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ORDER OF THE SECOND CIRCUIT
(JULY 27, 2018)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff-Appellee,

v.

NOEL L. SMITH, M.D.,

Defendant-Appellant.

No. 18-1204

Before: Robert A. KATZMANN, Chief Judge.,
Jose A. CABRANES, Rosemary S. POOLER,
Circuit Judges.

Appellee moves to dismiss the appeal for lack of jurisdiction. Appellant moves for the district court's order to be vacated, essentially seeking summary reversal, as well as other relief. Upon due consideration, it is hereby ORDERED that Appellee's motion is GRANTED, in part, and the appeal is DISMISSED as to the district court's order remanding to state court. 28 U.S.C. § 1447(d); *Shapiro v. Logistec USA, Inc.*, 412 F.3d 307, 310 (2d Cir. 2005). Appellant's motion is DENIED as moot insofar as it relates to the remand order.

The remainder of this appeal is hereby STAYED pending resolution of Appellant's timely motion for reconsideration of the district court's decision not to impose sanctions pursuant to Fed. R. Civ. P. 11, *See* 2d Cir. No. 14-3649-cv, Dkt. No. 40 (staying an appeal when a motion for reconsideration on the same issue remains undecided in the district court.). Appellant's notice of appeal will become "effective" as to the Rule 11 determination when that motion is decided. *See* Fed. R. App. P. 4(a)(4)(A)(vi), 4(a)(4)(B)(i).

Appellant is directed to inform this Court in writing within 14 days after final judgment is entered in the district court, Appellant is also directed to provide the Court with a copy of all dispositive orders. The motion will be decided by a new panel in the ordinary course.

FOR THE COURT:

/s/ Catherine O'Hagan Wolf
Clerk

**MANDATE OF THE SECOND CIRCUIT
(NOVEMBER 30, 2018)**

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff-Appellee,

v.

NOEL L. SMITH, M.D.,

Defendant-Appellant.¹

18-1204

Before: Amalya L. KEARSE,
Debra Ann LIVINGSTON,
Susan L. CAMEY, Circuit Judges.

In July 2018, this Court dismissed Appellant's appeal in part, ruling it lacked jurisdiction to review the district court's order remanding to state court, but the Court stayed the portion of the appeal challenging the district court's denial of Appellant's motion for Fed. R. Civ. P. 11 sanctions, pending resolution of a timely Fed. R. Civ. P. 60 motion. 2d Cir. 18-1204,

¹ The Clerk of Court is directed to amend the official caption to conform with the caption above.

doc. 34. The district court has since denied Appellant's Rule 60 motion.

Appellant, pro se, moves to reinstate his appeal from the district court's order remanding to state court, and for reconsideration *en banc*. Appellee moves to dismiss the appeal for lack of jurisdiction, arguing only that a remand order is not appealable.

Upon due consideration, it is hereby ORDERED that Appellant's motion to reinstate is DENIED. *See* 28 U.S.C. § 1447(d); *Shapiro v. Logistec USA Inc.*, 412 F.3d 307, 310 (2d Cir. 2005).

It is further ORDERED that the remainder of this appeal from the district court's order denying Rule 11 sanctions and the Rule 60 motion is DISMISSED because it lacks an arguable basis in law or fact. *See Klobel v. Millson*, 592 F.3d 78, 81 (2d Cir. 2010); *see Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (per curiam) (holding that this Court has "inherent authority" to dismiss an appeal that lacks an arguable basis in law or fact). Appellee's motion to dismiss is DENIED as moot because Appellant's appeal from the remand order was previously dismissed by this Court for lack of jurisdiction.

Appellant's motion for reconsideration *en banc* will be distributed to the active judges in due course.

FOR THE COURT:

/s/ Catherine O'Hagan Wolf
Clerk

ORDER OF THE
DISTRICT COURT OF NEW YORK
(APRIL 12, 2018)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

17 Civ. 07644 (AT)

Before: Analisa TORRES,
United States District Judge.

ANALISA TORRES, United States District Judge:

On October 5, 2017, Defendant *pro se* Noel L. Smith removed this case from the Superior Court in Lumpkin County, Georgia. ECF NO. 1. On October 13, 2017, the Court *sua sponte* remanded the case back to the state courts as procedurally improper, ECF No. 4; 28 U.S.C. § 1446(a). Defendant *pro se* filed a motion for reconsideration, ECF No. 5, which the Court granted in order to give each of the parties an opportunity to be heard, and, accordingly, notified Plaintiff

of the deadline for a motion to remand, ECF No. 6, which she filed, ECF No. 11.

