

Exhibit

7

4. Only 11 of the 16 Defendants have been served with the Summons and Verified Complaint.

5. On June 13, 2011, the U.S. Attorney filed a NOTICE OF REMOVAL that alleges to seek to remove Civil Action 2011CV200971 from Fulton County Georgia Superior Court to the United States District Court. The NOTICE OF REMOVAL mentions seven (7) Defendants in the opening paragraph, but the NOTICE OF REMOVAL identifies no Defendants in the signature block, and there are no affidavits from any of the Defendants. A true and correct copy of the NOTICE OF REMOVAL is attached as Exhibit 1.

6. This so-called NOTICE OF REMOVAL is based on 28 U.S.C. § 1442(a)(1) and 28 U.S.C. § 2679. See NOTICE OF REMOVAL ¶7.

7. On June 14, 2011, Windsor filed a MOTION TO DENY REMOVAL in the United States District Court.

8. On June 22, 2011, Windsor filed a Motion to Vacate Notice of Removal in this Court.

9. On July 5, 2011, Windsor filed this Motion for Remand.

I. **THE NOTICE OF REMOVAL WAS FILED FOR IMPROPER PURPOSES, SO THIS MOTION FOR REMAND MUST BE GRANTED.**

10. The NOTICE OF REMOVAL was filed so the Defendants could evade exposure as criminals. By filing the NOTICE OF REMOVAL, Defendants

have been able to utilize their racketeering enterprise to shield themselves from an honest judge and jury in the Fulton County Superior Court.

11. The judge to whom this matter was assigned, Thomas Woodrow Thrash, has violated Windsor's Constitutional rights up one side and down the other. Details of Mr. Thrash's wrongdoing is provided in PLAINTIFF WILLIAM M. WINDSOR'S EMERGENCY MOTION TO RECUSE JUDGE THOMAS WOODROW THRASH filed in 1:11-CV-01923-TWT, incorporated herein as if attached hereto. (Docket #43.)

**II. THE NOTICE OF REMOVAL IS PROCEDURALLY DEFECTIVE,
SO THIS MOTION FOR REMAND MUST BE GRANTED.**

12. The NOTICE OF REMOVAL has multiple procedural defects that make it void on its face. Technical, procedural requirements were not met.

13. Judges Mr. Dubina and Ms. Kravitch have so ruled: (*Russell Corp. v. American Home Assur. Co.*, 264 F.3d 1040, 1044 (11th Cir. 2001).)

14. Judge Mr. Duffey has so ruled: (*Henry County School Dist. v. Action Development, Inc.*, No. 1:07-cv-1490-WSD (N.D.Ga. 09/06/2007).)

The removing defendants carry the burden to demonstrate that the removal was effected properly, and "this burden is a heavy one." (*Lampkin v. Media General, Inc.*, 302 F. Supp.2d 1293, 1294 (M.D.Ala. 2004). (*Henry County School Dist. v. Action Development, Inc.*, No. 1:07-cv-1490-WSD (N.D.Ga. 09/06/2007) – Judge William S. Duffey.) (See also *Laughlin v. Prudential Ins. Co.*, 882 F.2d. 187 (5th Cir. 1989).)

15. Removal statutes are strictly construed in favor of state court jurisdiction. Judge Mr. Duffey has so ruled:

(Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941).
(Henry County School Dist. v. Action Development, Inc., No. 1:07-cv-1490-WSD (N.D.Ga. 09/06/2007) – Judge William S. Duffey.)

16. The NOTICE OF REMOVAL fails on all accounts, so this MOTION FOR REMAND must be granted.

17. **DEFECT #1 -- THE REMOVAL FAILS TO COMPLY WITH THE REQUIREMENT THAT DEFENDANTS MUST MAKE AN APPEARANCE, SO THIS MOTION FOR REMAND MUST BE GRANTED.**

18. None of the Defendants have made an appearance. None of the Defendants have filed a CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT as required by N.D.Ga Local Rule 3.3 and FRCP 7.1, which was due to be filed with the Clerk “at the time of first appearance.” This is a violation of the rules that is a procedural defect. This is proven by a true and correct copy of the Docket is attached as Exhibit 2, incorporated herein. There is no proof that the U.S. Attorneys, Yates, Huber, and Ben-David have authority to appear for Defendants.

19. DEFECT #2 -- THE ACTION IS NOT YET PENDING IN FULTON COUNTY SUPERIOR COURT AS 28 U.S.C. § 1442 REQUIRES, SO THIS MOTION FOR REMAND MUST BE GRANTED.

20. The removal statute requires service prior to removal in the state of Georgia. The removal statute requires that an action must be "pending" in a state court before it may be removed. See 28 U.S.C. § 1442(a) (noting that civil action may be removed to the district court "embracing the place wherein it is pending").

