

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

JANET JENKINS, et al.,

Plaintiffs,

v.

KENNETH L. MILLER, et al.,

Defendants.

No. 2:12-cv-184-WKS

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO MODIFY THE DISCOVERY SCHEDULE/ORDER**

Plaintiffs Janet Jenkins and Isabella Miller-Jenkins oppose, with one exception, Defendants' motion to modify the discovery schedule/order¹ to extend by twenty-five days the deadline to disclose their experts. *See* ECF 610 ("Mot."). This is not a routine request arising from unexpected, excusable delay; Defendants have had over a year to retain and secure reports from experts but apparently chose to start that process roughly thirty days before the deadline. Defendants now ask the Court to make Plaintiffs bear the consequences of Defendants' inexcusable delay. Plaintiffs oppose for the following reasons:

1. *Four hundred three days ago*, on November 1, 2019, Plaintiffs served their affirmative expert reports. *See* Disc. Certificate, ECF 399. The discovery schedule/order operative at the time set the same deadline for Plaintiffs' and Defendants' expert disclosures—four months before the close of all discovery. *See* Order, ECF 329 (approving and ordering Plaintiffs' proposed discovery schedule/order, ECF 320).

¹ The title of Defendants' motion does not make clear that they seek to amend the operative final discovery schedule/order.

2. On November 25, 2019, the Court entered a modified discovery schedule/order ordering Defendants to “submit responding expert witness reports on or before six weeks after service of affirmative expert reports — Friday, December 13, 2019.” ECF 425.

3. Defendants served no expert witness reports on or before December 13, 2019.

4. On January 7, 2020, the Court ordered the parties to “submit one modified proposed discovery schedule,” after the Court granted Gravel & Shea PC’s motion to withdraw as counsel for Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc. ECF 450.

5. After the parties negotiated by email, they filed on August 6, 2020, a proposed modified discovery schedule/order, which would require Defendants to disclose experts, if any, ninety days after the entry of the order. *See* ECF 544-1.

6. On September 14, 2020, the Court entered the final modified discovery schedule/order. *See* ECF 562. Therefore, Defendants must disclose experts, if any, on or before December 14, 2020—half of the 180 days the Court ordered for the remainder of discovery in this case. *See id.* ¶ 3.

7. Six days *before* the Court even entered its order, Plaintiffs began attempting to schedule depositions. *See* Ex. 1: Soto–Mihet Emails *24–25.

8. *Thirty days* after the Court entered its order, Defendants proposed deposing Plaintiffs’ experts *over a month* later, starting November 17. *See id.* at *15–16.

9. Defendants—who had had Plaintiffs’ expert reports for *382 days*—deposed Plaintiffs’ experts November 17–20, 2020. *See* McCoy Decl. ¶ 3.

10. Only then did they “finalize[] their expert selections and beg[i]n working with the experts toward the required disclosures.” Mot. ¶ 2.

11. Today, *eighty-five days* after the Court's order and with just six days until their deadline, Defendants move to modify the discovery schedule/order again to extend by *twenty-five days* their deadline to disclose experts. Defendants blame a "delay[] in retaining [their] experts and obtaining their reports by, among other things, the experts' pre-existing commitments and work and travel plans." Soto-Mihet Emails *5. Specifically, their first expert underwent surgery and their second "has a wedding anniversary trip this month." *Id.* at *4. Moreover, "the Holidays are upon us." *Id.* Defendants do not elaborate on what "revelations at the recent depositions of Plaintiff[s'] experts" necessitate their second expert's opinions that were not evident from Plaintiffs' experts' reports. Mot. ¶ 5.

12. That delay is of Defendants' own making and does not establish good cause to extend their deadline by even a day, much less twenty-five days. Defendants failed to meet the original December 13, 2019 deadline to submit responding expert reports without requesting a stay or modification of that deadline. Nevertheless, in the parties' negotiations over the proposed modified discovery schedule/order, Plaintiffs agreed to Defendants' proposal that they be allowed to disclose experts within ninety days of the Court's modified discovery schedule/order, and the Court accepted the parties' proposal. Defendants, who by that point had had Plaintiffs' expert reports for *318 days*, did not need to depose Plaintiffs' experts to retain their own experts and begin drafting reports, but they chose to do just that. *See* Soto-Mihet Emails *4 ("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."). Yet Defendants also chose to wait *thirty* of their ninety days before even attempting to schedule depositions of Plaintiffs' experts and proposed waiting another *thirty days* before those depositions would even commence, thus wasting *sixty* of their ninety days, knowing full well that the disclosure deadline and holidays

were approaching. Defendants cannot now blame the holidays and their experts' "pre-existing commitments and work and travel plans" for Defendants' own delay. Plaintiffs might understand if Defendants were delayed in obtaining *one* expert's report by the deadline because of unexpected circumstances, but Defendants assert delay in retaining and securing reports from *both* their experts in the roughly thirty-day window they boxed themselves into. Defendants' dawdling, whether deliberate or desultory, should not be rewarded.

