

**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' POST-HEARING MEMORANDUM AND RESPONSE TO SECOND  
SUPPLEMENTAL DECLARATION OF HORATIO G. MIHET REGARDING  
DISCOVERY COMPLIANCE EFFORTS OF DEFENDANTS LIBERTY COUNSEL,  
INC. AND RENA LINDEVALDSEN**

The Court should grant Plaintiffs' revised second motion to compel, ECF 591, and again compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to conduct reasonable, good-faith searches for documents responsive to Plaintiffs' Requests for Production 4–8, 11–12, 17–19, 35–36, and 47–48 and compel Defendants to correct the insufficiently detailed subject descriptions to which Plaintiffs' object in Defendants' privilege logs. With the close of discovery just *seventy-six* days away, the Court should set a date-certain deadline for Defendants' compliance. The Court also should schedule, for the very near future, a hearing on Plaintiffs' motion to compel Defendants to produce the AT&T records, ECF 582, so it may decide that important dispute before the parties commence party depositions in February.\*

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\* Thus far, the parties have scheduled Kenneth Miller's deposition for March 2, Timothy Miller's for March 8, and Philip Zodhiates's for March 24 due to their unavailability in February. Plaintiffs have proposed deposing Victoria Hyden on the first available Monday in February and Linda Wall on February 26 but are awaiting their responses. Plaintiffs are negotiating deposition dates for Rena Lindevaldsen, Liberty Counsel, and Response Unlimited.

**I. Plaintiffs' Revised Second Motion to Compel**

**A. Defendants Conducted Clearly Unreasonable, Bad-Faith Searches**

The Court should order Defendants to abide by its earlier order to comply with Plaintiffs' Requests for Production 4–8, 11–12, 17–19, 35–36, and 47–48. With respect to all those requests, Defendants still refuse to specify what email accounts they themselves searched. They vaguely respond that they searched “all of the email accounts to which Lindevaldsen has access (business and personal)” and “all of the email accounts to which Mathew Staver has access (business and personal).” Resp. 11, ECF 607. But only they, not Plaintiffs, know to what “business and personal” email accounts Lindevaldsen and Staver “ha[ve] access.” *Id.* at 10. The Court should compel Defendants to provide Plaintiffs a list of all email accounts they have searched, so that Plaintiffs may compare it with known email addresses for Lindevaldsen and Staver.

**1. Requests for Production 4–8 and 17–18**

The Court should compel Defendants to conduct a reasonable, good-faith search for all communications concerning Plaintiff Janet Jenkins, Plaintiff Isabella Miller-Jenkins, and Defendant Lisa Miller (Reqs. 4–6); all communications with Isabella and Lisa (Reqs. 7–8); and all documents and communications concerning the Dispute and the Court Orders (Reqs. 17–18). *See Op. & Order* 4–10, 12–13, ECF 395 (ordering their compliance).

Defendants unreasonably used only the search terms “Lisa Miller”, “Janet Jenkins”, “Isabella Miller”, and “Isabella Miller-Jenkins.” *See Mihet Decl.* ¶ 16 (Oct. 26, 2020), ECF 580. Again, full names are not and cannot be sufficient search terms to find all communications about those topics, especially when we know Defendants communicated about those topics without using those full names. *See Lindevaldsen Produc.*, ECF 591-5. Their search terms yielded at most a mere *sixty* emails that did not include Lisa and also did not concern unrelated litigation.

*See* Soto Decl. ¶¶ 3–8 (Jan. 14, 2021). They produced forty of these emails and withheld twenty. *Id.* Because they used unreasonably narrow search terms, they have not produced many communications about those subjects, including with known associates. *See* Reply 5–6, ECF 618.

Defendants have shown why it would have been futile for Plaintiffs to propose specific search terms sooner. After Plaintiffs suggested some possible search terms in their reply, *see id.* at 7–8, Defendants searched *only one* of those proposals and insisted at the hearing that, because *that* proposal produced too many false positives, no other search could possibly be reasonable. To state the obvious, Plaintiffs do not have access to Defendants’ email accounts to test the adequacy of their proposals, and Defendants cannot get off scot-free just because Plaintiffs’ initial proposals seem unworkable.

Defendants hope the Court will be fooled by their feigned ignorance of how to conduct truly reasonable, good-faith searches long enough to run out the clock for discovery. Defendants know at least as well as Plaintiffs what other combinations of terms could better target responsive, not-yet-produced communications. Thus far, Defendants have searched only for full names and two combinations of first names, as the Court ordered: (1) Lisa AND Janet, and (2) Lisa AND Janet AND Isabella. But they have not tried different combinations using, for example, Isabella’s nickname “Izzy”, her alias “Lydia”, Lisa’s alias “Sarah” or “Sister Sarah”, or other key terms, such as “Vermont”, “Virginia”, or “visitation”. *See* Mot. 12; Reply 7–8. For example, they could easily try searches such as (Isabella OR Izzy OR Janet OR Lisa OR Lydia OR Sarah OR Sessions OR Sharp OR “Sister Sarah”) AND (VA OR Vermont OR Virginia OR VT) and (Isabella OR Izzy OR Janet OR Lisa OR Lydia OR Sarah OR Sessions OR Sharp OR “Sister Sarah”) AND visitation.

