UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA -- ATLANTA DIVISION

WILLIAM M. WINDSOR, Plaintiff	))	CIVIL ACTION NO.
v.	))	1:11-CV-01922-TWT
JUDGE WILLIAM S. DUFFEY, Et Al, Defendants.	))))	

RESPONSE TO FEDERAL DEFENDANTS' MOTION TO DISMISS; MOTION FOR REMAND OR MOTION TO CONFIRM CONVERSION TO MOTION FOR SUMMARY JUDGMENT, MOTION FOR EXTENSION OF TIME TO RESPOND, MOTION FOR DISCOVERY, MOTION FOR HEARING

William M. Windsor ("Windsor" or "Plaintiff") hereby files the above-titled RESPONSE and MOTIONS. This Court has no jurisdiction over this matter. This case must be remanded to Fulton County Superior Court. Defendants' Motion to Dismiss ("MTD") advances arguments that do not meet the legal standard required to succeed. Defendants' MTD and motions filed with this Court require that the Defendants' motion be converted to a motion for summary judgment. Windsor hereby moves the Court for an extension of time to respond. Windsor seeks discovery. Windsor requests an evidentiary hearing. Windsor shows the Court:

BACKGROUND

1. On May 19, 2011, Windsor filed the VC in the Superior Court of Fulton County seeking a declaratory judgment pursuant to O.C.G.A. § 9-4-2, et seq. The Civil Action was assigned No. 2011CV200857.

2. There are no claims involving federal statutes in the VC. The complaint does not allege claims for acts done within the scope of official duties. The complaint merely seeks a declaration of Georgia law.

3. Only four of the eight Defendants have been served with the Summons and VC.

4. On June 13, 2011, the U.S. Attorney filed a NOTICE OF REMOVAL ("NOR") that served to remove the Action from Fulton County Georgia Superior Court to the U.S. District Court. The NOR mentions six Defendants in the opening paragraph, but the NOR identifies no Defendants in the signature block, and has no signatures from any of the Defendants. (Docket #1.) There are no affidavits from any of the Defendants in the record. This so-called NOR is based on 28 USC1442 (a)(1) & (3). *See* NOR ¶5. Exhibit 1 is a true and correct copy of the Docket.

5. On June 13, 2011, the U.S. Attorney filed a Motion for Protective Order, which is actually a motion for an injunction. [Docket #4.] Facts were alleged, but there is no affidavit to support the allegations.

6. On June 14, 2011, Windsor filed a MOTION TO DENY REMOVAL ("MTDR") in the United States District Court. [Docket #7.]

7. On June 17, 2011, this Court entered an order [Docket #25] in which the Court declared "This is the latest of a series of frivolous, malicious and vexatious lawsuits filed by the Plaintiff." There was no such evidence before the Court, so this is clearly an allegation that comes from outside the Complaint and the evidence before the Court..

8. On July 5, 2011, Windsor submitted his Motion for Remand ("MFR") to the Clerk for filing. (Exhibit 5 hereto.)

9. On July 19, 2011, USATT filed the MTD. [Docket #52.]

10. On July 29, 2011, this Court granted Windsor the right to file a response to the MTD. [Docket #56.]

11. The "Background" listed by USATT is a recitation of the results of the criminal racketeering enterprise operating in the guise of the federal district courts. Virtually everything cited was not based upon the facts or the law. It is also irrelevant to this matter, and due to the introduction of alleged facts outside the Complaint, the MTD must be converted to a motion for summary judgment.

MOTION FOR EXTENSION OF TIME TO RESPOND

12. Defendants waived their right to file a motion to dismiss when they filed a Motion for Protective Order on June 13, 2011 [Doc.#4] and the MTD on July 19, 2011 [DPC.#52]. This Court has already considered matters outside of the pleadings as shown by Docs. 4, 6, 12, 17, 25, 42, 43, and 56.

13. A motion to dismiss must be based solely on matters contained in the pleading at issue. If matters outside the pleading are presented, it must be considered to be a motion for summary judgment. "...any oral or written evidence not already "in the record" — public or court, physically or by reference — is regarded as "extrinsic" and will spur a conversion."

> If the court considers matters outside of the pleadings, the motion is converted into a motion for summary judgment under Federal Rule of Civil Procedure 56. See Fed. R. Civ. P. 12(d). If such a conversion occurs, each party "must be given a reasonable opportunity to present all the material that is pertinent to the motion." Id. See ***Bryant v. Avado Brands, Inc.***, 187 F.3d 1271, 1278 (11th Cir. 1999).

14. The Defendants have presented information outside of the pleadings, and this Court has already issued orders as to extrinsic information.