13. In particular, Defendants Liberty Counsel, Inc. and Rena Lindevaldsen consistently de-prioritize this case for their other cases. *See, e.g.*, Emergency Mot. for Extension of Time to File Resp. to Pls.' Revised Second Mot. to Compel ¶ 6 (Nov. 30, 2020), ECF 602 (citing oral argument in the Seventh Circuit, briefing in the Northern District of Indiana, and briefing in the Supreme Court); Second Unopposed Mot. for Extension of Time to File Resp. in Opp'n to Pls.' Mot. to Compel Produc. of AT&T Records 1–2 (Nov. 25, 2020), ECF 599 (citing Supreme Court petition in another case); Unopposed Mot. for Extension of Time to File Resp. in Opp'n to Pls.' Mot. to Compel Produc. of AT&T Records 1 (Nov. 11, 2020), ECF 592 (citing oral argument in the Seventh Circuit and briefing in other cases); Unopposed Second Mot. for Extension of Time to File Disc. Aff. 1 (Oct. 21, 2020), ECF 578 (citing depositions in another case); Unopposed Mot. for Extension of Time to File Disc. Aff. 1 (Oct. 15, 2020), ECF 576 (citing "three appellate court oral arguments and a preliminary injunction hearing"); Unopposed Second Mot. for Extension of Time to File Reply in Supp. of Mot. for Sanctions 1 (May 5, 2020), ECF 511 (citing "four separate, emergency TRO/PI matters").

14. Plaintiffs would be unfairly prejudiced by a modification of the discovery schedule/order to extend Defendants' deadline to disclose experts. Because Defendants proposed, and Plaintiffs agreed, to "keep December and early January relatively light," Soto–

Mihet Emails *16,² Plaintiffs—and their experts—intended to use that time, over the multiple holidays, to review Defendants’ expert reports and prepare to depose Defendants’ experts early in the new year. *See* McCoy Decl. ¶ 4. Irrespective of Defendants’ offer to “make the experts available for deposition shortly [after January 8], perhaps late January or early February,” Soto–Mihet Emails *5, Plaintiffs always intended to depose the experts as soon as possible in the new year, given the need to depose additional nonparties and *eight* parties (including two Rule 30(b)(6) depositions) by the **March 15, 2021 discovery deadline**. *See* McCoy Decl. ¶ 4. Defendants seek to shift the consequences of their delay to Plaintiffs by modifying the discovery schedule/order to shorten the time Plaintiffs have with Defendants’ expert reports by *four weeks* and forcing Plaintiffs to only begin preparing to depose Defendants’ experts while also depositing other nonparties and all parties.

15. Despite Defendants’ inexcusable delay, Plaintiffs counter-offered a 14-day extension, to and including December 28, 2020, for the report of the expert who, at the time, was about to undergo surgery, so long as Defendants disclose by the December 14, 2020 deadline the information required by Rule 26(a)(2)(B)(iv)–(vi) of the Federal Rules of Civil Procedure—“(iv) the witness’s qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the study and testimony in the case.” *See* Soto–Mihet Emails *2. That information would at least allow Plaintiffs to begin evaluating that expert’s qualifications while waiting for the expert’s opinions. Defendants dismiss that offer to modify the discovery schedule/order as “uncharitable,”

² Plaintiffs took nonparty depositions on December 4 and 7 and will take more on December 17 and 18. *See* McCoy Decl. ¶ 5.

“disjointed,” “Scrooge-like,” Mot. ¶¶ 11–12, and “devoid of any reason or rationale,” Soto–Mihet Emails *1.

CONCLUSION

The motion should be denied, except to the extent it requests a two-week extension for the report of the expert who underwent surgery, so long as Defendants disclose by the December 14, 2020 deadline the information required by Rule 26(a)(2)(B)(iv)–(vi) of the Federal Rules of Civil Procedure.

Respectfully submitted.

December 8, 2020

/s/ Frank H. Langrock
Frank H. Langrock
Langrock Sperry & Wool, LLP
111 S. Pleasant Street
P.O. Drawer 351
Middlebury, Vermont 05753-0351
Phone: (802) 388-6356
Fax: (802) 388-6149
Email: flangrock@langrock.com

Sarah Star
Sarah Star, PC
P.O. Box 106
Middlebury, Vermont 05753
Phone: (802) 385-1023
Email: srs@sarahstarlaw.com

Scott D. McCoy
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, Florida 32302
Phone: (850) 521-3042
Fax: (850) 521-3001
Email: scott.mccoy@splcenter.org

Tyler Clemons
Southern Poverty Law Center
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Phone: (504) 526-1530