Having heard from both parties, ECF Nos. 11, 13, 14, 15, 16, Plaintiff's motion to remands is hereby GRANTED. Defendant *pro se*'s request for sanctions against Plaintiff and for other relief DENIED. Under 28 U.S.C. § 1446(a), removal from state to federal court is only proper "in the district court of the United States for the district and division within which [the state] action is pending." Here, the state action may only be removed to the United States District Court for the Northern District of Georgia (Gainesville Division), *See* 28 U.S.C. § 90(a)(1).

The Clerk of Court is directed to terminate the motions at ECF Nos. 11, 14, 16, mail a copy of this order to Defendant *pro se*, remand this case to the Lumpkin County Superior Court, and mail a certified copy of this order to the clerk of the Lumpkin County Superior Court.

SO ORDERED.

/s/ Analisa Torres

United States District Judge

Dated: April 12, 2018
New York, New York

ORDER OF THE
DISTRICT COURT OF NEW YORK
(AUGUST 10, 2018)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

17 Civ. 7644(AT)

Before: Analisa TORRES,
United States District Judge.

ANALISA TORIES, United States District Judge:

On May 4, 2018, Defendant moved for reconsideration of the Court's order of April 12, 2018. ECF No. 19. The motion is DENIED as untimely. *See* Local Rule 6.3 (requiring motions for reconsideration to be served within fourteen days of the Court's original determination). Even if it were timely, Defendant's arguments are meritless and fail to meet the high bar required to prevail on a motion for reconsideration. *Mallet v. Miller*, 438 F. Supp. 2d 276, 277 (S.D.N.Y. 2006).

The Clerk of Court is directed to terminate the motion at ECF No. 19, mail a copy of this order to Defendant *pro se*, and close the case.

SO ORDERED.

/s/ Analisa Torres

United States District Judge

Dated: August 10, 2018
New York, New York

ORDER OF THE
DISTRICT COURT OF NEW YORK
(NOVEMBER 6, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

17 Civ. 7644(AT)

Before: Analisa TORRES,
United States District Judge.

ANALISA TORRES, United States District Judge:

Haying received Plaintiff's motion to remand pursuant to 28 U.S.C. § 1447(c), ECU No. 11, it is hereby ORDERED that:

1. By November 22, 2017, Defendant shall file his opposition to the motion to remand, if at all.
2. By December 1, 2017, Plaintiff shall file her reply, if at all.

The Clerk of Court is directed to mail a certified copy of this order to Defendant pro se and the clerk of the Lumpkin County Superior Court.

SO ORDERED.

/s/ Analisa Torres

United States District Judge

Dated: November 6, 2017
New York, New York

LETTER MOTION:
REQUEST FOR EXTENSION OF TIME
AND ORDER OF THE DISTRICT COURT
OF NEW YORK DENYING MOTION
(NOVEMBER 3, 2017)

Nora Kalb Bushfield
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3128 Clairmont RD NE
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Letter Motion
Honorable Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street New York
New York 10007

Re: *DIANE SMITH CARUSO & as Heir-at-Law to the, Estate of Dorothy Lang Smith, Deceased"). NOEL L. SMITH, M.D.* U.S. District Court for the Southern District of New York Civil Action File No.: 17 Civ. 7644 (AT) *Requests for Extension of Time*

Dear Judge Torres:

This Letter Motion is a Request for Extension of Time made in writing and filed electronically on ECF, with a courtesy copy delivered to the Court by e-mail in compliance with. The S.D.N.Y. Local Rules and Elec-

tronic Case Filing Rules and Instructions, in accordance with Rule I(B) and (C) of your individual Practices in Civil Cases.

I am in receipt of your ORDER, Date Filed: 10/24/2017, granting Defendant's Motion for Reconsideration, ECF No.5, of the Court's order of October 13, 2017, ECF No. 4. Under 28 U.S.C. § 1447(c), Plaintiff has until November 6, 2017 to file a motion to remand on the grounds that removal is procedurally improper.

