

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN GREGORY LAMBROS,

Plaintiff,

Civil Action No. 19-cv-1929 (TSC)

Vs.

Federative Republic of Brazil, et al.,

Defendants.

AFFIDAVIT FORM

**PLAINTIFF LAMBROS' OBJECTIONS TO DEFENDANT'S FEDERATIVE
REPUBLIC OF BRAZIL, et al.:**

**"MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANTS
THE FEDERATIVE REPUBLIC OF BRAZIL AND THE STATE OF RIO DE
JANEIRO OF THE FEDERATIVE REPUBLIC OF BRAZIL IN OPPOSITION
TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT
UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)" Filed on
June 14, 2021 (Document # 39, 39-1 and 39-3)**

AND

**"SUPPLEMENT TO MEMORANDUM OF POINTS AND AUTHORITIES
OF DEFENDANTS THE FEDERATIVE REPUBLIC OF BRAZIL AND THE
STATE OF RIO DE JANEIRO OF THE FEDERATIVE REPUBLIC OF BRAZIL
IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND
JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)"
Filed on June 15, 2021 (Document # 40, 40-1 and 40-2)**

1. COMES NOW, Plaintiff - Movant JOHN GREGORY LAMBROS, (Hereinafter "MOVANT"), Pro Se, and request this Court to construe this filing liberally. See, HAINES vs. KERNER, 404 U.S. 519 , 520-21 (1972).

2. In support of this request Plaintiff relies upon the record in this case and the following facts that are submitted in affidavit form herein. Therefore, Plaintiff restates and incorporates all pleadings, motions, exhibits, testimony and documents filed within this action. See, F.R.C.P. 10(c).

3. JOHN GREGORY LAMBROS, Movant/Plaintiff in the above-entitled action, stating in affidavit form, **OPPOSITION** to Defendant's "**MEMORANDUM OF POINTS AND AUTHORITIES...TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)**", Filed on June 14, 2021 (Document # 39, 39-1 and 39-3) **and** "**SUPPLEMENT TO MEMORANDUM OF POINTS AND AUTHORITIES.... TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)**", Filed on June 15, 2021 (Document # 40, 40-1 and 40-2), by Defendant's Attorneys at the law firm FOLEY HOAG LLP.

4. John Gregory Lambros declares under penalty of perjury:

5. I am the Plaintiff in the above entitled case.

6. Plaintiff - Movant Lambros **DENIES EACH AND EVERY MATERIAL ALLEGATION CONTAINED IN DEFENDANT'S** "**MEMORANDUM OF POINTS AND AUTHORITIES...TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)**", Filed on June 14, 2021 (Document # 39, 39-1 and 39-3) **and** "**SUPPLEMENT TO MEMORANDUM OF POINTS AND AUTHORITIES.... TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)**", Filed on June 15, 2021 (Document # 40, 40-1 and 40-2), except as hereinafter may be expressed and specifically admitted.

LEGAL STANDARDS

7. “Rule 59(e) permits a party to file a motion to alter or amend a judgment within twenty-eight days of the entry of that judgment. Fed. R. Civ. P. 59(e). Motions under Rule 59(e) are “disfavored,” and the moving party bears the burden of establishing “extraordinary circumstances” warranting relief from a final judgment. [Niedermeier v. Office of Baucus, 153 F. Supp. 2d 23, 28 \(D.D.C. 2001\)](#). Rule 59(e) motions are **“discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.”** [Firestone v. Firestone, 76 F.3d 1205, 1208 \(D.C. Cir. 1996\)](#) (internal quotation marks omitted).” See, **Chien v. U.S. Sec. Exch. Comm’n, Civil Action No. 17-2334 (CKK), United States District Court, District of Columbia. September 28, 2020. (emphasis added)**

8. Plaintiff Lambros **has met the standard for reconsideration here**. Plaintiff Lambros has identified **clear error and need to prevent manifest injustice** when he presented the following issue:

WHETHER THIS COURT HAD JURISDICTION AND/OR PLAINTIFF LAMBROS WAS PREJUDICED WHEN DEFENDANTS FILED NOTICE OF REMOVAL SIX HUNDRED AND TWENTY THREE (623) DAYS TOO LATE TO THIS COURT - TO SET ASIDE THE HONORABLE JUDGE FLORENCE YU PAN’S - SUPERIOR COURT OF THE DISTRICT OF COLUMBIA - ORDER OF DEFAULT AND OPPORTUNITY FOR PLAINTIFF TO ATTEND AN EX PARTE PROOF HEARING ON JULY 5, 2019. See, 28 U.S.C. 1446(b) (30-DAY TIME LIMIT)

