

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI – KANSAS CITY DIVISION**

William M. Windsor,)	
Plaintiff)	CIVIL ACTION NO.
)	
v.)	4:13-CV-00778
)	
Allie Loraine Yager Overstreet,)	
and John Does 1-1000,)	
Defendants.)	
_____)	

MOTION FOR REMAND

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

FACTUAL BACKGROUND

1. On April 29, 2013, Windsor filed the Verified Complaint in the District Court of Lafayette County against the Defendants stating claims only for violation of Missouri statutes. The civil action was assigned No. 13LF-CV00461.
2. On August 7, 2013, the Attorney for Defendant Allie Loraine Yager Overstreet (“OVERSTREET”) filed a NOTICE OF REMOVAL (“NOR”) that purports to remove Civil Action 13LF-CV00461 from Lafayette County Missouri

District Court to the United States District Court for the Western District of Missouri. (A true and correct copy of the NOR is attached as Exhibit 1 and is referenced and incorporated herein.)

I. **OVERSTREET'S CLAIM OF 28 U.S.C. 1441 FOR REMOVAL IS COMPLETELY FRIVOLOUS AS THE STATUTE CLEARLY PROVIDES.**

3. There are no claims involving federal statutes in the Amended Verified Petition, as is required for removal. (*Louisville and Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908); *Crews v. General American Life Insurance Co.*, 274 F.3d 502 (8th Cir. 12/17/2001).) None of the causes of action meet the requirements for removal expressed in federal statutes 28 U.S.C. 1332, 28 U.S.C. § 1441, or 28 U.S.C. § 1446 cited by the OVERSTREET'S attorney.

4. OVERSTREET is a citizen of the State of Missouri. This is admitted in the NOR, ¶42.

5. 28 USC 1441 (b) (2) clearly states: "A civil action otherwise removable solely on the basis of the jurisdiction under section 1332 (a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." This is a jurisdictional defect in the NOR, and the case must be remanded. (*Caterpillar, Inc.*

v. *Lewis*, No. 95-1263 (U.S. 12/10/1996); *Hurt v. Dow Chemical Company*, 963 F.2d 1142, 1146 (8th Cir. 1992).)

Under the so-called "forum defendant rule," a non-federal question case "shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). (*Horton v. Conklin*, 431 F.3d 602 (8th Cir. 12/08/2005).)

6. OVERSTREET was properly joined and served, and she was and is a citizen of the State of Missouri.

7. The NOR is frivolous. OVERSTREET'S attorney has an obligation to at least read the statutes that he is using. There are no excuses for this.

II. OVERSTREET HAS FAILED TO PROVE THE EXISTENCE OF FEDERAL JURISDICTION.

8. Defendants have the burden of proving the existence of federal jurisdiction, and they have failed to do so. (*Westerfeld v. Independent Processing, LLC*, No. 10-2635 (8th Cir. 09/20/2010); *Green v. Ameritrade, Inc.*, 279 F.3d 590, 596 (8th Cir. 2002).) The NOR's only mention of "jurisdiction" refers to diversity jurisdiction.

9. Defendants may remove civil actions to federal court only if the claims could have been originally filed in federal court. These claims could not have been filed in federal court as there are no federal issues.

(*Gore v. Trans World Airlines*, 210 F.3d 944, 948 (8th Cir. 2000); *Magee v. Exxon Corp.*, 135 F.3d 599, 601 (8th Cir. 1998); *Peters v. Union Pacific R.R. Co.*, 80 F.3d 257, 260 (8th Cir. 1996) (citing 28 U.S.C. Section(s) 1441(b)); *Gaming Corp.*, 88 F.3d at 542); *Hurt v. Dow Chemical Co.*, 963 F.2d 1142 (8th Cir. 05/12/1992).)

III. THE NOR FAILED TO ASSERT GROUNDS FOR SUBJECT MATTER JURISDICTION AND FAILED TO RAISE A DEFENSE.

10. There are no grounds even asserted for subject matter jurisdiction, an obligation that the NOR failed to address, so this MFR must be granted.

“...even though an action is eligible for removal ... 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.**]

Subject matter jurisdiction should be determined at the time of removal, when federal jurisdiction was invoked. See *Matter of Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990); *Nuclear Eng. Co. v. Scott*, 660 F.2d 241, 248 (7th Cir. 1981), cert. denied, 455 U.S. 993 (1982); *Gresham Park Community Org. v. Howell*, 652 F.2d 1227, 1236 (5th Cir. 1981); *International Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1210 (7th Cir. 1980), cert. denied, 454 U.S. 969 (1981)

11. 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).)

12. 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.