I have filed a Motion for Admissions Pro Hac Vice and anticipate my Motion for Admission being granted. However, the drafting and satisfying all requirements for inclusion is said Motion for Admission Pro Hac Vice has proven to be extremely time consuming. For example, I had to appear in person before the Clerk of the Supreme Court of Georgia to obtain my Certificate of Good Standing because their only means of transmission is by U.S. Postal Service. This required me to travel to downtown Atlanta in our infamous traffic to personally pick up my Certificate. In addition, the ECF reports the case as closed which is confusing.

I do not know when I might expect to receive notification of the status of my Motion for Admission Pro Hac Vice. Therefore, I am concerned that I will not be able to respond to the Court's request that I file a Motion to Remand by November 6, 2017.

This is the first and only request I have made for an extension of time in this case. I do not expect the Defendant to consent to this Motion due to the adversary history in this case.

Therefore, I request that the Court grant this Letter Motion by extending the time that I have to file a Motion to Remand in this case.

If you need additional information or have any questions, please contact me at your convenience.

Sincerely,

/s/ Nora Kalb Bushfield
Nora Kalb Bushfield, JD, MSW

DENIED. A motion for remand “must be made within 30 days after the filing of the notice of removal.” 28 U.S.C. § 1447(e). After 30 days, objections to removal “on the basis of any defect other than lack of subject matter jurisdiction,” *id.*, are waived, *Hamilton v. Aetna Life & Cas. & Co.*, 5 F.3d 642, 644 (2d Cir. 1993). Accordingly, the Court cannot extend the statutorily mandated time limit.

Plaintiff has until November 6, 2017 to move to remand. *See* ECF No. 6.

SO ORDERED.

/s/ Analisa Torres
United States District Judge

Dated: November 3, 2017
New York, New York

ORDER OF THE
DISTRICT COURT OF NEW YORK
(OCTOBER 24, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

17 Civ. 7644(AT)

Before: Analisa TORRES,
United States District Judge.

ANALISA TORIES, United States District Judge:

Defendant's motion for reconsideration, ECF No. 5, of the Court's order of October 13, 2017, ECF No. 4, is GRANTED.

Under 28 U.S.C. § 1447(e), Plaintiff has until November 6, 2017 to file a motion to remand on the grounds that removal is procedurally improper. *See Orden v. Cornell Univ.*, 243 F. Supp. 3d 287, 292 (N.D.N.Y. 2017) ("There is no provision of federal law which would permit a defendant to remove an action

to a federal court sitting in a district and division other than that where the, state court action is pending.") (quoting *Hoover v. Gershman Inv. Corp.*, 774 F. Supp. 60, 63 (D. Mass. 1991)).

Defendant shall send a copy of this order to Plaintiff by October 30, 2017. The Clerk of Court is directed to mail a certified copy of this order to Defendant *pro se* and the clerk of the Lumpkin County Superior Court.

SO ORDERED.

/s/ Analisa Torres
United States District Judge

Dated: October 24, 2017
New York, New York

ORDER OF THE
DISTRICT COURT OF NEW YORK
(OCTOBER 13, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

17 Civ. 7644(AT)

Before: Analisa TORRES,
United States District Judge.

ANALISA TORIES, United States District Judge:

Under 28 U.S.C. § 1446(a), removal from state to federal Court is only proper “in the district court of the United States for the district and division within which [the state action is pending.]” Here, the state action is pending in the Superior Court in Lumpkin County, Georgia, Defendant’s removal to the United States District Court for the Southern District of New York & therefore runs afoul of § 1446(a) The state action Way only be removed to the United States

District Court for the Northern District of Georgia.
(Gainesville Division). *See* 28 U.S.C. § 90(a)(1).

Accordingly, it is ORDERED that this case be remanded to the Lumpkin County Superior Court. The Clerk of Court is directed to mail a certified copy of this order to the clerk of the Lumpkin County Superior Court.

SO ORDERED.

/s/ Analisa Torres
United States District Judge

Dated: October 13, 2017
New York, New York

ORDER OF THE SECOND CIRCUIT DENYING
PETITION FOR REHEARING EN BANC
(JANUARY 11, 2019)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DIANE SMITH CARUSOS,
AS HEIR AT LAW TO THE ESTATE OF
DOROTHY LANG SMITH, DECEASED,

Plaintiff-Appellee,

v.

