

**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.)	
_____)	

**REPLY TO RESPONSE TO
MOTION FOR REMAND AND SUGGESTIONS**

William M. Windsor (“Windsor” or “Plaintiff”) hereby files this REPLY TO RESPONSE TO MOTION FOR REMAND AND SUGGESTIONS (“RRMFR”).

**DEFENDANT’S CLAIM THAT THE REQUIREMENTS HAVE BEEN MET FOR
DIVERSITY JURISDICTION IS COMPLETELY FRIVOLOUS.**

1. DEFENDANT bases this frivolous Response on a claim that “Removal to District Court is Appropriate Jurisdictionally in this Action.”
2. DEFENDANT’s attorney appears to be attempting to avoid Rule 11 sanctions for filing a frivolous Notice of Removal (“NOR”). The rules in this case are crystal clear. A sixth grader could probably read 28 U.S.C. § 1332 and tell you what the law is.
3. 28 U.S.C. § 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.” So, 1441 must be considered at the same time as 1332 (a).

4. The DEFENDANT was properly joined and served as a citizen of the state of Missouri.

5. The DEFENDANT ignored all of the PLAINTIFFS' case law, because it is incontrovertable.

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); *Virginia Scott Devlin v. Manuel Machado, Jr.*, No. 11-0698-CV-W-HFS (W.D.Mo. 11/21/2011); *Haren & Laughlin Construction Co., Inc. v. Granite Re, Inc.*, No. 6:11-cv-3242-DGK (W.D.Mo. 11/16/2011); *Charles Herling v. Thyssenkrup Access Corp., Thyssenkrup Accessibility Holding GmbH*, No. 10-1107-CV-W-ODS (W.D.Mo. 02/11/2011).)

"...a federal court lacks diversity jurisdiction over a removed case in which one of the defendants is a citizen of the forum state. In *Horton v. Conklin*, the Eighth Circuit announced that this rule, known as the 'forum defendant rule,' is jurisdictional. 431 F.3d 602 (8th Cir. 2005)." (*Perfect Output v. Ricoh*, Case No.: 12-0189-CV-W-SOW, 2012 WMO (July 17, 2012).)

6. The NOR is frivolous. DEFENDANTS' attorney had an obligation to at least read the statutes that he is using. There are no excuses for this.

7. DEFENDANTS' attorney cites totally irrelevant case law. *Casey v. F.D.I.C.* cited on unnumbered page 2, ¶3, in which jurisdiction is based solely on 28 U.S.C. § 1819(b)(2)(A). This is not the case here. *Baggs v. Martin* is cited as "supra" on unnumbered page 2, ¶3, but this case was not previously cited. *Baggs v. Martin*, 21 S. Ct. 109, 179 U.S. 206 (U.S. 12/03/1900) does not state what the DEFENDANT'S attorney indicates, and it is not applicable to this matter. *Handley-Mack v. Godchaux* is cited on unnumbered page 2, ¶3, but it does not apply. *Handley-Mack* deals with the so-called "Grubbs Rule" (*Grubbs v. General Electric Credit Corp.*, 405 U.S. 699, 31 L. Ed. 2d 612, 92 S. Ct. 1344 (1972)), which is not an issue in this matter. *Handley-Mack*, in fact, supports the rules and the PLAINTIFF simply

providing that the forum defendant rule is waived if not raised in the motion for remand, as it was in this matter:

The forum defendant provision is a procedural removal requirement that is waived if it is not raised by a timely motion to remand. *Plastic Moldings Corp. v. Park Sherman Co.*, 606 F.2d 117, 119 n.1 (6th Cir. 1979); *Handley-Mack Co. v. Godchaux Sugar Co.*, 2 F.2d 435, 436--37 (6th Cir. 1924); see also *Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 939--42 (9th Cir. 2006), cert. denied, 127 S.Ct. 1265 (2007); *Shapiro v. Logistec USA, Inc.*, 412 F.3d 307, 313 (2d Cir. 2005); *Hurley v. Motor Coach Indus. Inc.*, 222 F.3d 377, 380 (7th Cir. 2000), cert. denied, 531 U.S. 1148 (2001).

