

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

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

JOINT MOTION TO EXTEND DEFENSE EXPERT DISCLOSURE DEADLINE, FILED BY DEFENDANTS LINDA WALL, PHILIP ZODHIATES, VICTORIA HYDEN, RESPONSE UNLIMITED, RENA LINDEVALDSEN AND LIBERTY COUNSEL

AND REQUEST FOR EXPEDITED CONSIDERATION

Pursuant to Local Rule 7, Defendants Linda Wall, Philip Zodhiates, Victoria Hyden, Response Unlimited, Rena Lindevaldsen and Liberty Counsel, Inc. (“Defendants”), by and through their respective undersigned counsel, jointly and respectfully move the Court for an extension of time to provide their expert disclosures to Plaintiff Janet Jenkins (“Plaintiff”), to and including January 8, 2021. In support, Defendants show the Court as follows:

1) Defendants’ current expert disclosure deadline is on December 14, 2020. (Dkt. 562, at 2, ¶ 4).

2) Defendants have been working diligently to engage defense experts, and obtain their reports. Among other things, Defendants took the depositions of Plaintiff’s four experts on four consecutive days between November 17 and 20, 2009, and thereafter recently obtained the transcripts relevant to some of the expertise that Defendants now wish to present. With the

parameters of Plaintiff's experts established by their depositions, Defendants finalized their expert selections and began working with the experts toward the required disclosures.

3) For several reasons, Defendants need a brief extension of the expert disclosure deadline, to and including January 8, 2021.

4) First, one of the experts was required to undergo major hip replacement surgery last week (on December 4). He is now convalescing at home. Recovery times from such surgeries vary, and Defendants have not yet been able to ascertain when the expert will be able to return to work, but it is doubtful that this can happen before Christmas.

5) Second, another expert that Defendants only recently engaged (because of revelations at the recent depositions of Plaintiff's experts) had an exceedingly busy November and December professional schedule, and also a previously planned upcoming anniversary trip from which she will not return until January 4, 2010.

6) Third, as recounted in a previous extension motion (dkt. 602 at 3-4), which this Court granted (dkt. 603), the parties and counsel have been very busily engaged in the ongoing discovery efforts in this case, including numerous depositions (some of which have required review of thousands of pages of documents produced by non-party witnesses in advance of their depositions), as well as extensive motion practice on various discovery disputes. (*E.g.*, dkts. 591, 600, 607, 608).

7) Fourth, and finally, both the experts and defense counsel need a little leeway so that they can navigate and meet professional commitments in light of the year-end holidays that are upon us, and on the immediate horizon.

8) Prior to filing the instant Motion, Defendants conferred with counsel for Plaintiff, who indicated that Plaintiff opposes this motion. The course of communications is attached hereto

as **Exhibit A**. Defendants made repeated attempts to secure Plaintiff's consent for this necessary, brief and non-prejudicial holiday-time extension, because Defendants did not want to trouble the Court with yet another contested motion that ought to have been resolved by the parties. (*Id.*)

9) Plaintiff purports to lecture Defendants about waiting too long to engage experts, and presumes to know that "Defendants did not need to depose Plaintiff's experts before starting to retain their own and secure reports." (Exh. A). But Defendants specifically asked Plaintiff to move up the depositions of Plaintiff's four experts on the very busy deposition schedule, precisely because Defendants **did** need to establish the parameters of Plaintiff's proffered expertise beforehand. Plaintiff has no basis to conclude that **none** of the deposition testimony obtained from her four purported experts, which was only recently transcribed, is needed or useful to defense experts.

10) More importantly, Plaintiff can articulate absolutely no prejudice from a modest extension of Defendants' expert disclosure deadline. Discovery closes on **March 15, 2021**. With defense expert disclosures provided on January 8, 2021 (should the Court grant the extension), Plaintiffs will have ample time (**9 weeks**) to depose **two** experts. Defendants have already committed to making the two experts available for deposition by Plaintiff as soon after January 8 as convenient for the parties.