Defendants make two unconvincing complaints about the number of hits resulting from Plaintiffs' earlier proposed searches. They first complain that they often communicate about lists of donors and constituents, which expectedly include individuals named Lisa, Janet, and Isabella, *see* Mihet Decl. ¶¶ 5, 7(a) (Jan. 7, 2021), ECF 630, but Defendants surely can quickly move on to the next communication in their review. They also complain that their post-briefing searches produced too many communications that post-date the filing of this case, *see id.* ¶¶ 5, 7(b), but as far as Plaintiffs can tell, nothing prevents Defendants from sorting or filtering their search results by date. *See, e.g., Learn to Narrow Your Search Criteria for Better Searches in Outlook*, Microsoft, <https://support.microsoft.com/en-us/office/learn-to-narrow-your-search-criteria-for-better-searches-in-outlook-d824d1e9-a255-4c8a-8553-276fb895a8da> (last accessed Jan. 12, 2021) (explaining that searches can be limited to emails before a certain date using received<).

A thorough search of Defendants' communications is especially necessary because they repeatedly fall back on the convenient excuse that unrecovered responsive communications, including many Plaintiffs know exist, *see* Soto Letter 2–7, ECF 591-3, must have been deleted and not preserved before Defendants were obligated to preserve them. *See* Mihet Decl. ¶ 9 (Jan. 7, 2021); Mihet Decl. ¶¶ 26–30 (Oct. 26, 2020). Defendants have changed their tune a bit on that front, too: their new declaration assures the Court that they “manually examined each document saved in [their] electronic master folder for the Miller-Jenkins litigation” “where Liberty Counsel attorneys and staff saved email communications related to that litigation,” Mihet Decl. ¶ 9 (Jan. 7, 2021), but their prior declaration emphasized that “Liberty Counsel attorneys did not save every email ... in the Miller-Jenkins custody litigation” because of the “significant amount of time” it would have taken to manually save every email, Mihet Decl. ¶ 30 (Oct. 26, 2020). Even assuming all that were true—though many questions about that deletion practice remain

unanswered, *see* Mot. 17—Defendants cannot rely on that excuse *before* conducting a reasonable search of their communications not contained in that master file.

## 2. Requests for Production 11–12

The Court should compel Defendants to search for Lisa’s email addresses zeusdesfor@aol.com and god1ofchild@live.com within the body of their emails. The Court ordered them to comply with Plaintiffs’ request for all communications with Lisa’s email addresses zeusdesfor@aol.com (Req. 11) and god1ofchild@live.com (Req. 12) concerning certain subjects. *See* Op. & Order 10–12, ECF 395. Defendants refuse to search for those email addresses within the messages themselves versus just the To, From, and CC fields. *See* Resp. 13.

Such a search is necessary. Take, for example, the email chain Bates stamped LC28978–LC28979. *See* ECF 618-1. That is an email from Lindevaldsen to her secretary Bonnie Gentry forwarding an email chain from Steve Crampton to Lisa and Lindevaldsen. A search for Lisa’s email addresses only within the To, From, and CC fields would not find Lindevaldsen’s March 12 email to Gentry (and the entire email chain that went with it) because Lisa’s email address does not appear within those fields for this email (left below); instead, such a search would find—assuming it were not deleted—Crampton’s March 5 email to Lisa and Lindevaldsen because Lisa’s email address appears in the To field for that email (right below):

<p><b>From:</b> Lindevaldsen, Rena M.  <b>Sent:</b> Thursday, March 12, 2009 10:23 AM  <b>To:</b> Gentry, Bonnie M.  <b>Subject:</b> FW: Isabella</p>	<p><b>From:</b> Crampton, Steve  <b>Sent:</b> Thursday, March 05, 2009 6:51 PM  <b>To:</b> 'zeusdesfor@aol.com'  <b>Cc:</b> Lindevaldsen, Rena M.  <b>Subject:</b> FW: Isabella</p>
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Plaintiffs lucked out with this specific email presumably because Defendants preserved Crampton’s earlier email too and merely produced one version of the entire email chain. But, as Defendants admit, they had a practice of deleting emails, *see* Mihet Decl. ¶¶ 29–30 (Oct. 26,

2020), so Plaintiffs cannot safely assume that Defendants preserved every individual email to, from, or copying Lisa.

Defendants can easily search for Lisa’s email addresses within the body of their emails by searching about:“zeusdesfor@aol.com” and about:“god1ofchild@live.com”. *See, e.g., Learn to Narrow Your Search Criteria for Better Searches in Outlook, supra; see also Soto Decl.* ¶ 9 (Jan. 14, 2021) (explaining how the about:“” search works in practice).

### **3. Requests for Production 36 and 48**

The Court should order Defendants to conduct a reasonable, good-faith search for all documents and communications concerning events that happened, or were planned or expected to happen, on September 20–22, 2009 (Req. 36) or November 8–13, 2009 (Req. 48). *See Op. & Order 13–14, ECF 395* (ordering their compliance).