15. This Court must issue an order officially converting the Motion to Dismiss to a Motion for Summary Judgment.

16. This Court has failed to provide Windsor with the mandatory express 10-day notice of the summary judgment rules.

Fed. R. Civ. P. 12(b); ***Concordia v. Bendekovic***, 693 F.2d 1073, 1075 (11th Cir. 1982); ***Jones v. Auto. Ins. Co.***, 917 F.2d 1528, 1532 (11th Cir. 1990); ***Herron v. Beck***, 693 F.2d 125, 126 (11th Cir. 1982); ***Trustmark Ins. Co. v. ESLU, Inc.*** 299 F.3d 1265, 1267 (11th Cir. 2002); ***Griffith v. Wainwright***, 772 F.2d 822, 825 (11th Cir. 1985); ***Chong v. Healthtronics, Inc.***, No. 08-10160 (11th Cir. 07/17/2008); ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986); ***Trademark Ins. Co. v. ESLU, Inc.***, 299 F.3d 1265, 1267 (11th Cir. 2002); ***Spann v. Cobb County Pretrial Court Services Agency***, 206 Fed.Appx. 910 (11th Cir. 11/15/2006).)

17. Windsor must be given an extension of time to conduct discovery on the MTD (aka "MOTION FOR SUMMARY JUDGMENT").

Similarly, motions to dismiss under Fed.R.Civ.P. 12 "should be granted sparingly," and only "where adequate time is given to complete discovery and all the jurisdictional facts are fully developed and placed before the Court." ***Martin v. Morgan Drive Away, Inc., 665 F.2d 598, 602 n. 1 (5th Cir. Unit A 1982) (quoting Chatham Condominium Associations v. Century Village, Inc.***, 597 F.2d 1002, 1012-13 (5th Cir. 1979).)[1]

WINDSOR MOVES THE COURT TO ALLOW HIM TO AMEND THE VERIFIED COMPLAINT IF THE COURT FEELS ANY ASPECT OF THE PLEADINGS IS INADEQUATE

18. Because Windsor is pro se and has had no legal assistance whatsoever, Windsor moves this Court to allow him to amend the Verified Complaint should the Court feel that there is any merit whatsoever to the MTD. Windsor will amend under protest, and the amendment will be for protection only and will not constitute acceptance that this Court has jurisdiction.

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[1] In ***Bonner v. City of Prichard***, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the 11th Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

"Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed ." ***Tannenbaun v. United States***, 148 F .3d 1262, 1 263 (11th Cir. 1998) (per curiam). A pro se complaint is not held to stringent standards of formal pleadings, ***Haines v. Kerner***, 404 U.S. 519, 92 S .Ct. 594, 30 L . Ed.2d 652 (1972) [***Vinnedge v. Gibbs***, 550 F.2d 926 (1) (0 Cir . 1977)], and the complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief .' ***Conley v. Gibson***, 335 U.S . 41, 45-46, 78 S . Ct . 99, 2L . Ed.2d 80 (1957) . See also J . Moore, 2A ***Moore's Federal Practice***, para. 12.08 at 2265-86 (1972)." ***Hughes v. Roth***, 371 F. Supp . 740, 741 (D .C. Pa. 1974).

MOTION FOR DISCOVERY

19. There has been no discovery allowed.

20. For the reasons expressed above, Windsor moves this Court to grant discovery. Windsor must be able to take depositions and obtain discovery to effectively respond at summary judgment. Windsor moves this Court to grant discovery and order the Clerk of the Court to issue subpoenas to Windsor.

FALSE AND DECEPTIVE INFORMATION FROM U.S. ATTORNEY

21. In a typically deceptive fashion, the U.S. Attorney ("USATT") distorts the facts in the MTD. The Defendants have presented alleged statements of fact in the MTD, and it must be converted to a motion for summary judgment.

22. The USATT falsely states that "Windsor seeks to use this declaratory judgment action to attack collaterally an order issued by Judge Duffey…." This is totally false, and the MTD must be converted. There is no such order in evidence

in this or any other Civil Action. One may not collaterally attack a federal court action with a declaratory judgment action in a county court. The CLAIM FOR RELIEF in the VERIFIED COMPLAINT ("VC") explains precisely what this lawsuit is about, and this is ALL that it is about. See VC Docket #1, ¶41, 42, and 43. There is only one claim for relief, and it is not a collateral attack on anything.

23. The USATT falsely states that "Windsor has filed hundreds, if not thousands of frivolous pleadings, wasting the Court's time and the parties' time." This is absolutely false; it is not supported by any facts; the MTD must be converted to a motion for summary judgment.

24. The USATT falsely states that "That order barred Windsor from acting as his wife's lawyer." There is no such order before this Court. Windsor NEVER EVER sought to act as his wife's "lawyer." The MTD must be converted to a motion for summary judgment. O.C.G.A. § 10-6-5 allows a Georgia citizen ("Citizen") to issue a power of attorney that delegates to an agent ("Agent") the power to appear for the Citizen and in that citizen's behalf.... There are very specific rights available under O.C.G.A. § 10-6-5, and Windsor seeks nothing more than to be able to do what is legal under Georgia law. This Action simply asked the Georgia Court to declare what is allowed pursuant to the Georgia statute.