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).) (See *Caterpillar Inc. v. Williams*, 482 U. S. 386, 392; *Pet Quarters, Inc. v. Depository Trust and Clearing Corp.*, 559 F.3d 772, 778 (8th Cir. 2009).)

13. This Civil Action 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. It is not a case against foreign states and citizens.

14. Federal courts are courts of limited jurisdiction.

(*Finley v. United States*, 109 S. Ct. 2003, 490 U.S. 545 (U.S. 05/22/1989); *United States v. Afremov*, 611 F.3d 970 (8th Cir. 07/29/2010).)

15. This Court does not have original jurisdiction. There is no federal issue.

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). *Caterpillar, Inc. v. Lewis*, No. 95-1263 (U.S. 12/10/1996); *Pecherski v. General Motors Corp.*, 636 F.2d 1156 (8th Cir. 01/13/1981); *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir.2001). 28 U.S.C. § 1447(c).

Federal question jurisdiction is available only where (1) the right to relief under state law depends on the resolution of a substantial, disputed federal question, and (2) the exercise of jurisdiction will not disrupt the balance between federal and state jurisdiction adopted by Congress. See *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313-14 (2005).

16. 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).)

17. 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 U.S. (*First Federal Savings and Loan Association of Harrison v. Anderson*, 681 F.2d 528 (8th Cir. 06/25/1982).)

18. 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 Amended Verified Petition. Windsor intends this action to be solely based on Missouri law. Windsor specifically excluded federal statutes that could have been raised so this action would remain in Missouri courts.

Federal courts use the "well-pleaded complaint" rule to determine "arising under" jurisdiction. *Long*, 201 F.3d at 758. That rule provides that "'federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" Id. (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). (*The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913); *Phipps v. FDIC*, 417 F.3d 1006, 1010 (8th Cir. 2005); *Pet Quarters, Inc. v. Depository Trust and Clearing Corp.*, 559 F.3d 772 (8th Cir. 03/09/2009); *Krispin v. May Dep't Stores Co.*, 218 F.3d 919, 922 (8th Cir. 2000).)

19. When a Plaintiff has relied exclusively on state law, remand is required:

In this case, it is clear that Plaintiff relies exclusively on state law, and thus the well-pleaded complaint rule is not satisfied. Because Defendant fails to demonstrate that the Court has subject matter jurisdiction over this case, the Court is required to remand this action pursuant to 28 U.S.C. § 1447(c). (*Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Central Iowa Power Coop. v. Midwest Independent Transmission System Operator, Inc.*, 561 F.3d 904 (8th Cir. 03/27/2009).)

IV. THE NOTICE OF REMOVAL IS PROCEDURALLY DEFECTIVE, SO THIS MFR MUST BE GRANTED.

20. The NOR has multiple procedural defects that make it void on its face. Technical, procedural requirements must be met.

(*Russell Corp. v. American Home Assur. Co.*, 264 F.3d 1040, 1044 (11th Cir. 2001).) (See also *St. John v. International Association of Machinists*

and Aerospace Workers, 139 F.3d 1214, 157 L.R.R.M. (BNA) 2927 (8th Cir. 04/01/1998).)

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; *Bell v. Hershey Co.*, 557 F.3d 953 (8th Cir. 02/26/2009)). (See also *Laughlin v. Prudential Ins. Co.*, 882 F.2d. 187 (5th Cir. 1989); *Westerfeld v. Independent Processing, LLC*, No. 10-2635 (8th Cir. 09/20/2010).)

21. Removal statutes are strictly construed in favor of state court jurisdiction.

(*Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Syngenta Crop Protection, Inc. v. Henson*, 123 S.Ct. 366, 537 U.S. 28, 154 L.Ed.2d 368 (U.S. 11/05/2002); *Bradley v. Maryland Casualty Co.*, 382 F.2d 415 (8th Cir. 08/17/1967).)

22. 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).)

23. The NOR fails on all accounts, so this MFR must be granted.

24. **DEFECT #1 -- THE NOR FAILS TO COMPLY WITH THE REQUIREMENT OF A PLAIN STATEMENT OF THE GROUNDS FOR REMOVAL.**

25. A plain statement of the grounds is required.

(*Pet Quarters, Inc. v. Depository Trust and Clearing Corp.*, 559 F.3d 772 (8th Cir. 03/09/2009); (*Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th

Cir. 04/11/2007); *Roe v. Michelin North America, Inc.*, 613 F.3d 1058 (11th Cir. 08/05/2010).).