Under Georgia law, filing a suit "is still not the commencement of suit unless followed by service within a reasonable time." (*McClendon v. Hernando Phosphate Co.*, 28 S.E. 152, 153 (Ga. 1897); *Franek v. Ray*, 236 S.E.2d 629, 632 (Ga. 1977).) Thus, under Georgia law, "an action is not a 'pending' suit until after service of process is perfected." (*Steve A. Martin Agency, Inc. v. PlantersFIRST Corp.*, 678 S.E.2d 186, 188 (Ga. Ct. App. 2009); see also *Jenkins v. Crea*, 656 S.E.2d 849, 850 (Ga. Ct. App. 2008).)

21. Judge Julie E. Carnes, Judge Joel F. Dubina, Judge Ed Carnes, Judge Rosemary Barkett, and B. Grutby have not been served with process. Windsor also filed a motion with this Court seeking to add six additional Defendants.

22. Since the Civil Action is not yet "pending" in Fulton County Georgia Superior Court, the text of the removal statute prevents removal prior to service on Judge Julie E. Carnes, Judge Joel F. Dubina, Judge Ed Carnes, Judge Rosemary Barkett, and B. Grutby. (28 U.S.C. § 1446(b).)

23. **DEFECT #3 – THE DEFENDANTS DID NOT SIGN OR AUTHORIZE THE NOTICE OF REMOVAL, SO THIS MOTION FOR REMAND MUST BE GRANTED.**

24. The Notice of Removal was not authorized by the Defendants. **None** of the Defendants signed a consent or otherwise approved the removal. **None** of the Defendants are identified in the signature block on the NOTICE OF REMOVAL, so the Petition has not been filed on behalf of any of the Defendants.

(See 14C Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 3730 (4th ed. 2009).)

25. Judge Mr. Johnson has so ruled: *Demmons v. Fulton County*, No. 1:09-CV-2312-TWT-WEJ (N.D.Ga. 08/02/2010).

(See also *Bank of America National Association v. Derisme*, No. 3:10cv900 (D. Conn. 08/13/2010); *Helm v. Drennan*, No. 07-CV-0344-CVE-SAJ (N.D.Ok. 07/25/2007); *Sovereign Bank v. Park Development West, LLC*, No. 06-2603 (E.D.Pa. 08/17/2006); *Williams v. City of Beverly Hills, Missouri*, No. 4:07-CV-661 CAS (E.D.Mo. 09/24/2007); *Evanston Insurance Co. v. O'Conner*, No. 06-4687 (D.N.J. 03/20/2007); *Day Imaging, Inc. v. Color Labs Enterprises, L.L.C.*, No. 09-cv-02123-DME-MEH (D.Colo. 12/11/2009).)

26. **DEFECT #4 – THE REMOVAL IS DEFECTIVE FOR FAILURE TO COMPLY WITH THE RULE OF UNANIMITY.**

27. 28 U.S.C. § 1446(a) states that "**defendants desiring to remove any civil action** . . . shall file in the district court of the United States . . . a notice of removal." All Defendants have not filed the NOTICE. At best, only one has.

28 U.S.C. § 1446 requires the unanimous consent of *all* defendants to the removal. (*Russell Corp. v. American Home Assurance Co.*, 264 F.3d 1040 (11th Cir. 09/06/2001); *Loftis v. U.S. Parcel Serv., Inc.*, 342 F.3d 509, 516 (6th Cir. 2003); *Maguire v. Genesee County Sheriff*, 601 F.Supp.2d 882 (E.D.Mich. 02/17/2009).)

28. The NOTICE OF REMOVAL fails to claim the consent of ANY Defendant; it clearly fails to explain the absence of consent to the removal by at least 55 of the Defendants. It is defective for violating the rule of unanimity. Since 98.2% of the Defendants did not join in the notice of removal and the NOTICE OF REMOVAL failed to account for the lack of their consent, the NOTICE is procedurally defective and this MOTION FOR REMAND must be granted.

29. Judges Mr. Johnson, Mr. Duffey Mr. Edmondson, Mr. Cox, and Mr. Ed Carnes have ordered that unanimity is required:

Russell Corp. v. Am. Home Assur. Co., 264 F.3d 1040, 1044 (11th Cir. 2001). (*Demmons v. Fulton County*, No. 1:09-CV-2312-TWT-WEJ (N.D.Ga. 08/02/2010).) (*Thalacker v. Concessions International, LLC*, No. 1:06-cv-2685-WSD (N.D.Ga. 02/14/2007).) (*In re Ocean Marine Mut. Protection and Indem. Ass'n, Ltd.*, 3 F.3d 353, 355-56 (11th Cir.1993).)

