

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

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**WORLD MISSION SOCIETY CHURCH  
OF GOD, A NEW JERSEY NON-PROFIT  
CORPORATION,**

**Plaintiff,**

**v.**

**MICHELE COLON and  
TYLER J. NEWTON**

**Defendants.**

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**Case No. 2011-17163**

**DEFENDANT MICHELE COLON'S REPLY BRIEF  
IN FURTHER SUPPORT OF HER  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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The Court should grant Defendant Michele Colon's Motion to Dismiss for Lack of Personal Jurisdiction. Plaintiff World Mission Society Church of God ("WMSCOG") has not disputed any of the material facts set forth in Ms. Colon's affidavit, which establish conclusively the total absence of any purposeful activity targeted at Virginia. Without such activity, there can be no "minimum contacts" as required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

**I. Conspiracy Allegations Do Not Create the "Minimum Contacts" Needed for the Assertion of Personal Jurisdiction.**

While acknowledging that Ms. Colon has never been to Virginia and has not committed any torts in Virginia, Plaintiff argues that "Colon can be subject to jurisdiction based on the acts of Newton that occurred in Virginia in furtherance of the conspiracy." (Pltf.'s Mem. at 8). As Plaintiff concedes, the Virginia Supreme Court has never recognized a "conspiracy theory of jurisdiction." (*Id.*) More importantly, even those courts that have addressed the so-called conspiracy theory of jurisdiction do not treat it as an exception to the long-arm statute or the Due Process Clause. Rather, it is merely an application of the principle that a person can establish minimum contacts with a foreign jurisdiction through the authorized acts of an agent, as recognized in the Long-Arm Statute itself. *See* Va. Code § 8.01-328.1 (allowing personal jurisdiction over a person who satisfies statute through acts performed "directly or by an agent").

The United States District Court for the Eastern District of Virginia explained, "a defendant who joins a conspiracy knowing that acts in furtherance of the conspiracy have taken or will take place in the forum state is subject to personal jurisdiction in that forum state because the defendant has purposefully availed himself of the privileges of that state and should reasonably expect to be haled into court there." *Noble Sec., Inc. v. MIZ Eng'g, Ltd.*, 611 F. Supp. 2d 513, 539 (E.D. Va. 2009). The *Noble* court clarified, however, that mere allegations of a conspiracy do

not automatically create a basis for personal jurisdiction. *Id.* (noting that jurisdiction may be based on alleged co-conspirator's acts "in some circumstances").

In particular, the mere presence of an alleged co-conspirator within the forum state is *not* sufficient to permit personal jurisdiction over co-conspirators. *Gemini Enterprises, Inc. v. WFMY Television Corp.*, 470 F. Supp. 559, 564 (M.D.N.C. 1979). Only "substantial acts in furtherance of the conspiracy" can support the exercise of jurisdiction over a foreign co-conspirator, and then only where the co-conspirator knew or should have known that acts would be performed in the forum state. *Id.*; see also *Galustian v. Peter*, 750 F. Supp. 2d 670, 676 (E.D. Va. 2010) (declining to apply the "conspiracy theory" of jurisdiction as an exception to the requirements of the Due Process Clause and dismissing defamation case against California resident despite allegations of conspiracy).

In the present case, WMSCOG relies on Defendant Tyler Newton's mere residence in Virginia as its alleged basis for personal jurisdiction against Ms. Colon. The alleged conspiracy has no connection whatsoever to Virginia. WMSCOG's claims against Ms. Colon are based on alleged "public defamatory attacks" in Ridgewood, New Jersey (Compl. ¶¶ 21-24), Facebook posts that she made from her home in New Jersey, in which she encouraged others to attend a planning board meeting in New Jersey (Compl. ¶¶ 26-31), various "defamatory statements about Plaintiff on various online business review websites" (Compl. ¶ 34), similar statements on "various Internet discussion forums" (Compl. ¶ 49), defamatory videos on YouTube.com (Compl. ¶¶ 95 et seq.), and a series of articles called "How the WMSCOG Turned My Life Upside Down," published on a website owned by Mr. Newton.