8. DEFENDANT'S attorney misuses cases from other circuits to try to claim 28 U.S.C. 1441 (b) (2) is procedural, not jurisdictional.

9. *Hurley v. Motor Coach Indus., Inc.* is cited on unnumbered page 3, ¶1, and it is an atrocious example of trying to use a case to support your erroneous position when the case proves the PLAINTIFF'S position:

Under 28 U.S.C. sec. 1441(b), 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." This rule, sometimes called the "forum defendant" rule, means that Pines's presence in the case, if proper, would normally keep the case in state court. We say "normally" because in the typical case, a plaintiff who is about to see her chosen court slip away will object to removal if there is an in-state defendant, and thereby secure a speedy return to state court. (*Hurley v. Motor Coach Industries, Inc.*, 222 F.3d 377 (7th Cir. 07/25/2000).)

10. *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 04/26/2000) is cited on unnumbered page 3, ¶1, and it does not say what DEFENDANT'S attorney indicates it says, and it is not applicable to this issue.

DEFENDANT HAS ADMITTED THERE IS NO FEDERAL QUESTION

11. On unnumbered page 2 of the RESPONSE, second paragraph, DEFENDANT admits there is no federal question.

**THE CONSTITUTIONAL CLAIMS RAISED BY THE DEFENDANT ARE
FRIVOLOUS AND WITHOUT MERIT.**

12. The Constitution gives the judiciary the authority to set rules and gives the legislature the authority to enact laws. Those laws and rules provide that remand is the law of the land in this matter.

13. The plaintiff has the choice of where to file a complaint, and the PLAINTIFF made that choice by filing in Missouri state court.

14. The PLAINTIFF did not make allegations in the MFR that are invalid, contrary to the ridiculous statements made on unnumbered pages 4 and 5 of the RESPONSE. The PLAINTIFF is correct as to the law, and the DEFENDANT appears to be simply attempting to evade Rule 11 sanctions, for which notice to the DEFENDANT'S attorney was served.

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

15. The NOR has multiple procedural defects that make it void on its face. Technical, procedural requirements must be met, and they were not met.

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

17. 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).)

18. **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.

19. The list of documents filed with the NOR fails to include the summons to the DEFENDANT 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).)

20. The DEFENDANT claims she did not have a copy of the summons to Supanich, but it is filed with the Missouri court, and the DEFENDANT failed to obtain a copy and file it. A true and correct copy of the DOCKET is attached hereto as Exhibit A. DOCKET #2-a and 8 should have been provided.

21. The DEFENDANT claims she filed her summons with the NOR, but the PLAINTIFF did not receive it.

22. The DEFENDANT'S attorney is taking legal advice from the Clerk of the Court, yet the clerks are always very careful to say they cannot give legal advice. (RESPONSE, unnumbered page 6, ¶ 1.)

23. The PLAINTIFF has not filed any long-winded, unnecessary filings. The PLAINTIFF has filed sworn testimony and evidence. The DEFENDANT has filed none.

24. The DEFENDANT claims the PLAINTIFF did not identify which motions were not provided, but the PLAINTIFF did. A true and correct copy of the Docket in 13LF-CV-00461 was attached to the MFR as Exhibit 2. Those items on the Docket that were not provided are the items missing. The law requires ALL to be provided with the NOR. In the RESPONSE, unnumbered page 6, ¶ 1 admits that the DEFENDANT did not include ALL. Exhibit A is a marked-up copy of the DOCKET, and those items not marked out were not filed with this Court.

Documents served on the DEFENDANT but not filed with this Court include 98, 97, 93, 89, 79, 77, 76, 75, 74, 73, 72, 71, 70, 68, 66, 65, 64, 52, 51, 50, 49, 48, 47, 44, 42, 41, 40, 39, 38, 37, 36, 35, 34, 32, 31, 30, 29, 28, 25, and 21.