25. The USATT falsely alleges that Windsor seeks to use a declaratory judgment action as a substitute for an appeal. This is false. See ¶22 above. It does not relate or refer in any manner to anything in Judge Duffey's Court.

26. The USATT falsely alleges that the complaint is improper and frivolous. There can be nothing frivolous about asking the Great State of Georgia to define what one of its statutes means.

THIS COURT HAS NO JURISDICTION OVER THIS MATTER.

27. Judge Thomas Woodrow Thrash ("TWT") has never had any jurisdiction over this Civil Action.

28. This Civil Action was illegally removed from Fulton County Superior Court. This was initially presented in Windsor's Motion to Deny Removal ("MTDR") (Docket #7), referenced and incorporated herein. Also see Exhibit 5.

29. TWT's first responsibility following removal was to determine if he had jurisdiction. The Docket proves that he never addressed that issue. The Defendants never responded to Windsor's MTDR. It is clear and well established law that a judge must first determine whether the judge has jurisdiction before hearing and ruling in any case. TWT did not, and his so-called orders are void.

> (***Adams v. State***, No. 1:07-cv-2924-WSD-CCH (N.D.Ga. 03/05/2008).)
> (***See Steel Co. v. Citizens for a Better Env't***, 523 U.S. 83, 94 (1998); see also ***University of S. Ala. v. The Am. Tobacco Co.***, 168 F.3d 405, 410 (11th

Cir. 1999); ***Jean Dean v. Wells Fargo Home Mortgage***, No. 2:10-cv-564-FtM-29SPC (M.D.Fla.).)

30. The statutes required that Windsor file a Motion for Remand within 30 days following removal. On July 5, 2011 (22 days after removal), Windsor presented his MFR to the Clerk of the Court for filing. The Clerk did not file it. Exhibit 2 is a true and correct copy of the cover letter delivered with the MFR. Exhibit 3 is a true and correct copy of the Courier Connection confirmation of delivery and signed receipt for the cover letter and the MFR. Exhibit 5 is a true and correct copy of the MFR. Docket #41 is the Order where TWT refused to allow the MFR to be filed. Filing a motion for remand is a statutory right that TWT has no authority to deny. So, (1) failure to determine if the Court had jurisdiction, (2) ignoring the MTDR, and (3) refusing to allow the MFR to be filed mean this Court has no jurisdiction.

> (See ***Oliver v. Trunkline Gas Co.***, 789 F.2d 341, 343 (5th Cir.1986); ***Victory Carriers***, 404 U.S. at 212, 92 S.Ct. at 425 (quoting ***Healy v. Ratta***, 292 U.S. 263, 270, 54 S.Ct. 700, 703, 78 L.Ed. 1248 (1934); ***Steel Co. v. Citizens for a Better Env't***, 523 U.S. 83, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998); ***Ex parte McCardle***, 74 U.S. (7 Wall.) 506, 19 L.Ed. 264 (1868); ***Wernick v. Mathews***, 524 F.2d 543, 545 (5th Cir.1975).) (See also ***Fitzgerald v. Seaboard Sys. R.R.***, 760 F.2d 1249, 1251 (11th Cir.1985) (per curiam); ***Wernick***, 524 F.2d at 545; see also ***Save the Bay, Inc. v. United States Army***, 639 F.2d 1100, 1102 (5th Cir.1981); ***Mitchell v. Maurer***, 293 U.S. 237, 244, 55 S.Ct. 162, 165, 79 L.Ed. 338 (1934) (citing ***Mansfield, C. & L.M. Ry. Co. v. Swan***, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884); ***Jackson v. Seaboard Coast Line R.R.***, 678 F.2d 992, 1000-01 (11th Cir.1982) (quoting ***American Fire & Cas. Co. v. Finn***, 341 U.S. 6, 18, 71

S.Ct. 534, 542, 95 L.Ed. 702 (1951).) (See ***Cabalceta v. Standard Fruit Co.***, 883 F.2d 1553, 1556-57 (11th Cir.1989).)

"...**[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded**" to the state court from whence it came. 28 U.S.C. § 1447(c). **This provision is mandatory** and may not be disregarded based on speculation about the proceeding's futility in state court. See ***International Primate Protection League v. Administrators of Tulane Educ. Fund***, 500 U.S. 72, 87-89, 111 S.Ct. 1700, 1709-10, 114 L.Ed.2d 134 (1991). [**emphasis added**.]

THIS COURT MUST ORDER THIS CIVIL ACTION TO BE REMANDED.