Of the 175 numbered paragraphs in Plaintiff's Complaint, the only allegation having anything to do with the Commonwealth of Virginia is that Mr. Newton lives here. Even if the Court

were to apply the so-called “conspiracy theory” of jurisdiction, Mr. Newton’s mere residence in Virginia is not sufficient to confer personal jurisdiction over Ms. Colon. There are no allegations that Ms. Colon instructed Mr. Newton, as her agent, to perform substantial activities in Virginia. To the contrary, as shown by the uncontroverted statements in Ms. Colon’s affidavit, to the extent her activities were directed anywhere at all, they were directed at New Jersey, where both she and the Plaintiff reside, and not Virginia. *See Colon Aff.* ¶¶ 10-15.

## **II. Ms. Colon’s and Mr. Newton’s Sworn Affidavits Establish Conclusively the Absence of Personal Jurisdiction.**

WMSCOG was formed in New Jersey and is headquartered in New Jersey. (*Compl.* ¶ 5). Nevertheless, according to the Complaint, Ms. Colon, a New Jersey resident, “expressly aimed her intentional tortious conduct at Virginia and knew that her intentional conduct would cause harm in Virginia.” (*Compl.* ¶ 10). The Complaint is completely devoid of any allegations supporting these self-serving, conclusory statements. Moreover, Ms. Colon specifically rebutted these unfounded and unsupported allegations in her affidavit—attached to her Motion to Dismiss—in which she admitted to posting various statements about WMSCOG on the Internet, but clarified that she uploaded all such statements to the Internet from New Jersey, not Virginia, and that her intentions were to warn the people of New Jersey about the New Jersey church’s practices. *See Colon Aff.* ¶¶ 10-15 (stating, for example, “All of the statements and videos that I have uploaded to the Internet with respect to the WMSCOG have been uploaded in New Jersey”).

Significantly, WMSCOG has not attempted to rebut these allegations with any evidence of its own. It does not deny that Ms. Colon’s Internet activities were conducted solely in New Jersey, or that her purpose was to “start a public awareness campaign in the State of New Jersey to warn people about the WMSCOG.” *See Colon Aff.* ¶¶ 10-11. Instead, it asks this Virginia Court to assert jurisdiction over her solely because one of the many websites she posted infor-

mation to happen to be owned by someone in Virginia. Ownership of the website is completely irrelevant. Moreover, as Mr. Newton clarifies in his attached affidavit, all content on the website is stored on servers located in Massachusetts. *See* Affidavit of Tyler Newton ¶¶ 3-4, Exhibit 1.

WMSCOG did submit an affidavit from a Victor Lozada, the “Senior Deacon” of WMSCOG, but Mr. Lozada’s affidavit does not contradict any of the key jurisdictional statements made by Ms. Colon or Mr. Newton. Moreover, it consists almost entirely of inadmissible hearsay, legal conclusions, and other statements lacking any evidentiary foundation. Because these statements are not based on personal knowledge, they have no evidentiary value and should not be considered by the Court. *See Versatile v. Johnson*, 2011 WL 1167440, \*2 (E.D. Va. 2011) (excluding declaration based on inadmissible hearsay). Glaringly absent from Mr. Lozada’s affidavit are any statements showing that Ms. Colon targeted her activities at a Virginia audience. Without such intentional “purposeful availment,” to assert personal jurisdiction over Ms. Colon would be unconstitutional. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

### **III. Subjecting Ms. Colon to Personal Jurisdiction Would Violate Due Process.**

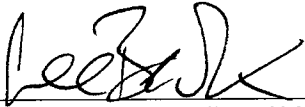
The Due Process Clause requires that before a court can assert personal jurisdiction over a non-resident defendant, the plaintiff must show that the defendant “purposefully directed [her] activities at residents of the forum” and that the causes of action “arise out of or relate to those activities.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). As explained at length in Ms. Colon’s opening brief, personal jurisdiction cannot be based on a defendant’s merely making information available on a passive website. *See Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 399 (4<sup>th</sup> Cir. 2003). Ms. Colon’s activities took place in New Jersey, and her statements were not intended specifically for a Virginia audience. *See* Colon Aff. ¶¶ 10-15. Even if the Court were to apply a “conspiracy theory” of jurisdiction, all that

Mr. Newton (the alleged co-conspirator) is alleged to have done was place information on his passive website. In other words, regardless of whether the Court examines the conduct of Ms. Colon or Mr. Newton, the fact remains that the act of posting information online about a New Jersey church, absent a “manifest intent” to target Virginians, is not a sufficient basis on which to assert personal jurisdiction in Virginia. *See Carefirst*, 334 F.3d at 400. Therefore, the Court cannot exercise personal jurisdiction over Ms. Colon.