30. Judge Ms. Totenberg ordered on April 27, 2011 that unanimity is required.

(William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

31. **DEFECT #5 -- THE NOTICE OF REMOVAL FAILS TO COMPLY WITH THE REQUIREMENT OF A PLAIN STATEMENT OF THE GROUNDS FOR REMOVAL.**

32. Judge Ms. Totenberg ordered in April 2011 that a plain statement of the grounds is required:

(William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

33. Judges Mr. Tjoflat, Mr. Marcus, and Ms. Barkett have so ordered: *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 04/11/2007). Judges Ms. Black, Ms. Hull, and Ms. Kravitch have so ordered: *Roe v. Michelin North Americu, Inc.*, 613 F.3d 1058 (11th Cir. 08/05/2010). Judges Mr. Edmondson, Mr. Ed Carnes, and Mr. Pryor have so ordered: *Pertka v. Kolter City Plaza II, Inc.*, 608 F.3d 744 (11th Cir. 06/08/2010). Judges Mr. Tjoflat and Mr. Ed Carnes have so ordered: *Cook v. Randolph County, Georgia*, 573 F.3d 1143 (11th Cir. 07/07/2009). Judges Mr. Edmondson and Mr. Wilson have so ordered: *Bautista v. Star Cruises*, 396 F.3d 1289 (11th Cir. 01/18/2005). Judges Mr. Tjoflat and Mr. Anderson have so ordered: *Hernandez v. Seminole County, Florida*, 334 F.3d

1233 (11th Cir. 06/24/2003). Judge Mr. Tjoflat has so ordered: *Bradway v. American National Red Cross*, 965 F.2d 991 (11th Cir. 07/07/1992).

34. **DEFECT #6 – THE NOTICE OF REMOVAL FAILED TO COMPLY WITH THE MANDATORY PROCEDURE TO INCLUDE WITH THE NOTICE OF REMOVAL THE SUMMONS ISSUED BY THE COURT ON ALL DEFENDANTS, DISCOVERY, AND OTHER DOCUMENTS SERVED ON DEFENDANTS CONTAINED IN THE STATE COURT RECORD.**

35. This is a fatal, non-amendable defect that mandates remand. 28 U.S.C. § 1446 (a) requires:

“A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together a copy of **all process, pleadings, and orders served upon such defendant or defendants** in such]action.” **[emphasis added.]**

36. The NOTICE OF REMOVAL fails to include a copy of any summons served on any Defendant.

37. Judge Ms. Totenberg ruled on April 27, 2011 that failure to file copies of all Summons and process is a defect:

“[Section] 1447(c) implicitly recognizes two bases upon which a district court may -- and in one case must -- order a remand: when there is: (1) a

lack of subject matter jurisdiction or (2) a defect other than a lack of subject matter jurisdiction." *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1252-1253 (11th Cir.1999). The "defect" noted in Section 1447(c) refers to the failure to follow statutory removal procedures, typically a lack of compliance with either the filing requirements set forth in Section 1446(a) or the timeliness requirements set forth in Section 1446(b). *Id.* ... Defendants' failure to include with their notice of removal the summons or process issued by the Court on all defendants, discovery, and other documents served on Defendants contained in the state court record is a fatal, non-amendable defect that mandates remand. This Court has found no authority to support Defendants' contention that multiple defendants can rely on a single defendant's compliance with 28 U.S.C. § 1446(a). The statute states that "[a] defendant or defendants ... shall file ... a copy of all process, pleadings, and orders served upon such defendant or defendants ..." (*William & Jin Nam, Individually, and William Nam As the Personal v. U.S. Xpress, Inc., A Nevada Corporation*, No. 1:10-CV-3924-AT (N.D.Ga. 04/27/2011).)

III. THE PRINCIPLE OF COMITY AND THE LONG-STANDING PUBLIC POLICY AGAINST FEDERAL COURT INTERFERENCE WITH STATE COURT PROCEEDINGS SHOULD PREVAIL AND THIS MOTION FOR REMAND MUST BE GRANTED.

38. The federal court should abstain for the sake of non-interference with state court proceedings. The jurisdictional laws of Georgia permit individuals to sue in Georgia courts for violations of any rights secured by the Constitution and laws of Georgia.

39. Prohibition of and interference with the State of Georgia in carrying out the important and necessary task of enforcing its own laws against socially harmful conduct that the State believes in good faith to be punishable under its

own laws and Constitution would result in a chilling effect on all Georgia citizens' right to the availability of relief under the Constitution and laws of Georgia.

40. The Constitution and laws of Georgia provide for a plain, speedy, and efficient remedy to violations of its laws, therefore the federal court should abstain from this action under the "abstention doctrine."

41. Judge Mr. Story has ruled:

"...where plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand."). Sound reasons exist for so limiting the exercise of removal jurisdiction. For one, the removal of cases to federal courts implicates principles of federalism. As the Supreme Court has explained: The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. "Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109, 61 S.Ct. 868, 85 L.Ed. 1214 (1941) (quoting *Healy v. Ratta*, 292 U.S. 263, 270, 54 S.Ct. 700, 78 L.Ed. 1248 (1934)). (See also *Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir. 1997) (internal quotations omitted). (*Poll v. Deli Management, Inc.*, No. 1:07-CV-0959-RWS (N.D.Ga. 08/24/2007).)

