

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS LIBERTY COUNSEL, INC. AND  
RENA M. LINDEVALDSEN’S MEMORANDUM REGARDING THE SCOPE OF  
THE STAY OF LITIGATION PENDING LISA MILLER’S CRIMINAL PROSECUTION**

Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”) respond to the Court’s April 16, 2021 Order granting Lisa Miller’s motion to stay proceedings, and soliciting the remaining parties’ position on the scope of the stay (dkt. 686), as follows:

Defendants have been burdened by Plaintiff’s meritless lawsuit, fact-less allegations, and very intrusive, incessant discovery requests for over **five years**. Defendants were eagerly anticipating the close of discovery on May 26, 2021 and the opportunity to bring an end to Plaintiff’s fishing expedition through summary judgment. The prospect of delaying that opportunity for many months, and potentially multiple years, while Lisa Miller’s criminal prosecution is brought to trial and through possible appeals, weighs heavily on Defendants.

That said, Defendants also understand the constitutional and due process concerns that counseled the Court to grant Lisa Miller a stay of this civil case pending her criminal prosecution. Defendants also understand that continuing and finishing the discovery process in this case now, to get to summary judgment, including taking the parties’ depositions (and Lisa Miller’s own deposition), would likely trigger and exacerbate the same concerns that the Court was attempting

to alleviate by granting Lisa Miller the stay she requested. (*See* dkt. 686; *see also*, Order Granting Zodiates Stay, dkt. 192 at 3-4 (“To now allow discovery under the relatively liberal rules of civil procedure, as opposed to the more restrictive rules and procedures governing criminal matters, poses a danger of fundamental unfairness to Mr. Zodiates and his co-defendants in the criminal case.”).) Accordingly, Defendants would reluctantly accede to a global stay of this case, notwithstanding their strong preference to continue immediately to summary judgment. Defendants have not reached this decision lightly. Further, Defendants expressly reserve the right to seek a severance of their case at a subsequent time, including a separate trial from any defendants convicted criminally or invoking Fifth Amendment privileges against self-incrimination (in the unlikely event that any claim against Defendants Liberty Counsel and Lindevaldsen survives summary judgment).

In the event the Court grants a global stay of this case, however, Defendants do not consent to, and in no event should the Court grant, anything less than a full and global stay of all pending discovery and litigation in this case. In recent discussions with Plaintiff’s counsel prior to filing this memorandum, Defendants learned that Plaintiff insists vigorously that the Court should extend the stay granted to Lisa Miller to all other defendants, because Plaintiff does not wish to engage in “piecemeal litigation.” However, Plaintiff apparently wants this Court to issue only a **one-sided stay**—one that **prevents** Defendants from seeking any additional discovery from Plaintiff, while at the same time **obligates** Defendants to continue the voluminous work necessary to respond to Plaintiff’s already pending document requests and “outstanding” discovery. In other words, Plaintiff objects to piecemeal litigation, but insists on a one-sided, piecemeal stay. The Court should reject this tactic for several reasons:

**A) The piecemeal stay sought by Plaintiff is fundamentally unfair and would heighten the prejudice to Defendants.**

Among the discovery that Plaintiff is asking this Court to allow to continue—while staying all of Plaintiff’s own discovery obligations—are Liberty Counsel’s and Lindevaldsen’s search of the AT&T telephone records, and their searching for numerous additional ESI search terms within their electronic records, both as provided by this Court in its recent discovery Order. (Dkt. 665). **This is no small task.** Since the Court’s discovery order, Plaintiff has sent Defendants a **36-page list** containing literally **hundreds of telephone numbers (well in excess of one thousand)** that Plaintiff is demanding Defendants to search in their telephone records. This burdensome search, and the review of the resulting records one-by-one, will take untold numbers of hours to complete. Also requiring many hours of discovery time will be Defendants’ search for numerous additional ESI search terms that the Court allowed in its discovery order. Plaintiff wants the Court to continue to impose all of these significant burdens upon Defendants, while at the same time shielding Plaintiff from having to provide any additional discovery herself.