31. This Court must order this Civil Action to be remanded before considering the MTD. The right to remand has not and cannot be waived. Windsor has consistently stated that this Court has no jurisdiction, and this action must be remanded.

Moreover, a federal court must remand for lack of subject matter jurisdiction notwithstanding the presence of other motions pending before the court. See, e.g., ***Marathon Oil***, 145 F.3d at 220 (holding that **district court should have considered motion to remand for lack of subject matter jurisdiction before it addressed motion to dismiss** for want of personal jurisdiction); ***Toumajian v. Frailey***, 135 F.3d 648, 655 (9th Cir.1998); ***Avitts v. Amoco Prod. Co.***, 53 F.3d 690, 693 (5th Cir.1995) (per curiam); Smith, 23 F.3d at 1139 (holding that **district court had no authority to dismiss removed claim without subject matter jurisdiction**); ***In re Bear River Drainage Dist.***, 267 F.2d 849, 851 (10th Cir.1959) (holding that **motion to remand for lack of subject matter jurisdiction necessarily precedes motion to dismiss**); ***Nichols v. Southeast Health Plan of Ala., Inc.***, 859 F.Supp. 553, 559 (S.D.Ala.1993) (same). [**emphasis added**.]

The right to remand cannot be waived. See ***In re Carter***, 618 F.2d 1093 (5th Cir. 1980), cert. denied 101 S. Ct. 1410, 450 U.S. 949, 67 L. Ed. 2d 378

(1981). See ***Winters v. Government Sec. Corp. v. Nafi Employees Credit Union***, 449 F. Supp. 239, 242 (S.D.Fla. 1978).

32. Defendants have failed to establish that this Court has jurisdiction.

"A defendant seeking to remove a case to federal court has the burden of proving that the district court possesses jurisdiction." ***Williamson v. Aetna Life Ins. Co.***, 481 F.3d 369, 375 (6th Cir. 2007) (citation omitted); ***Benjamin v. Western Boat Building Corp.***, 472 F.2d 723 (5th Cir. 1973).)

"...federal courts are directed to construe removal statutes strictly." See ***Shamrock Oil & Gas Corp. v. Sheets***, 313 U.S. 100, 108-09, 61 S.Ct. 868, 872, 85 L.Ed. 1214 (1941). Indeed, all doubts about jurisdiction should be resolved in favor of remand to state court. See ***Burns v. Windsor Ins. Co.***, 31 F.3d 1092, 1095 (11th Cir.1994) (citing ***Boyer v. Snap-on Tools Corp.***, 913 F.2d 108 (3d Cir.1990); ***Coker v. Amoco Oil Co.***, 709 F.2d 1433 (11th Cir.1983); see also ***Bromwell***, 115 F.3d at 214 (noting that **justiciability is a matter for the state court to decide where case should have been remanded to state court for lack of subject matter jurisdiction rather than dismissed**); ***Smith***, 23 F.3d at 1139; ***University of South Alabama v. American Tobacco Co.***, 168 F.3d 405 (11th Cir. 02/22/1999).)

33. 28 U.S.C. 1447: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

(***American Fire & Casualty Co. v. Finn***, 341 U.S. 6, 71 S. Ct. 534, 95 L. Ed. 702 (1951). See also ***Tennessee v. Union & Planters' Bank***, 152 U.S. 454, 14 S. Ct. 654, 38 L. Ed. 511 (1894).)

"**There is no federal question to validate removal under 28 U.S.C. § 1441(b) since all claims are related to Florida law**. ...the petition for removal was improvidently filed in violation of the statutory procedure for removal, 28 U.S.C. § 1446(b)." (***Winters Govt. Secs. Corp. V. Nafi Emples. Credit U***, 449 F. Supp. 239 (S.D.Fla 03/24/1978).) [**emphasis added**.]

34. TWT's orders were, and are, **void**. The U.S. Supreme Court has stated that if a court is "without authority, its judgments and orders are regarded as nullities." (***Elliot v. Piersol***, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).) Therefore, Windsor's MTDR must be granted as Defendants failed to respond. Windsor's MFR must be accepted as filed, as must everything that Windsor filed. The Protective Order issued (Docket #25) is void, so Defendants have failed to answer. TWT has not followed mandatory statutory procedures. TWT did not have subject matter jurisdiction.

35. There are no valid orders in this matter. The orders issued by TWT are invalid. Orders have not been signed, issued under seal, or signed by the Clerk of the Court in violation of 28 U.S.C. § 1691.