**IV. THE DEFENDANTS HAVE FAILED TO PROVE
THE EXISTENCE OF FEDERAL JURISDICTION,
SO THIS MOTION FOR REMAND MUST BE GRANTED.**

42. The Defendants have the burden of proving the existence of federal jurisdiction, and they have failed to do so. Mr. Huber's NOTICE OF REMOVAL does not even include the word "jurisdiction."

Removal jurisdiction merely refers to the right of a defendant to move a lawsuit filed in state court to the federal district court for the federal judicial district in which the state court sits. (*Wikipedia*.)

43. Mr. Huber's NOTICE OF REMOVAL mentions **removal** "pursuant to 28 U.S.C. §1442(a)(1)," but that's it. Nothing is proven or argued or anything.

44. The NOTICE OF REMOVAL fails to address subject matter jurisdiction at all, so the MOTION TO REMAND must be granted.

"...even though an action is eligible for removal pursuant to 28 U.S.C. §1442(a)(1), it is still subject to dismissal for lack of subject matter jurisdiction. See *Rankin v. I.R.S.*, No. 5:01-CV-79-OCI0GRJ, 2001 WL 34107044, at *1 (M.D. Fla. May 16, 2001) (noting that "[t]he issue of whether the court has subject matter jurisdiction and the issue of whether there is removal jurisdiction, however, involve separate considerations.") (*Morse v. United States*, No. 2:07-cv-249-FtM-34DNF (M.D.Fla. 12/04/2007).) [**emphasis added.**]

45. Judges Mr. Tjoflat and Ms. Black have ruled that defendants have the burden of proving the existence of federal jurisdiction, as have Judges Mr. O'Kelley, and Mr. Story. (*Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1356 (11th Cir. 1996).) (*Standridge v. Wal-Mart Stores*, 945 F. Supp. 252 (N.D.Ga. 09/18/1996).) (*Wells Fargo Bank NA v. Narh*, No. 1:06-CV-0580-RWS (N.D.Ga. 05/09/2006).)

46. So ordered Judge Mr. Thrash on April 22, 2011 as in 2007:

(Federal Home Loan Bank of Atlanta v. Countrywide Securities Corporation, et al, No. 1:11-CV-489-TWT (N.D.Ga. 04/22/2011).) (*AR*

Motorsports, Inc. v. City of Lawrenceville, Georgia, No. 1:07-CV-847-TWT (N.D.Ga. 08/07/2007).)

V. **THE NOTICE OF REMOVAL FAILED TO ASSERT GROUNDS FOR SUBJECT MATTER JURISDICTION AND FAILED TO RAISE A DEFENSE, SO THIS MOTION FOR REMAND MUST BE GRANTED.**

47. There are no grounds even asserted for subject matter jurisdiction.

This was an obligation that the NOTICE OF REMOVAL failed to address, so this MOTION FOR REMAND must be granted.

(See *Rankin v. I.R.S.*, No. 5:01-CV-79-OC10GRJ, 2001 WL 34107044, at *1 (M.D. Fla. May 16, 2001); *Morse v. United States*, No. 2:07-cv-249-FtM-34DNF (M.D.Fla. 12/04/2007).)

48. Judge Mr. Forrester has ruled that failure to assert grounds for subject matter jurisdiction and failure to raise a defense require that the case be remanded:

When considering such a motion, a court should examine closely the grounds asserted for its subject matter jurisdiction. "As a congressionally imposed infringement upon a state's power to determine controversies in their [sic] courts, removal statutes must be strictly construed." (*Hall v. Travelers Ins. Cos.*, 691 F. Supp. 1406 (N.D.Ga. 04/29/1988).)

49. Federal officers must raise a federal defense before removing to federal court, and the NOTICE OF REMOVAL failed to do so. Judges Mr. Edmondson, Mr. Tjoflat, Mr. Anderson, Ms. Black, Mr. Ed Carnes, Ms. Barkett, Mr. Marcus, and Mr. Wilson have all so ordered:

(*Bellsouth Telecommunications, Inc. v. MCI Metro Access Transmission*, 317 F.3d 1269, 317 F.3d 1270 (11th Cir. 01/10/2003).)

In sum, an unbroken line of Supreme Court decisions extending back nearly a century and a quarter have understood all the various incarnations of the federal officer removal statute to require the averment of a federal defense. (*Mesa et al. v. California*, 109 S. Ct. 959, 489 U.S. 121 (U.S. 02/21/1989).)

50. The U.S. district courts may hear only cases arising under federal law and treaties, cases involving ambassadors, admiralty cases, controversies between states or between a state and citizens of another state, lawsuits involving citizens of different states, and against foreign states and citizens.

