

APPEAL NO. 22-12038 and 22-12411

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

WILLIAM M. WINDSOR,
Plaintiff – Appellant,

versus

JAMES N. HATTEN, et al,
Defendants

**Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
D.C. Docket No. 1:11-CV-01923-TWT
Judge Thomas Woodrow Thrash**

**APPELLANT’S PETITION FOR REHEARING
AND EN BANC DETERMINATION**

APPENDIX 19

William M. Windsor
5013 S Louise Avenue PMB 1134, Sioux Falls, South Dakota 57108
Phone: 352-661-8472, Email: windsorinsouthdakota@yahoo.com

PRO SE FOR PLAINTIFF/ APPELLANT, WILLIAM M. WINDSOR

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

WILLIAM M. WINDSOR,)
Plaintiff)

v.)

James N. Hatten, Anniva Sanders, J. White,)
B. Gutting, Margaret Callier, B. Grutby,)
Douglas J. Mincher, Jessica Birnbaum,)
Judge William S. Duffey, Judge Orinda D.)
Evans, Judge Julie E. Carnes, John Ley)
Judge Joel F. Dubina, Judge Ed Carnes,)
Judge Rosemary Barkett, Judge Frank M.)
Hull,)
Defendants.)

CIVIL ACTION NO.

1:11-CV-01923-TWT

**EXPEDITED TREATMENT
REQUESTED**

**MOTION TO DENY REMOVAL,
AND EMERGENCY MOTION FOR DISCOVERY AND HEARING**

William M. Windsor (“Windsor” or “Plaintiff”) hereby moves for an emergency hearing and immediate denial of the NOTICE OF REMOVAL and issuance of an order placing jurisdiction of this matter to the Superior Court of Fulton County, Georgia. The Plaintiff seeks this relief on several procedural and substantive grounds. Windsor shows the Court as follows:

FACTUAL BACKGROUND

1. On May 20, 2011, Windsor filed the Verified Complaint in the Superior Court of Fulton County against Defendants stating claims for violation of

Georgia statutes. There are no claims involving federal statutes in the Verified Complaint. The Civil Action was assigned No. 2011CV200971.

2. Plaintiff and Defendants are citizens of the State of Georgia.

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

4. 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 this 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. The NOTICE OF REMOVAL is referenced and incorporated herein as if attached hereto.

5. 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.

6. On June 14, 2011, Windsor filed this MOTION TO DENY REMOVAL.

I. THE NOTICE OF REMOVAL IS PROCEDURALLY DEFECTIVE, AND THIS MOTION TO DENY REMOVAL MUST BE GRANTED.

7. The NOTICE OF REMOVAL has procedural defects that make it void on its face.

8. 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).) The party seeking removal has the burden of proving the jurisdictional and procedural requirements for removal. (*Laughlin v. Prudential Ins. Co.*, 882 F.2d. 187 (5th Cir. 1989).)

9. The NOTICE OF REMOVAL fails on all accounts, so this MOTION TO DENY REMOVAL must be granted.

II. THE REMOVAL IS PROCEDURALLY DEFECTIVE FOR FAILURE TO COMPLY WITH THE REQUIREMENT THAT DEFENDANTS MUST MAKE AN APPEARANCE, AND THIS MOTION TO DENY REMOVAL MUST BE GRANTED.

10. None of the Defendants have made an appearance.

11. 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. The Docket is attached as Exhibit A.

12. The U.S. Attorneys, Sally Quillian Yates and Christopher Huber, have no authority to appear for the Defendants.

13. Christopher Huber is representing one of the Defendants in two legal actions before Defendant Judge Duffey. There are an assortment of other conflicts

that make it impossible for Christopher Huber to represent many of the Defendants.

14. Nothing has been filed with any court giving the U.S. Attorneys the authority to appear for any of the Defendants.

15. 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

16. There is no indication that any of the Defendants have signed a sworn affidavit in regard to representation or the NOTICE OF REMOVAL.

