

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

JANET JENKINS, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 2:12-cv-00184-WKS
	:	
KENNETH L. MILLER, et al.,	:	
Defendants.	:	

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**RESPONSE OF DEFENDANTS LIBERTY UNIVERSITY, INC.,  
THOMAS ROAD BAPTIST CHURCH, INC. AND VICTORIA HYDEN TO  
PLAINTIFF'S MOTION FOR SERVICE BY PUBLICATION ON LINDA WALL**

Defendants Liberty University, Inc., Thomas Road Baptist Church, Inc. and Victoria Hyden (collectively, "these Defendants") submit the following response to Plaintiff's Motion for Service by Publication on Defendant Linda Wall (dkt. 95) ("Motion"). While consulted conceptually on the Motion before it was filed, counsel for these Defendants was never provided an advance copy of the Motion or the Proposed Order granting the Motion submitted by Plaintiff (dkt. 96). After considering both, this response is necessary.

Plaintiff's Motion is premised on the argument that this Court has personal jurisdiction over Defendant Linda Wall ("Wall"). (Dkt. 95, p. 4). Plaintiff's sole jurisdictional claim over Wall is the "*Calder* effects theory" under Plaintiff's reading of *Calder v. Jones*, 465, U.S. 783 (1984). Specifically, Plaintiff argues that the Court has jurisdiction over Wall, and therefore can order service by publication, solely because the effects of Wall's conduct that allegedly took place entirely outside Vermont were felt in Vermont, by a Vermont resident. (Dkt. 95, p. 4). That is the same jurisdictional argument advanced by Plaintiff against these Defendants.

As demonstrated elsewhere by these Defendants, they have no legally cognizable connection to Wall, in that, contrary to Plaintiff's allegations, Wall has never been an officer,

deacon, authorized agent or even member of Thomas Road Baptist Church (or of Liberty University). (*See, e.g.*, dkt. 94, p. 13, n. 11). Thus, although these Defendants are not in a position to defend Wall's interests in this litigation, they are duty bound to advise the Court that Plaintiff's *Calder* effects theory is defunct and not the law in the Second Circuit. As explained by these Defendants in their Reply in Support of their Motion to Dismiss, *Calder* requires much more than a Vermont plaintiff merely feeling the effects of an alleged intentional tort committed outside Vermont. (Dkt. 94, pp. 13-16). Instead, Vermont must be the focal point of both **the alleged tort itself**, and the alleged harm suffered. (*Id.*) Under a proper reading of *Calder*, Plaintiff would have to show that Wall expressly aimed her conduct **at Vermont itself**, not just at an individual who happens to be living in Vermont. (*Id.*) Plaintiff's reading of *Calder* completely vitiates the constitutional requirement of minimum contacts and purposeful availment. (*Id.*) Because the alleged wrongs – to the extent they even constitute a cognizable intentional tort, which they do not – are alleged to have occurred entirely outside Vermont, Plaintiff cannot make this showing as to Wall, these Defendants, or any other defendant. (*Id.*)

These Defendants therefore urge the Court to consider their rebuttal of Plaintiff's *Calder* effects theory prior to adopting a flawed interpretation of that precedent in deciding Plaintiff's instant Motion.

Moreover, the Proposed Order granting the Motion submitted by Plaintiff (dkt. 96) includes a provision that "in case of [Wall's] failure to [timely respond to the Amended Complaint after publication service,] judgment by default shall be entered against Defendant Linda Wall for the relief demanded in the Amended Complaint." (Dkt. 96, p. 2, ¶ 2). These Defendants respectfully submit that this language is gratuitous and premature. Even if the Court were to conclude that it could lawfully order service by publication, Wall's theoretical failure to

timely respond to the Amended Complaint should be addressed subsequently by separate motion, if it materializes, pursuant to the default mechanisms provided in the Rules of Civil Procedure. These Defendants oppose any order providing for default at this time and reserve the right to make substantive arguments regarding same if and when the forecasted default should ripen into an issue properly before this Court.

Respectfully submitted,

DINSE, KNAPP & McANDREW, P.C.

/s/ Ritchie E. Berger

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Hyden

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on April 17, 2013. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

DINSE, KNAPP & McANDREW, P.C.

/s/ Ritchie E. Berger

Ritchie E. Berger, Esq.

Attorney for Defendants Liberty University, Inc.,  
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