

**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

**PLAINTIFF JANET JENKINS'S MOTION TO STAY
ALL DISCOVERY SCHEDULE/ORDER DEADLINES**

Plaintiff Janet Jenkins moves to stay all pending deadlines under the discovery schedule/order. *See* ECF 562, 614. In support, Jenkins states the following:

1. Under the current discovery schedule/order, discovery closes in fifty-one days on March 31, 2021. *See* ECF 614. Other still-pending deadlines are tied to the close of discovery, including the deadline to serve any interrogatories and requests for production in nine days on February 17. *See* Final Modified Disc. Schedule/Order ¶¶ 1, 5–7, ECF 562.

2. The discovery schedule/order deadlines should be stayed for several reasons. *First*, Lisa Miller can now be served process, which at the very least entitles her to respond to the complaint, *see* Fed. R. Civ. P. 12(a)(1)(A)(i) (requiring answer “within 21 days after being served with the summons and complaint”), and participate in discovery, including by attending depositions, *see* Fed. R. Civ. P. 32(a)(1) (allowing use of a deposition against a party if “the party was present or represented at the taking of the deposition or had reasonable notice of it”).*

* When the Court granted leave to withdraw to then-counsel for Defendants Philip Zodhiates, Victoria Hyden, and Response Unlimited, Inc. and allowed those defendants time to secure successor counsel, the parties agreed to reschedule depositions because proceeding with them would prejudice the unrepresented parties. *See* Emails Between Counsel *2, *4–5, ECF 454-1.

On or about January 27, 2021, Lisa Miller, who until then was a fugitive, was returned to the United States and arrested 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.); *United States v. Miller*, No. 1:21-mj-02159 (S.D. Fla.). Jenkins's counsel began preparations to serve process on Lisa Miller, who currently is incarcerated in Miami, Florida, *see Find an Inmate*, BOP, <https://www.bop.gov/inmateloc/> (last accessed Feb. 8, 2021) (search BOP Register Number 27502-509), but who was ordered transferred to the Western District of New York, *see Warrant of Removal, Miller*, No. 1:21-mj-02159 (S.D. Fla. Feb. 1, 2021), ECF 4. *See Soto Decl.* ¶ 2 (Feb. 8, 2021). Jenkins still does not know when Lisa Miller 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. *See id.*

3. *Second*, Defendant Timothy Miller has moved to disqualify Jenkins's counsel from further representation of her because of Isabella's purported objection, in an affidavit, to that further representation. *See* ECF 636. That affidavit was prepared by attorney Vincent Heuser of the firm Hirsh & Heuser, LLC who, acting with a clear conflict of interest, unethically communicated *ex parte* with Isabella, formed an attorney–client relationship, and induced Isabella to execute two affidavits and a release of all liability from Defendants, even though Heuser knew his firm represented three defendants in this case and that Isabella was at the time represented by counsel in this case through her mother and next friend, Jenkins. *See Soto–Heuser Emails *2*, ECF 635-2. Heuser has since conceded an apparent conflict of interest and withdrawn from further representing Isabella. *See Ex. 1: Heuser Email; see also Soto–Heuser Emails *1*. Timothy Miller objected to the parties conferring about how Lisa Miller's reappearance would affect the discovery schedule/order, instead taking the position that the parties need to discuss

how much time Jenkins needs to find new counsel. *See* Emails with Defense Counsel *1–2, ECF 635-1. All other Defendants, except Kenneth Miller, have since concurred with Timothy’s position that Jenkins’s counsel cannot continue to represent her. *See* Ex. 2: Emails with Defense Counsel *1–3. Jenkins’s response to Timothy’s motion is due on or before February 16. *See* L.R. 7(a)(3)(B); Fed. R. Civ. P. 6(a)(1)(C), (a)(6)(A).