**III. THE REMOVAL IS PROCEDURALLY DEFECTIVE
BECAUSE THE ACTION IS NOT YET PENDING IN FULTON COUNTY
SUPERIOR COURT AS 28 U.S.C. § 1442 REQUIRES,
SO THIS MOTION TO DENY REMOVAL MUST BE GRANTED.**

17. The removal statute requires service prior to removal in the state of Georgia. The removal statute states 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").

18. According to *Black's Law Dictionary*, the word pending means "remaining undecided" or "awaiting decision." *Black's Law Dictionary* 1154 (7th ed. 1999). An action must have "commenced" before it can be "pending." A

determination of whether the action was pending in a Georgia court at the time of removal requires reference to Georgia law. Under Georgia law, “there is a substantial difference between the commencement of an action and its being a suit pending between the parties.” (*McClendon v. Hernando Phosphate Co.*, 28 S.E. 152, 153 (Ga. 1897).) Georgia law preserves this distinction, as filing a suit “is still not the commencement of suit unless followed by service within a reasonable time.” (*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) (“An action is not a pending suit until service is perfected.”))

19. Defendants 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 the Fulton County Superior Court seeking to add six additional Defendants.

20. 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).)

IV. THE REMOVAL IS PROCEDURALLY DEFECTIVE FOR FAILURE TO COMPLY WITH THE RULE OF UNANIMITY, AND THIS MOTION TO DENY REMOVAL MUST BE GRANTED.

21. Another defect in the NOTICE OF REMOVAL is its failure to comply with the rule of unanimity.

22. 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." There are 16 Defendants in this Civil Action, and all 16 Defendants have not filed the NOTICE OF REMOVAL. .

23. 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).) The NOTICE OF REMOVAL fails to claim the consent of ANY Defendant, and it clearly fails to explain the absence of consent to the removal by at least nine of the Defendants, so it is defective for violating the rule of unanimity. Since some 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 OF REMOVAL is procedurally defective and cannot withstand this MOTION TO DENY REMOVAL.

“... all of the defendants must consent to removal.” (*Wisc. Dep't of Corr. v. Schacht*, 524 U. S. 381, 393 (1998) (Kennedy, J., concurring).)

“The unanimity requirement mandates that in cases involving multiple defendants, all defendants must consent to removal.” *Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1044 (11th Cir. 2001) (citing *Chicago R. I. & P. Ry. Co v. Martin*, 178 U.S. 245, 247-48, 20 S.Ct. 854, 855, 44 L.Ed. 1055 (1900) (deriving from a removal statute the rule that all defendants must join in removal)). (See also *In re Federal Savings and Loan Insurance Corp.*, 837 F.2d 432 (11th Cir. 01/19/1988); *In re Ocean Marine Mut. Protection and Indem. Ass'n, Ltd.*, 3 F.3d 353, 355-56 (11th Cir. 1993); *Marano Enters. of Kan. v. Z-Teca Rests., L.P.*, 254 F.3d 753, 754 (8th Cir. 2001); *Balazik v. County of Dauphin*, 44 F.3d 209, 213 (3d Cir. 1995); *Doe v. Kerwood*, 969 F.2d 165, 167 (5th Cir. 1992); *Hewitt v. City of Stanton*, 798 F.2d 1230, 1232 (9th Cir. 1986); *N. Ill. Gas Co. v. Airco Indus. Gases*, 676 F.2d 270, 272-73 (7th Cir.1982); *Cornwall v. Robinson*, 654 F.2d 685, 686 (10th Cir. 1981); 11C Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3731 (3d ed. 1998); *Esposito v. Home Depot U.S.A., Inc.*, 590 F.3d 72 (1st Cir. 12/30/2009).)

V. **THE REMOVAL IS DEFECTIVE BECAUSE THIS COURT LACKS JURISDICTION, SO THIS MOTION TO DENY REMOVAL MUST BE GRANTED.**

24. This 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.

25. This Civil Action is pursuant to the Georgia Racketeer Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. No federal statute has been included in the causes of action.