51. Judge Mr. Story has ruled:

No federal question is present on the face of Plaintiff's Complaint, and the requirements for diversity jurisdiction are not satisfied. The Court therefore concludes that it lacks subject matter jurisdiction and that this action is frivolous. (*HSBC Mortgage Services, Inc. v. Williams*, No. 1:07-CV-2863-RWS (N.D.Ga. 12/10/2007).)

52. This case does not arise under federal law or treaties. It does not involve an ambassador. It is not an admiralty case. It is not a controversy between states. It is not a controversy between a state and citizens of another state. All parties are from Georgia, as admitted on the New Case Filing Form included as part of the Notice of Removal. It is not a case against foreign states and citizens.

53. According to Judge Mr. Duffey, federal courts are courts of limited jurisdiction:

Federal courts are courts of limited jurisdiction, and thus a federal court must take care to ensure that it has jurisdiction for all cases that come before

it. (*Deutsche Bank Nat'l v. Eberhart*, No. 1:06-cv-1588-WSD (N.D.Ga. 07/10/2006).) (See Judge Mr. Duffey's ruling also in *Equity Residential Properties v. Bravo*, No. 1:06-cv-1012-WSD (N.D.Ga. 05/03/2006) and *Stegeman v. Wachovia Bank, National Association*, No. 1:06-cv-0247-WSD (N.D.Ga. 04/04/2006).)

54. This Court does not have original jurisdiction. So says Judge Mr.

Story:

A defendant may only remove an action from state court if the federal court would possess original jurisdiction over the subject matter. 28 U.S.C. § 1441(a). *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir.2001). 28 U.S.C. § 1447(c). (*Kofi Boateng v. Morrison Management Specialists, Inc.*, No. 1:11-CV-00142-RWS (N.D.Ga. 06/13/2011).)

55. This Court lacks subject matter jurisdiction. Lack of subject matter jurisdiction requires remand to the state court. (28 U.S.C. § 1447(c), FRCP 12(h)(3); *Standridge v. Wal-Mart*, 945 F. Supp. 252 (N.D.Ga. 09/18/1996).)

56. The U.S. District Court lacks federal-question jurisdiction because there is no dispute as to the validity, construction or effect of a federal statute with a cause of action "arising under" the laws of the United States. So says Judge Mr. Baverman in *Wells Fargo Bank v. Cyrus*, No. 1:10-CV-02064-RLV-AJB (N.D.Ga. 07/15/2010).

57. The instant Civil Action is pursuant to the Georgia RICO Act, O.C.G.A. § 16-14-1 et seq. No federal statute has been included in the causes of action. To meet the requirement of a case "arising under" federal law, the federal

question must appear on the face of the plaintiff's complaint. There is no federal question presented on the face of the Verified Complaint. Windsor intends this Action to be solely based on Georgia law. Windsor specifically excluded federal statutes that could have been raised so this action would remain in Georgia courts.

Federal courts use the "well-pleaded complaint" rule to determine "arising under" jurisdiction. *Long*, 201 F.3d at 758. That rule provides that "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Id.* (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913).

58. Judge Mr. Duffey has regularly ruled that when a Plaintiff has relied exclusively on state law, remand is required:

"In this case, it is clear that Plaintiff relies exclusively on state law, and thus the well-pleaded complaint rule is not satisfied. Because Defendant fails to demonstrate that the Court has subject matter jurisdiction over this case, the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c)." (*Deutsche Bank Nat'l v. Eberhart*, No. 1:06-cv-1588-WSD (N.D.Ga. 07/10/2006).) (See also *Equity Residential Properties v. Bravo*, No. 1:06-cv-1012-WSD (N.D.Ga. 05/03/2006).) (See also *PHH Mortgage Corp. v. Diamond*, No. 1:06-cv-0673-WSD (N.D.Ga. 03/29/2006).) (See also *Chase Home Finance, LLC v. Mungaro*, No. 1:05-cv-3082-WSD (N.D.Ga. 12/08/2005); *State v. Serries*, No. 1:10-cv-01564 -WSD (N.D.Ga. 07/16/2010); *Cunningham v. HSBC Mortgage Services*, No. 1:07-cv-1346-WSD (N.D.Ga. 06/20/2007); *Chase Manhattan Mortgage Corp. v. Gresham*, No. 1:05-cv-1944-WSD (N.D.Ga. 11/17/2005).)

59. Judge Mr. Thrash said on April 22, 2011 that a Georgia RICO action, upon which this action is based, is not a matter of federal law:

(Federal Home Loan Bank of Atlanta v. Countrywide Securities Corporation, et al, No. 1:11-CV-489-TWT (N.D.Ga. 04/22/2011).)

60. The U.S. District Court lacks diversity jurisdiction because the Plaintiff and the Defendants are all citizens of Georgia. The amount in controversy well exceeds the minimum amount, but this is irrelevant as there is not diversity between the parties.

