

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.)	
_____)	

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

Just last week, in connection with a different deadline, Plaintiff’s counsel opposed a **first** extension request of only **two days**, necessitated in part because of the death of one of the undersigned counsel’s mother. (Dkt. 602 at 4, 7). The undersigned presented their need to this Court, and asked for either two days or one week. (*Id.*) Within minutes, the Court granted the undersigned’s request, granted one week, and continued the discovery hearing at issue by one week. (Dkt. 603).

In this week’s installment of scorched earth litigation, the same Plaintiff’s counsel now file a **39-page** opposition (complete with a sworn declaration of counsel and supporting documents), to a **first** extension request of Defendants’ expert report deadline, necessitated in part because of a hip replacement surgery, a previously planned anniversary trip, and Christmas. (Dkt. 612).

While these types of tactics may be “normal” for counsel who have publicly sworn to “destroy” and “wreck” their ideological opponents, as Plaintiff’s counsel have threatened to do to some of the moving Defendants here (dkt. 600 at 3-4), they have no place in a court of law, where counsel are supposed to be collegial and professional.

The sole justification and asserted “prejudice” that Plaintiff’s counsel offer for their heartless opposition is that they need to take up to one dozen depositions before the close of discovery, which, as of today, is **96 days** away (March 15, 2021). (Dkt. 612). According to Plaintiff’s counsel, one of Defendant’s experts must jump out of his surgery recovery bed, the other must cancel her anniversary trip, and both experts and counsel should cancel Christmas, because Plaintiff’s counsel cannot possibly squeeze two more depositions (**just two more**) in the **14 weeks** (14 weeks!) that remain before the close of discovery. And, tellingly, from the 39 pages they submit to this Court, Plaintiff’s counsel leave out the 40th page – **even though it was in the same chain of emails they chose to submit** – which would have shown the Court that, on the very same day that they intimated to the Court that the accommodation requested by Defendants cannot possibly be worked out, Plaintiff’s counsel provided to Defendants a host of potential deposition dates in January, February and March that would very easily accommodate just two more depositions. (See **Exhibit A** hereto, page one (Plaintiff’s counsel suggesting depositions dates including January 12, 14, 19, 21, 26, 28, February 2, 4, 9, 12, 16, 19, 26, and March 5, 12)). And this list was not even exhaustive of all available dates in the next quarter year, since Plaintiff’s counsel invited Defendants to discuss and propose additional deposition dates within the same time frame. (*Id.*) Obviously, Plaintiff’s counsel’s inflexibility is pretextual, and appears to be designed to “wreck” and “destroy” counsel’s and experts’ Christmas.

Defendants respectfully request that the Court reject these tactics, and grant Defendants' first (and only) extension of this deadline, for the good cause demonstrated. This relief would have no impact on the progress of this case, and **would not require the Court to change any other deadline, including the close of discovery and the submission of dispositive motions.** It is unfortunate that it was necessary to trouble the Court with this much paper over this (non) issue.

Respectfully Submitted,

/s/ Adam S. Hochschild

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Counsel for Defendant Linda Wall

/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*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th 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: [Diego Soto](#)
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
Date: Tuesday, December 8, 2020 8:43:56 AM

Counsel,

Plaintiffs are considering the following dates for the remaining nonparty depositions and for party depositions. Please let me know as soon as possible whether any of these dates—or any other date in January, February, or March—does not work for you or your client(s), so we may begin proposing dates for specific deponents.

- Tue Jan 12
- Thu Jan 14
- Tue Jan 19
- Thu Jan 21
- Tue Jan 26
- Thu Jan 28
- Tue Feb 2
- Thu Feb 4
- Tue Feb 9
- Fri Feb 12
- Tue Feb 16
- Fri Feb 19
- Fri Feb 26
- Fri Mar 5
- Fri Mar 12

Sincerely,
Diego



Diego Soto he/him/his
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From: Diego Soto
Sent: Thursday, November 19, 2020 12:02 PM
To: 'Horatio Mihet' <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; 'mrhirsh@hirshandheuser.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

Counsel,

I just learned that Terry Miller is available for a deposition on December 18. Because no one indicated that date no longer works, I will follow up with the notice.

Thanks,
Diego



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From: Diego Soto

Sent: Friday, November 13, 2020 8:57 AM

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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<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,

I will go ahead and notice and schedule Mr. Wright's deposition for December 17 starting at 10am Eastern.

I also just learned this morning that Terry Miller is not available until after December 15, contrary to our previous understanding. I have asked for his availability on December 18 and for alternative dates, so please let me know as soon as possible if you are no longer available on December 18.

Sincerely,
Diego



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From: Diego Soto

Sent: Thursday, November 12, 2020 1:02 PM

To: 'Horatio Mihet' <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; mrhirsh@hirshandheuser.com;
<mrhirsh@hirshandheuser.com>; 'Brooks McArthur' <bmcarthur@jarvismcarthur.com>; 'Cassie Parah'
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<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,

Douglas Wright is available for a deposition on **Thursday, December 17, 2020** starting at 10am Eastern. Please let me know by COB today whether that date no longer works for you. We'll otherwise notice and schedule his deposition for that date.

Thanks,
Diego



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From: Diego Soto

Sent: Monday, November 9, 2020 9:19 AM

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



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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
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<rickboyerlaw@gmail.com>; 'Toddy Ferguson' <cs.fergie@myfairpoint.net>; 'Michael Tierney'
<mtierney@wadleighlaw.com>

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<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.*
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Chief Litigation Counsel*
Liberty Counsel
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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'
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<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.



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From: Horatio Mihet <hmihet@lc.org>
Sent: Wednesday, November 4, 2020 3:25 PM
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 – 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
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From: Diego Soto <Diego.Soto@splcenter.org>

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).

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From: Horatio Mihet <hmihet@lc.org>

Sent: Friday, October 30, 2020 11:46 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>

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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

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

Sent: Friday, October 30, 2020 12:24 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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<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*
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From: Diego Soto

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

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

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

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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

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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
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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

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From: Diego Soto

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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

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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

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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>
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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.*
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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
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

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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,

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

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That is fine with me as well.

Michael Hirsh

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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.

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

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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
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(407) 875-0770 fax
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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

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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*
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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 <mhirsh@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	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	[1]
----------------------------	-------------------------------------------------------------------------------------------------------------------------------------	---------------------

identify rebuttal experts	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
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
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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

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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

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[Orlando, FL 32854](#)

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

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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).