NOEL L. SMITH, M.D.,

Defendant-Appellant.

Docket No: 18-1204

Appellant Noel L. Smith, M.D., filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

/s/ Catherine O'Hagan Wolf
Clerk

CROSS-MOTION FOR ORDER DENYING
PLAINTIFF'S SELF-STYLED REMAND MOTION
AND SANCTIONING PLAINTIFF
AND/OR NORA BUSHFIELD, ESQ.
UNDER RULE 11 OF THE FED. R. CIV. P.
AND GRANTING OTHER APPROPRIATE RELIEF
(NOVEMBER 13, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

Docket No. 17 Civ. 7644(AT)

No Oral Argument Requested Motion
on Submission Only

Before: Hon. Analisa TORRES,
United States District Judge.

PLEASE TAKE NOTICE that pursuant to Rule 11
of the Fed. R. Civ. P. and upon filing the Affirmation
dated November 13, 2017 of Noel L. Smith, Defendant
pro se herein, and its supporting documents, annexed

hereto, a cross-motion shall be made in this United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007, Courtroom No. ___, on Friday December 15, 2017, at 9:30 AM: or any place or date and time thereafter as directed by the Court, for an ORDER,

DENYING WITH PREJUDICE Plaintiff's defective self-styled "MOTION TO REMAND ON GROUNDS THAT REMOVAL IS PROCEDURALLY IMPROPER;" and

SANCTIONING Plaintiff and/or her representative Nora Bushfield, ESQ., under Rule 11 of the Fed. R. Civ. P., and

ENJOINING Nora Bushfield from representing further Plaintiff Diane Smith Carusos in this Court until such time as she Would have been granted prior court leave to formally do so; and

GRANTING Defendant relief sought in defense MOTION TO REMOVE and/or defense MOTION FOR RECONSIDERATION, being on file with the Court; and

REASSIGNING this Case to another Judge of the Court in the event Honorable Analisa Torres would have decided to continue to improperly act as *de factor* co-counsel for Plaintiff Diane Smith Carusos herein; and

RETAINING Subject-Matter Jurisdiction of this Court over this Case, and

GRANTING Defendant a Final Judgment dismissing with prejudice Plaintiff Diane Smith Carusos' Complaint on the merit, and terminating her Civil Action against Defendant, Case No. 17-cv-342-MM,

in the Superior Court of Lumpkin County, State of Georgia; and

AUTHORIZING Defendant to file with *res judicata* and/or collateral estoppel effects the Dismissal Order with Prejudice of Plaintiff's instant proceeding with all Concerned state and federal courts in which Plaintiff might already have, or would have filed Any complaint or cause of action against Defendant herein to date; and

GRANTING Defendant the option of seeking a Judgment granting part or all the amount of damages set forth in defense Counterclaims, on file with the Court, in the event Plaintiff chooses not to default in this action but appear and/or answer Counterclaims, and/or raise any issue in this Court or any other court to protract further this proceeding pursuant to Rule 11 of the Fed. R. Civ. P.; and

GRANTING Defendant all other and further appropriate relief in the circumstances.

PLEASE TAKE FURTHER NOTICE, that opposition papers, if any, must be served upon Defendant and filed with the Court 14 days before the return date, and that this motion' will be made by submission, all oral argument waived, Defendant being not practicing attorney at law but acting *pro se* in this proceeding, and, except otherwise directed by the Court in writing, no appearance by any party will be required on the hearing date.

Respectfully Yours,

/s/ Noel L. Smith

Noel L. Smith, M.D., Defendant

Pro Se

325 Broadway, Suite 204

New York, NY 10007

(917) 565-5210

Dated: November 13, 2017

DEFENDANT NOEL L SMITH,
PRO SE'S AFFIRMATION IN SUPPORT OF
DEFENSE CROSS-MOTION FOR ORDER
DENYING PLAINTIFF'S SELF-STYLED
REMAND MOTION AND SANCTIONING
PLAINTIFF AND/OR NORA BUSHFIELD, ESQ.
UNDER RULE 11 OF THE FED. R. CIV. P.
APPROPRIATE RELIEF
(NOVEMBER 13, 2017)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE SMITH CARUSOS, as Heir-at-Law to
the Estate of Dorothy Lang Smith, Deceased,

Plaintiff,

v.