*First*, the Court should order Defendants to search all personal and business calendars, including @liberty.edu calendars, available to them and to specify in a declaration what calendars they searched. Defendants say only that they searched their “master firm calendar,” which “is a composite of all individual member calendar entries available to Liberty Counsel.” Resp. 24. They do not, however, specify which “individual member calendar entries” are “available to Liberty Counsel.” Most glaringly, they do not say what, if any, other calendars Lindevaldsen herself searched, such as her personal calendars or @liberty.edu calendar.

*Second*, the Court should compel Defendants to search for more than just documents and communications *from* those dates. *See id.* The requests are not so limited; they seek documents and communications *about* those dates, which could have been authored before or after those timeframes. The September timeframe concerns Isabella’s kidnapping. As Plaintiffs understand it, Defendant Philip Zodhiates picked up Lisa and Isabella on September 20, drove them to the United States–Canada border on September 21, and they departed Canada for Nicaragua on

September 22, while Zodhiates drove home to Virginia and called Liberty University School of Law and Liberty Counsel president Mathew Staver. *See* Revised Second Am. Compl. ¶¶ 36, 38, 44, 60, ECF 223. Meanwhile, the November timeframe concerns the removal of Lisa’s and Isabella’s belongings from their Virginia home for delivery to Nicaragua. As Plaintiffs understand it, on October 23, Zodhiates sent Defendant Victoria Hyden a list from Lisa of belongings Lisa wanted delivered to Nicaragua; between November 8 and 11, Zodhiates asked Hyden for updates about the removal of those belongings; and on November 13, Zodhiates’s son delivered those belongings to his teacher, who agreed to take them on his trip to Nicaragua. *See id.* ¶¶ 45–46. By November 15, Lindevaldsen confirmed that Lisa and Isabella were both safe. *See* Thurman Dep. Ex. 33, ECF 616-2. Plaintiffs naturally seek Defendants’ documents and communications from before and after those dates too, which could show Defendants’ knowledge of or participation in the planning or execution of Isabella’s kidnapping and the removal of Lisa’s and Isabella’s belongings. Defendants should use various terms in various combinations to target these types of communications. The Court should, at the very least, order them to run the following searches:

<b>Timeframe</b>	<b>Search Term(s)</b>
Sept. 12–18, 2009; Oct. 31–Nov. 6, 2009	“next weekend”
Sept. 13–19, 2009; Nov. 1–7, 2009	“next Sunday” OR “this Sunday” OR “this coming Sunday” OR “this upcoming Sunday”
Sept. 14–18, 2009; Nov. 2–6, 2009	“this weekend” OR “this coming weekend” OR “this upcoming weekend”
Sept. 14–19, 2009; Nov. 2–7, 2009	“next week” OR “next Monday” OR “this Monday” OR “this coming Monday” OR “this upcoming Monday”
Sept. 14–19, 23–26, 2009; Nov. 2–7, 14, 2009	“Sunday”
Sept. 15–19, 2009; Nov. 3–7, 2009	“next Tuesday” OR “this Tuesday” OR “this coming Tuesday” OR “this upcoming Tuesday”
Sept. 15–19, 23–27, 2009; Nov. 3–7, 14–15, 2009	“Monday”

<b>Timeframe</b>	<b>Search Term(s)</b>
Sept. 16–19, 23–28, 2009; Nov. 4–7, 14–16, 2009	“Tuesday”
Sept. 19, 2009; Nov. 7, 2009	“tomorrow”
Sept. 23, 2009; Nov. 14, 2009	“yesterday”
Sept. 23–27, 2009; Nov. 14–15, 2009	“last Sunday” OR “past Sunday” OR “last weekend” OR “past weekend”
Sept. 23–28, 2009; Nov. 14–16, 2009	“last Monday” OR “past Monday”
Sept. 23–29, 2009; Nov. 14–17, 2009	“last Tuesday” OR “past Tuesday”
Sept. 26–Oct. 2, 2009; Nov. 14–20, 2009	“last week” OR “past week”
Nov. 4–7, 2009	“next Wednesday” OR “this Wednesday” OR “this coming Wednesday” OR “this upcoming Wednesday”
Nov. 5–7, 2009	“next Thursday” OR “this Thursday” OR “this coming Thursday” OR “this upcoming Thursday”
Nov. 5–7, 14–17, 2009	“Wednesday”
Nov. 6–7, 2009	“next Friday”
Nov. 6–7, 14–18, 2009	“Thursday”
Nov. 7, 14–19, 2009	“Friday”
Nov. 14–18, 2009	“last Wednesday” OR “past Wednesday”
Nov. 14–19, 2009	“last Thursday” OR “past Thursday”
Nov. 14–20, 2009	“last Friday” OR “past Friday”
2009	“September 20” OR “Sept. 20” OR “Sep. 20” OR “9/20” OR “9-20”
2009	“September 21” OR “Sept. 21” OR “Sep. 21” OR “9/21” OR “9-21”
2009	“September 22” OR “Sept. 22” OR “Sep. 22” OR “9/22” OR “9-22”
2009	“November 8” OR “Nov. 8” OR “11/08” OR “11-08” OR “11/08” OR “11-08” OR “11/8” OR “11-8”
2009	“November 9” OR “Nov. 9” OR “11/09” OR “11-09” OR “11/9” OR “11-9”
2009	“November 10” OR “Nov. 10” OR “11/10” OR “11-10”
2009	“November 11” OR “Nov. 11” OR “11/11” OR “11-11”
2009	“November 12” OR “Nov. 12” OR “11/12” OR “11-12”
2009	“November 13” OR “Nov. 13” OR “11/13” OR “11-13”
Before August 14, 2012	“September 20, 2009” OR “Sept. 20, 2009” OR “Sep. 20, 2009” OR “9/20/2009” OR “9-20-2009” OR “9/20/09” OR “9-20-09”
Before August 14, 2012	“September 21, 2009” OR “Sept. 21, 2009” OR “Sep. 21, 2009” OR “9/21/2009” OR “9-21-2009” OR “9/21/09” OR “9-21-09”