Fax: (504) 486-8947

Email: tyler.clemons@splcenter.org

Diego A. Soto

Maya G. Rajaratnam

Southern Poverty Law Center

400 Washington Avenue

Montgomery, Alabama 36104

Phone: (334) 956-8200

Fax: (334) 956-8481

Email: diego.soto@splcenter.org

Email: maya.rajaratnam@splcenter.org

Counsel for Plaintiffs

Janet Jenkins and Isabella Miller-Jenkins

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served on the following counsel of record through the Court's CM/ECF system:

Richard Boyer
Integrity Law Firm, PLLC
Counsel for Defendant Linda M. Wall

Anthony R. Duprey
Neuse, Duprey & Putnam, PC
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Roger K. Gannam
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Adam S. Hochschild
Hochschild Law Firm, LLC
Counsel for Defendant Linda M. Wall

Michael R. Hirsh
Hirsh & Heuser, LLC
Counsel for Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc.

Brooks G. McArthur
Jarvis, McArthur & Williams, LLC
Counsel for Defendant Kenneth L. Miller

Horatio G. Mihet
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Daniel Joseph Schmid
Liberty Counsel
Counsel for Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen

Norman C. Smith
Norman C. Smith, PC
Counsel for Defendant Linda M. Wall

Michael J. Tierney
Wadleigh, Starr & Peters, PLLC
Counsel for Defendant Timothy D. Miller

December 8, 2020

/s/ Diego A. Soto
Diego A. Soto
Counsel for Plaintiffs
Janet Jenkins and Isabella Miller-Jenkins

Diego Soto

From: Horatio Mihet <hmihet@lc.org>
Sent: Thursday, December 3, 2020 6:07 PM
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

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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

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
LC.org
Offices in DC, FL, and VA
*Licensed in Florida and Ohio

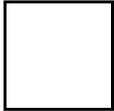
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From: Diego Soto <Diego.Soto@splcenter.org>
Sent: Thursday, December 3, 2020 6:53 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: Roger Gannam <rgannam@lc.org>; Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Jessica 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



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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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.*
*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

LC.org

Offices in DC, FL, and VA

*Licensed in Florida and Ohio

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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

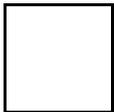
Harry,

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



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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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

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

LC.org

Offices in DC, FL, and VA

*Licensed in Florida and Ohio

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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

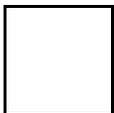
<ejoselson@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam

<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.



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 | www.splcenter.org

Admitted in Alabama and the District of Columbia

From: Horatio Mihet <hmihet@lc.org>

Sent: Wednesday, December 2, 2020 5:48 PM

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

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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Diego Soto

From: Diego Soto
Sent: Monday, November 9, 2020 9:19 AM
To: Horatio Mihet; Adam Hochschild; mrhirsh@hirshandheuser.com; 'Brooks McArthur'; 'Cassie Parah'; 'Anthony Duprey'; Daniel Schmid; Roger Gannam; 'Norman Smith'; 'Richard Boyer'; 'Toddy Ferguson'; 'Michael Tierney'
Cc: Beth Littrell; Emily Joselson; flangrock; Jessica Stone; Maya Rajaratnam; Sarah Star; Scott McCoy; Tyler Clemons
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Harry, no need for subpoenas for our experts' depositions; your notice is sufficient.



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 | www.splcenter.org
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From: Horatio Mihet <hmihet@lc.org>
Sent: Monday, November 9, 2020 9:04 AM
To: Diego Soto <Diego.Soto@splcenter.org>; Adam Hochschild <adam@hochschildlaw.com>; mrhirsh@hirshandheuser.com; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>
Cc: Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego and Counsel: please find attached a deposition notice for Plaintiff's four experts, formally affixing their deposition on the dates we previously agreed upon (Nov. 17, 18, 19 and 20), each one starting at 10 am Eastern. The depositions will be taken remotely via Veritext. Links will be provided in advance via email.

Diego – please confirm that Plaintiff will produce her experts for deposition on the basis of this Notice alone, without the need for additional subpoenas, etc.

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: Wednesday, November 4, 2020 5:04 PM

To: Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; mrhirsh@hirshandheuser.com; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>

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

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Harry, we have asked Planet Depos to provide a shared folder accessible to all attendees to which exhibits will be uploaded as they are marked during the deposition. I will circulate a link to that shared folder once I receive it. Exhibits also will be presented through screen sharing.



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 | www.splcenter.org

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Sent: Wednesday, November 4, 2020 3:25 PM

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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego – what is your plan regarding the means and timing for providing defense counsel with the exhibits to be used at the remote deposition of Joleen Booth this Friday?

