

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

**JANET JENKINS et al.,**

Plaintiffs, )

CIVIL CASE NO. 2:12-cv- 00184-wks

v. )

**KENNETH L. MILLER et al.,**

Defendants. )

March 11, 2014

**RENEWED MOTION TO DISMISS BY DEFENDANT LINDA M. WALL  
FOR LACK OF PERSONAL JURISDICTION IN LIGHT OF  
INTERVENING SUPREME COURT PRECEDENT**

Defendant Linda M. Wall, through the undersigned counsel, in her capacities as an individual and as alleged agent for Thomas Road Baptist Church, hereby renews her motion to dismiss the amended complaint (ECF 109) and proposed second amended complaint (ECF 127, should leave to amend be granted) pursuant to Fed. R. Civ. P 12(b)(2) for lack of personal jurisdiction in light of the intervening United States Supreme Court case of *Walden v. Fiore*, \_\_\_ U.S., \_\_\_, S.Ct. \_\_\_, 188 L. Ed. 2d 12, 2014 U.S. LEXIS 1635 (February 25, 2014). In support of the renewed motion Wall submits a memorandum of law simultaneously herewith.

WHEREFORE, Defendant Linda M. Wall respectfully requests that her renewed motion to dismiss this case be granted.

FOR THE PLAINTIFF,

/s/ Michael J. DePrimo

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## ARGUMENT

### A. **Intervening Supreme Court Precedent Clarified that, in Assessing Personal Jurisdiction, Courts Must Focus on the Defendant's Connections to the Forum State, Not Alleged Harm to the Plaintiff.**

In a unanimous decision released on February 25, 2014 the United States Supreme Court held that “‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, \_\_\_ U.S., \_\_\_, S.Ct. \_\_\_, 188 L. Ed. 2d 12, 2014 U.S. LEXIS 1635 at \*14-15 (February 25, 2014). *See also id.* at \*15 (“a defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction”). “Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” *Id.* at \*15 (quoting *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 475 (1985) (internal quotation marks omitted). “A forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.” *Id.* at \*16.

In *Walden*, a Covington, Georgia police officer (Fiore) seized \$97,000 in cash at the Atlanta Hartsfield-Jackson Airport after a drug-sniffing dog sniffed carry-on bags belonging to a couple with homes in California and Nevada. *Id.* at \*4-5. He also helped draft an allegedly false affidavit to show probable cause for forfeiture of the funds seized at the airport. *Id.* at \*6. The affidavit was allegedly false and misleading because Fiore misrepresented the encounter at the airport and omitted exculpatory information regarding the lack of drug evidence and the legitimate source of the funds. *Id.* In the end, no forfeiture complaint was filed, and the DEA returned the funds. *Id.* The couple filed suit seeking money damages against Fiore in the United

States District Court for the District of Nevada. *Id.* at \*7.

In its “minimum contacts” analysis, the Supreme Court noted that the “inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant ‘focuses on the relationship among the defendant, the forum, and the litigation.’” *Id.* at \*11 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 775 (1984)). In other words, “[f]or a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.” *Id.*

“First, the relationship must arise out of contacts that the ‘defendant himself’ creates with the forum State.” *Id.* at \*12 (citing *Burger King Corp.*, 471 U. S. at 475). “Due process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant — not the convenience of plaintiffs or third parties.” *Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 291-92 (1980)). Consequently, the High Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. *Id.* at \*12-13 (citing *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 417 (1984)). “Put simply, however significant the plaintiff’s contacts with the forum may be, those contacts cannot be ‘decisive in determining whether the defendant’s due process rights are violated.’” *Id.* at \*13 (quoting *Rush v. Savchuk*, 444 U. S. 320, 332 (1980)).

Second, “minimum contacts” analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there. *Id.* at \*13-14 (citations omitted). “[A]lthough physical presence in the forum is not a prerequisite to jurisdiction, *Burger King, supra*, at 476, physical entry into the State — either by the defendant in person or through an agent, goods, mail, or some other means — is certainly a relevant contact.” *Id.* at \*14-15

(citation omitted). “But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Id.* at \*15 (citations omitted). These same principles apply when intentional torts are involved. *Id.* at \*16.

Applying these factors, the Court concluded that the Nevada court could not assert personal jurisdiction over Fiore because “no part of petitioner’s course of conduct occurred in Nevada.” *Id.* at \*19-20. Fiore “never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada.” *Id.* at \*20. “In short, when viewed through the proper lens — whether the defendant’s actions connect him to the forum — petitioner formed no jurisdictionally relevant contacts with Nevada.” *Id.* Importantly, the Court expressly rejected the notion that mere injury in the forum state confers personal jurisdiction:

*Calder* [*v. Jones*, 465 U. S. 783 (1984)] made clear that mere injury to a forum resident is not a sufficient connection to the forum. Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.

*Id.* at \*21-22. The Court concluded by stating, “[Fiore]’s relevant conduct occurred entirely in Georgia, and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.”

**B. Defendant Linda Wall Has No Connections to Vermont.**

The reasoning of *Walden* applies with equal force here. The amended complaint contains no allegation that any of the alleged actions taken by Wall occurred in Vermont. *See* Amended Complaint (ECF 109). Nor did this Court find that Wall engaged in any activities in Vermont or directed any activities at Vermont. *See* Order at 11, 25-26. On the contrary, the basis for personal jurisdiction relied on by this Court was that, “[t]he plaintiffs have pled specific facts

showing that Linda Wall aimed intentional tortious acts at Janet Jenkins;” that “at all times [Wall] knew that Jenkins was a resident of Vermont;” and that Wall’s “actions were aimed at depriving [Jenkins] of lawful parental rights, and the brunt of the injury as a result of their actions was felt in Vermont.” Order at 25-26. These are the same types of non-forum “contacts” the Supreme Court rejected in *Walden*. Moreover, unlike the petitioner in *Walden* who had direct contact with the respondent, Wall never had any contact with Jenkins whatsoever. As *Walden* makes clear, personal jurisdiction cannot be premised on either Jenkins’ residency in Vermont or any injuries allegedly felt by Jenkins in Vermont.

