

In the
UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRAND ENGAGEMENT NETWORK, INC. }
Plaintiff, }
v. } Civil Action No. 3:25-CV-00114-S
RALPH WRIGHT BREWER III, *et. al.*, }
Defendants. }
}

**DEFENDANT FITZPATRICK'S RESPONSE IN OPPOSITION TO
AFG'S MOTIONS TO REMAND**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS:

COMES NOW, Defendant Maurice Fitzpatrick, (hereinafter “Fitzpatrick”), pro se, and reserving the right to supplement, files this Defendant Fitzpatrick's Response In Opposition To AFG's Motions To Remand, in opposition to Dkt #'s 40 and 41 where AFG and its counsel seeks remand of the removed state cases to escape federal scrutiny over their fraudulent and retaliatory conduct, including whistleblower retaliation, securities fraud, insider trading, market manipulation, weaponization and abuse of the Texas state court system. Incorporating by reference as if stated fully herein, all his previous filings (Dkt #'s 21, 22, 28, 30, 32, 33, 34, 35, 36, 37, 39, all their respective exhibits), Fitzpatrick states as follows:

I. INTRODUCTION

1. The motions for remand are **premature** as the Court has not yet ruled on Fitzpatrick's *Motion to Intervene* (Dkt # 21), *Motion to Proceed In Forma Pauperis* (Dkt # 22) or the underlying *Notices of Removal* for the state cases removed from Tarrant County (Case No. 017-352358-24) and Denton County (Case No. 24-11876-442), included as exhibits A and B to Fitzpatrick's *Motion to Intervene* (Dkt # 21), respectively.
2. The Court must first determine whether Fitzpatrick has a right to intervene or be permissively intervened, and whether federal jurisdiction exists **before** considering remand.
3. The removed cases involve substantial federal questions under 28 U.S.C. § 1331, civil rights removal jurisdiction under 28 U.S.C. § 1443, Racketeer Influenced and Corrupt Organizations Act (RICO) violations under 18 U.S.C. §§ 1962(a)-(d), whistleblower and retaliation claims under the Sarbanes-Oxley (Sox) and Dodd-Frank Acts.
4. Because the issues raised are inherently federal and concern constitutional rights and violations of federal law, which this Court retains exclusive jurisdiction, remand would impair Fitzpatrick's ability to seek redress for federal claims.

II. THE MOTIONS FOR REMAND ARE PREMATURE

5. The notices of removal were properly filed. Pursuant to 28 U.S.C. § 1446, removal was timely filed in **both** state cases, and this Court has yet to issue any ruling regarding the removal.

6. The federal court has not yet docketed the removed cases. The Notices of Removal have not yet been fully processed and finalized by this Court. Therefore, the motion to remand is premature.

7. The Court Must Rule on the Motion to Intervene First:

- a) Fitzpatrick has filed a *Motion to Intervene* based on his direct legal and financial interests in the litigation, which arise from fraudulent business conduct, retaliation, and RICO violations committed by Plaintiff, other named Defendants and their co-conspirators not yet named.
- b) The Court must determine whether Fitzpatrick has standing to participate before it can address jurisdictional or procedural challenges related to remand.

III. FEDERAL JURISDICTION IS PROPER

8. The claims in the removed cases directly implicate federal law, under federal question jurisdiction (28 U.S.C. § 1331), including:

- a) Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. §§ 1962(a)-(d))
- b) Whistleblower Protection and Retaliation under the Sarbanes-Oxley Act (18 U.S.C. § 1514A) and Dodd-Frank Act (15 U.S.C. § 78u-6)
- c) First and Fourteenth Amendment violations (retaliation and obstruction of justice).

9. The claims in the removed cases directly implicate federal law, under civil rights removal jurisdiction (28 U.S.C. § 1443):

- a) Removal is appropriate under 28 U.S.C. § 1443(1) because Fitzpatrick is deprived of rights under federal whistleblower protection laws, free speech, due process, and equal protection under the Constitution.
- b) The state court proceedings have failed to afford Fitzpatrick adequate due process to assert these rights.

10. Federal jurisdiction is not discretionary in this case, it is mandatory. The Supreme Court has consistently held that when a case presents a federal question under 28 U.S.C. § 1331, a federal court must adjudicate it. (*Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983)). Courts do not have discretion to remand a case where exclusive federal jurisdiction applies. Whistleblower retaliation under Dodd-Frank (15 U.S.C. § 78u-6(h)) and securities fraud under SEC Rule 10b-5 fall squarely within exclusive federal jurisdiction.