Thanks,

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

LC.org

Offices in DC, FL, and VA

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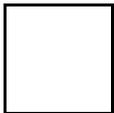
Sent: Friday, October 30, 2020 1:28 PM

To: Horatio Mihet <hmihet@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; mrhirsh@hirshandheuser.com; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>

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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Thanks, Harry. I am processing documents for production today, which include documents from Ms. Booth, Ms. Stasulli, and Ms. Thurman. We have already produced documents from Mr. Wright (e.g., JENKINS23544–JENKINS23547). We have not yet received documents from Mr. Yoder (we gave him an extension to Mon Nov 2) or Mr. Miller (who has until Fri Nov 13).



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 | www.splcenter.org

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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego – these dates work for me. I am releasing Nov. 9 on my calendar, because I have something else popping up on that date.

We will go ahead and notice the 4 depositions of your experts shortly.

Lastly – have you received any of the documents you have subpoenaed from the non-party witnesses you are deposing? Most pressing from Ms. Booth? Are you expecting productions in advance of the depositions? Please let us know the status and expected timing of providing Defendants with any such documents you receive in advance of the depositions.

Thanks,

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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Cc: Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock

<flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Counsel,

In addition to my email on Wednesday about the deposition protocol, I have some updates on scheduling other nonparty depositions: Ms. Stasulli informed me yesterday that she actually is not available on Nov 23 due to a personal matter; we propose rescheduling her for Mon Dec 7. We propose scheduling Terry Miller for Tue Dec 8; we are waiting for his availability after Dec 15. **Please let me know as soon as possible if these dates don't work for you.** We have been unable to reach Ms. Sturgill; we'll get back to you on a proposed date.

Below is an updated list:

- Fri Nov 6: Joleen Booth (scheduled)
- Tue Nov 17: Patricia Apy (9am ET)
- Wed Nov 18: Tara Devine (9am ET)
- Thu Nov 19: Sharon Lamb (9am ET; hard stop at 5pm ET)
- Fri Nov 20: John Maluccio (9am ET)
- Mon Nov 30: Andrew Yoder (scheduled)
- Fri Dec 4: Deborah Thurman (scheduled)
- Mon Dec 7: Janet Stasulli (proposed)
- Tue Dec 8: Terry Miller (proposed)

Thanks,
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 | www.splcenter.org
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From: Diego Soto

Sent: Wednesday, October 28, 2020 12:58 PM

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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Counsel,

Plaintiffs believe it would be more appropriate for the parties to stipulate to some protocol to govern even the first remote deposition scheduled for next Friday, November 6.

I believe I have already addressed the questions and concerns raised by email. I'd appreciate all other questions and concerns with the proposal—especially any objections to abiding by any particular proposed provision at the first deposition. It would be more prudent to hash those problems out now before they come up in the middle of a deposition.

I'd highlight that the first paragraph of our proposal provides that “[t]he Parties agree to work together in good faith to supplement or adjust this protocol as needed to accommodate changing circumstances or address unforeseen issues.” We aren't looking to trap the parties into unworkable protocol; we welcome proposed amendments at any time.

I have attached our earlier proposal with some changes in redline.

Thanks,
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 | www.splcenter.org
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Cc: Beth Littrell <beth.littrell@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <scott.mccoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Thanks for letting me know. I don't believe Mr. Miller is available after Dec 15 but I'll try to confirm. Would Dec 7 or 8 work?

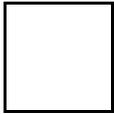
Below is an updated list. Because Mr. Wright is sick with Covid-19 and seems unlikely to be available as early as Nov 9, we've moved Ms. Sturgill to Nov 9 and will try to confirm that date with her. Also, Mr. Yoder is not available on Nov 23, so we've swapped him with Ms. Stasulli.

- Mon Nov 9: Sandra Sturgill
- Tue Nov 17–Wed Nov 18: Apy/Devine
- Thu Nov 19–Fri Nov 20: Lamb/Maluccio
- Mon Nov 23: Janet Stasulli
- Mon Nov 30: Andrew Yoder

- Fri Dec 4: Deborah Thurman
- Mon Dec 7 or Tue Dec 8: Terry Miller

Seeing no conflicts with Nov 30 or Dec 4, we'll notice and serve deposition subpoenas for Mr. Yoder and Ms. Thurman, who have confirmed their availability those days.

Thanks,
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 | www.splcenter.org
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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego – I have a conflict on Dec. 11 (I'm out of pocket Dec. 9-11). Could you please move the Terry Miller deposition to the following week, on Dec. 14, 17 or 18?

Thanks,

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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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Counsel,

Here's a proposed deposition schedule for most of the nonparties Plaintiffs intend to depose:

- Mon Nov 9: Douglas Wright
- Tue Nov 10: Sandra Sturgill
- Tue Nov 17–Wed Nov 18: Apy/Devine
- Thu Nov 19–Fri Nov 20: Lamb/Maluccio
- Mon Nov 23: Andrew Yoder
- Mon Nov 30: Janet Stasulli
- Fri Dec 4: Deborah Thurman
- Fri Dec 11: Terry Miller

While I confirm these dates with the deponents, please let me know if any of these do not work for you.