<b>Timeframe</b>	<b>Search Term(s)</b>
Before August 14, 2012	“September 22, 2009” OR “Sept. 22, 2009” OR “Sep. 22, 2009” OR “9/22/2009” OR “9-22-2009” OR “9/22/09” OR “9-22-09”
Before August 14, 2012	“November 8, 2009” OR “Nov. 8, 2009” OR “11/08/2009” OR “11-08-2009” OR “11/08/09” OR “11-08-09” OR “11/8/2009” OR “11-8-2009” OR “11/8/09” OR “11-8-09”
Before August 14, 2012	“November 9, 2009” OR “Nov. 9, 2009” OR “11/09/2009” OR “11-09-2009” OR “11/09/09” OR “11-09-09” OR “11/9/2009” OR “11-9-2009” OR “11/9/09” OR “11-9-09”
Before August 14, 2012	“November 10, 2009” OR “Nov. 10, 2009” OR “11/10/2009” OR “11-10-2009” OR “11/10/09” OR “11-10-09”
Before August 14, 2012	“November 11, 2009” OR “Nov. 11, 2009” OR “11/11/2009” OR “11-11-2009” OR “11/11/09” OR “11-11-09”
Before August 14, 2012	“November 12, 2009” OR “Nov. 12, 2009” OR “11/12/2009” OR “11-12-2009” OR “11/12/09” OR “11-12-09”
Before August 14, 2012	“November 13, 2009” OR “Nov. 13, 2009” OR “11/13/2009” OR “11-13-2009” OR “11/13/09” OR “11-13-09”

**B. Defendants’ Privilege Logs Contain Many Unjustifiably Vague Subject-Matter Descriptions**

The Court should order Defendants to add sufficient detail to their privilege logs to resolve Plaintiffs’ objections to forty-eight of their subject-matter descriptions. *See* Pls.’ Objs. to Defs.’ Privilege Log, ECF 618-3; Pls.’ Objs. to Lindevaldsen’s Privilege Log, ECF 618-4. To properly assert a privilege, Defendants must “describe the nature of the documents, communications, or tangible things not produced or disclosed... in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(ii). To challenge Defendants’ privilege assertions under the crime–fraud exception, Plaintiffs need sufficient information about the withheld documents to show “a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies.” *In re John Doe, Inc.*, 13 F.3d 633, 636 (2d Cir. 1994) (quoting *United States v. Zolin*, 491 U.S. 554, 572 (1989)); *see also* Reply 10 (collecting other cases).

To be clear, Plaintiffs are not asking for the substance of what was written in any of the withheld documents—for example, what specific legal advice was requested or what impressions counsel had about a particular hearing; instead, Plaintiffs seek sufficient information about the nature of those documents—for example, legal advice about visitation, as opposed to friendship advice, or counsel’s impressions about a hearing on August 24, 2005, as opposed to an “upcoming hearing.” Defendants sometimes give that needed specificity, and Plaintiffs’ objections are limited to the entries in which they did not. For example, Defendants helpfully specify to which hearings Entries 14–19 refer. *See* Defs.’ Privilege Log 2, ECF 607-6 (“8/24/2005 hearing ... 8/17/2004 hearing ... 5/26/2004 hearing ... 3/15/2004 hearing ... 3/15/2004 hearing ... [and] 5/26/2004 hearing.”). But they do not provide that same specificity for Entries 42, 91, 95, 98–99, 102, 111, 134, 138, 142–143, 146, or 202–204. They also sometimes specify that the advice was legal and what it concerned, such as in Entry 81, *id.* at 7 (“legal advice concerning welfare of child”), and Entry 87, *id.* (“legal advice concerning visitation problems and issues”), but not in Entries 82–83, 92, 126, or 135. Entries 103–106 and 108–110 use the incredibly vague phrase “potential outcomes” without specifying from what those “potential outcomes” would come, such as a hearing or missed visitation.