NOEL L. SMITH, M.D.,

Defendant.

Docket No. 17 Civ. 7644(AT)

No Oral Argument Requested Motion
on Submission Only

Before: Hon. Analisa TORRES,
United States District Judge.

Noel L. Smith, Defendant *pro se* herein, affirms under the penalty of perjury as follows:

1. I am Defendant in this removed proceeding that was self-styled *Diane Smith Carusos, as Heir-at-Law to the Estate of Dorothy Lang Smith, Deceased, Plaintiff vs. Noel L. Smith, M.D., Defendant*, Case No. 17-Cv-342-MM, in the Superior Court of Lumpkin County, State of Georgia.
2. As shown on court records, in September 2017 Plaintiff Diane Smith Carusos herein sued Defendant Noel Smith, M.D., herein in the Superior Court of Lumpkin County, State of Georgia, for alleged non-compliance with the terms of an alleged stipulation and agreement of the parties that had been supposedly signed in the Probate Court of Lumpkin County. [Note: This issue has been now confirmed by Nora Bushfield's Affirmation in support of Motion to Remand—On file with the Court].
3. Thereafter, Defendant had timely and duly complied with all the requirements set forth by 28 U.S.C. § 1441 and 1446 to remove the foregoing State Court action to this U.S. District Court. [See, Defendant's Notice of Removal and supporting documents on file with the Court.]
4. In or about October 13, 2017, this Court issued an Order stating that: "*Under 28 U.S.C. Section 1446(a), removal from state to federal court is only proper "in the district court of the United States for the district and division within which [the state] action is pending.*" [See, Court Order, Exhibit 1 to Motion—Emphasis added] And, as a result, the Court ordered that this proceeding be remanded to the

Superior Court of Lumpkin County. [See, Court Order, Exhibit 1 to Motion]

5. Defendant timely moved the Court for reconsideration upon my contention that this Court's said Order was erroneous as a matter of law, justice, due process, and judicial economy.

6. Within 24 hours of filing with the Court of Defendant's Motion for Reconsideration, and well before its return date of November 17, 2017, this Court GRANTED defense Motion for Reconsideration on October 24, 2017, and directed that "Under 28 U.S.C. § 1447(c), Plaintiff has until November 6, 2017 to file a motion to remand on the grounds that removal is procedurally improper." [EXHIBIT 2]

7. Undisputedly, by granting Defense motion for reconsideration this Court agreed that it has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332, to wit: Plaintiff being a citizen of Georgia while Defendant a citizen of New York.

8. The Court however shows sign of being confused regarding the difference between two following distinct legal concepts: (a) subject-matter jurisdiction and (b) venue. And, as such the Court issued its incorrect legal advice in aid of Plaintiff that she should file "*a motion to remand on the grounds that removal is improper procedurally.*" But she should do so on or before November 6, 2017, *i.e.* as a matter of law, plaintiff must file a motion to remand within 30 days following the removal that occurred on October 6, 2017. [EXHIBIT 2]

9. Notwithstanding the above, only on November 8, 2017 I received in the mail a copy of this Court Order dated November 6, 2017 directing that the Court

“(h)aving received Plaintiff’s motion to remand pursuant to 28 U.S.C. Sec. 1447(c), ECF No. 11, ordered that (1) By November 22, 2017 Defendant shall file his opposition paper, and (2) By December 1, 2017 Plaintiff shall file her Reply. [EXHIBIT 3]

10. This is therefore Defendant’s Opposition paper to Plaintiff’s purported “Motion to Remand,” and Defendant’s “Cross-Motion” for ancillary and/or additional relief duly set forth in the instant Notice of Cross-Motion.

11. First, it is of note that to date Plaintiff has failed to file any motion to remand as (improperly) suggested by the Court. (The suggestion is indeed improper because the Court may not as a matter of law and justice take side and provide legal advice to litigant or their counsel on how to practice law or analyze legal issue on their behalf, especially in this case Plaintiff is represented by her Georgia attorney at law, why Defendant is *pro se*.)

