

**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.

PLAINTIFF’S EMERGENCY MOTION FOR HEARING

Plaintiff Janet Jenkins moves for an emergency hearing to address important developments: the arrest of Lisa Miller in the United States; defense counsel’s purported representation of Isabella Miller-Jenkins; and Isabella’s purported instruction to dismiss her claim, termination of Plaintiff’s counsel’s representation of her, and objection to Plaintiff’s counsel’s further representation of *Plaintiff*. Plaintiff and her counsel urgently need the Court’s guidance on how these developments affect their participation in this case and the discovery schedule/order. In support, Plaintiff states the following:

1. Plaintiff filed this case for herself and her then-minor daughter Isabella Miller-Jenkins, as Isabella’s next friend, against Isabella’s kidnappers and those who assisted in the kidnapping.

2. Although Isabella turned eighteen years old on April 16, 2020, the statutory age of majority under Vermont law, the Court held that Plaintiff “may still bring next friend claims on behalf of Isabella because she has shown that Isabella lacks access to the U.S. courts under *Whitmore v. Arkansas*, 495 U.S. 149 (1990).” Op. & Order 6, ECF 556. The Court reasoned that “Isabella’s longstanding status as a victim of kidnapping shows that she faces significant obstacles to appearing in American court,” *id.* at 8, and that Plaintiff is “truly dedicated to the

best interests of” Isabella, *id.* at 6, “in large part due to her significant relationship with Isabella,” *id.* at 9. The Court rejected Defendants’ argument that Plaintiff “has not had contact with Isabella for over a decade, nor has she had any way of confirming Isabella’s wishes or interests in pursuing her own claims in this litigation,” because Plaintiff “has not had the opportunity to investigate Isabella’s wishes due to the *very harm at the heart of this case – her kidnapping.*” *Id.* at 10 (emphasis in original).

3. On or about January 27, 2021, Lisa Miller was returned to the United States and arrested in Miami, Florida on a criminal superseding indictment filed in the United States District Court for the Western District of New York. *See United States v. Lisa Miller*, No. 1:14-cr-00175 (W.D.N.Y.). Upon information and belief, Lisa had her first appearance before a United States magistrate judge on January 28, 2021, in the United States District Court for the Southern District of Florida, during which she waived her right to a removal hearing and reserved her right to a detention hearing. *See United States v. Miller*, No. 1:21-mj-02159 (S.D. Fla.). The magistrate judge ordered Lisa removed to the Western District of New York. Upon information and belief, Lisa currently is incarcerated at FDC Miami in Miami, Florida. *See Find an Inmate*, BOP, <https://www.bop.gov/inmateloc/> (last accessed Jan. 29, 2021) (search “Lisa Miller”). Plaintiff does not know when Lisa will be removed from the Southern District of Florida, when she will arrive in the Western District of New York, or how she will be transported there.

4. Now that Lisa’s whereabouts are known and she can be served process in this case, Plaintiff yesterday informed Defendants of this development and asked to confer early next week about how this development will affect the discovery schedule/order. *See Ex. 1: Emails*

with Defense Counsel 3. That day, only counsel for Defendant Timothy Miller responded with his availability. *See id.*

5. Today, at 3 p.m. Eastern Time, attorney Vince Heuser of the firm Hirsh & Heuser, LLC, which represents Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc. in this case, *see, e.g.*, Mot. to Admit Attorney Michael R. Hirsh Pro Hac Vice, ECF 540 (requesting *pro hac vice* admission without local counsel); Order, ECF 545 (granting motion), emailed counsel of record in this case advising that he represents Isabella in this matter and instructing Plaintiff's counsel to "take appropriate action to fulfill her instructions" contained in two attached affidavits purportedly by Isabella. *See Ex. 2: Soto-Heuser Emails 2.* Specifically, Isabella purportedly instructs Plaintiff's counsel to dismiss her claim, terminates Plaintiff's counsel's representation of her, and objects to Plaintiff's counsel's further representation of any other person in this matter, *including Plaintiff.* *See id.* at 5-8.