Neither does the proposed seconded amended complaint<sup>1</sup> allege that Wall has sufficient minimum contacts with Vermont to confer personal jurisdiction. As shown below, there is not a single allegation that Wall ever traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to in Vermont:

17. Defendant Linda Wall, a Virginia anti-gay activist and Thomas Road Baptist Church member, stated that in 2004 she was contacted by attorney Rena Lindevaldsen, of Liberty University and was asked to meet with Lisa Miller to screen her for representation by lawyers working at Liberty University and its related law firm, Liberty Counsel, LLC. After this screening, Lisa Miller was accepted for representation by Liberty University attorneys, and also formed a friendship with Defendant Wall.

20. In the spring of 2008, Lisa Miller, with the encouragement and support of the Defendants named herein, moved with Isabella from her home in Winchester, Virginia to the Lynchburg area, where she was provided with housing, a job and a vehicle by TRBC. Lisa Miller began to associate more openly with the Co-Defendants and was counseled by church members and pastors not to allow contact between Isabella and Janet Jenkins. In Lynchburg, Lisa Miller joined Thomas Road Baptist Church and was hired as a teacher at TRBC's elementary school, Liberty Christian Academy, where Isabella also became enrolled. Upon information and belief, at Liberty Christian Academy, Lisa Miller would also give assemblies to students to discuss her legal battle.

21. Also in the spring of 2008, Lisa Miller and Defendant Wall met to discuss what Lisa Miller should do “knowing that Virginia” law was not going to prevent Isabella from having contact

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<sup>1</sup> Plaintiffs filed a motion seeking leave to file a second amended complaint on December 12, 2013 (ECF 127). To date, the motion remains undecided.

with Plaintiff Jenkins. At this time, Appellate Courts in Vermont and Virginia had affirmed Janet Jenkins' parental rights. Upon information and belief, Wall and Miller decided and agreed as early as June of 2008 that Lisa Miller should flee with Isabella.

22. The Protect Isabella Coalition was organized in the spring of 2008 in Lynchburg by Wall and Miller and other church agents, including Deborah Thurman, who ran a woman's group at TRBC. The purpose of the Protect Isabella Coalition ("PIC") was to prevent court ordered contact between Isabella Miller-Jenkins and Janet Jenkins.

45. In January 2010, Linda Wall appeared on television with several members of the PIC and TRBC, including TRBC's Pastor for Outreach and Assimilation Tipton Killingsworth, to endorse the kidnapping. In discussing her role, Wall compared herself to Harriet Tubman, and suggested she would take similar actions with regard to more children from same-sex families.

46. Defendant Wall also wrote on Facebook that if anyone knew of Lisa and Isabella's whereabouts, they should not tell anyone. She also made several phone calls to law enforcement to instruct them that they should not look for Lisa and Isabella.

48. . . . Linda Wall sought donations for Lisa Miller after January 2010, and other TRBC members maintained a post office box for donations to "Friends of Lisa Miller."

57. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins further allege that Lisa Miller did conspire with, and was aided and abetted by Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc., Kenneth Miller, Timothy Miller, and Linda Wall.

59. Plaintiffs Janet Jenkins and Isabella Miller-Jenkins allege that Lisa Miller conspired with Response Unlimited, Inc., Philip Zodhiates, individually and as an agent/officer of Response Unlimited, Inc., Victoria Hyden, f/k/a Victoria Zodhiates, individually and as an agent of Response Unlimited, Inc., Kenneth Miller, Timothy Miller, and Linda Wall, to violate the civil rights of Janet Jenkins and Isabella Miller-Jenkins, based on discriminatory animus against same-sex couples and against Janet Jenkins due to sexual orientation, and to prevent the courts of Vermont and Virginia from securing to them equal protection of the law, and to prevent or hinder State authorities from securing equal protection of the law to same-sex couples.

## CONCLUSION

*Walden v. Fiore* makes clear that Plaintiffs' amended complaint and proposed second amended complaint do not assert facts demonstrating personal jurisdiction over Wall in this forum. For the foregoing reasons, Wall respectfully requests that her renewed Motion to Dismiss be granted.

FOR THE PLAINTIFF,

/s/ Michael J. DePrimo

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**CERTIFICATE OF SERVICE**

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I hereby certify that, on March 11, 2014, I electronically filed with the Clerk of the Court a Renewed Motion to Dismiss and a memorandum of law in support thereof on behalf of Defendant Linda M. Wall, and service of such filing shall be provided by CM/ECF via Notice of Electronic Filing (NEF) to the following NEF counsel of record:

Ritchie E. Berger, Esq.	Thomas E. McCormick, Esq.
Brooks G. McArthur, Esq.	Sophie E. Zdatny, Esq.
Peggy J. Schmitz, Esq.	Sarah Star, Esq.
Steven J. Shrock, Esq.	Frank H. Langrock, Esq.
Katherine B. Kramer, Esq.	Lisa B. Shelkrot, Esq.
Robert G. Cain, Esq.	Norman C. Smith, Esq.
Robert G. Hemley, Esq.	
Norman C. Williams, Esq.	

Dated and signed at Hamden, CT.

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