

**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.)	
_____)	

MOTION FOR REMAND

William M. Windsor (“Windsor” or “Plaintiff”) hereby files this MOTION FOR REMAND pursuant to 28 U.S.C. § 1447(c) and moves for an emergency hearing. The Plaintiff seeks this relief on several procedural and substantive grounds. Windsor shows the Court as follows:

FACTUAL BACKGROUND

1. On June 19, 2011, Windsor filed the Verified Complaint 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 Verified Complaint. 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. Plaintiff and six Defendants are citizens of the State of Georgia.

4. Only four of the eight 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 2011CV200857 from Fulton County Georgia Superior Court to the United States District Court. The NOTICE OF REMOVAL mentions six (6) 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 and is referenced and incorporated herein.) There are no affidavits from any of the Defendants.

6. This so-called NOTICE OF REMOVAL is based on 28 U.S.C. § 1442(a)(1) and (3). *See* NOTICE OF REMOVAL ¶5.

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 this Motion to Vacate Notice of Removal in Fulton County Superior 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-01922-TWT, incorporated herein as if attached hereto. (Docket #31.)

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. There is a presumption against removal jurisdiction, and this Court must strictly construe the removal statute. (*Fajen v. Foundation Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir.1982).)

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

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

19. 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 attached as Exhibit 2. There is no proof that the U.S. Attorney has authority to appear for Defendants.

20. The Attorney General for the State of Georgia has a vested interest in this Declaratory Judgment Action and was served with the Verified Complaint in compliance with O.C.G.A. § 9-4-7 (CGA 110-1106). Windsor has afforded the Attorney General the opportunity to be heard and has sought an Answer from the Attorney General whether the Attorney General elects to participate as a party. The Attorney General is not mentioned in the NOTICE OF REMOVAL, and the U.S. Attorneys do not represent the Georgia Attorney General.

21. **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.**

22. 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**").

23. 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).)

24. Judge Joel F. Dubina, John Ley, Maid of the Mist Corporation, and Maid of the Mist Steamboat Company Limited have not been served with process. 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 Joel F. Dubina, John Ley, Maid of the Mist Corporation, and Maid of the Mist Steamboat Company Limited. (28 U.S.C. § 1446(b).)

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

26. 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).)

27. 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).)

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

29. 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).)

30. 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.

31. Judges Mr. Johnson, Mr. Duffey Mr. Edmondson, Mr. Cox, and Mr. Ed Carnes have ordered that unanimity is required. Judge Ms. Totenberg so ordered on April 27, 2011:

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).) (*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).)

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

33. The NOTICE OF REMOVAL has no plain statement of grounds.

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

A defendant or defendants ... 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 ... containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action. (*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).)

35. 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 America, 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). Judge 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*, 334 F.3d 1233 (11th Cir. 06/24/2003). Judge Mr. Tjoflat has so ordered: *Bradway v. American*, 965 F.2d 991 (11th Cir. 07/07/1992).

36. **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 AND OTHER DOCUMENTS SERVED ON DEFENDANTS CONTAINED IN THE STATE COURT RECORD.**

37. 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.]**

38. The NOTICE OF REMOVAL fails to include a copy of any summons served on any Defendant. Judge Ms. Totenberg ruled on April 27, 2011 that failure to file copies of all Summons and process is a defect:

...the failure to attach the summons served on all Defendants does not comply with the requirements of 28 U.S.C. § 1446(a). (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) – Defendant (Judge) Totenberg.)

"[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)...: Id. This Court has found no authority ... 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.**

39. 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. 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. 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." 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.**

40. 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.*)

41. Mr. Huber's NOTICE OF REMOVAL mentions **removal** "pursuant to 28 U.S.C. §1442(a)(1),(3)," but that's it. Nothing is proven or argued or anything.

42. The sole issue in this matter is a declaration of the meaning and terms of Georgia state law O.C.G.A. § 10-6-5. The legislative intent and purpose of the Georgia Declaratory Judgment Act is to settle and relieve against uncertainty and insecurity with respect to rights, status, and legal interpretation. O.C.G.A. § 9-4-1 (CGA § 110-1111). Pursuant to O.C.G.A. § 9-4-2(b) (GCA § 110-1101) the Georgia Superior Courts 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." Only the Georgia Superior Courts have the authority for a declaratory judgment action regarding Georgia statutes.

43. 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-OC10GRJ, 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.**]

44. 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).)

45. 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.**

46. 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).)

47. **Subject-matter jurisdiction** is the authority of a court to hear cases of a particular type or cases relating to a specific subject matter. By far the most important two categories of federal subject-matter jurisdiction in non-criminal cases are federal question jurisdiction and diversity jurisdiction. (Wikipedia.)

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." *Cowart Ironworks, Inc. v. Phillips Construction Co.*, 507 F. Supp. 740, 743 (S.D. Ga. 1981). "Where the basis for jurisdiction is doubtful, the court should resolve such doubt in favor of remand." *Id.*; *Clyde v. National Data Corp.*, 609 F. Supp.

216 (N.D. Ga. 1985). (*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).)

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. Judge Mr. Story 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).)

51. 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.

52. 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).)

53. 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).)

54. 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).)

55. 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).

56. 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.

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).

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

"...a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. ... 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).)