12. Second, only on or about November 5, 2017 Defendant received by email a copy of Nora Bushfield’s letter dated November 3, 2017 to your Honor. [EXHIBIT 4]

13. A review of the letter shows that (a) It is not a motion made by Plaintiff Diane Carusos and/or her attorney at law duly admitted to practice in this Court to remand the instant proceeding, and (b) It was only a private letter by a person not admitted to practice in this Court to personally advise a Judge having jurisdiction over this Case that due to her “insurmountable” difficulties to put herself in a position to represent Plaintiff Diane Carusos in this Court, this Court should have understood her personal

problems and extend time for her to move the court to remand the action when she would have been able to do so on behalf of Plaintiff.

14. With due respect, patently such letter is not a motion to remand this Case to the Court from which it was removed.

15. Third, as herein-above mentioned only on November 8, 2017 Defendant was served with this Court's Order dated November 6, 2017 directing that the Court "(h)aving received Plaintiff's motion to remand pursuant to 28 U.S.C. Sec. 1447(c), ECF No. 11, ordered that (1) By November 22, 2017 Defendant shall file his opposition paper, and (2) By December 1, 2017 Plaintiff shall file her Reply. [EXHIBIT 3]

**PLAINTIFF'S ALLEGED MOTION TO REMAND IS
DEFECTIVE AS A MATTER OF LAW AND SHOULD
BE DISMISSED AS A MATTER OF LAW**

16. A review of what the Court seems to refer to in its November 6, 2017 Order as "Plaintiff's Motion to Remand" [EXHIBIT 5] shows that it is defective on its face as a matter of law and must be dismissed for the following reasons.

17. First, even though it is labelled a "motion" there was no return date by which Defendant must answer or oppose.

18. Second, the affirmation in support of motion was not signed by plaintiff Diane Carusos or a person with power to sign it on her behalf.

19. Third, it was signed by Nora Bushfield, Plaintiff's Georgia attorney at law, who has admittedly disclosed to this Court that she is not admitted to practice

in this Court, not in any way in a foreseeable future.
[EXHIBIT 5]

20. Fourth, it was not served on Defendant on or before November 6, 2017, and until today Defendant has not received a true copy of the Motion.

21. On the face of the Certificate of Service duly signed by Nora Bushfield, who is not an attorney being admitted to practice in this Court, it is stated that: *"I hereby certify that on November 6, 2017, I electronically filed a MOTION TO REMAND ON GROUNDS THAT REMOVAL IS PROCEDUALLY [sic] IMPROPER with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the Defendant."*
[Page 7 of EXHIBIT 6]

22. The foregoing certification is incorrect as a matter of fact and law. Indeed, as a matter of law, Nora Bushfield, being not admitted to practice in this Court, had no permission to gain access to the Court's *CM/ECF system* to file or serve papers on parties in a case where she is neither a party nor licensed attorney for a party. By doing that either Nora Bushfield has intentionally or inadvertently violated the law in this matter of electronic filing. And, as such the service, if any, being performed by a person without proper authorization to do so is not valid, even had it been done as intended.

23. In the instant circumstances, actually the service of purported Motion to remand has never been performed by the Court's *CM/ECF system* on Defendant herein because I am a party *pro se* and barred by rules of the court not to gain access to its electronic filing system and more importantly no lawyer may use

the Court's *CM/ECF system* to serve me with any paper in this case. Indeed, this Court's November 6 2017 Order has been served on me by mail and I received it on November 8, 2017.

24. In any event, Defendant herein was not automatically served with an electronic copy of Plaintiff's motion to remand.

25. Also, to date Defendant herein has not received any hard copy of the alleged Motion to Remand, something that is consistent with Nora Bushfield's Certification of Service, which did not list Defendant among the parties being served with such hard copies, if any. [EXHIBIT 5, Page 7 & 8]

26. Viewing the foregoing, it is undisputedly established that there is no plaintiff's motion to remand as a matter of law.

**PLAINTIFF'S ALLEGED MOTION TO REMAND IS
MERITLESS AS A MATTER OF LAW AND SHOULD BE
DISMISSED AS A MATTER OF LAW**

27. In order to support motion to remand Nora Bushfield, who has no right to argue in this Court, contends that remand should be granted because Defendant's removal under 28 U.S.C. Section 1446(a), is procedurally defective.