26. There is no federal question presented on the face of the Verified Complaint. Windsor intends this Civil 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)). "[T]he party who brings the suit is master to decide what law he will rely upon." *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913).

This court has held that for a paper to fall within the removal statutes, it must be unambiguous. Cf. *Akin v. Ashland Chem. Co.*, 156 F.3d 1030, 1035-36 (10th Cir. 1998)

**VI. 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 TO DENY REMOVAL MUST BE GRANTED.**

27. 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 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: 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....”

28. 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....”

The U.S. Supreme Court holds that the jurisdictional provision found in 28 U.S.C. § 1442(a)(1) required federal officers to raise a federal defense before removing to federal court. *Mesa v. California*, 489 U.S. 121, 109 S. Ct. 959, 103 L. Ed. 2d 99 (1989).

29. 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.”

30. 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 this Civil Action, so no defense has been raised.

The Supreme Court has held that "the right of removal [under § 1442(a)(1)] is absolute for conduct performed under color of federal office," *Arizona v. Manypenny*, 451 U.S. 232, 242, 101 S. Ct. 1657, 1664, 68 L. Ed. 2d 58 (1981), and that 28 U.S.C. § 1442(a)(1) "is broad enough to cover all cases where federal officers can raise a colorable defense arising out of their duty to enforce federal law." *Willingham v. Morgan*, 395 U.S. 402, 406-07, 89 S. Ct. 1813, 1816, 23 L. Ed. 2d 396 (1969). The Court agreed with the government that "the removal statute is an incident of federal supremacy, and that one of its purposes [is] to provide a federal forum for cases where

federal officials must raise defenses arising from their official duties." *Willingham*, 395 U.S. at 405, 89 S. Ct. at 1815.

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). In *Willingham*, the Supreme Court noted that "the removal statute is an incident of federal supremacy, and that one of its purposes was to provide a federal forum for cases where federal officials must raise defenses arising from their official duties." 395 U.S. at 405, 89 S. Ct. at 1815. "The test for removal should be broader, not narrower, than the test for official immunity." *Id.*

31. 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) (quoting *Willingham*, 395 U.S. at 406-07, 89 S. Ct. at 1816). That defense need only be plausible; its ultimate validity is not to be determined at the time of removal. *Id.* at 129, 109 S. Ct. at 964. However, 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. However, the Supreme Court has held that, in a civil suit such as this, it is sufficient for the defendant to show that his relationship to the plaintiff "derived solely from [his] official duties." *Willingham*, 395 U.S. at 409, 89 S. Ct. at 1817. In such

a case, the causal connection requirement "consists, simply enough, of the undisputed fact that [the defendant was] on duty, at [his] place of federal employment, at all the relevant times." *Id.* If the question raised by the plaintiff is whether the defendant was engaged in "some kind of frolic," or acting in contravention of his official duties, the parties will have the opportunity to present their versions of the facts to a federal court. *Id.* (*Magnin v. Teledyne Continental Motors*, 91 F.3d 1424 (11th Cir. 08/15/1996).) [**emphasis added.**]

32. 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.

33. 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. Those advantages are “the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Id.* at 312.

More recently, in *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290 (C.A. 11, Dec. 19, 2008), plaintiffs brought, *inter alia*, a defamation claim based on the defendants’ statements that the plaintiffs had violated federal gun laws. *See* 552 F.3d at 1293-94. The Eleventh Circuit reversed the district court’s conclusion that federal question jurisdiction was appropriate, concluding that the federal interest involved was insubstantial. *See id.* at 1301-03.