9. Plaintiff Lambros supported the above issue with the U.S. Supreme Court case:

\$64,000.00 QUESTION: Plaintiff Lambros challenges whether this case was properly removable from the Superior Court of the district of Columbia to this Federal Court and whether the defendant followed proper procedures in removing the case. See, 28 U.S.C. 1446(b) (30-DAY TIME LIMIT)

ANSWER: The U.S. Supreme Court would respond that Defendants in this action **DID NOT** follow proper procedure when requesting removal to file a notice of removal within 30 days after receipt of the complaint - 28 U.S.C. § 1446(b)(1) - to this Federal Court.

See, **MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC. (97-1909) 526 U.S. 344 (1999)** - Available at:

<https://www.law.cornell.edu/supct/html/97-1909.ZO.html>

10. In addition, without listing all of the other cases from this District Court, Plaintiff Lambros offered an excellent overview of 28 U.S.C. § 1446(b)(1) by the Honorable **BERYL A. HOWELL**, Chief District Judge, (Dist. Court, Dist. of Columbia 2019) - the Chief District Judge for this Court, offered within:

Patterson v. HANSES, Civil Action No. 19-392 (BAH) (Dist. Court, Dist. of Columbia 2019)

[https://scholar.google.com/scholar_case?case=14233590799453154321&q=28+U.S.C.+1446\(b\)&hl=en&as_sdt=4,130,140&as_ylo=2017](https://scholar.google.com/scholar_case?case=14233590799453154321&q=28+U.S.C.+1446(b)&hl=en&as_sdt=4,130,140&as_ylo=2017)

“Under 28 U.S.C. § 1446(b)(1), the defendants had 30 days from "the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the

claim for relief upon which such action or proceeding is based" or 30 days from "the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter," to file the notice of removal. Section 1446 applies to cases such as this one removed under 28 U.S.C. § 1442. See 28 U.S.C. § 1446(b) (creating general rule that "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant"); *id.* § 1446(g) (creating a carve out from 28 U.S.C. § 1446(b)'s 30-day requirement for the subset of cases "removable under section 1442(a) . . . in which a judicial order for testimony or documents is sought or issued or sought to be enforced"). **Thus, based on the supplement to the notice of removal, containing the documents from the Superior Court record, the defendants appeared to have until February 6, 2019 to file the notice of removal in this Court, making the February 14, 2019 notice of removal untimely.**

Section 1446's 30-day deadline is not jurisdictional. [*Wasserman v. Rodacker*, 557 F.3d 635, 638 n.2 \(D.C. Cir. 2009\)](#); see also [*Brown v. Allied Home Mortgage Capital Corp.*, 588 B.R. 271, 276 \(D.D.C. Aug. 8, 2018\)](#) ("[A] procedural defect in removal . . . does not affect the federal court's subject matter jurisdiction."). Still, "[c]ourts in this circuit **have construed removal jurisdiction strictly, favoring remand where the propriety of removal is unclear.**" [*Ballard v. District of Columbia*, 813 F. Supp. 2d 34, 38 \(D.D.C. 2011\)](#); [*Peeters v. Mlotek*](#), No. 15-cv-835 (RC), 2015 WL 3604609, at *1 (D.D.C. June 9, 2015) ("**Because federal courts are courts of limited jurisdiction, the removal statute is to be strictly construed.**")" (emphasis added)

11. Plaintiff Lambros offered this Court a listing of cases supporting the Honorable **BERYL A. HOWELL**, Chief District Judge, (Dist. Court, Dist. of Columbia 2019) within Plaintiff Lambros' "**ADDENDUM TO: MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e) - Dated: May 25, 2021.**"

12. Plaintiff Lambros has **CLEARLY OUTLINED** clear error in this Court's prior ruling on this issue and explained how it **must be reconsidered to prevent manifest injustice**, as Defendants were served on September 13, 2017 and **requested removal** to this

Court on June 27, 2019. **Result: 653 days too late!** It is 653 days from the start date to the end date, end date included. Or 1 year, 9 months, 15 days including the end date. Or 21 months, 15 days including the end date.