28. However, in her Certification, Ms. Bushfield has completely failed to intelligently discuss the issue. She merely asserts in substance that there is no federal law allowing Defendant to remove a plaintiff's action to a federal court than the one in whose jurisdiction the state court from which the case to be removed is located. [EXHIBIT 5, P.5]

29. Indeed, the foregoing “argument” is meritless and must be rejected as a matter of law. Indeed, Ms. Bushfield has failed to dissect the difference between “Subject-Matter” of the Court with “Venue.” Indeed, while defendant may not move the state action to a federal court without Jurisdiction, defendant may always move it to a federal court of competent jurisdiction first, then the issue of venue shall be decided by the parties and by the Court.

30. The rule of law regarding remand as cited by Ms. Bushfield in her Certification is completely misplaced because it governs issue of venue of federal court that acquires subject-matter jurisdiction over the case being based on other grounds of subject-matter jurisdiction than Diversity Jurisdiction under 28 U.S.C. Sec. 1332.

31. In this case, the subject-matter jurisdiction of this Court over this case through Diversity Jurisdiction under 28 USC Sec. 1332 has been undisputed.

32. The issue of whether the parties herein should litigate in New York or Georgia became only one of venue, *i.e.* the location of the U.S. District Court of competent jurisdiction.

33. It is settled law that venue does not deprive a court of its subject-matter jurisdiction. The issue of proper venue depends on the sound discretion of the two or more concerned U.S. District Courts.

34. In this case, while plaintiff has absolutely failed to show any valid ground to sue Defendant in Georgia, defendant’s constitutional right to due process clearly dictates that since Plaintiff must sue Defendant in a U.S. District Court due to diversity of citizenship and that Defendant is undisputedly a citizen

of New York, while Plaintiff a citizen of Georgia, she must be doing so in this SDNY.

35. It is of note that in order to sue Defendant in Georgia State Court, instead of New York where Defendant resides, Plaintiff has made material misrepresentation of fact that Defendant had consented to accept jurisdiction of the Superior Court of Lumpkin County. It was a glaring lie for which Bushfield should be as sanctioned.

36. Therefore, it would be undisputedly grave error of law for this Court to agree with Plaintiff and remand this case to Georgia, where neither state court nor federal court would have subject matter jurisdiction over this action.

CONCLUSION

37. Viewing that the subject-matter jurisdiction of this Court over this case has been undisputedly established under 28 U.S.C. § 1332 and that the only rational venue of this proceeding is the district where defendant resides and was served with summons, Plaintiff's motion to remand, if any, must be denied, and Defendant should be granted all relief set forth in my instant Notice of Cross-Motion.

38. Another way to view this matter correctly may be simply put as follows. First, Plaintiff's motion to remand, if any, must be denied because it is in fact a motion for reconsideration of this Court October 24, 2017 Order granting Defendant's motion to reconsider this Court's October 13 2017 Order remanding the case to Georgia. Second, Plaintiff's motion for reconsideration must be denied because it only rehashed the same argument already made before but failed to point out

that the Court has overlooked some material facts and/or controlling legal authority in this matter, which if the Court had considered would have resulted in a different conclusions of law.

**GROUNDS SHOWING THAT DEFENDANT NOEL SMITH
SHOULD BE ALLOWED TO PROCEED *PRO SE*
ON SUBMISSION OF PAPERS WITHOUT
ORAL ARGUMENT OR COURT APPEARANCE**

39. The undersigned Noel Smith, M.D., defendant and movant herein is over 75 years of age. I am still a very busy practicing surgeon in good standing in Manhattan, New York. I have no financial means to afford a competent lawyer in this case. I am now relying on friends, who are retired attorneys at law helping me with ideas, and on paralegal services to type and prepare and serve these papers in accordance with common sense, and my Constitutional right to due process.

40. I believe that anything that can be said in open court can be put in writing with documents in support.

41. As such, I respectfully move this Court to honor my constitutional right to due process by allowing me to do all my motions) and opposition papers by submission, without neither court appearance nor oral argument.

42. Your affiant further respectfully requests that this Court issue an order to the Clerk of the Court to serve me promptly with all and any orders or papers or warnings or notices upon your affiant herein at my current address that is on file with the Court.

WHEREFORE, Defendant Noel L. Smith, M.D., order granting all relief duly respectfully applies to this Court for an set forth in my instant Notice of Cross-Motion, and/or granting other and further relief as the Court may deem just and proper in the premises.

/s/ Noel L. Smith
Noel L. Smith, Defendant
325 Broadway, Suite 204
New York, NY 10007

Dated: November 13, 2017