11. Further, **28 U.S.C. § 1441** explicitly allows removal of **any civil action arising under the Constitution, laws, or treaties of the United States**. AFG's argument for remand **ignores this statutory directive**, attempting to manipulate jurisdiction by **artificially framing the case as purely state law** when it clearly presents substantial federal issues.

12. The allegations against AFG directly implicate federal statutes, making federal jurisdiction compulsory. Fitzpatrick's whistleblower retaliation claims fall under:

- a) Sarbanes-Oxley Act (18 U.S.C. § 1514A) – Prohibiting retaliation against employees for reporting securities violations.
- b) Dodd-Frank Act (15 U.S.C. § 78u-6(h)) – Providing exclusive federal jurisdiction for whistleblower retaliation claims related to securities fraud.
- c) Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c)) – Addressing fraud conducted as part of a racketeering enterprise.

13. Even if some claims arise under **state law**, the presence of **substantial federal issues** ensures that **federal jurisdiction applies**. Under the **Grable doctrine** (*Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005)), a state-law claim can arise under federal law if:

- a) The case presents a substantial federal issues.

b) The federal court's jurisdiction is necessary to maintain uniformity in federal law enforcement.

c) Allowing state adjudication would undermine federal regulatory interests.

14. Courts have repeatedly held that securities law violations and whistleblower retaliation under these statutes are exclusively federal matters that cannot be remanded to state court. See *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016).

IV. CONSOLIDATION AND JUDICIAL ECONOMY

15. Consolidation with the Pending Federal Case (3:25-CV-00114-S):

- a) The cases removed from Tarrant and Denton Counties are **directly** related to the pending federal case.
- b) Fitzpatrick has moved for consolidation to ensure efficiency, prevent conflicting rulings, and streamline adjudication of federal claims.

16. Judicial Economy Supports Retaining Federal Jurisdiction:

- a) Keeping the removed cases in federal court avoids duplication of proceedings and ensures the federal claims are adjudicated where they belong, in federal court and in this venue.

V. IMPACT OF ATTORNEY AND PARTY MISCONDUCT ON MOTION TO REMAND ANALYSIS

17. When a party moving for remand is engaged in **misconduct** and **whistleblower retaliation**, the legal analysis for removal vs. remand shifts in significant ways such that key removal doctrines could be affected by **bad faith**, **retaliation**, or **legal misconduct** by AFG and its attorneys, Mark Hill and others of the Law Firm of Scheef & Stone LLP.

VI. OVERARCHING LEGAL PRINCIPLES IMPACTING REMAND WHEN BAD FAITH EXISTS

A. Fraudulent Joinder and Abuse of State Court Proceedings

18. If AFG used the Denton County lawsuit as a retaliatory tool against Fitzpatrick, federal courts may disregard procedural defects, if any exist, and retain jurisdiction.

19. Fraudulent joinder doctrine applies when parties are improperly added solely to defeat federal jurisdiction. See *Boone v. Citigroup, Inc.*, 416 F.3d 382, 388 (5th Cir. 2005)

20. If the joinder of a party is fraudulent, the federal court may disregard procedural defects in removal. See *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005)

21. If AFG's Denton County case was designed to suppress whistleblower speech, the federal court could ignore minor procedural defects and retain jurisdiction.

22. AFG's attempt to litigate in state court is a textbook example of fraudulent joinder. Courts apply the fraudulent joinder doctrine when a party adds or structures claims solely to prevent federal jurisdiction. *Boone v. Citigroup, Inc.*, 416 F.3d 382, 388 (5th Cir. 2005).

23. In this case, AFG:

- a) Filed a state action despite knowing the core claims implicated federal law.
- b) Omitted key federal securities fraud and whistleblower allegations from its state court petition to avoid federal oversight.
- c) Used the state case as a retaliatory tool to suppress whistleblowing and block Fitzpatrick from accessing federal remedies.

24. Because fraudulent joinder prevents improper remand, the court must retain jurisdiction. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303 (5th Cir. 2005).

25. AFG's tactical use of state court litigation is a well-documented method of retaliatory jurisdictional manipulation. The Supreme Court has ruled that courts must reject procedural gamesmanship aimed at defeating federal oversight. See *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998).