PLAINTIFF'S RESPONSE TO DEFENDANT'S

“MEMORANDUM OF POINTS AND AUTHORITIES...TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(E)”, Filed on June 14, 2021 (Document # 39, 39-1 and 39-3)

MOTION OF DEFENDANTS - DOCUMENT 39 - TWELVE (12) PAGES IN LENGTH:

13. Page 1: Defendants state Plaintiff Lambros did not serve his Rule 59(e) motion to defendants. This is not true! Defendants received the motion on June 14, 2021. See, Defendant's "Supplement to Memorandum of Points and Authorities ..." Filed on June 15, 2021. (D.E. 40 at 1 and 2) (20 day delay due to U.S. Postal Service poor service)

14. Page 2: Defendants state that Plaintiff Lambros' Rule 59(e) is without merit. This is not true. Plaintiff has clearly identified clear error and a need to prevent manifest injustice. See, paragraphs 7 thru 12 above.

15. Page 3: Defendants state "On June 7, 2021, the Clerk docketed the Motion, which is dated May 25, 2021. D.E. 37. The Motion does not include a certificate of service. See id." This is not true! Plaintiff Lambros' Rule 59(e) motion to the Court - Clerk contained a CERTIFICATE OF SERVICE.

16. Page 4: Defendants state that Plaintiff Lambros failed to serve his May 25, 2021 Rule 59(e) Motion to Defendants. This is not true! See, Paragraph 13 above.

17. Page 7: Defendants state that Plaintiff's Rule 59(e) must be denied because he failed to meet the standard required to Amend or Alter a Judgment under Rule 59(e). This is not true! See, Paragraphs 7 thru 12 above.

18. Page 8: Defendants start addressing Plaintiff in a very unprofessional manner, stating: "Rather, Plaintiff **regurgitates his shopworn argument** that the 30-day time limit to file a notice of removal under 28 U.S.C. § 1446(b) expired because the Sovereign Defendants were supposedly served with the Complaint and Summons more than 30 days before removal. D.E. 37 at 4-5; D.E. 38 at 4-8. But Plaintiff offers no response to the fact that, as the Sovereign Defendants previously showed in their opposition to the motion to remand, Plaintiff never served those documents because service was not made in accordance with Brazilian law. Consequently, the 30-day removal period under § 1446(b) never began to run. See D.E. 11 at 10-13." **This is not true! See, Plaintiff Lambros' May 25, 2021 Rule 59(e) Motion: Paragraph 7 and 13:** (Please note that copy of the Brazilian Docket sheet as to Brazil's receipt of Plaintiff's Complaint and Summons was offered as EXHIBIT A)

"7. September 13, 2017: Defendants received a copy of Plaintiff's complaint in this action, according to the current Brazilian court docket sheets that are attached. Two (2) docket sheets are attached, one verifying process on the State of Rio de Janeiro - **Letter Rogatory 12537** and one verifying process on the Federal Government of Brazil - **Letter Rogatory 12540**. See, **EXHIBIT A**. (November 5, 2018, Letter from Celeste Ingalls, Director of Operations, Crowe Foreign Services to the Honorable Florence Y. Pan, Superior Court of the District of Columbia, Civil Division)"

Again, Plaintiff only has to offer the Supreme Court case that is on point to prove he DOES NOT "**regurgitates**" on this point of law:

The U.S. Supreme Court would respond that Defendants in this action DID NOT follow proper procedure when requesting removal to file a notice of removal within 30 days after receipt of the complaint - 28 U.S.C. § 1446(b)(1) - to this Federal Court.

See, **MURPHY BROTHERS, INC. V. MICHETTI PIPE STRINGING, INC.**
(97-1909) 526 U.S. 344 (1999) - Available at:

<https://www.law.cornell.edu/supct/html/97-1909.ZO.html>

CONCLUSION:

19. Plaintiff Lambros requests this Court to vacate the May 6, 2012 “ORDER” and “MEMORANDUM OPINION”.

20. Plaintiff Lambros requests this Court to **return this action** to the Superior Court Of the District of Columbia, Case No. 2017-CA-000929-B. JUDGE: Florence Y. Pan.

21. I JOHN GREGORY LAMBROS states the above information is true and correct under the penalty of perjury, as per Title 28 USC 1746.

EXECUTED ON: June 24, 2021

John Gregory Lambros, Pro Se

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