"In this case, it is clear that Plaintiff relies exclusively on state law, and thus the well-pleaded complaint rule is not satisfied. ...the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c)." (*Equity Residential Properties v. Bravo*, No. 1:06-cv-1012-WSD (N.D.Ga. 05/03/2006).)

“Because Ms. Davis 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).” (*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). (See also *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).)

58. Judge Mr. Thrash said on April 22, 2011 that a Georgia law issue is not a matter of federal law:

In *Grable & Sons Metal Products, Inc. v. Darue Engineering and Manufacturing*, 545 U.S. 308 (2005), the Supreme Court held that a state-law claim gives rise to federal jurisdiction when it "necessarily raise[s] a . . . disputed and substantial" federal issue. *Id.* at 314. The Eleventh Circuit applied Grable's substantiality test in *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290 (11th Cir. 2008). *Austin v. Ameriquest Mortgage Co.*, 510 F. Supp. 2d 1218, 1226-27 (N.D. Ga. 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).)

59. The U.S. District Court lacks diversity jurisdiction because the Plaintiff and 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.**

60. This Court is required to resolve all doubts about federal jurisdiction in favor of remand, *Id.* ("where plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand") (citing *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).)

61. Judge Mr. Thrash has so ruled:

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

62. 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 Insurance Co. v. J.P. Morgan Securities, Inc.*, No. 1:08-CV-1748-TWT (N.D.Ga. 09/30/2008).)

**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.**

SO THIS MOTION FOR REMAND MUST BE GRANTED.

63. 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....”

64. 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).)

65. Maid of the Mist Corporation and Maid of the Mist Steamboat Company Limited are not federal officers, so they have no right to raise a federal defense. The Georgia Attorney General is not a federal officer and has no right to raise a federal defense.

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), (3).”

67. There is no citation of case law to support such a claim. 28 U.S.C. § 1442(a)(1) and (3) have nothing to do with defenses to a declaratory judgment action, so no defense has been raised.

The purpose of section 1442(a)(1) is to "permit[] the removal of those actions commenced in state court that expose a federal official to potential civil liability or criminal penalty for an act performed ... under color of office." *Murray v. Murray*, 621 F.2d 103, 107 (5th Cir.1980). *Willingham*, 395 U.S. at 405, 89 S. Ct. at 1815.

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. This Civil Action is a declaratory judgment action about Georgia state law. So, it is impossible for a Defendant to raise a colorable defense as the Defendants have nothing to defend. There can be no causal connection because this is merely a declaratory judgment action.

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.

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.

**VIII. THE REMOVAL IS DEFECTIVE PURSUANT TO
28 U.S.C § 1442 (a)(3) BECAUSE FEDERAL OFFICERS HAVE NOT
RAISED A FEDERAL DEFENSE,
SO THE NOTICE OF REMOVAL MUST BE VACATED.**

73. The U.S. Attorney also erroneously cited 28 U.S.C. § 1442(a)(3) as a basis for the removal.

28 U.S.C. § 1442(a)(3) provides that “a civil action or criminal prosecution 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: Any officer of the courts of the United States, for any act under color of office or in the performance of his duties;”

74. 28 U.S.C. § 1442(a)(3) does not apply because the Verified Complaint is not about “**any act under color of office or in the performance of [anyone’s] duties.**”

75. The federal interest in this matter is insubstantial, and the exercise of federal-question jurisdiction would disrupt the Congressionally-approved balance of federal and state judicial responsibilities.

“[F]ederal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” *Grable*, 545 U.S. at 313.

76. The U.S. District 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) (quoting *Leonard v. Enter. Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002)).

77. In this matter, NO federal issue exists. There is no disputed question of federal law. The meaning of a Georgia state statute is the only legal and factual issue contested.

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).)

78. There is no legal authority to permit a Federal court to claim jurisdiction over a state declaratory judgment action. 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.

The removal statute is strictly construed against removal jurisdiction and doubt is resolved in favor of remand. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979); *Prize Frize Inc. v. Matrix Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999).

79. This Court must confirm that jurisdiction must remain with the Superior Court of Fulton County, Georgia.

28 U.S.C. § 1446 (c)(4) provides: The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

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.

80. Should this Court fail to deny removal on the grounds specified above, this Court should conduct a de novo hearing. 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).)

81. 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

82. 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

PO Box 681236

Marietta, GA 30068

Telephone: 770-578-1094

Facsimile: 770-234-4106

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.

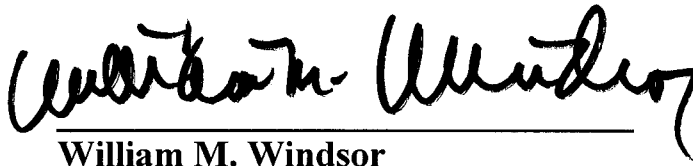
A handwritten signature in black ink, appearing to read "William M. Windsor", written in a cursive style. The signature is positioned above a horizontal line.

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.

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

William M. Windsor

P.O. Box 681236
Marietta, GA 30068
Telephone: 770-578-1056
Fax: 770-234-4106
williamwindsor@bellsouth.net

CERTIFICATE OF SERVICE

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

NEELI BEN-DAVID
ASSISTANT U.S. ATTORNEY
600 Richard B. Russell Federal Bldg.
75 Spring Street, S.W. -- Atlanta, Georgia 30303
Telephone: (404) 581-6303 -- Facsimile: (404) 581-6181
Email: neeli.ben-david@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.



William M. Windsor
Pro Se

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