendants would not be able to complete their amended privilege logs or any other discovery materials, if any, until this Friday.

17) **Defendants stress that this alternative relief is only what Defendants estimate would be needed to avoid the extreme prejudice they would suffer without any extension, but**

would not be fully sufficient for Defendants to provide the necessary attention to the multiple new issues raised by Plaintiff, and to adequately brief these issues for the Court. An extension of only two days for the Response (and four days for amended privilege logs) would require Defendants' counsel to work literally around the clock between now and Wednesday, and then again around the clock through Friday. Such a limited extension would not allow any time for additional contingencies, and may not provide the Court with sufficient time to review the briefs and related materials before the currently scheduled hearing.

18) Therefore, because, as discussed below, the parties would suffer no prejudice, Defendants respectfully request that the Court provide the weeklong relief requested in Paragraph 12.

#### **PLAINTIFF'S POSITION AND LACK OF PREJUDICE**

19) Prior to filing the instant Motion, Defendants conferred with counsel for Plaintiff, who indicated that Plaintiff opposes this motion, and opposes both relief alternatives requested by Defendants.

20) Nevertheless, Plaintiff is not prejudiced by even the modest, weeklong extension requested, let alone by the alternative two-day/four-day extensions. Discovery in this case will not close until March 15, 2020, more than three-and-a-half months from now. (Dkt. 562). There are no depositions of these Defendants even set yet. There is no trial date set yet, as the Court has timed the trial date to a ruling on future dispositive motions. And, importantly, Plaintiff is responsible, at least partially, for the extension needed here, because she is raising multiple issues and claims that she has not raised before, as she was required to do prior to filing her most recent motion to compel.

21) Defendants note that Plaintiff herself has requested discovery and briefing

extensions in this case (as have Defendants), including an emergency motion to modify and extend the discovery schedule in this case (dkt. 418), which the Court granted. (Dkts. 424, 425).

22) This is the **first** extension request by Defendants for this response deadline, or for the discovery hearing. If the Court grants Defendants' requested relief, Defendants will not request an additional extension for this Response, absent extreme and unforeseen contingencies that Defendants do not expect.

23) This motion is not being filed for purposes of undue delay. As detailed above, Defendants are not sitting idle, nor ignoring nor delaying their responsibilities in this case. On the contrary, as detailed above, this case alone is currently occupying and consuming Defendants' time, even without the numerous other professional commitments Defendants and their counsel have.

24) Defendants assure the Court that they are moving as fast as they can possibly move, that they do not make this request lightly, and that they would not make this request if it were not absolutely necessary.

WHEREFORE, for good cause shown, Defendants respectfully request that this Court grant Defendants' motion and either:

- (A) extend the deadline for Defendants' Response to Plaintiff's Revised Second Motion to Compel by one week, to and including December 7, 2020; commensurately extend Plaintiff's Reply deadline by one week, to and including December 17, 2020; and continue the discovery hearing currently scheduled for December 14, 2020 by approximately one week, to a date and time of the Court's convenience after briefing is complete; or
- (B) alternatively, and at a minimum, if the Court is not inclined to continue the

discovery hearing by one week or otherwise grant Defendants' requested relief above, then extend Defendants' deadline by two days, to and including Wednesday, December 2, 2020, to file their Response, and by four days, to and including Friday, December 4, 2020, to provide amended privilege logs and any additional discovery materials to Plaintiff.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of November, 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