6. Plaintiff's counsel responded that they "cannot, and will not, take any actions adverse to Isabella's interests, including dismissing her claim, unless and until [they] can communicate with her in confidence or until the Court orders otherwise." *Id.* at 1. Plaintiff's counsel requested further information about their communications with Isabella and explanation of how those communications and the purported simultaneous representation of a plaintiff and three defendants in this case do not violate Vermont's and other applicable states' rules of professional conduct governing communications with represented persons and conflicts of interest. *See id.*

7. Given those same rules of professional conduct, Plaintiff's counsel has been cornered into the bizarre situation of not being able to ethically communicate with their client

because counsel for opposing parties communicated with her without warning or permission and now purportedly represent her.

8. At 5:55 p.m., counsel for Defendants Liberty Counsel, Inc. and Rena Lindevaldsen (collectively, “Liberty Counsel Defendants”) served Plaintiff’s counsel a renewed Rule 11 motion for sanctions against Plaintiff and her counsel, given Isabella’s purported instructions. *See* Ex. 3: Liberty Counsel Defs.’ Notice of Rule 11 Mot.

9. At 6:01 p.m., the Liberty Counsel Defendants responded to Plaintiff’s January 28 request to confer, asking to add their Rule 11 motion to the agenda and whether Plaintiff still intends to depose one of their experts. *See* Emails with Defense Counsel 2. Timothy Miller responded that the parties cannot discuss the discovery schedule/order as originally planned because, per Isabella’s purported objection, Plaintiff’s counsel need to move to withdraw and Plaintiff needs to find new counsel. *See id.* at 1–2. Plaintiff responded that these issues should be addressed at a status conference, instead of a meet-and-confer, because her position on them depends on what guidance the Court gives concerning Isabella. *See id.* at 1.

CONCLUSION

The Court should grant Plaintiff’s emergency motion for a hearing and schedule a hearing at the Court’s earliest convenience to address how Plaintiff and her counsel’s participation in this case and the discovery schedule/order are affected by Lisa’s sudden reappearance, defense counsel’s purported representation of Isabella, and Isabella’s purported instruction to dismiss her claim, termination of Plaintiff’s counsel’s representation of her, and objection to Plaintiff’s counsel’s further representation of Plaintiff.

Respectfully submitted.

January 29, 2021

/s/ Frank H. Langrock

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Counsel for Plaintiff Janet 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

I further certify that, on this date, the foregoing document was served on the following attorney by email:

Vincent F. Heuser, Jr.
Hirsh & Heuser, LLC
Purported Counsel for Plaintiff Isabella Miller-Jenkins

January 29, 2021

/s/ Diego A. Soto
Diego A. Soto
Counsel for Plaintiff Janet Jenkins

Diego Soto

From: Diego Soto
Sent: Friday, January 29, 2021 6:52 PM
To: 'Michael J. Tierney'; Horatio Mihet; Brooks McArthur; Cassie Parah; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman Smith; Richard Boyer; Toddy Ferguson; Michael Hirsh
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.) - Request to Confer [WSP-ACTIVE.FID39922]

Counsel,

Plaintiff is preparing to file tonight an emergency motion for a status conference in light of this week's developments concerning Lisa and Isabella. Until we receive guidance from the Court on how the development concerning Isabella affects our involvement in this case, Plaintiff is unable to take a position on any of the issues raised in this email chain. For that reason, a meet-and-confer would not be productive and we believe these issues should be addressed at the status conference too.

Sincerely,
Diego



Diego Soto he/him/his
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Admitted in Alabama and the District of Columbia

From: Michael J. Tierney <mtierney@wadleighlaw.com>
Sent: Friday, January 29, 2021 5:23 PM
To: Horatio Mihet <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>; 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>
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.) - Request to Confer [WSP-ACTIVE.FID39922]

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Isabella has not just demanded that her previous attorneys (Diego, Frank, et al) stop representing her in this case but has demanded that her previous attorneys stop representing Janet as well. That is her right. Having represented both Janet and Isabella these past several months asserting that they had the same interest, now knowing that their interests are no longer aligned, the current team needs to immediately withdraw and be replaced by counsel solely representing

Janet. Our discussion on Tuesday should not be about who Janet wants to depose but rather how long Janet needs to find new counsel. Will she require 7 days? 10 days? 14 days?