> The word "process" at 28 U.S.C. 1691 means a court order. See ***Middleton Paper Co. v. Rock River Paper Co.***, 19 F. 252 (C.C. W.D. Wisconsin 1884); ***Taylor v. U.S.***, 45 F. 531 (C.C. E.D. Tennessee 1891); ***U.S. v. Murphy***, 82 F. 893 (**DCUS** Delaware 1897); ***Leas & McVitty v. Merriman***, 132 F. 510 (C.C. W.D. Virginia 1904); ***U.S. v. Sharrock***, 276 F. 30 (**DCUS** Montana 1921); ***In re Simon***, 297 F. 942, 34 ALR 1404 (2nd Cir. 1924); ***Scanbe Mfg. Co. v. Tryon***, 400 F.2d 598 (9th Cir. 1968); and ***Miles v. Gussin***, 104 B.R. 553 (Bankruptcy D.C. 1989).

THE NOTICE OF REMOVAL WAS FILED FOR IMPROPER PURPOSES, SO THIS MATTER MUST BE REMANDED.

36. The NOR was filed so the Defendants could evade exposure as criminals. By filing the NOR, Defendants have been able to utilize their

racketeering enterprise to shield themselves from an honest judge and jury in the Fulton County Superior Court.

37. TWT has violated Windsor's Constitutional rights in a host of ways. Details of TWT's wrongdoing is provided in William M. Windsor's Emergency Motion to Recuse Judge Thrash. (Docket #31.) (See MFR, pp. 2-3; see Exhibit 4.)

THE NOTICE OF REMOVAL WAS PROCEDURALLY DEFECTIVE, SO REMAND MUST BE GRANTED.

38. The NOR has multiple procedural defects that make it void on its face. Technical, procedural requirements were not met. Each of these defects is explained with citations to case law, including decisions by current 11th Circuit judges and Defendants. (See MFR, pp. 3-10, incorporated herein.)

39. The removal fails to comply with the requirement that defendants must make an appearance. The action was not yet pending in Fulton County Superior Court as 28 U.S.C. § 1442 requires. The Defendants did not sign or authorize the notice of removal. The removal is defective for failure to comply with the rule of unanimity. The notice of removal fails to comply with the requirement of a plain statement of the grounds for removal. 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 and other documents

served on defendants contained in the state court record. The principle of comity and the long-standing public policy against federal court interference with state court proceedings should prevail. See MFR, pp. 10-12. The Defendants have failed to prove the existence of federal jurisdiction. See MFR, pp. 12-14.

40. The removal is defective pursuant to 28 U.S.C, § 1442 (a)(1) because federal officers have not raised a federal defense. The NOR failed to assert grounds for subject matter jurisdiction and failed to raise a defense, so the MTD must be denied. See MFR, pp.14-18, 20-22. There are no grounds even asserted for subject matter jurisdiction.

> (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).)

41. The removal is defective pursuant to 28 U.S.C. § 1442 (a)(3) because federal officers have not raised a federal defense. See MFR, pp. 22-24. The VC is not about "**<u>any act under color of office or in the performance of [anyone's] duties</u>**." 11th Circuit Judges Edmondson, Tjoflat, Anderson, Black, Ed Carnes, Barkett, Marcus, and Wilson have all so ordered:

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

defense. (***Mesa et al. v. California***, 109 S. Ct. 959, 489 U.S. 121 (U.S. 02/21/1989).) [**emphasis added**.]

42. This Court is required to resolve all doubts about federal jurisdiction in favor of remand, so the MTD must be denied. See MFR, pp. 18-19.

(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).)

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

44. 28 U.S.C. § 1442(a)(1) does not apply because the VC 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).)

THIS CIVIL ACTION IS ON APPEAL,
AND THE MOTION TO DISMISS MAY NOT BE CONSIDERED.

45. This Civil Action is on appeal. The Court of Appeals has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1) because one of the district court's rulings (1) imposed an injunction; or (2) had the practical effect of an injunction. Doc. #25 denies rights to Windsor and implicitly enjoins future exercise of rights (filing).

See ***Black's Law Dictionary*** 784 (6th ed. 1990) (defining "injunction" as "[a] court order prohibiting someone from doing some specified act or

commanding someone to undo some wrong or injury"). (***Nken v. Holder***, 129 S.Ct. 1749, 173 L.Ed.2d 550 (U.S. 04/22/2009).) (See also ***KPMG, LLP v. SEC***, 289 F.3d 109, 124 (D.C. Cir. 2002); ***Lundberg v. United States***, No. 09-01466 (D.D.C. 07/01/2010).)

46. TWT entered "a court order prohibiting someone from doing some specified act," and that is an injunction (or a restraining order).

"...we have jurisdiction under 28 U.S.C. § 1292(a)(1) (1982), which permits an immediate appeal from the issuance of a new or modified injunction. ***Szabo v. U.S. Marine Corp.***, 819 F.2d 714, 718 (7th Cir. 1987); see also ***I.A.M. Nat'l Pension Fund Benefit Plan A v. Cooper Indus.***, 252 U.S. App. D.C. 189, 789 F.2d 21, 23-24 (D.C. Cir.), cert. denied, 479 U.S. 971, 107 S. Ct. 473, 93 L. Ed. 2d 417 (1986). (***International Association v. Eastern Airlines, Inc.***, No. 88-7079, United States Court Of Appeals For The District Of Columbia Circuit, 06/07/88.)