4. *Third*, Deborah Bucknam, Esq. entered her appearance for Plaintiff Isabella Miller-Jenkins three days ago on February 5, 2021. *See* ECF 637. Bucknam informed Jenkins’s counsel on February 6 that Bucknam is still discussing with Isabella her various options, and Isabella has made no decisions, *see* Soto Decl. ¶ 4 (Feb. 8, 2021), notwithstanding the affidavits and release her former counsel Heuser prepared, *see* Soto–Heuser Emails *5–11. After more than a decade as a missing person, Isabella should not be rushed or pressured into any decisions because of the upcoming discovery deadlines.

5. *Fourth*, Isabella’s reappearance might affect expert testimony in this case and might justify the designation of additional experts.

6. The parties, including Lisa Miller, could not begin to negotiate a new discovery schedule/order for the Court’s consideration, until Lisa is served process and enters an appearance and until the Court resolves whether to disqualify Jenkins’s counsel, and if so, whether to allow her time to secure successor counsel.

7. Pursuant to Local Rule 7(a)(7), Jenkins certifies that she made a good-faith attempt to obtain the parties’ agreement to the requested relief. On February 4, 2021, Jenkins’s counsel emailed Defendants’ counsel explaining the basis for this motion and asking for their positions on it by close of business on February 5. *See* Ex. 2: Emails with Defense Counsel *8–9. Defendants Liberty Counsel, Inc., Rena Lindevaldsen, Linda Wall, Philip Zodhiates, Victoria

Hyden, and Response Unlimited, Inc. (collectively, “the RUL Defendants”) responded that they oppose this motion. *See id.* at *5–7. Liberty Counsel, Lindevaldsen, and the RUL Defendants further responded that Jenkins cancels previously scheduled party depositions in February and March at her own risk, despite their simultaneous position that her current counsel must withdraw their appearances and she must find new counsel or proceed *pro se*. *See id.*; *cf. supra* note *. As of this filing, Defendants Kenneth Miller and Timothy Miller did not respond regarding this motion. *See* Soto Decl. ¶ 6 (Feb. 8, 2021). Today, Jenkins’s counsel emailed Isabella’s new counsel for her position on this motion, but she has not responded as of this filing. *See id.* ¶ 7.

CONCLUSION

Jenkins’s motion to stay all pending deadlines under the discovery schedule/order should be granted.

Respectfully submitted.

February 8, 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

Deborah T. Bucknam
Bucknam Law, P.C.
Counsel for Plaintiff Isabella Miller-Jenkins

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

February 8, 2021

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

Diego Soto

From: Vincent F. Heuser Jr. <vheuser@heuserlawoffice.com>
Sent: Friday, February 5, 2021 7:32 AM
To: Diego Soto
Cc: Beth Littrell; 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
Attachments: 20210205082704167.pdf

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Mr. Soto,

Attached is a letter response you your email of 1/29.

Vince Heuser

Vincent F. Heuser, Jr., Attorney
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EXHIBIT
1

Heuser Law Office

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Vincent F. Heuser, Jr.
Admitted in Kentucky
vheuser@heuserlawoffice.com

February 5, 2021

Via email: Diego.Soto@splcenter.org

Diego Soto, Staff Attorney
Southern Poverty Law Center
400 Washington Avenue
Montgomery, Alabama 36104

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

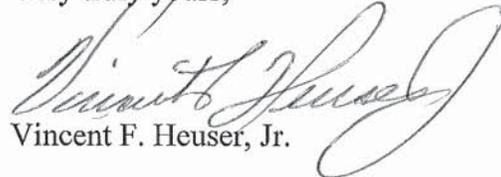
Dear Mr. Soto:

This letter is in response to your email of January 29, 2020. You are completely wrong about the nature of my practice and my relationship with Michael Hirsh, however, after consulting with the Kentucky Ethics Hotline, I will concede that our advertising gave rise to an apparent conflict of interest. That situation is being corrected.

In the meantime, because of the appearance of a conflict of interest, I have advised Isabella that she will need to find new counsel and I will withdraw from representing her further.