Ayres v. Gen. Motors Corp., 234 F.3d 514, 518 (11th Cir. 2000) serves to illustrate this point. In *Ayres*, the plaintiff brought suit under Georgia’s civil RICO statute, alleging that the defendant had violated the federal National

Traffic and Motor Vehicle Safety Act and, by so doing, had committed federal mail and wire fraud, which were predicate offenses constituting racketeering. *See* 234 F.3d at 516-17. The Eleventh Circuit found federal question jurisdiction was appropriate because “this case requires that we decide whether or not a breach of the disclosure duty under the [National Traffic and Motor Vehicle] Safety Act constitutes a federal mail and wire fraud crime.” *Id.* at 519. In other words, because the **meaning** of a federal statute was at issue, a substantial federal question was involved. *See id.*

(“[F]ederal question jurisdiction exists where a plaintiff’s cause of action has as an essential element the existence of a right under federal law which will be supported by a construction of the federal law concluding that the federal crime is established, but defeated by another construction concluding the opposite”). **Where, however, “allegations of violations of federal law as predicate acts under a state RICO act” do not “require the court to interpret an independent federal statute,” federal question jurisdiction is inappropriate.** *See Austin v. Ameriquest Mortgage Co.*, 510 F. Supp. 2d 1218, 1227-28 (N.D. Ga. 2007); *accord, e.g., Neighborhood Mortgage, Inc. v. Fegans*, No. 1:06-CV-1984-JOF, 2007 WL 2479205, at *4 (N.D. Ga. Aug. 28, 2007) (“Unlike *Ayres* where the court had to decide whether the federal mail and wire fraud statutes would also constitute a breach of the National Traffic and Motor Vehicle Safety Act, where there is no other federal question, . . . the mere citation of federal mail and wire fraud as predicate acts to a state RICO action is not sufficiently substantial to confer federal jurisdiction”). [**emphasis added.**]

As the Eleventh Circuit explained in *Adventure Outdoors: Ayres* involved two levels of federal questions. The need to construe independent bodies of federal law and to determine the legal effect of the interaction of those two bodies of law made the federal question in *Ayres* far more substantial than the one presented by Adventure Outdoors’s defamation claim. 552 F.3d at 1302. The same is also true here because this matter has nothing to do with the construction of federal regulations. Consequently, this Court should decline to exercise federal-question jurisdiction over Plaintiffs’ state-law claim and remand this matter to the Superior Court of Gwinnett County, Georgia.

34. 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) (quoting *Leonard v. Enter. Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002)). “All doubts about the propriety of federal jurisdiction should be resolved in favor of remand to state court.” *Id.* (citing *Diaz v. Sheppard*, 85 F.3d 1502, 1505 (11th Cir. 1996)); accord *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994) (“[W]here a plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand”).

The test for whether federal jurisdiction should be exercised over embedded federal issues in state-law claims between non-diverse parties is whether “a state law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prods., Inc v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005).

35. 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).)

36. 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 George RICO Act, and they knowingly participated in an enterprise designed to damage Windsor. 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).

VII. 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 TO DENY REMOVAL MUST BE GRANTED.**

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

38. 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 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).

39. 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). Georgia law does not permit anyone to violate the Georgia 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 with duties to violate criminal statutes and commit racketeering.

40. 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).)

41. 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.

VIII. 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.

42. Should this Court fail to deny removal on the grounds specified above, the district court must 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).)

CONCLUSION

43. This Court must deny removal of this Civil Action and 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.

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

45. For the aforementioned reasons, this Court should order that removal is not permitted and that this case should remain with the Superior Court of Gwinnett 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 scope issue;
- c. order that removal is not permitted;
- d. order that jurisdiction for this Civil Action remains with the Superior Court of Fulton County Georgia; and
- e. grant any other relief this Court deems just and proper.

Respectfully submitted this 14th day of June, 2011.

William M. Windsor

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 14th day of June, 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.



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 to each Defendant by mail with sufficient postage addressed with the addresses for service shown in the Verified Complaint and 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

This 14th day of June, 2011.



WILLIAM M. WINDSOR
Pro Se

PO Box 681236
Marietta, GA 30068
Telephone: 770-578-1094
Facsimile: 770-234-4106
Email: williamwindsor@bellsouth.net