## **II. Plaintiffs’ Motion to Compel Defendants to Produce AT&T Records**

The Court should grant Plaintiffs’ motion to compel Defendants to promptly produce AT&T’s records in their entirety. Plaintiffs originally obtained, through a Freedom of Information Act request, a copy of AT&T’s records for Lindevaldsen’s phone calls from August 30, 2009, through December 4, 2009, which the government introduced into evidence at Zodhiates’s criminal trial. *See* ECF 582-3. Because Defendants refused to admit or deny the authenticity of those records, *see* Soto Decl. ¶ 2 (Oct. 28, 2020), ECF 582-8, and because Plaintiffs need records covering a wider timeframe and records of Liberty Counsel’s phone calls,

Plaintiffs subpoenaed AT&T for all call and text-message logs for all of Defendants' phone numbers a year before and a year after the September 2009 kidnapping (that is, September 2008–September 2010). Per an agreement with Plaintiffs, AT&T produced those records to Defendants, but Defendants refuse to produce them to Plaintiffs. Defendants' refusal is meritless; AT&T's nonsubstantive records of Defendants' calls and texts are relevant, proportional to the needs of the case, and not protected by privilege, privacy, or the First Amendment.

The Court should consider two important developments:

*First*, Plaintiffs recently learned that, on November 4, 2020, Defendant Timothy Miller produced a broader scope of AT&T's records of Lindevaldsen's phone calls, from January 1, 2009, through November 30, 2010. Because of that disclosure, Defendants undoubtedly have no basis for withholding those same records. If Defendants produce those records, that would resolve most, but not all, of Plaintiffs' demand for AT&T's records for Lindevaldsen, leaving at issue the records for September 1–December 31, 2008.

*Second*, on January 8, 2021, Defendants disclosed a purported expert, Larry Daniel, to opine that Staver did not answer Zodiates's phone call on September 22, 2009, as Zodiates drove home to Virginia after leaving Lisa and Isabella at the United States–Canada border. *See* Soto Decl. ¶ 10 (Jan. 14, 2021). Daniel reviewed AT&T's record of that phone call and its records key. *Id.* Although Plaintiffs reserve the right to move to strike Daniel's report as an untimely affirmative expert report, Defendants' reliance on AT&T's records for Staver makes the remainder of those records even more relevant and proportional than before. Plaintiffs must be permitted to review the entirety of the records to respond to Defendants' theory that Staver did not answer Zodiates's phone call in the immediate aftermath of the kidnapping.

Plaintiffs believe the Court can easily grant their motion based on the briefing, but because Defendants have requested a hearing, Plaintiffs respectfully request that the Court schedule that hearing for the very near future, so that this issue can be resolved before the parties commence party depositions in February.

### CONCLUSION

The Court should grant Plaintiffs' revised second motion to compel and schedule for the very near future a hearing on their motion to compel Defendants to promptly produce AT&T's records.

Respectfully submitted.

January 14, 2021

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**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:

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January 14, 2021

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**Emails Within LC13262–LC36969 That Contain  
“Lisa Miller”, “Janet Jenkins”, “Isabella Miller”, or “Isabella Miller-Jenkins”**

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
1	LC16837	LC16838	2	Email	8/17/2012	News and Advance article re suit against LUSOL and TRBC...	Staver, Mathew D	Staver, Mathew D		
2	LC28152	LC28152	1	Email	1/8/2010	Telephone Conference with Bedford County Sheriff's Office...	Staver, Mathew (Liberty Counsel)	Staver, Mathew (Law School)	Gentry, Bonnie M.; Crampton, Steve; Lindevaldsen, Rena M.	
3	LC28153	LC28153	1	Email	9/16/2008	RE: Lisa has relocated?	'Price, Joseph'	Lindevaldsen, Rena M.	Crampton, Steve	
4	LC28154	LC28154	1	Email	10/21/2008	Re: Depo of Lisa Miller	Crampton, Steve	Price, Joseph [mailto:Price.Joseph@ARENTFOX.COM]	Lindevaldsen, Rena M.; 'parisit@verizon.net'; 'lchalidze@shoreham.net'; 'gnevins@lambdalegal.org'; 'rglenberg@acluva.org'	
5	LC28159	LC28160	2	Email	8/17/2012	News and Advance article re suit against LUSOL and TRBC...	Staver, Mathew D	Staver, Mathew D		
6	LC28178	LC28178	1	Email	12/22/2011	Media	Haskew, Amber S	Tedeschi, Janie		
7	LC28179	LC28182	4	Email	12/28/2017	Challenging	firegrassmail@gmail.com	Liberty Counsel		Liberty Counsel email mailer
8	LC28183	LC28187	5	Email	7/11/2019	Crushing defeat...	Vickie Maloney	Mat Staver, Liberty Counsel		Liberty Counsel email mailer
9	LC28188	LC28189	2	Email	2/9/2016	demand for retraction and correction of defamatory publication	stn@suntimes.com	Horatio Mihet		