...preliminary injunctions are appealable orders under 28 U.S.C. § 1292(a)(1). See, e.g., ***El Paso Natural Gas Co. v. Neztsosie***, 526 U.S. 473, 482 (1999).

Under 28 U.S.C. § 1292(a)(1), the court has jurisdiction to review "[i]nterlocutory orders of the district courts of the United States ... granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions...." Although the provision is typically invoked to appeal preliminary injunctions, it can be invoked to appeal permanent injunctions that are interlocutory in nature. ***Smith v. Vulcan Iron Works***, 165 U.S. 518 (1897); see also ***Ty, Inc. v. Publ'ns Int'l Ltd.***, 292 F.3d 512, 516 (7th Cir. 2002), cert. denied, 123 S. Ct. 892 (2003); ***Cohen v. Bd. of Trs. of Univ. of Med. & Dentistry***, 867 F.2d 1455, 1464 n.7 (3d Cir. 1989); ***CFTC v. Preferred Capital Inv. Co.***, 664 F.2d 1316, 1319 n.4 (5th Cir. 1982); 16 Charles Alan Wright & Arthur R. Miller, ***Federal Practice and Procedure*** § 3924 (2d ed. 1996). (***National Railroad Passenger Corporation v. ExpressTrak, L.L.C.***, 330 F.3d 523 (D.C.Cir. 06/06/2003).)

"...section 1292(a)(1) applies to any order that has "the practical effect of granting or denying an injunction," so long as it also "might have a

serious, perhaps irreparable, consequence, and . . . can be effectually challenged only by immediate appeal." ***I.A.M. Nat'l Pension Fund Benefit Plan A v. Cooper Indus., Inc.***, 789 F.2d 21, 23-24 (D.C. Cir. 1986) (internal quotation marks omitted). **[emphasis added.]**

47. Some of the appealed orders are "collateral orders" that deal with important issues that are completely separate from the underlying civil action and are effectively unreviewable on appeal from a final judgment because the impact cannot be reversed, and no compensation is available for the wrongdoing.

(See ***Cohen v. Beneficial Indus. Loan Corp.***, 337 U.S. 541, 545--47, 69 S.Ct. 1221, 1225--26, 93 L.Ed. 1528 (1949); ***Coopers & Lybrand v. Livesay***, 437 U.S. 463, 468 (1978).)

48. In this matter, TWT issued an order that had immediate and irreparable impact on Windsor. The statute of limitations is running on claims that Windsor needs to file, and TWT is blocking Windsor from filing anything and taking action to protect his rights. When the statute of limitations expires, Windsor will be irreparably harmed as he will have no recourse.

(See ***Trout***, 891 F.2d at 335; ***Rosenfeld***, 859 F.2d at 721-22; ***Palmer v. City of Chicago***, 806 F.2d 1316, 1318 (7th Cir. 1986); ***Forgay v. Conrad***, 47 U.S. (6 How.) 201, 204 (1848).

49. In the words of Defendant Judge William S. Duffey:

("[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance--it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case

involved in the appeal."). (***Bryant v. Jones***, No. 1:04-cv-2462-WSD (N.D.Ga. 01/10/2007).)

50. Windsor has many orders from the Eleventh Circuit that provide that this civil action is stayed and hundreds from federal courts everywhere. See ***Mahone v. Ray***, 326 F.3d 1176, 1179 (11th Cir. 2003) and hundreds of others.

51. The Supreme Court stated the law on jurisdiction quite clearly:

> "Even before 1979, it was generally understood that a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal. *See, e.g.,* ***U.S. v. Hitchmon,*** 587 F.2d 1357 (CA5 1979)." ***(Griggs v. Provident Consumer Discount*** 459 U. S. 56 (1982).) See also ***Marrese v. Amer Acad of Orth Surg***, 470 U.S. 373, 379, 105 S.Ct. 1327,1331 (1985), reh'g denied, 471 U.S. 1062, 105 S.Ct. 2127 (1985).

JUDGE THRASH FAILED TO RESPOND TO MOTIONS FOR RECUSAL, AND HE IS DISQUALIFIED AND MAY NOT CONSIDER THE MTD

52. TWT's failure to acknowledge a stay and follow the mandatory requirements of the law is a further evidence of the appearance of partiality of TWT. This required recusal. **(See *Liteky v. U.S.***, 114 S.Ct. 1147 (1994).)

53. The disqualification motions against TWT become self-executing. (Docket #31 is the Motion for Recusal. Exhibit 4 hereto is a true and correct copy of the Request to File Emergency Motion to Recuse Judge Thrash that he denied consent to file.) TWT has demonstrated pervasive extra-judicial bias. Exhibit 9 is

a true and correct copy of Windsor's Application for Stay detailing wrongdoing, referenced and incorporated herein.