I am flexible and likely agreeable to whatever time others think is necessary to find new counsel.

I don't believe anything substantive can be decided until we know who is representing who.

Michael

Michael J. Tierney, Esq.
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603-669-6018 (Fax)

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Sent: Friday, January 29, 2021 6:01 PM

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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.) - Request to Confer [WSP-ACTIVE.FID39922]

Diego – let us speak on this Tuesday at 10 am Eastern. Please circulate a dial-in.

Let us add the following two additional subjects to the agenda, in light of today's developments:

- 1) Whether Jenkins will voluntarily comply with Isabella's instructions that Jenkins abandon Isabella's purported claims in this lawsuit, or whether a renewed Motion for Summary Judgment and Motion for Sanctions will be necessary to secure that compliance; and
- 2) Whether Jenkins still intends to depose defense expert Dr. Drew.

Regards,

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

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From: Michael J. Tierney <mtierney@wadleighlaw.com>

Sent: Thursday, January 28, 2021 5:34 PM

To: Diego Soto <Diego.Soto@splcenter.org>; Brooks McArthur <bmcarthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <anthony@dupreylaw.com>; Daniel Schmid <daniel@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>

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.) - Request to Confer [WSP-ACTIVE.FID39922]

Yes. I am available on Monday or Tuesday.

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

Sent: Thursday, January 28, 2021 5:24 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 J. Tierney <mtierney@wadleighlaw.com>

Cc: Beth Littrell <beth.littrell@splcenter.org>; Diego Soto <Diego.Soto@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: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Request to Confer

Counsel,

We have learned that Lisa Miller is in federal custody in the United States and that Isabella is not in the United States. Are you available to confer Monday at any time or Tuesday afternoon to discuss how this will affect the discovery schedule/order?

Sincerely,
Diego



Diego Soto he/him/his

Staff Attorney | LGBTQ Rights & Special Litigation

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From: Diego Soto
Sent: Friday, January 29, 2021 6:52 PM
To: vheuser@hirshandheuser.com
Cc: Beth Littrell; Diego Soto; Emily Joselson; flangrock; Jessica Stone; Maya Rajaratnam; Sarah Star; Scott McCoy; Tyler Clemons; Brooks McArthur; Cassie Parah; Anthony Duprey; Daniel Schmid; Horatio Mihet; Roger Gannam; Adam Hochschild; Norman Smith; Richard Boyer; Toddy Ferguson; Michael Hirsh; Michael Tierney
Subject: RE: Jenkins v. Miller et al, CASE #: 2:12-cv-00184-wks

Vince,

As you are aware, given your firm's representation of certain defendants in this case, the Court held that Janet Jenkins may continue to represent Isabella's interests in this case as her next friend. We cannot, and will not, take any actions adverse to Isabella's interests, including dismissing her claim, unless and until we can communicate with her in confidence or until the Court orders otherwise. We are preparing to file tonight an emergency motion for a status conference to address this development concerning Isabella. **In the meantime, you do not have our permission to communicate with Isabella about this matter, and you must immediately cease all further communication with her.**

Please detail precisely how you and your firm interacted with Isabella, including when, where, how, how often, and who else was involved with and/or present during the communication.

Please explain how your firm's communication with Isabella does not violate Rule 4.2 of the Georgia, Kentucky, and Vermont Rules of Professional Conduct, which prohibit a lawyer from "communicat[ing] about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter." Comment 3 to Kentucky's and Vermont's rules specifically apply that prohibition to when "the represented person initiates or consents to the communication." The comment instructs that "[a] lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule."

Please also explain how your firm's purported simultaneous representation of Isabella on the one hand and Defendants Philip Zodiates, Victoria Hyden, and RUL on the other does not violate Rule 1.7 of the Georgia, Kentucky, and Vermont Rules of Professional Conduct, which prohibit a lawyer from "represent[ing] a client if the representation involves a concurrent conflict of interest."