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

cc: client, other counsel

Diego Soto

From: Hirsh Law <michael@hirsh.law>
Sent: Sunday, February 7, 2021 7:04 AM
To: 'Michael J. Tierney'
Cc: Adam Hochschild; Harry Mihet; Diego Soto; 'Deborah Bucknam'; 'Brooks McArthur'; 'Cassie Parah'; 'Anthony Duprey'; 'Daniel Schmid'; 'Roger Gannam'; 'Norman Smith'; 'Richard Boyer'; 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.) - Stipulation of Dismissal [WSP-ACTIVE.FID39922]

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Diego,

I agree with Michael T., Adam, and Harry.

MRH

Sent from [BlueMail](#)

On Feb 6, 2021, at 8:48 PM, "Michael J. Tierney" <mtierney@wadleighlaw.com> wrote:

I agree with Harry & Adam. Once all counsel who Isabella has requested withdraw have in fact filed their withdrawals then the remaining counsel (including myself) can file a Stipulation of Dismissal with prejudice.

Michael

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

From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Saturday, February 6, 2021 2:27 PM
To: 'Horatio Mihet' <hmihet@lc.org>; 'Diego Soto' <Diego.Soto@splcenter.org>; 'Deborah Bucknam' <dbucknam@vtlegalhelp.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>; 'Michael Hirsh' <Michael@Hirsh.law>; Michael J. 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.) - Stipulation of Dismissal

Diego:

I agree with Harry.

In the proposed stipulation, SPLC and its co-counsel purport to represent both Jenkins and Isabella. I understand that, for a “stipulation of dismissal signed by all parties who have appeared” to be submitted under FRCP 41(a)(1)(2), SPLC and its co-counsel will first need to withdraw from representing any person in this matter pursuant to the Vermont Rules of Professional Conduct, including but not limited to Rule 1.7 (conflict of interest: current clients) and/or Rule 1.9 (duties to former clients), and paragraph 3 of Isabella’s second (1/26/21) affidavit (“I want... [SPLC and its co-counsel] discharged and withdrawn as my attorney and I further object to their representing any other person in this matter....”).

Adam

Adam S. Hochschild
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314.503.0326
adam@hochschildlaw.com
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From: Horatio Mihet [<mailto:hmihet@lc.org>]
Sent: Saturday, February 6, 2021 1:58 PM
To: Diego Soto <Diego.Soto@splcenter.org>; Deborah Bucknam <dbucknam@vtlegalhelp.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>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson <cs.fergie@myfairpoint.net>; Michael Hirsh <Michael@Hirsh.law>; 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.) - Stipulation of Dismissal

Diego:

While we are pleased that you have finally seen the light as to the claims others have purported to concoct for Isabella, and that a motion for sanctions may no longer be necessary to secure their dismissal, there are several problems with the substance and form of the stipulation you present:

- 1) The stipulation, both in the title and body, needs to expressly state that the dismissal is with prejudice. In her Release, Isabella makes it clear, repeatedly, that she has forever disclaimed and discharged any and all claims against these defendants, including those that were purportedly advanced on her behalf in this lawsuit.
- 2) None of Jenkins' current counsel can sign this release for Isabella. She has made it clear that you all are fired. You do not and cannot represent her.
- 3) None of Jenkins' current counsel can sign this release for Jenkins. Isabella has made it clear that she is objecting to her former counsel continuing to represent Jenkins. Jenkins can sign this stipulation either pro se, or through substitute counsel following your withdrawal.

Please correct these deficiencies.

HGM

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, February 5, 2021 4:56 PM

To: Deborah Bucknam <dbucknam@vtlegalhelp.com>; 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 <Michael@Hirsh.law>; Michael 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.) - Stipulation of Dismissal

Counsel,

After conferring with Isabella's new counsel Deborah Buckman, we can now confirm that Isabella wishes to dismiss her claims in this case. Please find attached a draft stipulation of voluntary dismissal under Rule 41 for your review and your express agreement to the form and substance of the document and our authorization to file it on behalf of all signatories.