To guide our proposals for the remaining depositions, it would be helpful to have any dates that do not work for your and your clients in December, January, February, and March. I will follow up with a list of matters for the Rule 30(b)(6) depositions of Liberty Counsel and Response Unlimited as soon as I can.

Thanks,
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 | www.splcenter.org
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Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Thanks everyone for your responses. We'll revisit this proposal after the first remote deposition, though two points of clarification:

- We intended paragraph 5 to require good-faith notice of a general intent to use electronic exhibits to ensure that the deponent would be ready to view them, not notice of an intent to use any specific electronic exhibit.
- We intended paragraph 15 to require that separate cameras be used if anyone else is in the room with the deponent, so that every person is visible on camera but that no one is in the same frame as the deponent. That would allow everyone to observe those in the room with the deponent, while limiting the video recording to the deponent.

Attached are some resources from Planet Depos, Plaintiffs' deposition vendor, for remote depositions. You can also view the following 15-minute demo: <https://www.bigmarker.com/planetdepos/A-Look-At-Remote-Depositions-2>

Questions, including a request for a walkthrough, can be directed to our contact:

Sarah Rosenberg | Planet Depos
Account Executive
Worldwide Court Reporting & Litigation Technology
t 888.433.3767 | m 412.855.4032
sarah.rosenberg@planetdepos.com | planetdepos.com

Thanks,
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
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I agree with Harry on all points.

Some of my concerns about the proposed deposition protocol include:

1. Paragraph 5 requires that the parties provide "good-faith notice" of intent to use electronic exhibits. It's unclear to me whether this notice means: notice of which specific exhibits will be used; or generic notice that (unspecified) electronic exhibits will be used.
2. Paragraph 16 seems to be unnecessary and to address issues not specific to remote depositions. I think it should either be deleted entirely or replaced with a simple statement that the applicable Rules of Professional Conduct and Federal Rules of Evidence and Procedure apply to communications with anyone about the deponent's testimony while under oath.

But I agree with Harry's suggestion that the Nov. 6 deposition of Joleen Booth would be a "trial run" and that we can revisit after that deposition whether formal protocols are necessary in the future, and if so what they would be.

Thanks,
Adam

Adam S. Hochschild
Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

From: mrhirsh@hirshandheuser.com [<mailto:mrhirsh@hirshandheuser.com>]

Sent: Wednesday, October 14, 2020 12:39 PM

To: 'Horatio Mihet' <hmihet@lc.org>; 'Diego Soto' <Diego.Soto@splcenter.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; 'Daniel Schmid' <daniel@lc.org>; 'Roger Gannam' <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael 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>; 'Maya Rajaratnam' <maya.rajaratnam@splcenter.org>; 'Sarah Star' <sarahstar.esq@gmail.com>; 'Scott McCoy' <Scott.McCoy@splcenter.org>; 'Tyler Clemons' <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

I would echo Horatio's sentiments. I, too, have some dates of depositions, court appearances, etc., but I can be at least partially flexible. If you propose some dates, I can vote on particulars.

Thanks for doing this.

Michael Hirsh

From: Horatio Mihet <hmihet@lc.org>

Sent: Wednesday, October 14, 2020 12:09 PM

To: Diego Soto <Diego.Soto@splcenter.org>; mrhirsh@hirshandheuser.com; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah'

<cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Diego:

Thanks for putting together a suggested deposition protocol. I'm not convinced that such provisions are entirely necessary, and have concerns about some of them. However, my proposal is for us to just take the first deposition of Joleen Booth that you have noticed for November 6 as a "trial run" and to re-assess immediately after that deposition whether these provisions (or some version of them) are necessary in the future. I would be a lot more comfortable discussing these provisions in a less abstract context, after we've had one remote deposition.

On scheduling, I would propose that you go ahead and schedule the two other depositions you previously mentioned (Stassulli and Yoder) for the Nov. 2-10 timeframe we previously discussed.

Then, in view of Defendants' mid-December deadline to disclose their experts, let us take the depositions of Plaintiffs' experts during the week of November 16. We can do one per day starting that Tuesday, and we're not particular on the order, so let us know what works for you and the witnesses.

Then, we can schedule additional depositions that you want to take in the December – March timeframe. My personal preference would be to keep December and early January relatively light, and to plan on doing heavy lifting in late January and February. But I have some availability in December as well, if you want to schedule some depositions then too. On this front, why don't you propose some dates/deponents and we'll let you know if we can make them work.

Thanks,

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

LC.org

Offices in DC, FL, and VA

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

Sent: Wednesday, October 14, 2020 10:24 AM

To: mrhirsh@hirshandheuser.com; Horatio Mihet <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith'

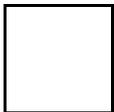
<norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>
Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; flangrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability
Importance: High

Counsel,

A reminder to please let me know your availability for both party and nonparty depositions through the close of discovery on March 15, 2021. Plaintiffs are trying to schedule depositions for dates that work for everyone, including the nonparty deponents. If I'm not mistaken, Defendants are available the first two weeks of November except for November 11–13.