Ms. Jenkins reserves her right to seek all appropriate relief—including but not limited to sanctions, ethics complaints, and the revocation of pro hac vice admission—against you, your firm, and all other attorneys acting in concert with you in all applicable courts and jurisdictions.

Sincerely,
Diego

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EXHIBIT
2

-----Original Message-----

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

Sent: Friday, January 29, 2021 2:00 PM

To: adam@hochschildlaw.com; Anthony@DupreyLaw.com; bmcarthur@jarvismcarthur.com; Diego Soto <Diego.Soto@splcenter.org>; dschmid@lc.org; flangrock <flangrock@langrock.com>; hmihet@lc.org; Maya Rajaratnam <maya.rajaratnam@splcenter.org>; mrhirsh@hirshandheuser.com; mtierney@wadleighlaw.com; nc.smith@myfairpoint.net; rberger@dinse.com; rgannam@LC.org; Scott McCoy <Scott.McCoy@splcenter.org>; srs <srs@sarahstarlaw.com>; Tyler Clemons <Tyler.Clemons@splcenter.org>

Subject: Jenkins v. Miller et al, CASE #: 2:12-cv-00184-wks

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Dear Counsel:

Please be advised that I represent Isabella Miller regarding the above matter.

Attached is correspondence regarding her status.

Attached also are two affidavits from her.

Please take appropriate action to fulfill her instructions.

Thank you.

Vince Heuser
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Hirsh & Heuser

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January 29, 2021

Hon. William K. Sessions III
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Re: Jenkins v. Miller et al, CASE #: 2:12-cv-00184-wks

Your Honor and Counsel:

Recently a person whose interests are affected in the above case contacted me for assistance in making her wishes known to the United States District Court and to Counsel of record. Her name is Isabella Miller. I have verified her identity and involvement in the case and am satisfied with her veracity. I am writing to pass on from her certain information she wishes to provide to the Court and parties.

Vincent F. Heuser, Jr.
Hirsh & Heuser Attorneys
Letter to U.S. District Court and Counsel
Re: Jenkins v. Miller et al, CASE #: 2:12-cv-00184-wks
January 29, 2021
Page 2 of 2

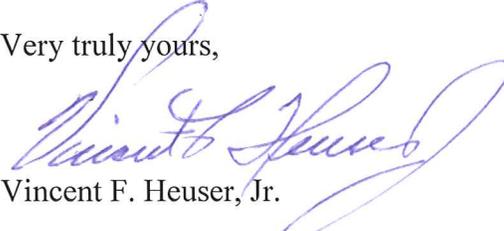
Accompanying this letter are two affidavits from my client, Isabella Miller. I have spoken with her and am satisfied that she is acting freely and voluntarily. In addition, I had her appear before both a U.S. Notary in a U.S. Embassy and before a foreign notary in the country in which she was able to be present to authenticate her story and the documents I provided.

Ms. Miller has given me instructions in accordance with the accompanying affidavits. These instructions are directed primarily to her Next Friend and the attorneys who have purported to represent Isabella through the Next Friend, but the Court is also requested to take notice of her situation.

While I am not a Vermont attorney or expert in the Vermont Rules of Professional Conduct, it appears that Rule 1.2(a) requires following these instructions and that Rule 1.7(a)(1), regarding conflict of interest, Rule 1.9, regarding duties to former clients, and Rule 1.10 regarding imputation, all apply. Please accommodate her request and dismiss her from the case and terminate your representation.

If you have any questions or I can be of further assistance, please do not hesitate to call.

Very truly yours,



Vincent F. Heuser, Jr.

VFH/tm

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JANET JENKINS, *et al.*,)
Plaintiffs)
v.)
KENNETH L. MILLER, *et al.*,)
Defendants.)