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
10	LC28190	LC28193	4	Email	12/20/2015	Fwd: demand for retraction and correction of defamatory publication	Horatio Mihet	Bobby McGuire		"prs@edgemedianet work.com" <prs@edgemedianet work.com>, "press@edgemedianetwork.com" <press@edgemedianetwork.com>, "info@edgemedianetwork.com" <info@edgemedianetwork.com>
11	LC28194	LC28196	3	Email	6/5/2017	Liberty Counsel Responds to SPLC Lawsuit	Janie Tedeschi	Liberty Counsel		Liberty Counsel email mailer
12	LC28197	LC28197	1	Email	9/25/2014	Fwd: Lisa Miller...	Mihet, Horatio; Lindevaldsen, Rena M; Gannam, Roger; Staver, Anita Leigh	Staver, Mathew D		"eckholm@nytimes.com" <eckholm@nytimes.com>
13	LC28198	LC28198	1	Email	4/25/2011	MEDIA issue	Redacted	Staver, Anita L		
14	LC28199	LC28200	2	Email	3/22/2017	FW: Press Request - The Daily Beast	Holly Meade	Mat Staver		'Allen, Samantha' <Samantha.Allen@thedailybeast.com>
15	LC28201	LC28202	2	Email	9/7/2015	RE: Retraction and Correction Demanded...	Mat Staver	Sarah Fowler-News	Horatio Mihet; Charla Bansley	
16	LC28203	LC28207	5	Email	8/21/2019	SPLC blames Trump for mass shooting	Janie Tedeschi	Mat Staver, Liberty Counsel		Liberty Counsel email mailer
17	LC28208	LC28212	5	Email	1/13/2020	SPLC goes fishing	Liberty Counsel	Mat Staver, Liberty Counsel		Liberty Counsel email mailer
18	LC28213	LC28216	4	Email	4/19/2017	They want to destroy us!	Liberty Counsel Store	Mat Staver		Liberty Counsel email mailer
19	LC28217	LC28221	5	Email	8/19/2019	This time the SPLC went too far . . .	Janie Tedeschi	Mat Saver, Liberty Counsel		Liberty Counsel email mailer
20	LC28222	LC28225	4	Email	4/18/2017	URGENT threat to destroy Liberty Counsel	Mat Staver	Liberty Counsel		Liberty Counsel email mailer
21	LC28226	LC28228	3	Email	12/20/2017	Urgent!	firegrassmail@gmail.com	Liberty Counsel		Liberty Counsel email mailer
22	LC28229	LC28229	1	Email	9/8/2016	US v. Philip Zodiates	Holly Meade	Ring, Wilson		

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
23	LC28356	LC28358	3	Email	4/20/2007	Liberty Counsel Asks Supreme Court To Apply Federal Defense of Marriage Act To Protect Parental Rights				Liberty Alert email
24	LC28359	LC28360	2	Email	4/30/2007	Supreme Court Sidesteps Conflict Between States Over Same-Sex Unions				Liberty Alert
25	LC28361	LC28363	3	Email	8/4/2006	Vermont Supreme Court Ruling Begins Showdown Between States Over Same-Sex Unions				Liberty Alert
26	LC28374	LC28377	4	Email	12/27/2007	Standing at the Center of the Battle for America's Soul				Liberty Alert
27	LC28378	LC28380	3	Email	12/31/2007	Advancing Religious Freedom, Life and Family in 2008				Liberty Alert
28	LC28381	LC28383	3	Email	2/7/2007	Liberty Counsel Asks Supreme Court to Settle Legal Battle Between States Over Same-Sex Unions				Liberty Alert
29	LC28384	LC28386	3	Email	5/4/2005	Liberty Counsel Files Brief At Vermont Supreme Court Arguing That A Vermont Civil Union Issued To Virginia Residents Is Void And That Virginia Law Controls Parental Rights Concerning A Minor Child				Liberty Alert

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
30	LC28387	LC28389	3	Email	1/3/2005	Virginia and Vermont Courts Collide Over Child Custody Battle Arising From a Vermont Civil Union				Liberty Alert
31	LC28421	LC28423	3	Email	3/13/2006	Virginia Judge Rejects Registration of Vermont Civil Union Order				Liberty Alert
32	LC28450	LC28452	3	Email	9/13/2007	Virginia Supreme Court Agrees To Decide Vermont Same-Sex Civil Unions Case				Liberty Alert
33	LC28742	LC28742	1	Email	10/16/2008	FW: 10/21 Deposition of Lisa Miller	Lindevaldsen, Rena M.	Crampton, Steve	Gentry, Bonnie M.	Price, Joseph [mailto:Price.Joseph@ARENTFOX.COM]; 'Theodore A. Parisi, Jr.'; 'Gregory R. Nevins Esq. (gnevins@lambdalegal.org)'
34	LC28937	LC28938	2	Email	11/26/2007	RE: [Bad Attachment] Miller-Jenkins v. Miller-Jenkins	'Lisa Chalidze, Esq.'; dlc@clearyshahi.com; nc.smith@verizon.net	Crampton, Steve		Price.Joseph@ARENTFOX.COM; parisit@verizon.net; jajenkins79@verizon.net
35	LC28954	LC28955	2	Email	4/9/2009	FW: Visitation	Gentry, Bonnie M.	Lindevaldsen, Rena M.		Sarah Star [mailto:srs@sarahstarrow.com]; 'Michelle Kenny'; rglenberg@acluva.org; GNevins@lambdalegal.org; 'Janet Jenkins'
36	LC28956	LC28956	1	Email	3/6/2009	RE: Isabella	jajenkins79@myfairpoint.net	lisa miller [mailto:god1ofchild@live.com]	Crampton, Steve	