The unfairness of this demand is self-evident. Why should Plaintiff be relieved of any further discovery obligations, even as she continues to impose huge burdens on Defendants? For example, why should Defendants be precluded from taking the deposition of Plaintiff now? Or why should Defendants be precluded from taking additional depositions which, like Plaintiff’s deposition, have already been scheduled? This discovery that would benefit Defendants is already scheduled, and is no less “outstanding” than the discovery Plaintiff still seeks from Defendants. For that matter, why should Defendants be precluded from serving additional document requests upon Plaintiff at this time?

Discovery is a two-way street. If Plaintiff insists upon a stay of this case to avoid “piecemeal” litigation, then the Court should grant her wish and issue a complete stay, not a

piecemeal stay that would continue to impose discovery burdens on Defendants but not on Plaintiff. Defendants are already being asked to significantly delay their release from this case via dispositive motions. Forcing Defendants to wait for their exoneration is one thing, but requiring them to be continually subjected to Plaintiff's one-sided discovery demands in the meantime is altogether different and profoundly prejudicial.

**B) The piecemeal stay sought by Plaintiff is unnecessary.**

There is no need, or logical reason, for the piecemeal stay sought by Plaintiff. Jenkins will no doubt contend that she prefers to have Defendants' outstanding discovery during the course of the stay, so that she may continue her own research and litigation preparation during the stay. But why should Defendants be denied the same opportunity that Plaintiff unilaterally seeks only for herself? If Defendants are forced to postpone their further discovery investigation until after the stay is lifted, why can't Jenkins do the same?

There is no good reason. If the Court enters a global stay, then all parties will (and should) be required to wait until the stay is lifted. Once that stay is lifted, the parties will agree to a new discovery and dispositive motion schedule. Plaintiff will then have more than sufficient opportunity to obtain her "outstanding" discovery from Defendants, and Defendants will have sufficient opportunity to complete their own discovery from Plaintiff and other parties.

**C) There is no precedent in this case for a piecemeal stay.**

Finally, in pre-filing communications, Jenkins argued (and may do so in her memorandum) that this "Court ordered similar document production from Response Unlimited before it stayed the case pending Philip Zodhiates's criminal prosecution," and therefore somehow established a precedent for the unilateral discovery and stay that Plaintiff now seeks. Except that this Court has done no such thing.

In its order staying discovery pending the Zodhiates criminal prosecution (dkt. 192), the Court ordered Zodhiates only to provide Plaintiff with the documentary discovery **that Zodhiates was already obligated to provide to the Government within the criminal prosecution.** (*Id.* at 5). **Zodhiates himself** sought the stay. (*Id.* at 1). Zodhiates was being required to provide the discovery in question to the prosecutor, and thus he faced no additional burdens by providing that same discovery to Jenkins during the stay. (*Id.* at 5). And, critically, Jenkins and Zodhiates both **agreed** that Jenkins should obtain the discovery she was seeking, but disagreed only as to whether Jenkins would be permitted to share that discovery, or provide testimony about it, in the criminal prosecution. (*Id.* at 4).

In sharp contrast here, Defendants Liberty Counsel and Lindevaldsen are **not** seeking a stay. They are reluctantly acceding to a stay given the circumstances, but their strong preference would have been to proceed immediately to completion of discovery and summary judgment. Moreover, unlike Zodhiates at the time of his stay, these Defendants do not have any obligation to produce anything to any prosecutor, and therefore the discovery Jenkins wants to continue during the stay would impose special and continued burdens on these Defendants (and only on them). There is also no agreement here between Jenkins and these Defendants that Jenkins should be provided the outstanding discovery, as there was for the Zodhiates stay.

In sum, there is no precedent, in this case or elsewhere, for the one-sided, unfair, and prejudicial piecemeal stay that Jenkins seeks.

### CONCLUSION

For the foregoing reasons, if the Court extends the stay granted to Lisa Miller to the other parties in this case, the Court should make that stay an actual, global stay, and should place **all** further discovery and litigation on hold until the criminal prosecution against Lisa Miller is

completed. The Court should not enter any stay that would continue to subject Liberty Counsel and Lindevaldsen to discovery burdens, while delaying and precluding their ability to complete their own discovery and file dispositive motions.

Respectfully Submitted,

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

### **CERTIFICATE OF SERVICE**

I hereby certify that on this April 26, 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.

/s/ Horatio G. Mihet  
*Attorney for Defendants  
Liberty Counsel, Inc. and  
Rena M. Lindevaldsen*