#### **IV. Ms. Colon Has Not Waived Her Objection to Personal Jurisdiction.**

WMSCOG claims that a “simultaneous pleading” objecting to jurisdiction on two different grounds constitutes a general appearance that results in a waiver of the objection to personal jurisdiction. *See* Pltf.’s Mem. at 1. That is wrong. Waiver of objections to personal jurisdiction is governed by Va. Code § 8.01-277.1, which provides clearly that a party “does not waive any objection to personal jurisdiction...if he engages in conduct unrelated to adjudicating the merits of the case....” Objecting to subject-matter jurisdiction is unrelated to adjudicating the merits of this case and does not constitute a general appearance. *See Wells v. Wells*, 29 Va. App. 82, 85 (1999) (treating party’s objection to subject-matter jurisdiction as a “special appearance”); *Butkiewicz v. Semanko*, 2005 WL 2427909 (E.D. Va. Sept. 29, 2005) (“Dismissal for lack of subject matter jurisdiction is not a decision on the merits”). Plaintiff’s own case, *Ceyte v. Ceyte*, 222 Va. 11 (1981), recognizes that action taken “for the sole purpose of objecting to the jurisdiction” will not amount to a general appearance. *Id.* at 14 (emphasis added). Here, the only conduct undertaken by Ms. Colon in this case has been to object to jurisdiction. Therefore, she has not waived any objections and the Court should dismiss her from this case.

MICHELE COLON  
By Counsel




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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2012, a true and correct copy of the foregoing Reply

Brief was served by facsimile on:

John W. Dozier, Jr.  
Dozier Internet Law, P.C.  
11520 Nuckols Road Ste 101  
Glen Allen, VA 23059  
Fax: 804-346-0800



Lee E. Berlik

# Exhibit 1



**VIRGINIA:****IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX****WORLD MISSION SOCIETY  
CHURCH OF GOD****Plaintiff,****v.****MICHELE COLON AND TYLER J.  
NEWTON,****Defendants.****Case No. 11-17163****DEFENDANT TYLER NEWTON'S AFFIDAVIT  
IN SUPPORT OF DEFENDANT MICHELE COLON'S  
MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION**

Tyler Newton, on his oath, deposes and says:

1. I am one of the Defendants named in the above-captioned case. As such, I am familiar with the facts described herein. I make this Affidavit, based solely on my personal knowledge, in support of co-Defendant Michele Colon's Motion to Dismiss for Lack of Personal Jurisdiction.
2. I am the owner of the website examiningthewmscog.com (the "Website"). I created the Website in February 2011.
3. At all times that the Website has been in existence, it has been hosted in Massachusetts by the web host ICDSOft.
4. At all times that the Website has been in existence, all of the materials posted to the Website have resided on a server or servers located in Massachusetts.

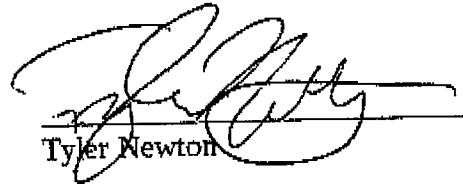
**EXHIBIT**

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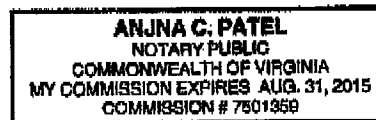
5. The Website allows members of the public to click on a link to submit materials by e-mail, but Ms. Colon never submitted any of her articles that way.
6. Ms. Colon has administrative access to the web site which allows her to post material directly to the web site.

Dated: March 2, 2012

  
Tyler Newton

Sworn and Subscribed before me  
this 2 day of March, 2012.

Anjna Patel  
Notary Public



03/02/2012

Anjna Patel

SWORN AND SUBSCRIBED BEFORE  
ME. IN MY PRESENCE THIS 2<sup>nd</sup>  
DAY OF March 2012. 200  
A NOTARY PUBLIC IN AND FOR  
THE STATE OF VIRGINIA, COUNTY  
OF FAIRFAX Tyler James Newton  
Anjna Patel  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 08/31/2015

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