VI. **THIS COURT IS REQUIRED TO RESOLVE ALL DOUBTS ABOUT FEDERAL JURISDICTION IN FAVOR OF REMAND, SO THIS MOTION FOR REMAND MUST BE GRANTED.**

61. This Court is required to resolve all doubts about federal jurisdiction in favor of remand.

(See Boyer v. Snap-on Tools Corp., 913 F.2d 108 (3rd Cir. 1990), cert. denied, 498 U.S. 1085, 111 S. Ct. 959, 112 L. Ed. 2d 1046 (1991); Coker v. Amoco Oil Co., 709 F.2d 1433 (11th Cir. 1983); STANDRIDGE v. WAL-MART STORES, 945 F. Supp. 252 (N.D.Ga. 09/18/1996).)

62. Judge Mr. Thrash has so ruled:

(Saye v. Unumprovident Corp., No. 1:07-CV-31-TWT (N.D.Ga. 08/09/2007).)

63. The Defendants have waived any grounds for removal not included in their initial notice. So says Judge Mr. Thrash:

The initial notice of removal must include all grounds for removal or they are waived. 28 U.S.C. § 1446(c)(2). *(ING USA Annuity and Life*

**VII. THE REMOVAL IS DEFECTIVE PURSUANT TO
28 U.S.C § 1442 (a)(1) BECAUSE FEDERAL OFFICERS
HAVE NOT RAISED A FEDERAL DEFENSE,
SO THIS MOTION FOR REMAND MUST BE GRANTED.**

64. The U.S. Attorney erroneously cites 28 U.S.C. § 1442(a)(1) as a basis for the removal.

28 U.S.C. § 1442(a)(1) provides that “a civil action ... commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress....”

65. 28 U.S.C. § 1442(a)(1) does not apply because the Verified Complaint is not about suing “in an official or individual capacity for any act under color of such office or... under any Act of Congress...” (See *Mesa v. California*, 489 U.S. 121, 109 S. Ct. 959, 103 L. Ed. 2d 99 (1989).)

66. None of the other Defendants have raised any defense whatsoever to the Civil Action. The ONLY statement made by the U.S. Attorney in the NOTICE OF REMOVAL is: “This action is one that may be removed to the United States District Court pursuant to 28 U.S.C. § 1442(a)(1) and 28 U.S.C. § 2679.”

67. There is no citation of case law to support such a claim. 28 U.S.C. § 1442(a)(1) has nothing to do with defenses to this Civil Action, so no defense has been raised.

68. The U.S. Attorney has failed to meet the Supreme Court's stated requirements for removal pursuant to 28 U.S.C. § 1442(a)(1) that are binding precedents recognized by the Eleventh Circuit.

Proper removal of an action under section 1442(a)(1) has historically required the satisfaction of two separate requirements. **First, the defendant must advance a "colorable defense arising out of [his] duty to enforce federal law."** *Mesa v. California*, 489 U.S. 121, 133, 109 S. Ct. 959, 966-67, 103 L. Ed. 2d 99 (1989) ...absent the assertion of a federal defense, a state court action against a federal officer is not removable. *Id.* [**emphasis added.**]

Second, the defendant must establish that there is a "causal connection between what the officer has done under asserted official authority" and the action against him. *Maryland v. Soper*, 270 U.S. 9, 33, 46 S. Ct. 185, 190, 70 L. Ed. 449 (1926) (interpreting predecessor statute); see also *Willingham*, 395 U.S. at 409, 89 S. Ct. at 1817. (*Magnin v. Teledyne Continental Motors*, 91 F.3d 1424 (11th Cir. 08/15/1996).) [**emphasis added.**]

69. It is impossible for a Defendant to raise a colorable defense to charges of racketeering as racketeering is not something that one may do under their federal employment. Each Defendant has been sued personally for acts that were not under color of their office.

70. This Court's exercise of federal-question jurisdiction over this state-law claim would be inappropriate because there is no dispute as to any federal statute.

"A removing defendant bears the burden of proving proper federal jurisdiction." *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294 (11th Cir. 2008)

71. In this matter, NO federal issue exists. There is no disputed question of federal law.

Federal-question jurisdiction over state-law claims is confined to those claims that "really and substantially involv[e] a dispute or controversy respecting the validity, construction or effect of [federal] law." *Grable*, 545 U.S. at 313 (quoting *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912)). (See also *Fed. Trade Comm'n v. Tashman*, 318 F.3d 1273, 1279 (11th Cir. 2003) (Vinson, J., dissenting).)

72. This Civil Action does not seek to hold an officer of the United States in violation of state law while simultaneously executing his duties as prescribed by federal law. In this Civil Action, federal employees ignored the limitations on their powers. They intentionally committed acts that violate the Georgia RICO Act, and they knowingly participated in an enterprise designed to damage Windsor. Defendants did not act within the scope of their federal duties; what they did was not required of them by federal law, and they did not do what federal law required. It is well established that a federal employee's actions lie outside the scope of his

or her authority when he or she fails to comply with the affirmative requirements of the law.