Docket No. 2:12-cv-184

AFFIDAVIT OF ISABELLA MILLER

COMES NOW, Affiant who is also a Plaintiff in the above-captioned action and offers this my sworn Affidavit:

1. My name is Isabella Miller, sometimes referred to as Isabella Jenkins Miller in this litigation.
2. I am at least 18 years of age.
3. I have personal knowledge of the facts asserted in this Affidavit.
4. I offer this Affidavit freely and voluntarily.
5. I am not under any disability or impediment that would interfere with my ability to freely and voluntarily offer this Affidavit.
6. In September 2009 I left the United States with my mother, Lisa Miller.
7. At that time I travelled to Nicaragua where we lived.
8. I was shown tremendous kindness by many people.
9. My life from September 2009 until the present has been happy, safe, healthy, and I have been well cared for.
10. I remain outside the United States of my own free will.
11. If (and when) I desire to return to the United States I will do so.
12. I am operating under no financial or other impediment to voluntarily returning to the United States should I choose to do so.
13. I have been made aware of litigation that has been brought in my name in the U.S. District Court in the state of Vermont (Case #2:12-CV-184).
14. That litigation has been prosecuted by many attorneys, among them several lawyers who are employed by the Southern Poverty Law Center (SPLC).

15. All the lawyers who purport to represent me and my wishes are acting contrary to my wishes and desires and in way to further a cause that is the exact opposite of what my desire and wishes as their client in fact are.
16. I want those people who claim to be my attorneys to cease their actions that are contrary to my wishes and desires.
17. I order and direct them to file all papers necessary to have me removed as a Plaintiff in this case.
18. Once I am dismissed from this action – whether through their effort, unilateral action of the Court, or the result of any filing from any party – I summarily and without equivocation fire, terminate, and discharge SPLC and all attorneys who have appeared ostensibly on my behalf in this litigation from taking any further action in my name.
19. I authorize any attorneys for the Defendants in this case to utilize this Affidavit in the best interest of your clients.
20. Contemporaneously with this Affidavit, I am also executing a full, unconditional, global, total Release for the benefit of each of the Defendants in this lawsuit together with my deepest appreciations for whatever they did or might have done or didn't do that has helped me to have a happy and safe life.

FURTHER THE AFFIANT SAYETH NAUGHT.

Isabella Miller
Isabella Miller
Date:

Sworn and subscribed before me this 25 day of January, 2021.

Notary

Peter Ritter
Consular Officer
COMMISSION:

Indefinite 22 USC Sec 110

REPUBLIC OF NICARAGUA
CITY OF MANAGUA
EMBASSY OF THE UNITED
STATES OF AMERICA



AUTÉNTICA DE FIRMAS

Ante mí **Harling Carmelo Bobadilla Treminio**, Abogado y Notario Público de la República de Nicaragua, debidamente autorizado por la Corte Suprema de Justicia para cartular en un quinquenio que expira el día veintitrés de agosto del dos mil veinticinco. **CERTIFICO Y DOY FE** que la firma que antecede fue puesta en mi presencia y es la que usa en su documento de identidad pasaporte de los Estados Unidos de América No. 720594835 , Documento que firma de su libre y espontánea voluntades. Documento que tuve a la vista, con el cual lo cotejé debidamente.-certifico y sello en la ciudad de Managua Nicaragua a las nueve y quince minutos de la mañana del día veintiséis de enero del dos mil veintiuno.=====


Harling Carmelo Bobadilla Treminio
Abogado y Notario Publico
Carnet C. S. J. 15212.







REPUBLICA DE NICARAGUA
Corte Suprema de Justicia

HARLING CARMELO
BOBADILLA TREMINIO
Abogado y Notario Público
Cédula 001-160774-0078F
Carné No. 15212



[Handwritten Signature]
Secretario



Diego Soto

From: Horatio Mihet <hmihet@lc.org>
Sent: Friday, January 29, 2021 4:55 PM
To: Diego Soto; Tyler Clemons; Maya Rajaratnam; Scott McCoy; flangrock; srs
Cc: 'Brooks G. McArthur'; 'Michael J. Tierney'; nc.smith@myfairpoint.net; Adam Hochschild; Michael Hirsh; 'Anthony Duprey'; Daniel Schmid; Roger Gannam
Subject: Renewed Rule 11 Motion for Sanctions Against Plaintiff and Counsel
Attachments: Motion - Renewed Rule 11 Sanctions Against Plaintiff and Counsel (Prefiling).pdf

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.