Please also let me know whether you stipulate to the attached proposed stipulated deposition protocol or if you would propose any changes.

Thanks,
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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: Diego Soto
Sent: Monday, October 5, 2020 3:38 PM
To: 'mrhirsh@hirshandheuser.com' <mrhirsh@hirshandheuser.com>; 'Horatio Mihet' <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>
Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; 'Daniel Schmid' <daniel@lc.org>; 'Roger Gannam' <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <scott.mccoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Counsel,

Please see the attached proposed stipulated deposition protocol to govern all remote depositions in this case. Please let me know whether you stipulate to this proposal or if you would propose any changes.

Please also let me know your availability for both party and nonparty depositions through the close of discovery on March 15, 2021. In addition to Joleen Booth, Janet Stasulli, and Andrew Yoder, Plaintiffs intend to depose Beth Ehrhorn,

Jessica Fehr, Terry Miller, Mathew Staver, Sandy Sturgill, Debbie Thurman, and Douglas Wright. I will follow up with a list of matters for the Rule 30(b)(6) depositions of Liberty Counsel and Response Unlimited.

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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: mrhirsh@hirshandheuser.com <mrhirsh@hirshandheuser.com>

Sent: Thursday, October 1, 2020 3:31 PM

To: Diego Soto <Diego.Soto@splcenter.org>; 'Horatio Mihet' <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>

Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; 'Daniel Schmid' <daniel@lc.org>; 'Roger Gannam' <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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That is fine with me as well.

Michael Hirsh

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

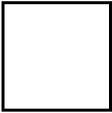
Sent: Thursday, October 1, 2020 2:21 PM

To: Horatio Mihet <hmihet@lc.org>; mrhirsh@hirshandheuser.com; 'Adam Hochschild' <adam@hochschildlaw.com>

Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Thanks, Harry. Plaintiffs intend to notice Ms. Booth's deposition for Friday, November 6. I'll follow-up with the deposition notice and additional details about logistics as I get them.



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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: Horatio Mihet <hmihet@lc.org>
Sent: Thursday, October 1, 2020 1:09 PM
To: Diego Soto <Diego.Soto@splcenter.org>; mrhirsh@hirshandheuser.com; 'Adam Hochschild' <adam@hochschildlaw.com>
Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego – from these dates, I am only available on November 2, 6 and 9. I am not available on Oct. 19/26, nor Nov. 13. Note also that Nov. 11-12 are now also full on my calendar (in relation to the availability I previously gave you).

Please let me know as soon as possible which date you have selected for the Booth deposition.

Thanks,

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: Tuesday, September 29, 2020 11:03 AM
To: mrhirsh@hirshandheuser.com; 'Adam Hochschild' <adam@hochschildlaw.com>; Horatio Mihet <hmihet@lc.org>

Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Thanks, everyone. Of Ms. Booth's available dates, these work best for Plaintiffs. We would prefer to schedule this deposition for the earliest date possible, so please let me know soon if any do not work for you.

- Mon Oct 19
- Mon Oct 26
- Mon Nov 2
- Fri Nov 6
- Mon Nov 9
- Fri Nov 13



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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: mrhirsh@hirshandheuser.com <mrhirsh@hirshandheuser.com>

Sent: Wednesday, September 23, 2020 8:04 PM

To: 'Adam Hochschild' <adam@hochschildlaw.com>; 'Horatio Mihet' <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>

Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; 'Daniel Schmid' <daniel@lc.org>; 'Roger Gannam' <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney' <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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Diego,

Sorry for the delay in responding. First two weeks in November generally work for me as well.

Michael Hirsh

From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Wednesday, September 23, 2020 5:14 PM
To: 'Horatio Mihet' <hmihet@lc.org>; 'Diego Soto' <Diego.Soto@splcenter.org>
Cc: 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah' <cparah@jarvismcarthur.com>; 'Anthony Duprey' <Anthony@dupreylaw.com>; 'Daniel Schmid' <daniel@lc.org>; 'Roger Gannam' <rgannam@lc.org>; 'Norman Smith' <norman@normansmithlaw.com>; 'Richard Boyer' <rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Hirsh' <mrhirsh@hirshandheuser.com>; 'Michael Tierney' <mtierney@wadleighlaw.com>; '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>; 'Maya Rajaratnam' <maya.rajaratnam@splcenter.org>; 'Sarah Star' <sarahstar.esq@gmail.com>; 'Scott McCoy' <Scott.McCoy@splcenter.org>; 'Tyler Clemons' <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Diego: At this time I am also generally available the first two weeks of November for those three depositions.