...we look to (1) whether the officers were acting "within the outer perimeter of [their] line of duty" as defined by federal statutory and regulatory law, *Barr v. Matteo*, 360 U.S. 564, 575, 79 S.Ct. 1335, 3 L.Ed. 2d 1434 (1959) (plurality opinion), and (2) whether "in doing [those acts, they] did no more than what was necessary and proper for [them] to do" as demarcated by the Constitution, see *Neagle*, 135 U.S. at 57, 10 S.Ct. at 666. As the Supreme Court explained, "a federal official may not with impunity ignore the limitations which the controlling law has placed on his powers." *Butz v. Economou*, 438 U.S. 478, 489, 98 S.Ct. 2894, 2902, 57 L.Ed. 2d 895 (1978). Indeed, it is a tautology that a federal officer's actions lie outside the scope of his authority when the officer fails to comply with the affirmative requirements of federal statutory or regulatory law, see *id.* at 489--91, 98 S.Ct. at 2902--03; *Castro v. United States*, 560 F.3d 381, 390--91 (5th Cir. 2009); *United States Fid. & Guar. Co. v. United States*, 837 F.2d 116, 120 (3d Cir.1988), and his actions fail to qualify as "necessary and proper" if committed in violation of the negative injunctions of the Constitution, see *Butz*, 438 U.S. at 489--91, 98 S.Ct. at 2902--03; *Castro*, 560 F.3d at 389; *Medina*, 259 F.3d at 225; *Red Lake Band of Chippewa Indians*, 800 F.2d at 1196; see also *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689--90, 69 S.Ct. 1457, 1461, 93 L.Ed. 1628 (1949); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170--71 (1803).

**VIII. THE REMOVAL IS DEFECTIVE PURSUANT TO 28 U.S.C §2679
BECAUSE FEDERAL EMPLOYEES WERE NOT ACTING WITHIN THE
SCOPE OF THEIR OFFICIAL DUTIES WHEN THEY PARTICIPATED IN
THE VIOLATION OF CRIMINAL STATUTES TO DAMAGE WINDSOR,
SO THIS MOTION FOR REMAND MUST BE GRANTED.**

73. The Defendants were not acting within the scope of their official duties when they committed acts of racketeering against Windsor.

74. The Verified Complaint specifies violation of the following Georgia statutes as the sole basis for the RICO claim: Obstruction of Justice and Tampering with Evidence pursuant to O.C.G.A. § 16-10-94; Perjury – Violation of O.C.G.A. § 16-10-70; Subornation of Perjury – Violation of O.C.G.A. § 16-10-72, and O.C.G.A. § 16-10-93; Theft by Deception - O.C.G.A. § 16-8-3.

In *Mesa v. California*, the Supreme Court denied removal under the federal officer removal statute to two postal employees, 28 U.S.C. § 1442(a)(1), because they failed to establish that they were acting within the scope of their official duties and therefore, had no colorable federal defense to the state law charges of reckless driving and related offenses. 489 U.S. 121, 127--28, 109 S.Ct. 959, 963--64, 103 L.Ed. 2d 99 (1989). Because the federal employees' actions fell outside the scope of their federal duties, California's interest in vindicating the rights of its citizens did not frustrate any valid federal interest. (*Denson v. United States*, 574 F.3d 1318 (11th Cir. 07/15/2009).)

The question of whether an employee's conduct was within the scope of his employment "is governed by the law of the state where the incident occurred." (See *S.J. & W. Ranch*, 913 F.2d at 1542; *Williams v. United States*, 350 U.S. 857, 76 S. Ct. 100, 100 L. Ed. 761 (1955) (per curiam), vacating 215 F.2d 800 (9th Cir. 1954); 28 U.S.C. § 1346(b).)

75. Georgia law does not permit anyone to violate its RICO Act. Georgia law says the conduct must be within the general duties of employment for which the employee was hired, and none of the Defendants were hired to violate criminal statutes and commit racketeering.

"The court found that there were material questions of fact as to whether the cameraman was acting within the scope of his employment at the time he

pointed a gun at the appellant." Id. (*Sevilla v. United States*, No. 1:06-CV1710-JOF (N.D.Ga. 06/01/2007).)

In *Bennett v. United States*, 102 F.3d 486, 489 (11th Cir. 1996), the Eleventh Circuit considered whether the United States could be held liable for a soldier's accidental shooting on an army base. Id. at 488. "when an employee undertakes an act purely personal in nature, no respondeat superior liability may be imposed." Id. The Eleventh Circuit noted that "[t]he question of whether a given act falls within the scope of employment is highly fact-specific, and turns on the unique circumstances of the case at bar." Id. (*Amedisys Holding, LLC v. Interim Healthcare of Atlanta, Inc.*, Denise Cathey, Brenda Hogan, and, No. 1:11-cv-1437-WSD (N.D.Ga. 06/03/2011).)