Sincerely,
Diego



Diego Soto he/him/his
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Diego Soto

From: Diego Soto
Sent: Friday, February 5, 2021 2:29 PM
To: Michael@Hirsh.law
Cc: Beth Littrell; Emily Joselson; flangrock; Jessica Stone; Maya Rajaratnam; Sarah Star; Scott McCoy; Tyler Clemons; 'Horatio Mihet'; 'Adam Hochschild'; 'Michael J. Tierney'; 'Brooks McArthur'; 'Cassie Parah'; 'Anthony Duprey'; 'Daniel Schmid'; 'Roger Gannam'; 'Norman Smith'; 'Richard Boyer'
Subject: RE: Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability [WSP-ACTIVE.FID39922]

Thanks, Michael. Can you elaborate on how we “are operating under a misapprehension of the facts that are behind Isabella coming forward”?



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From: Michael@Hirsh.law <Michael@Hirsh.law>
Sent: Friday, February 5, 2021 1:38 PM
To: Diego Soto <Diego.Soto@splcenter.org>; 'Horatio Mihet' <hmihet@lc.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Michael J. Tierney' <mtierney@wadleighlaw.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>
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 [WSP-ACTIVE.FID39922]

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Diego,

In response to your email of yesterday regarding your contemplated Motion. We join, in part, the position taken by Liberty Counsel and Rena Lindevaldsen.

My clients (RUL, Inc., Victoria Hyden, and Philip Zodhiates) oppose any motion to invalidate Isabella’s clearly expressed wishes in her affidavits and release. Plaintiff’s counsel does not and cannot represent Isabella. There is no uncertainty about that. Any attempts to represent Isabella, or to maintain her purported claims, against her clearly expressed wishes are unethical and improper.

We will consider all depositions to be cancelled by you. But you do so at your own risk. We do not have unlimited availability in March, and your unilateral cancelling of depositions in February (and March) will make it impossible to

complete discovery by the court-imposed deadline. The remedy will be for you to forego the depositions you are cancelling, and not to extend discovery yet again.

As to your contemplated assertions against me personally, I respectfully request that you reconsider that position. First, I acknowledge that there is an issue with how we have administratively handled advertising. Those issues are being quickly addressed. Second, it appears that you are operating under a misapprehension of the facts that are behind Isabella coming forward.

PLEASE NOTE NEW CONTACT INFORMATION BELOW.

Michael R. Hirsh
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Woodstock, Georgia 30189
678-653-9907 Office

Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that any tax advice given herein (and in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (1) avoiding tax penalties, or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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

Sent: Thursday, February 4, 2021 3:30 PM

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

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 [WSP-ACTIVE.FID39922]

Counsel,

We do not believe we can or should proceed with any depositions at this time and intend to move, by end of day tomorrow, to stay all pending deadlines under the discovery schedule/order.

As my initial request for a meet-and-confer suggested, we believe the discovery schedule/order needs to be amended due to Lisa's reappearance and arrest, making her capable of being served process, which at the very least entitles her to respond to the complaint and participate in discovery.

Diego Soto

From: Adam Hochschild <adam@hochschildlaw.com>
Sent: Friday, February 5, 2021 11:40 AM
To: 'Horatio Mihet'; Diego Soto; mrhirsh@hirshandheuser.com; 'Michael J. Tierney'; 'Brooks McArthur'; 'Cassie Parah'; 'Anthony Duprey'; 'Daniel Schmid'; 'Roger Gannam'; 'Norman Smith'; 'Richard Boyer'
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 [WSP-ACTIVE.FID39922]

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Diego: Defendant Linda Wall opposes any attempt to void Isabella's affidavits and release, opposes an indefinite stay of all deadlines, and takes no position on Plaintiff's allegations about other counsel.

Adam S. Hochschild
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From: Horatio Mihet [mailto:hmihet@lc.org]
Sent: Thursday, February 4, 2021 4:09 PM
To: Diego Soto <Diego.Soto@splcenter.org>; mrhirsh@hirshandheuser.com; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Michael J. Tierney' <mtierney@wadleighlaw.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>
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 [WSP-ACTIVE.FID39922]

Diego:

Liberty Counsel and Rena Lindevaldsen oppose any motion for a stay or extension of the discovery schedule. They oppose any motion to invalidate Isabella's clearly expressed wishes in her affidavits and release. And they take no position on Plaintiff's allegations as to other counsel. However, irrespective of those allegations, one thing is certain: Plaintiff's counsel does not and cannot represent Isabella. There is no uncertainty about that. Any attempts to represent Isabella, or to maintain her purported claims, against her clearly expressed wishes are unethical and improper.