<u>THERE IS NO DOUBT THAT THE PLAINTIFF COULD PROVE A SET OF FACTS IN SUPPORT OF THE CLAIM, SO THE MOTION TO DISMISS MUST BE DENIED</u>

54. It is long settled that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief.

> (*Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed. 2d 80 (1957). (*See Linder v. Portocarrero*, 963 F.2d 332, 334-36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F.2d 43 (5th Cir. 1967).).
>
> For purposes of a motion to dismiss, the court must accept the allegations of the complaint as true. *United States v. Pemco Aeroplex, Inc.*, 195 F.3d 1234, 1236 (11th Cir. 1999) (en banc). ... the complaint must be viewed in the light most favorable to the plaintiff. *St. Joseph's Hosp., Inc. v. Hosp. Corp. of America,* 795 F. 2d 948, 953 (11th Cir. 1986). To warrant a dismissal under Rule 12(b)(6) ... it must be "clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Blackstone v. Alabama*, 30 F.3d 117, 120 (11th Cir. 1994) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).)

55. In this Civil Action, ¶¶ 20-25 and 35-38 of the VC are the facts that are truly important. These facts are uncontroverted. But as the VC says in ¶43, "the claims presented in this Complaint involve pure questions of law for the Court to decide." The request for relief in ¶41 of the VC simply states the language

contained in model Georgia Power of Attorney Forms and asks the Court to clarify if the grant of these powers by a Georgia Power of Attorney is valid.

WINDSOR'S FACTUAL ALLEGATIONS SUPPORT THE CAUSE OF ACTION.

56. This is a simple declaratory judgment action that asks for a Georgia statute to be more fully defined. The claim for relief is plausible on its face. This is not the type of action to which a motion to dismiss even applies. The claims presented in the VC involve pure questions of law for the Court to decide.

WINDSOR HAS PROPERLY STATED A CLAIM, AND FRCP 12(b)(6) DOES NOT APPLY.

57. Windsor clearly and concisely stated his claim. This is a simple declaratory judgment action asking the State of Georgia to clarify a statute.

58. Pursuant to O.C.G.A. § 9-4-2(b) (GCA § 110-1101), the Superior Courts of Georgia are charged with the responsibility to "determine and settle by declaration any justiciable controversy of a civil nature where it appears to the court that the ends of justice require that such should be made for the guidance and protection of the petitioner, and when such a declaration will relieve the petitioner from uncertainty and insecurity with respect to his rights, status, and legal relations." Relief by Declaratory Judgment shall be available, notwithstanding the

fact that the complaining party has any other adequate legal or equitable remedy or remedies. (O.C.G.A. § 9-4-2(c) (CGA § 110-1101).)

59. Windsor properly pled all of the elements necessary to state a cause of action for a declaratory judgment in his Complaint and supported those elements with the necessary facts required by law. In *Conley v. Gibson*, the Court held that "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which its rests." *Conley*, 355 U.S. at 47. Windsor has met that standard, and the MTD should be denied.

JUDGE THRASH IS ACTING IN THIS MATTER SOLELY TO DAMAGE WINDSOR AND PROTECT HIMSELF AND HIS FELLOW RACKETEERS.

60. TWT is ignoring the facts and the law in this case solely to damage Windsor and protect himself and his fellow corrupt racketeers. This is detailed in Civil Action No. 1:11-CV-02027-TWT Docket #1, referenced and incorporated herein as if attached hereto and in the Civil Action presented to the Clerk for filing on July 14, 2011 (Exhibit 6 hereto).

THIS CIVIL ACTION IS NOT A SUBSTITUTE FOR AN APPEAL.

61. The assertion that this Civil Action is a substitute for an appeal is patently false. The VC seeks only this in the Prayer for Relief: "issue a declaratory judgment declaring that all courts operating in the state of Georgia must honor a valid Georgia power of attorney and allow a Georgia resident to represent another in court pursuant to a power of attorney as required by O.C.G.A. § 10-6-5."

62. USATT cites ***Pub. Serv. Comm's of Utah v. Wycoff Co***. (MTD, p.7), ***Glitsch, Inc. v. Koch Eng'g Co., Inc***. (MTD, p.7), ***Fireman's Fund Ins. Co. v. Ignacio*** (MTD, p.8), and ***Grand Trunk Western*** (MTD, p.8), which say a party "should have appealed...adverse ruling rather than filing a declaratory judgment action and 'effectively seeking immediate interlocutory review' of the first court's order." Windsor has appealed. Windsor's appeals are post-judgment appeals that stayed the action, but Judge Duffey refused to recognize a stay. (See 1:09-CV-01543-WSD Docket.) ***Pub. Serv. Comm's of Utah v. Wycoff Co*** is not applicable because it is based upon a federal statute, not Georgia law, and it is not a case in which a declaratory judgment action was filed rather than an appeal. ***Glitsch*** and ***Fireman's Fund*** do not apply because they were based upon a federal statute, not Georgia law, and they were seeking relief other than a simple declaratory judgment. ***Grand Trunk*** does not apply because it is based upon a federal statute, not Georgia law. These four cases do not apply and are irrelevant to this action.