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
37	LC28957	LC28957	1	Email	3/9/2009	FW: skype	Lindevaldsen, Rena M.	lisa miller [mailto:god1ofchild@live.com]		jajenkins79@myfairpoint.net; scampton@liberty.edu
38	LC28958	LC28959	2	Email	3/9/2009	FW: Isabella	Lindevaldsen, Rena M.	lisa miller [mailto:god1ofchild@live.com]		jajenkins79@myfairpoint.net; scampton@liberty.edu
39	LC28960	LC28960	1	Email	3/9/2009	skype and letters	janet	lisa miller [mailto:god1ofchild@live.com]	Lindevaldsen, Rena M.	
40	LC28961	LC28962	2	Email	3/9/2009	FW: Isabella	Lindevaldsen, Rena M.	lisa miller [mailto:god1ofchild@live.com]		jajenkins79@myfairpoint.net; scampton@liberty.edu
41	LC28963	LC28963	1	Email	3/9/2009	FW: Isabella	Lindevaldsen, Rena M.	lisa miller [mailto:god1ofchild@live.com]		jajenkins79@myfairpoint.net; scampton@liberty.edu
42	LC28966	LC28966	1	Email	3/12/2009	FW: skype and letters	Gentry, Bonnie M.	Lindevaldsen, Rena M.		lisa miller [mailto:god1ofchild@live.com]; jajenkins79@myfairpoint.net
43	LC28967	LC28967	1	Email	3/12/2009	FW: e-mail address	Gentry, Bonnie M.	Lindevaldsen, Rena M.		lisa miller [mailto:god1ofchild@live.com]; Crampton, Steve; jajenkins79@myfairpoint.net
44	LC28973	LC28977	5	Email	3/12/2009	FW: Isabella	Gentry, Bonnie M.	Lindevaldsen, Rena M.		zeusdesfor@aol.com [mailto:zeusdesfor@aol.com]; Crampton, Steve <scampton@liberty.edu>; 'Sarah Star' <srs@sarahstarlaw.com>; 'Michelle Kenney' <mkenny@kenlanlaw.com>

	First Bates No.	Last Bates No.	Page #	Doc Type	Doc Date	Subject	To	From	CC	Notes
45	LC28980	LC28984	5	Email	3/12/2009	FW: Isabella	Gentry, Bonnie M.	Lindevaldsen, Rena M.		Crampton, Steve; Zeusdesfor@aol.com; Sarah Star [mailto:srs@sarahstarlaw.com]; 'Michelle Kenny'
46	LC29267	LC29267	1	Email	9/22/2009	Lisa Miller	Staver, Mathew (Law School)	Lindevaldsen, Rena M.		
47	LC32032	LC32034	3	Email	6/5/2017	Liberty Counsel Responds to SPLC Lawsuit	Amber Haskew	Liberty Counsel		Liberty Counsel email mailer

**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 DIEGO A. SOTO IN SUPPORT OF  
PLAINTIFFS' POST-HEARING MEMORANDUM AND RESPONSE TO SECOND  
SUPPLEMENTAL DECLARATION OF HORATIO G. MIHET REGARDING  
DISCOVERY COMPLIANCE EFFORTS OF DEFENDANTS LIBERTY COUNSEL,  
INC. AND RENA LINDEVALDSEN**

I, Diego A. Soto, declare under penalty of perjury that the following is true and correct:

1. I am a Staff Attorney at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. My December 17, 2020 declaration, ECF 618-5, contained a typo in paragraph 4: Liberty Counsel produced the documents Bates stamped LC00226–LC13261 on January 10, 2020, not 2019.

3. On January 11, 2021, I reviewed both the documents Liberty Counsel produced from its electronic files and its December 7, 2020 privilege log. Based on this review, their search terms “Lisa Miller”, “Janet Jenkins”, “Isabella Miller”, and “Isabella Miller-Jenkins” yielded only fifty-seven emails that did not include Lisa and also did not concern unrelated litigation. They produced thirty-seven of these emails and withheld twenty.

4. I first reviewed the documents Bates stamped LC13262–LC36969. Liberty Counsel produced these documents on March 9, 2020. As Plaintiffs understand it, these documents were found within Defendants’ “electronic files,” Mihet Decl. ¶ 10(b) (Oct. 26,

2020), ECF 580, using the search terms set forth in Defendants’ declaration, *see id.* ¶¶ 16, 19, 22. Specifically, in response to Requests for Production 4–8, 11–12, and 17–18, Defendants searched for “[a]ll emails sent by anyone to, or received by anyone from, zeusdesfor@aol.com, one of Lisa Miller’s email addresses,” or “god1ofchild@live.com, another of Lisa Miller’s email addresses,” and for “[a]ll emails and documents containing the term ‘Lisa Miller’ ... ‘Janet Jenkins’ ... ‘Isabella Miller’ [or] ‘Isabella Miller-Jenkins.’” *Id.* ¶ 16. I searched within LC13262–LC36969 for all documents containing the terms “Lisa Miller”, “Janet Jenkins”, “Isabella Miller”, or “Isabella Miller-Jenkins” by running the following search: 'DOC ID' >= LC13262 AND 'DOC ID' <= LC36969 AND ( 'Lisa Miller' WITHIN OCR OR 'Janet Jenkins' WITHIN OCR OR 'Isabella Miller' WITHIN OCR OR 'Isabella Miller-Jenkins' WITHIN OCR ). That search yielded 281 documents. I reviewed those documents and determined that forty-seven of them are emails. Exhibit 1 is a table setting forth those forty-seven emails. Of those forty-seven emails, six were from Lisa’s email address god1ofchild@live.com (LC28956, LC28957, LC28958, LC28960, LC28961, and LC28963) and four were email chains that included either that email address or Lisa’s other email address zeusdesfor@aol.com (LC28966, LC28967, LC28973, and LC28980). In other words, of the forty-seven emails, only thirty-seven did not include Lisa.