We will consider all depositions to be cancelled by you. But you do so at your own risk. We do not have unlimited availability in March, and your unilateral cancelling of depositions in February (and March) will make it impossible to complete discovery by the court-imposed deadline. The remedy will be for you to forego the depositions you are cancelling, and not to extend discovery yet again.

HGM

Horatio G. Mihet, Esq.*

*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774

Orlando, FL 32854

(407) 875-1776 phone

(407) 875-0770 fax

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*Licensed in Florida and Ohio

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

Sent: Thursday, February 4, 2021 3:30 PM

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

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 [WSP-ACTIVE.FID39922]

Counsel,

We do not believe we can or should proceed with any depositions at this time and intend to move, by end of day tomorrow, to stay all pending deadlines under the discovery schedule/order.

As my initial request for a meet-and-confer suggested, we believe the discovery schedule/order needs to be amended due to Lisa's reappearance and arrest, making her capable of being served process, which at the very least entitles her to respond to the complaint and participate in discovery.

The circumstances of Isabella's reappearance further confirmed that the current discovery schedule/order needs to be amended and that the parties cannot proceed with depositions at this time. As suggested by our emergency motion for a hearing, we believe Hirsh & Heuser's unethical communication with and purported representation of Isabella leaves uncertain who exactly represents her in this matter and arguably prevents us from ethically communicating with her without the Court's permission. Defendant Timothy Miller has taken the position that we cannot represent Isabella or Ms. Jenkins and has gone so far as to move to disqualify us from this case.

We intend to file a motion by end of day tomorrow asking the Court to:

- disqualify Hirsh & Heuser from further representation of Defendants Philip Zodiates, Victoria Hyden, and Response Unlimited, Inc. and from further purported representation of Isabella;
- revoke Hirsh's pro hac vice admission;
- impose all other sanctions it deems appropriate;
- refer Hirsh and his firm to the Disciplinary Committee;

- declare Isabella's purported affidavits and release null and void, given that they were obtained through Hirsh & Heuser's unethical conduct;
- compel Hirsh & Heuser to produce documents and communications related to its unethical communication with and purported representation of Isabella; and
- resolve who represents Isabella in this matter, including whether a guardian ad litem should be appointed.

We also believe Isabella's reappearance likely affects expert testimony in this case and justifies the designation of additional experts, which counsels against proceeding with expert depositions at this time.

For these reasons, we believe a stay of all pending deadlines under the discovery schedule/order is necessary and appropriate so the Court may resolve these issues.

Please let me know **by close of business tomorrow** your positions on the motion to stay all pending deadlines under the discovery schedule/order and on the motion against Hirsh & Heuser described above.

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8427 C 334.604.1414 F 334.956.8481
diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

From: Horatio Mihet <hmihet@lc.org>

Sent: Thursday, February 4, 2021 8:20 AM

To: mrhirsh@hirshandheuser.com; Diego Soto <Diego.Soto@splcenter.org>; 'Adam Hochschild' <adam@hochschildlaw.com>; 'Michael J. Tierney' <mtierney@wadleighlaw.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>

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 [WSP-ACTIVE.FID39922]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Diego:

I have not received any connection information for Monday's deposition of Victoria Hyden. Please have that sent out ASAP.

Also, you previously inquired about a 10 am start time for the defense expert depositions on Feb. 12 (Larry Daniel) and Feb. 16 (Catherine Drew). I can confirm that will work. Please send out the deposition notices for those two depositions ASAP.

Thanks,

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

Sent: Tuesday, February 2, 2021 9:56 AM

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

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 [WSP-ACTIVE.FID39922]

Diego,

I have just received word (about 5 minutes ago) from the Case Worker from BOP. Mr. Zodiates new release date (to a "community" facility) is March 26.