76. The U.S. Attorney is not impartial; the U.S. Attorneys are "interested parties." The U.S. Attorneys are representing some of the Defendants in related matters against Windsor.

Moreover, the statutory interpretation urged by defendant Lehtinen is particularly suspect because it leaves the determination of a dispositive issue in FTCA cases to an interested party. Under 28 U.S.C. § 2679(c), the Attorney General is required to "defend any civil action or proceeding brought in any court against any employee of the Government . . . for any such damage or injury." Id. We do not believe Congress intended to entrust the party responsible for providing the federal employee's defense with the power to make a scope determination that will have the result of dismissing the plaintiff's suit for lack of jurisdiction. *Nasuti*, 906 F.2d at 812-13; *Petrousky*, 728 F. Supp. at 894; see *Gogek*, 729 F. Supp. at 933. Our concern with the impartiality of the scope determination is especially acute in a situation like the one in this case where the authority to make scope certifications has been delegated to the federal employee defendant or his colleagues. (*S.J. & W. Ranch Inc. v. Lehtinen*, 913 F.2d 1538 (11th Cir. 10/10/1990).)

77. This Civil Action is about the corrupt practices of the Defendants, using the federal court system in Fulton County Georgia to commit criminal acts against Windsor and others. Windsor must argue that under these circumstances, this Civil Action must not be moved to the same federal court system that Windsor is suing. The very clerks that Windsor has charged with racketeering are the clerks who will be handling the various filings in this matter. The judges named as Defendants are friends of this Court. Windsor can be treated fairly and impartially only if he is on the neutral turf of the Fulton County Superior Court.

IX. THE POSITION OF THE U.S. ATTORNEYS IN THE NOTICE OF REMOVAL IS SUBJECT TO LITIGATION, AND IF THIS COURT DOES NOT DENY REMOVAL FOR THE REASONS SPECIFIED ABOVE, WINDSOR DEMANDS DISCOVERY AND AN EVIDENTIARY HEARING.

78. Should this Court fail to deny removal on the grounds specified above, this Court should conduct a de novo hearing on whether the Defendants were not acting within the scope of their official duties when they committed acts that Windsor complains of in the Verified Complaint. This Court must permit Windsor full discovery on the scope question. (*S.J. & W. Ranch Inc. v. Lehtinen*, 913 F.2d 1538 (11th Cir. 10/10/1990).)

79. Plaintiff has filed this Motion for Remand within thirty (30) days of the filing of the Notice of Removal. Therefore, this Motion for Remand is timely

CONCLUSION

80. The burden of establishing federal jurisdiction rests upon the party seeking removal, and Defendants have failed to carry this burden.

81. For the aforementioned reasons, this Court should order that remand is required to the Superior Court of Fulton County in the State of Georgia.

WHEREFORE, Windsor respectfully requests:

- a. order that Windsor may immediately conduct discovery;
- b. schedule an evidentiary hearing on the issue of removal and remand;
- c. order that remand is required;
- d. order that jurisdiction for this Civil Action is with the Superior Court of Fulton County Georgia; and
- e. grant any other relief this Court deems just and proper.

Respectfully submitted this 5th day of July, 2011.



William M. Windsor

Pro Se

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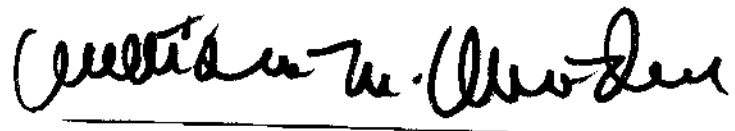
Email: williamwindsor@bellsouth.net

VERIFICATION OF WILLIAM M. WINDSOR

I, William M. Windsor, swear that I am authorized to make this verification and that the facts alleged in the foregoing MOTION are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 5th day of July, 2011.

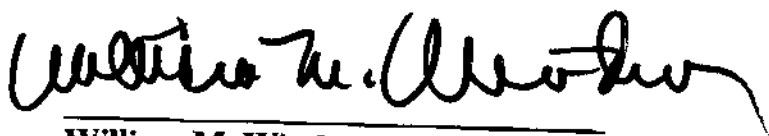
A handwritten signature in black ink, appearing to read "William M. Windsor", written over a horizontal line.

William M. Windsor

CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.

This 5th day of July, 2011.



William M. Windsor

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing MOTION by fax and mail with sufficient postage addressed to:

CHRISTOPHER J. HUBER
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 545627
600 Richard B. Russell Federal Bldg.
75 Spring Street, S.W. -- Atlanta, Georgia 30303
Telephone: (404) 581-6292 -- Facsimile: (404) 581-6181
Email: chris.huber@usdoj.gov

I have also prepared a copy for each Defendant to be served with the Summons and Complaint.

This 5th day of July, 2011.



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