Plaintiff's Counsel:

In light of today's communication from Isabella Miller instructing you to abandon Janet Jenkins' purported claims on her behalf, we believe that any further attempts by Janet Jenkins or you to maintain next friend claims on Isabella's behalf are frivolous. Demand is hereby made that you voluntarily dismiss all such claims, immediately.

Pursuant to Fed. R. Civ. P. 11(c)(2), please find attached a Renewed Motion for Sanctions we will file with the Court on February 22, 2021, unless Jenkins' next friend claims are voluntarily dismissed before then.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774
Orlando, FL 32854
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Offices in DC, FL, and VA

*Licensed in Florida and Ohio

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EXHIBIT

3

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

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

**DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN’S
RENEWED MOTION FOR SANCTIONS AGAINST PLAINTIFF
JANET JENKINS AND HER COUNSEL
AND INCORPORATED MEMORANDUM IN SUPPORT**

Pursuant to Fed. R. Civ. P. 11, Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”), by and through the undersigned counsel, herby move the Court for an Order of sanctions against Plaintiff Janet Jenkins (“Jenkins”) and each of her counsel and their respective firms, jointly and severally, on the ground that their continued advocacy and maintenance of Jenkins’ purported next friend claims on behalf of Isabella Jenkins, who is now an adult, are: (1) being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) premised on factual contentions that have no evidentiary support, and are not likely to have evidentiary support after a reasonable opportunity for further discovery; and (4) premised on denials of factual contentions that are not warranted by the evidence nor

reasonably based on belief or lack of information; all of which violate the requirements of Fed. R. Civ. P. 11(b)(1)-(4). In further support of this motion, Defendants show the Court as follows:

1. As conclusively demonstrated in Defendants' Motion for Partial Summary Judgment As to All Claims Plaintiff Janet Jenkins Purports to Bring As Next Friend of Isabella Miller, dkt. 495, and in the Statement of Undisputed Materials Facts filed concurrently therewith, dkt. 494, on April 16, 2020 Isabella Miller reached the age of majority under Vermont law, and any purported authority or standing that Plaintiff Janet Jenkins might have had to bring or maintain claims on Isabella's behalf automatically expired. Jenkins has no standing to continue to assert those claims, and this Court lacks subject matter jurisdiction over those claims. (*Id.*)

2. Jenkins and her counsel know that Isabella Miller has reached the age of 18, because they themselves produced in this litigation all of the documents that establish this undeniable fact. (*See Exhibits A-H to Defendants' Statement of Undisputed Material Facts, dkt. 494-1 – 494-8.*)

3. Jenkins and her counsel know that the age of majority in Vermont is 18, and thus Isabella Miller is now an adult.

4. Jenkins and her counsel know that Jenkins' purported standing or authority to maintain next-friend claims automatically expired upon Isabella reaching the age of maturity, in accordance with settled law.

5. Jenkins and her counsel know that Jenkins' lack of standing to maintain next-friend claims deprives the Court of subject matter jurisdiction over those claims.

6. Jenkins and her counsel have no facts and no evidence that would justify their continued advocacy and maintenance of next friend claims on behalf of Isabella Miller, now that she is an adult.

7. Specifically, and without limitation, Jenkins and her counsel know that Isabella Miller has access to United States courts; that Isabella is not being held captive outside of the United States against her will; that Isabella does not lack practical and financial ability to access United States courts; that Isabella does not have an inability to control her own movement; and that Isabella is able to articulate her own interests and wishes. Jenkins and her counsel know all of these things because on January 29, 2021, Isabella Miller through her legal representative contacted Jenkins' counsel and provided them with two sworn declarations stating as much. A copy of Isabella Miller's correspondence and declarations provided to Jenkins' counsel on January 29, 2021 is attached hereto as composite **Exhibit A**.