Michael R. Hirsh
Hirsh & Heuser, LLC
2295 Towne Lake Pkwy
Suite 116-181
Woodstock, Georgia 30189
404-713-4400

Circular 230 Notice: In accordance with Treasury Regulations which became applicable to all tax practitioners as of June 20, 2005, please note that any tax advice given herein (and in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (1) avoiding tax penalties, or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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

Sent: Tuesday, January 19, 2021 4:05 PM

To: Adam Hochschild <adam@hochschildlaw.com>; 'Horatio Mihet' <hmihet@lc.org>; 'Michael J. Tierney' <mtierney@wadleighlaw.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>; '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.) - Discovery Deadlines and Deposition Availability [WSP-ACTIVE.FID39922]

Adam: We can agree to depose Ms. Wall on Fri Mar 26. We propose a 9am Eastern start time.

Michael Hirsh: We can agree to depose Ms. Hyden on Mon Feb 8 with a 9am Eastern start time.

All: Below are what I believe to be the currently pending proposals:

Deponent	Date
Victoria Hyden	Mon Feb 8 at 9am Eastern
Larry Daniel	Fri Feb 12 at 10am Eastern
Catherine Drew	Tue Feb 16 at 10am Eastern
Kenneth Miller	Tue Mar 2 at 10am Eastern
Timothy Miller	Mon Mar 8 at 9am Eastern
Rena Lindevaldsen and Mathew Staver	Fri Mar 12 and Wed Mar 17; or Mon Mar 15 and Thu Mar 18
Philip Zodhiates	Wed Mar 24 at 9am Eastern
Linda Wall	Fri Mar 26 at 9am Eastern

Sincerely,
Diego



Diego Soto he/him/his
Staff Attorney | LGBTQ Rights & Special Litigation
Southern Poverty Law Center
T 334.956.8427 C 334.604.1414 F 334.956.8481
diego.soto@splcenter.org | www.splcenter.org
Admitted in Alabama and the District of Columbia

From: Adam Hochschild <adam@hochschildlaw.com>

Sent: Monday, January 18, 2021 3:21 PM

To: 'Horatio Mihet' <hmihet@lc.org>; Diego Soto <Diego.Soto@splcenter.org>; 'Michael J. Tierney' <mtierney@wadleighlaw.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>; '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

**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
PLAINTIFF JANET JENKINS'S MOTION TO STAY
ALL DISCOVERY SCHEDULE/ORDER DEADLINES**

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. On January 29, 2021, I called the Court's Clerk's Office and learned that a summons to Defendant Lisa Miller must include the address of her current facility, must be mailed or dropped off in person, and must be executed with a wet-ink signature and a raised seal, rather than electronically. On February 8, 2021, I called FDC Miami, where Lisa Miller is being held, and learned that an appointment must be made to serve legal documents and that an appointment might not be possible if Lisa is in quarantine. The person with whom I spoke did not have access to information about Lisa, including when she is scheduled to leave Miami for New York. I then emailed the facility to schedule an appointment and requested information about when Lisa Miller is scheduled to be removed from Miami, when she is scheduled to arrive in New York, and at which facility she will be housed in New York. I received an automated response informing me that I will receive a response within forty-eight hours.

3. Exhibit 1 is a true and correct copy of an email and attachment that I received from Vincent Heuser, Esq. on February 5, 2021.

4. On February 6, 2021, my co-counsel Fritz Langrock, Esq. and Sarah Star, Esq. received an email from Deborah Bucknam, Esq. informing them that she was still discussing with Isabella the various options she has and that Isabella had made no decisions.

5. Exhibit 2 is a true and correct copy of emails between counsel for the parties in this case, specifically: (1) an email chain titled “Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Stipulation of Dismissal” and (2) a portion of an email chain, from January 19, 2021, to February 5, 2021, titled “Jenkins et al. v. Miller et al., No. 2:12-cv-184 (D. Vt.) - Discovery Deadlines and Deposition Availability.”

6. As of this filing, Defendants Kenneth Miller and Timothy Miller did not respond to my February 4, 2021 email requesting their positions on this motion.

7. On February 8, 2021, Star emailed Bucknam asking for her position on this motion, but Bucknam has not responded as of this filing.

Executed on February 8, 2021

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