26. **DEFECT #2 -- THE NOR FAILED TO COMPLY WITH THE MANDATORY PROCEDURE TO INCLUDE WITH THE NOR THE SUMMONS ISSUED BY THE COURT ON ALL DEFENDANTS, DISCOVERY, AND OTHER DOCUMENTS SERVED ON DEFENDANTS.**

27. The list of documents filed with the NOR fails to include the summons to OVERSTREET or former defendant Mark Supanich (“SUPANICH”).

...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).)

28. A number of motions are not included, and the Docket was not included, which shows orders of the court. A true and correct copy of the Docket in 13LF-CV-00461 is attached hereto as Exhibit 2 and referenced herein.

29. 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.**]

V. **THE PRINCIPLE OF COMITY AND THE LONG-STANDING PUBLIC POLICY AGAINST FEDERAL COURT INTERFERENCE WITH STATE COURT PROCEEDINGS SHOULD PREVAIL.**

30. The federal court should abstain for the sake of non-interference with state court proceedings. (*Younger v. Harris*, 401 U.S. 37, 43-45 (1971); *Villarreal v. Galvin*, 333 Fed.Appx. 139 (8th Cir. 10/05/2009).) The jurisdictional laws of Missouri permit individuals to sue in Missouri courts for violations of any rights secured by the Constitution and laws of Missouri.

31. Prohibition of and interference with the State of Missouri 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 Missouri citizens' right to the availability of relief under the Constitution and laws of Missouri.

32. The Constitution and laws of Missouri 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."

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).)

VI. **THIS COURT IS REQUIRED TO RESOLVE ALL DOUBTS ABOUT FEDERAL JURISDICTION IN FAVOR OF REMAND.**

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

(*Dahl v. R.J. Reynolds Tobacco Co.*, 478 F.3d 965, 968 (8th Cir. 2007); *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).)

34. OVERSTREET has waived any grounds for removal not included in their initial notice. OVERSTREET does not suggest that this is a case properly removed because federal law actually creates the causes of action Windsor asserts; OVERSTREET said nothing but the Plaintiff lives in South Dakota; OVERSTREET lives in Missouri; and the amount in question exceeds \$75,000. (See *Nichols v. Harbor Venture, Inc.*, 284 F.3d 857 (8th Cir. 03/21/2002).)

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).)

CONCLUSION

35. The NOR is frivolous. It has procedural defects. It ignores the plain language of 28 U.S.C. 1441. Subject matter jurisdiction was not even addressed.

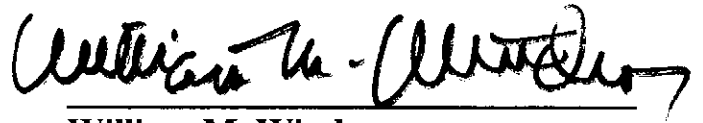
The burden of establishing federal jurisdiction rests upon the party seeking removal, and OVERSTREET has failed to carry this burden.

36. For the aforementioned reasons, this Court should order that remand is required to the District Court of Lafayette County in the State of Missouri.

WHEREFORE, the Plaintiff respectfully requests:

- a. order that remand is required;
- b. order that jurisdiction for this civil action is with the District Court of Lafayette County in the State of Missouri; and
- c. grant any other relief this Court deems just and proper.

Respectfully submitted this 8th day of August, 2013.



William M. Windsor

Pro Se

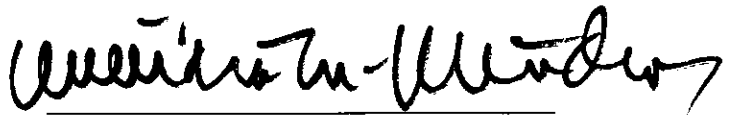
514 America's Way #4841
Box Elder, SD 57719-7600
Email: nobodies@att.net
Phone: 770-578-1094

VERIFICATION OF WILLIAM M. WINDSOR

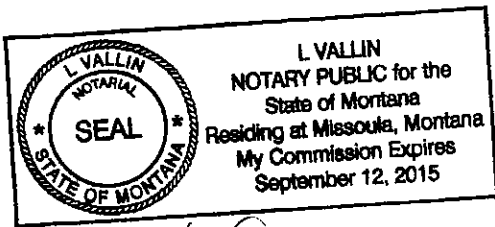
I, William M. Windsor, swear that I am authorized to make this verification and that the facts alleged in the foregoing MOTION are true and correct based upon my personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters I believe 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 8th day of August, 2013.



William M. Windsor



CERTIFICATE OF SERVICE

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

Matthew J. O'Connor
521 Walnut Street
Kansas City, MO 64106
Phone: 816-842-1111
Email: mjoc@workingforjustice.com

This 8th day of August, 2013.



William M. Windsor
Pro Se

514 America's Way #4841
Box Elder, SD 57719-7600
Email: nobodies@att.net
Phone: 770-578-1094