One clarification on the trial-readiness deadline: section 7 of the 9/14/20 order provides that “[t]his case shall be ready for trial by the first Monday 90 days after the deadline to complete all discovery [by 6/14/21], but if any summary judgment motions are timely filed and pending as of the Motion Deadline [4/26/21], then this case instead shall be ready for trial by the first Monday 60 days after the Court rules on all such summary judgment motions.”

Thanks,
Adam

Adam S. Hochschild
Hochschild Law Firm, LLC
314.503.0326
adam@hochschildlaw.com
www.HochschildLaw.com

From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Friday, September 18, 2020 4:21 PM
To: Diego Soto <Diego.Soto@splcenter.org>
Cc: Brooks McArthur <bmcarthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael Hirsh <mrhirsh@hirshandheuser.com>; Michael Tierney <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Diego – your deadline calculations are consistent with mine. As for the three depositions, as of now I am generally open in the first two weeks of November. If you don’t notice the depositions early next week, please run a specific date by me thereafter to ensure it is still open.

Thanks,

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: Wednesday, September 16, 2020 10:29 AM

To: Horatio Mihet <hmihet@lc.org>

Cc: Brooks McArthur <bmcarthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael Hirsh <mrhirsh@hirshandheuser.com>; Michael Tierney <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Harry,

Plaintiffs intend to notice remote depositions of the following three nonparties and would appreciate Defendants' availability in the next two months for those depositions. I will follow up at a later time about other nonparties.

- Booth, Joleen (Virginia Beach, Virginia)
- Stasulli, Janet (Forest, Virginia)
- Yoder, Andrew (Russellville, Ohio)

Below are what Plaintiffs understand the discovery deadlines to be in light of the Court's discovery schedule order on Monday. Please let me know if you have a different understanding of these discovery deadlines.

Deadline for Defendants to identify rebuttal experts	90 days after the later of (1) the entry of the discovery schedule order and (2) the date the Court rules on the Motion for Partial Summary Judgment as to All Claims Plaintiff Janet Jenkins Purports to Bring as Next Friend of Isabella Miller ("Isabella Motion"), ECF 495	Monday, December 14, 2020 ^[1]
Deadline to serve interrogatories and requests for production	6 weeks before the deadline to complete all discovery	Monday, February 1, 2021

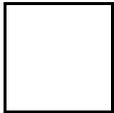
Deadline to complete all discovery	180 days after the later of (1) the entry of the discovery schedule order and (2) the date the Court rules on the Isabella Motion	Monday, March 15, 2021 ^[2]
Deadline to serve requests for admission	4 weeks after the deadline to complete all discovery	Monday, April 12, 2021
Deadline to file motions, including summary judgment motions but excluding motions relating to the conduct of trial	6 weeks after the deadline to complete all discovery	Monday, April 26, 2021
Deadline for trial readiness	The first Monday 90 days after the deadline to complete all discovery	Monday, June 14, 2021 ^[3]

^[1] The Court ruled on the Isabella Motion on Monday, August 31, 2020. ECF 556. The Court entered the discovery schedule order on Monday, September 14, 2020. ECF 562. 90 days after September 14, 2020, is Sunday, December 13, 2020, so the deadline continues to move forward to Monday, December 14, 2020. See Fed. R. Civ. P. 6(a).

² 180 days from September 14, 2020, is Saturday, March 13, 2021, so the deadline continues to move forward to Monday, March 15, 2021. See Fed. R. Civ. P. 6(a).

³ 90 days after March 15, 2021, is Sunday, June 13, 2021, so the deadline continues to move forward to Monday, June 14, 2021. See Fed. R. Civ. P. 6(a).

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 | www.splcenter.org
Admitted in Alabama and the District of Columbia

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From: Horatio Mihet <hmihet@lc.org>

Sent: Monday, September 14, 2020 3:28 PM

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

Cc: Brooks McArthur <bmcarthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <Anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael Hirsh <mrhirsh@hirshandheuser.com>; Michael Tierney <mtierney@wadleighlaw.com>; 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>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: Re: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

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: please identify the five individuals you wish to the depose, and the cities where they are expected to be during their depositions.

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

PO Box 540774

Orlando, FL 32854

(407) 875-1776 phone

(407) 875-0770 fax

LC.org

Offices in DC, FL, and VA

*Licensed in Florida and Ohio

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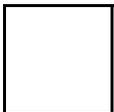
On Sep 14, 2020, at 4:15 PM, Diego Soto <Diego.Soto@splcenter.org> wrote:

Counsel,

Following up on my two questions below from last week.