11) Plaintiff's uncharitable offer to extend the deadline for **only one** expert, not both, and first only by one week, then begrudgingly by two weeks (until only December 28) (Exh. A) is unworkable and unnecessarily stingy. Not only was this offer conditioned on a December 14 partial disclosure – which would require essentially disjointed, double reports, instead of a single report from each expert – but the offer is simply insufficient to address the concerns at hand. Defendants don't know if the expert who had surgery will be physically able to complete the work by

Plaintiff's artificial December 28 deadline. And Plaintiff's unforgiving deadline would have the other expert cancel her anniversary trip, and would have both experts working through Christmas.

12) Plaintiff's ongoing inflexibility (*see* dks. 602, 603) and unwillingness to consent to reasonable discovery extensions that are necessitated by uncontrollable factors (*id.*), and now the Scrooge-like insistence that experts and counsel work through Christmas – when the discovery deadline is months away – is quite unfortunate.

13) This is the first extension request by Defendants for their expert disclosure deadline. If the Court grants Defendants' requested relief, Defendants will not request an additional extension for this deadline, absent extreme and unforeseen contingencies that Defendants do not expect.

14) This motion is not being filed for purposes of undue delay. Defendants are active, attentive and engaged in moving the discovery of this case to completion.

WHEREFORE, for good cause shown, Defendants respectfully request that this Court grant Defendants' motion and extend Defendants' expert disclosure deadline from December 14, 2020 to and including January 8, 2021. In light of the approaching current deadline next week, Defendants respectfully request the Court's expedited consideration of this motion.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

/s/ Adam S. Hochschild

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/s/Michael R. Hirsh

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/s/ Horatio G. Mihet

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

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 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

From: [Horatio Mihet](#)
To: [Diego Soto](#)
Cc: [Roger Gannam](#); [Beth Littrell](#); [Emily Joselson](#); [Jessica Stone](#); [Maya Rajaratnam](#); [Scott McCoy](#); [Sarah Star](#); [Tyler Clemons](#); [flangrock](#)
Subject: RE: extension on expert report deadline
Date: Thursday, December 3, 2020 7:06:57 PM

Thanks Diego. I thought it was obvious in my response, but since you asked me to spell it out: I disagree with Plaintiff's position because I think it is more of the same tiresome practice of imposing and insisting on fatuous deadlines that Plaintiff has become accustomed to imposing, devoid of any reason or rationale, and designed only to inflict inconvenience and damage where merits are lacking. Discovery does not close until March 15. That Plaintiff is insisting for our other expert to cancel her pre-existing anniversary trip, and work through Hanukkah and Christmas, when Plaintiff won't be deposing anyone over the Holidays anyways, is shameful. I don't take pleasure in litigating like this, but we'll adapt.

Plaintiff's position is transparent, but we'll spell it out for the Court. I know this goes without saying, but, obviously, litigation courtesies are a two-way street.

HGM

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From: Diego Soto <Diego.Soto@splcenter.org>
Sent: Thursday, December 3, 2020 6:53 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>; flangrock <flangrock@langrock.com>
Subject: RE: extension on expert report deadline

Harry,

I've given you Plaintiffs' position on why this extension request is unjustified. Having received nothing from you on why you disagree with Plaintiffs' position, Plaintiffs cannot agree to your proposed 14-day extension for all your experts. Plaintiffs are willing to agree to a 14-day extension, to and including December 28, 2020, for the report of the expert who will be undergoing surgery tomorrow, so long as Defendants disclose by the December 14 deadline the information required by Rule 26(a)(2)(B)(iv)–(vi) for that expert.

Sincerely,
Diego

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From: Horatio Mihet <hmihet@lc.org>
Sent: Thursday, December 3, 2020 4:49 PM
To: Diego Soto <Diego.Soto@splcenter.org>
Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>; flangrock <flangrock@langrock.com>
Subject: RE: extension on expert report deadline

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Thanks Diego. Since we appear to be headed to the Court on this, we'll save our disagreement with everything you've just said for the papers.