63. There is no factual basis or legal authority for the assertion that this Civil Action is a substitute for an appeal; the MTD fails and must be denied.

THIS CIVIL ACTION IS NOT AN IMPROPER COLLATERAL ATTACK

64. While this isn't listed as a basis for the MTD, it is expressed on page 9 of the MTD. There is no such order. There is no such order in the district court, and there is no order in evidence in this Civil Action.

65. The CLAIM FOR RELIEF in the VC explains precisely what this lawsuit is about, and this is ALL that it is about. (See paragraph 3 above and VC Docket #1, ¶41, 42, and 43.)

66. Windsor sought the declaratory judgment so that he would know what rights he did and did not have to protect his ill wife. His wife has filed an appeal with the Eleventh Circuit in another matter in which the Windsors hope to use a Power of Attorney in some manner and have filed a motion seeking to use the Power of Attorney. Exhibit 7 hereto is a true and correct copy of this. The Windsors also hope to use the declaratory judgment in a state court action.

WINDSOR HAS NEVER SOUGHT INSULATION FROM THE UNAUTHORIZED PRACTICE OF LAW.

67. This is raised in MTD, p.8-9. The USATT implies that Windsor has sought to commit the unauthorized practice of law. This is false, and there are no

facts before this Court to support such a claim. The cases cited by the USATT all refer to cases in which a non-attorney attempted to represent a party in court.

68. The only thing Windsor has sought is for the Georgia Court to declare what a person can and cannot do pursuant to O.C.G.A. § 10-6-5, which according to the model Georgia Power of Attorney forms available online, provides certain attorney-like powers. Gee whiz, that must be why they call it a "Power of Attorney."

69. In Judge Duffey's court, Barbara Windsor is not a party. Windsor did not seek to represent his wife in court. Windsor sought to be able to handle matters relative to a subpoena for documents. That is not litigating pro se.

70. None of the cases cited in MTD on p.10 are about Georgia law, and they do not apply. None of the cases cited by USATT apply to the facts in this matter and must be disregarded.

71. Windsor never sought admission to practice before the federal courts as USATT implies in the footnote on p.10 of the MTD. The footnote repeatedly refers to representing another party. Barbara is not a party, so all of this is hogwash.

72. ***In re UPL*** does not apply because it was a case of a non-attorney trying to represent a party in a debtor/creditor action. The case also says: "In other instances, a determination of what constitutes the practice of law in this state must be decided on a fact-specific inquiry." ***Busbee*** does not apply because a father was

allowed to act for his wife. But neither apply primarily because they were cases where a non-attorney was representing a party.

73. The cases cited in MTD, p.10 do not apply as none are based upon Georgia law and all deal with representation of a party. In addition, none are Eleventh Circuit cases. Georgia law is all that this case is about; the law of no other state has any applicability to this Civil Action whatsoever.

74. Exhibit 8 hereto is an Affidavit of William M. Windsor in Response to the Motion to Dismiss.

WHEREFORE, Windsor respectfully requests that this Court:

a. grant this Motion;
b. grant an extension of time to conduct discovery;
c. grant discovery;
d. schedule a hearing;
e. recognize that this Court has had no jurisdiction and declare all orders void;
f. order that Judge Thrash is disqualified;
g. strike all statements in the MTD that are alleged statements of fact as they are not supported by affidavits or evidence;
h. remand this case to Fulton County Superior Court;
i. issue an order denying the MTD, or in the alternative, allow Windsor to amend the Verified Complaint; and
j. grant any other relief this Court deems just and proper.

Submitted, this 1st day of August 2011.

William M. Windsor
Pro Se

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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 are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief and citations of law, and that as to those matters I believe them to be true. Therefore, this document also serves as a sworn affidavit.

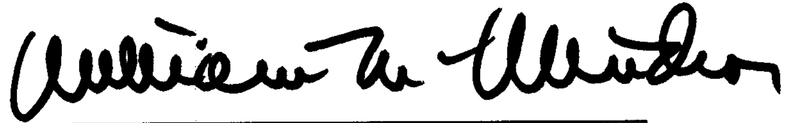
In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 1st day of August 2011.

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.



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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by depositing the same with the United States Postal Service with sufficient postage and addressed as follows:

CHRISTOPHER J. HUBER
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This 1st day of August 2011.

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