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 | www.splcenter.org

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From: Diego Soto

Sent: Tuesday, September 8, 2020 12:49 PM

To: Brooks McArthur <bmcarthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <anthony@dupreylaw.com>; Daniel Schmid <dschmid@lc.org>; Horatio Mihet <hmihet@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael Hirsh <mrhirsh@hirshandheuser.com>; Michael Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Claudia Huerta <claudia.huerta@splcenter.org>; Diego Soto <Diego.Soto@splcenter.org>; Emily Joselson <ejoselson@langrock.com>; Fritz Langrock <flangrock@langrock.com>; Jessica Stone <jessica.stone@splcenter.org>; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; Sarah Star <sarahstar.esq@gmail.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Tyler Clemons <tyler.clemons@splcenter.org>

Subject: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability

Counsel:

Please let me know whether you agree with Plaintiffs that the chart below accurately reflects the current discovery deadlines as entered by the Court in its minute entry on September 1, 2020. Please also let me know your availability for remote depositions of 5 nonparties within the next couple of months.

Deadline for Defendants to identify rebuttal experts	90 days after the later of (1) the entry of the discovery schedule order and (2) the date the Court rules on the Motion for Partial Summary Judgment as to All Claims Plaintiff Janet Jenkins Purports to Bring as Next Friend of Isabella Miller ("Isabella Motion"), ECF 495	Monday, November 30, 2020 ^[1]
Deadline to serve interrogatories and requests for production	6 weeks before the deadline to complete all discovery	Friday, January 15, 2021 ^[2]
Deadline to complete all discovery	180 days after the later of (1) the entry of the discovery schedule order and (2) the date the Court rules on the Isabella Motion	Monday, March 1, 2021 ^[3]
Deadline to serve requests for admission	4 weeks after the deadline to complete all discovery	Monday, March 29, 2021
Deadline to file motions, including summary judgment motions but excluding motions relating to the conduct of trial	6 weeks after the deadline to complete all discovery	Monday, April 12, 2021
Deadline for trial readiness	The first Monday 90 days after the deadline to complete all discovery	Monday, June 7, 2021 ^[4]

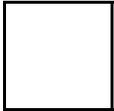
¹ The Court ruled on the Isabella Motion on Monday, August 31, 2020. ECF 556. The Court entered the discovery schedule order on Tuesday, September 1, 2020. ECF 557.

² 6 weeks before Monday, March 1, 2021, is Monday, January 18, 2021, a legal holiday, so the deadline continues to move backward to Friday. *See* Fed. R. Civ. P. 6(a).

³ 180 days from September 1, 2020, is Sunday, February 28, 2021, so the deadline continues to move forward to Monday. *See* Fed. R. Civ. P. 6(a).

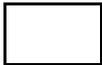
⁴ 90 days after March 1, 2021, is Sunday, May 30, 2021, so the deadline continues to move forward to Monday, May 31, 2021, which is a legal holiday, so the deadline continues to move forward to Monday, June 7, 2021. *See* Fed. R. Civ. P. 6(a).

Sincerely,
Diego



Diego Soto he/him/his
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^[1] The Court ruled on the Isabella Motion on Monday, August 31, 2020. ECF 556. The Court entered the discovery schedule order on Monday, September 14, 2020. ECF 562. 90 days after September 14, 2020, is Sunday, December 13, 2020, so the deadline continues to move forward to Monday, December 14, 2020.

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^[4] 90 days after March 1, 2021, is Sunday, May 30, 2021, so the deadline continues to move forward to Monday, May 31, 2021, which is a legal holiday, so the deadline continues to move forward to Monday, June 7, 2021. *See* Fed. R. Civ. P. 6(a).

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

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**DECLARATION OF SCOTT D. MCCOY IN SUPPORT OF
PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO MODIFY THE DISCOVERY SCHEDULE/ORDER**

I, Scott D. McCoy, declare under penalty of perjury that the following is true and correct:

1. I am the interim Deputy Legal Director at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. Exhibit 1 is a true and correct copy of emails between Diego Soto, counsel for Plaintiffs, and Horatio Mihet, counsel for Defendants Liberty Counsel, Inc. and Rena Lindevaldsen.

3. Defendants deposed Plaintiffs' four experts on November 17, 2020, through November 20, 2020.

4. Because Defendants proposed, and Plaintiffs agreed, to "keep December and early January relatively light," Soto-Mihet Emails *16, Plaintiffs—and their experts—intended to use that time, over the multiple holidays, to review Defendants' expert reports and prepare to depose Defendants' experts early in the new year. Irrespective of Defendants' offer to "make the experts available for deposition shortly [after January 8], perhaps late January or early February," Soto-Mihet Emails *5, Plaintiffs always intended to depose the experts as soon as possible in the new

year, given the need to depose additional nonparties and *eight* parties (including two Rule 30(b)(6) depositions) by the March 15, 2021 discovery deadline.

5. Plaintiffs took nonparty depositions on December 4 and 7 and will take more on December 17 and 18.

Executed on December 8, 2020

/s/ Scott D. McCoy
Scott D. McCoy
Counsel for Plaintiffs
Janet Jenkins and Isabella Miller-Jenkins