As a final attempt to compromise, please let me know if you'd consent to a mere 14-day extension of Defendants' expert disclosure deadline, to and including December 28.

To be clear, if you don't consent to this either, and we have to go to the Court anyway, we will ask for the full period in our initial request, because we don't believe it prejudices Plaintiff in the slightest, and because the full amount is necessary here. We offer this only as a compromise of last resort, and at great personal toll to us and our experts.

Kind Regards,

Horatio G. Mihet, Esq.*
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From: Diego Soto <Diego.Soto@splcenter.org>

Sent: Thursday, December 3, 2020 3:29 PM

To: Horatio Mihet <hmihet@lc.org>

Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>; flangrock <flangrock@langrock.com>

Subject: RE: extension on expert report deadline

Harry,

This is not a routine extension request. Defendants had had Plaintiffs' expert reports for over 300 days when the Court entered the operative discovery schedule/order, which gave Defendants 90 days to disclose their experts. Defendants did not need to depose Plaintiffs' experts before starting to retain their own and secure reports, but they chose to wait and still did not depose Plaintiffs' experts until over 60 days after the Court's order, knowing full well that the disclosure deadline and holidays were approaching. Defendants are asking Plaintiffs to pay the price for Defendants' delay by shortening the time Plaintiffs have with Defendants' expert reports by four weeks.

All that said, Plaintiffs are willing to agree to a 1-week extension, to and including December 21, 2020, for the report of the expert who will be undergoing surgery tomorrow, so long as Defendants disclose by the December 14 deadline the information required by Rule 26(a)(2)(B)(iv)–(vi).

Plaintiffs intend to file a response in opposition.

Sincerely,

Diego

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From: Horatio Mihet <hmihet@lc.org>

Sent: Thursday, December 3, 2020 1:50 PM

To: Diego Soto <Diego.Soto@splcenter.org>

Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>; flangrock <flangrock@langrock.com>

Subject: RE: extension on expert report deadline

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Thanks Diego. We would prefer not to trouble the Court with another 9-page extension motion, because we believe the Court does not appreciate these kinds of squabbles and would rather we work them out.

What is the reason Plaintiff opposes this request, in light of the generous discovery time that remains after early January to depose the experts we designate?

I was hoping not to have to divulge health and personal information of others, and it ought not be necessary here. But note that one of our experts is going in for hip-replacement surgery tomorrow. Another expert has a wedding anniversary trip this month.

We took the depositions of Plaintiffs' expert first, because we believed we might need some of that testimony for our expert selection and for their reports. That was fairly recently, and we are just now beginning to receive the transcripts.

And, of course, the Holidays are upon us.

It's only three-and-a-half weeks. Give all of the above, are you sure we can't agree here, and we must involve the Court?

HGM

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From: Diego Soto <Diego.Soto@splcenter.org>
Sent: Thursday, December 3, 2020 9:35 AM
To: Horatio Mihet <hmihet@lc.org>
Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Scott McCoy <Scott.McCoy@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>; flangrock <flangrock@langrock.com>
Subject: RE: extension on expert report deadline

Harry, Plaintiffs oppose the requested extension.

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From: Horatio Mihet <hmihet@lc.org>
Sent: Wednesday, December 2, 2020 5:48 PM
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Cc: Roger Gannam <rgannam@lc.org>
Subject: extension on expert report deadline

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Diego – we need to ask the Court to extend Defendants’ deadline to provide expert disclosures, to and including January 8, 2021. We have been delayed in retaining our experts and obtaining their reports by, among other things, the experts’ pre-existing commitments and work and travel plans. Upon providing you with their reports on January 8, we can make the experts available for deposition shortly thereafter, perhaps late January or early February.

Please let me know on Thursday whether we may represent that our motion is unopposed.

Kind Regards,

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