5. I next reviewed Entries 72–261 in Defendants’ December 7, 2020 privilege log. Defendants first produced a privilege log, containing seventy-one entries, on January 10, 2019, *see* ECF 472-7, after searching their “paper file,” *see* Mihet Decl. ¶ 10(a) (Oct. 26, 2020). On March 9, 2020, they produced an amended privilege log adding 190 entries, for a total of 261 entries, *see* ECF 484-3, after searching their “electronic files,” Mihet Decl. ¶ 10(b) (Oct. 26, 2020). On December 7, 2020, Defendants produced another amended privilege log adding nine

entries, for redactions made to documents within Defendants' production, for a total of 270 entries. *See* ECF 607-6. Of the 190 entries from Defendants' "electronic files" (that is, Entries 72–261), only 182 entries describe the document as "Email correspondence"—Entries 72–112, 116–140, 142–143, 146–148, 150–153, and 155–261. Of those 182 emails, seventy-five emails—Entries 72–112, 116–117, 120–126, 128–140, 146–147, 155, and 201–209—included Lisa Miller as either an author or recipient and eighty-seven emails—Entries 148, 151–153, 156–159, 171–172, 174–200, 210–229, 231–254, and 256–261—involved "unrelated litigation." In other words, of the 182 emails Defendants logged, only twenty were emails that did not include Lisa and that did not concern unrelated litigation—Entries 118–119, 127, 142–143, 150, 160–170, 173, 230, and 255.

6. On January 13, 2021, I reviewed both the documents Rena Lindevaldsen produced and her December 7, 2020 privilege log. Based on this review, her search terms "Lisa Miller", "Janet Jenkins", "Isabella Miller", and "Isabella Miller-Jenkins" yielded only three emails that did not include Lisa. She produced all three.

7. I first reviewed all of the documents Lindevaldsen produced, which she Bates stamped RL00001–RL05164. I searched within those documents for all documents containing the terms "Lisa Miller", "Janet Jenkins", "Isabella Miller", or "Isabella Miller-Jenkins" by running the following search: RL\* WITHIN 'DOC ID' AND ( 'Lisa Miller' WITHIN OCR OR 'Janet Jenkins' WITHIN OCR OR 'Isabella Miller' WITHIN OCR OR 'Isabella Miller-Jenkins' WITHIN OCR ). That search yielded thirty-seven documents. I reviewed those documents and determined that five of them are emails—RL00345, RL03603, RL03616, RL03671, and RL03688. Of those five emails, two were from Lisa's email address zeusdesfor@aol.com—RL03616 and RL03671. In other words, of the five emails, only three did not include Lisa.

8. I next reviewed Lindevaldsen’s December 7, 2020 privilege log. Lindevaldsen first produced an individual privilege log, containing nineteen entries, on March 9, 2020. On December 7, 2020, she produced an amended privilege log adding seventeen entries, for redactions made to documents within her production, for a total of thirty-six entries. *See* ECF 607-6. Entries 25 and 29 log the redactions made to RL03671 and RL03688, respectively, both of which were found from the search described in paragraph 7. Of the nineteen entries for documents withheld in full, only eleven describe the document as “Email correspondence”—Entries 1–11. All eleven emails included Lisa Miller as either an author or recipient. In other words, Lindevaldsen logged zero emails that did not include Lisa.

9. On January 12, 2021, I tested the functionality of Microsoft Outlook’s search term about:“”. I sent three emails: (1) an email to my personal email address, to which I will refer as personal@email.com, with the subject “Test” and message body “Test”; (2) an email to my work email address diego.soto@splcenter.org with the subject “Test” and the message body “personal@email.com”; and (3) an email to my work email address with the subject “Test - personal@email.com” and the message body “Test”. I then ran a search within all mailboxes for about:“personal@email.com”. That search yielded emails 2 and 3, which contained personal@email.com in the message body and subject, respectively, but not email 1, which was to personal@email.com but did not include personal@email.com in the message body or subject.

10. On January 8, 2021, Defendants disclosed a purported expert, Larry Daniel, to opine that Staver did not answer Zodiates’s phone call on September 22, 2009, as Zodiates drove home to Virginia after leaving Lisa and Isabella at the United States–Canada border. Daniel reviewed AT&T’s record of that phone call and its records key.

Executed on January 14, 2021

/s/ Diego A. Soto

Diego A. Soto

*Counsel for Plaintiffs*

*Janet Jenkins and Isabella Miller-Jenkins*