25. 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.]**

26. The DEFENDANT failed to file the required certificate of interested persons.

DEFENDANT’S ATTEMPTED AMENDMENT TO THE NOTICE OF REMOVAL IN A RESPONSE IS IMPROPER, FRIVOLOUS, AND MUST BE DISREGARDED.

27. The PLAINTIFF appears to have been mistaken in the belief that DEFENDANT had waived the right to raise new grounds in an amended notice of removal. A notice of removal is not amended in a response to a motion for remand.

(EX PARTE HARDING, 31 S. Ct. 324, 219 U.S. 363 (U.S. 02/20/1911); *KINNEY v. COLUMBIA SAVINGS & LOAN ASSOCIATION*, 24 S. Ct. 30, 191 U.S. 78 (U.S. 11/09/1903); *MITCHELL v. SMALE*, 11 S. Ct. 819, 140 U.S. 406 (U.S. 05/11/1891); *Ritchie Grocer Co. v. Aetna Cas. & Surety Co.*, 426 F.2d 499 (8th Cir. 05/12/1970); *State v. Thomas*, No. 09-1447 (3d Cir. 09/11/2009); *Moffitt v. Residential Funding Co., LLC*, No. 10-1316 (4th Cir. 05/03/2010); *Menendez v. Wal-Mart Stores, Inc.*, No. 09-40993 (5th Cir. 02/01/2010); *Klein v. Manor Healthcare Corp.*, 19 F.3d 1433 (6th Cir. 03/22/1994); *In re AMOCO Petroleum Additives Co.*, 964 F.2d 706 (7th Cir. 05/21/1992); *Bauer v. Transitional School Dist. of the City of St. Louis*, 255 F.3d 478 (8th Cir. 07/02/2001); *Luehrs v. Utah Home Fire Ins. Co.*, 450 F.2d 452 (9th Cir. 09/30/1971); *In re First Nat. Bank of Boston*, 70 F.3d 1184 (11th Cir. 11/30/1995).)

28. FRCP Rule 15 provides that “a party may amend its pleading only with the opposing party's written consent or the court's leave.” The PLAINTIFF does not consent, and leave of the court was not requested.

29. 28 U.S.C. § 1332 (c)(1) applies to corporations and insurers. The PLAINTIFF is an individual who is seeking to recover for damages to him personally. This is absolutely clear in the FIRST AMENDED VERIFIED PETITION (“FAVP”), as it was in the original Verified Complaint.

30. The DEFENDANT falsely and maliciously claims the PLAINTIFF filed this action on behalf of his corporation. The FAVP clearly shows the PLAINTIFF to be William M. Windsor. There are no facts before this Court to indicate that the PLAINTIFF even has a corporation. There are no facts before the Court to indicate if Lawless America Association is incorporated, if so – where, or anything else in regard to that entity. All statements other than legal arguments in the RESPONSE must be stricken, as there is no sworn evidence of any type before this Court or the Missouri state court except that of the PLAINTIFF.

31. The term “Lawless America Association” is not mentioned in the FAVP, nor are the words “corporation” or “company.”

32. The DEFENDANT falsely and maliciously claims “a large portion of the acts that Plaintiff is alleging did not occur in the State of Missouri.” This is irrelevant, but there is no evidence before this Court to that effect. See FAVP, ¶¶ 3, 5, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 33, 33, 36, 37, 40, and 42. Approximately half of the Statement of Facts applies to acts committed in Missouri. The PLAINTIFF believes discovery will prove that other paragraphs apply to Missouri as well.

CONCLUSION

33. The Notice of Removal (“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 DEFENDANT has failed to carry this burden.

34. 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 27th 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 REPLY 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 27th day of August, 2013.

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

William M. Windsor

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing REPLY by United States Postal Service 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 29th day of August, 2013.



William M. Windsor
Pro Se

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