8. Under these circumstances, the refusal of Jenkins and her counsel to voluntarily dismiss and withdraw Jenkin's purported next friend claims on behalf of an adult, and their continued advocacy and maintenance of those claims, violate each of the requirements of Fed. R. Civ. P. 11(b)(1)-(4).

9. Pursuant to Fed. R. Civ. P. 11(c)(1) and (4), the Court should enter an appropriate sanction against Jenkins, her counsel, and their respective firms, jointly and severally, in a monetary amount that "suffices to deter repetition of the conduct or comparable conduct by others similarly situated," and includes the reasonable fees and costs expended to (a) bring about this motion, and (b) obtain dismissal of the offending claims through summary judgment or otherwise. *Id.*

10. Pursuant to Fed. R. Civ. P. 11(c)(2), this motion for sanctions was served upon Plaintiff and her counsel at least twenty-one days prior to filing (*e.g.*, on January 29, 2021), along with a demand that they voluntarily withdraw or dismiss Jenkins' purported next-friend claims on

behalf of an adult, but Plaintiff and her counsel have refused or have otherwise failed to comply. A copy of the communication is attached hereto as **Exhibit B**.

WHEREFORE, for good cause shown, Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen respectfully request that this motion be granted, that the Court enter an Order of sanctions against Plaintiff Janet Jenkins and each of her counsel and their respective firms, jointly and severally, as requested herein, and that the Court award such other and further relief to which Defendants may be entitled or which is just and proper.

Anthony R. Duprey
DUPREY LAW, PLLC
11 Main Street, Suite B110F
Vergennes, VT 05491
802-870-6563
anthony@dupreylaw.com

Respectfully submitted,

/s/ Horatio G. Mihet

Horatio G. Mihet*
Roger K. Gannam*
Daniel J. Schmid*
LIBERTY COUNSEL
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dschmid@LC.org

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

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2021, 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.

I further certify that, pursuant to Fed. R. Civ. P. 11(c)(2), on January 29, 2021 I served a copy of this motion for sanctions upon Plaintiff and her counsel via electronic mail at the addresses below (pursuant to their consent to receive electronic service), along with a demand that they voluntarily withdraw or dismiss Jenkins' purported next-friend claims on behalf of Isabella Miller, but Plaintiff and her counsel have refused or have otherwise failed to comply.

Service List:

Diego A. Soto, Esq. (diego.soto@splcenter.org)
J. Tyler Clemons, Esq. (Tyler.Clemons@splcenter.org)
Maya G. Rajaratnam, Esq. (maya.rajaratnam@splcenter.org)
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Brooks G. McArthur, Esq. (bmcarthur@jarvismcarthur.com)

Counsel for Defendant Kenneth L. Miller

Michael J. Tierney, Esq. (mtierney@wadleighlaw.com)

Counsel for Defendant Timothy D. Miller

Norman C. Smith, Esq. (nc.smith@myfairpoint.net)
Adam Hochschild (adam@hochschildlaw.com)

Counsel for Defendant Linda Wall

Michael R. Hirsh (mrhirsh@hirshandheuser.com)

***Counsel for Defendants Philip Zodiates,
Victoria Hyden and Response Unlimited, Inc.***

/s/ Horatio G. Mihet
Horatio G. Mihet

*Attorney for Defendants Liberty Counsel
and Rena Lindevaldsen*

**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

**DECLARATION OF DIEGO A. SOTO IN SUPPORT OF
PLAINTIFF'S EMERGENCY MOTION FOR HEARING**

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 Plaintiff Janet Jenkins in this case.

2. Exhibit 1 is a true and correct copy of an email chain between me and counsel in this case.

3. Exhibit 2 is a true and correct copy of an email chain, and its attachments, between me, Vince Heuser, and counsel in this case.

4. Exhibit 3 is a true and correct copy of an email, and its attachment, from Horatio Mihet, counsel for Defendants Liberty Counsel, Inc. and Rena Lindevaldsen, to me and others.

Executed on January 29, 2021

/s/ Diego A. Soto

Diego A. Soto

Counsel for Plaintiff Janet Jenkins