26. Here, AFG:

- a) Omitted material facts in its state petition to give the false impression that no federal issues exist.
- b) Filed an ex parte TRO in state court to create a procedural roadblock against Fitzpatrick's intervention and removal rights.

27. These tactics violate the bad-faith litigation doctrine, which allows federal courts to reject remand and retain jurisdiction.

B. The Complete Preemption Doctrine

28. Courts have recognized that certain federal statutes preempt state-law claims, making remand improper.

29. If AFG's retaliation implicates federal securities laws (SEC Rule 10b-5) or whistleblower protections (Dodd-Frank, 15 U.S.C. § 78u-6(h)), a state court **lacks jurisdiction**, and **removal is automatically valid**.

30. When federal law completely preempts a state claim, remand is improper. See *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003)

31. Federal securities claims must be adjudicated in federal court. See *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016)

32. If Fitzpatrick's whistleblower retaliation claims fall under federal securities laws, remand is improper, and the case must remain in federal court.

C. The "Artful Pleading" Doctrine and Bad-Faith Litigation

33. Courts scrutinize cases where a plaintiff artfully pleads around federal law to avoid removal.

34. If AFG deliberately omitted material federal issues (e.g., securities fraud) from its state court filings, this strengthens the basis for removal.

35. Plaintiffs cannot avoid removal by strategically omitting federal claims. See *Rivet v. Regions Bank of Louisiana, F.S.B.*, 200 F.3d 816 (5th Cir. 1999)

36. A case arises under federal law if a substantial federal issue is present, **even if** the plaintiff attempts to frame it as a state-law claim. See *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 (1983)

37. If AFG omitted key federal law violations (securities fraud, whistleblower retaliation) from its state cases to avoid federal review, the federal court may disregard AFG's arguments for remand.

38. Fitzpatrick respectfully requests an expedited hearing on:

- a) Motion to Intervene (Dkt. #21)
- b) Notices of Removal (Exhibits A and B to Dkt. # 21)
- c) Motions for Judicial Notice (Dkt. #'s 35, 36, 37, and 39)
- d) Motions for Remand (Dkt. #40, #41)

39. Before any ruling on remand, the Court must resolve these matters to avoid procedural unfairness.

AFG's Own Case Law Citations Change When Bad Faith and Retaliation Exist

40. The presence of retaliation and misconduct drastically shifts how certain cases apply. The holdings of AFG's own case law citations in their Motion for Remand (Dkt # 40 and 41), change in light of AFG's and their legal counsel's misconduct. See Table 1 below.

Case	Original Holding	How It Changes If AFG and/or their counsel Engaged in Retaliation/Misconduct
Albonetti v. GAF Corp. Chem. Group (1981)	Strict construction of removal statutes, favoring remand.	If AFG used the state court to retaliate, federal courts can overlook procedural defects and retain jurisdiction.
Avitts v. Amoco Prod. Co. (1997)	Federal jurisdiction must be evident in the plaintiff's complaint.	If AFG omitted federal securities claims from the complaint, remand is improper.
Beiser v. Weyler (2002)	Removal is valid if federal claims are not frivolous.	If Fitzpatrick's RICO/securities fraud claims are valid, removal must stand.
Beneficial Nat'l Bank v. Anderson (2003)	Federal law preempts state law in certain areas.	If Fitzpatrick's claims involve SEC violations, federal court has exclusive jurisdiction.
Bernhard v. Whitney Nat'l Bank (2008)	Federal jurisdiction cannot be based on a defense.	If AFG fraudulently omitted federal issues, this case supports removal.
Boone v. Citigroup, Inc. (2005)	Fraudulent joinder bars remand.	If AFG used state court proceedings as a weapon, removal is proper.
Bosky v. Kroger Tex., LP (2002)	Timing of removal depends on when removability is first ascertainable.	If Fitzpatrick removed the case upon learning of securities fraud, timing arguments are irrelevant.
Collin County v. Siemens (2007)	Improper venue should be transferred, not remanded.	If venue is improper, AFG cannot use this argument to force remand.
Franchise Tax Board (1983)	A federal defense alone does not create federal jurisdiction.	If AFG omitted federal securities law violations, removal remains proper.
Garcia v. Koch Oil (2003)	The "voluntary-involuntary" rule favors remand.	If AFG manipulated the case to block removal, courts may retain jurisdiction.
Guillory v. PPG Indus. (2005)	Improper joinder bars remand.	If AFG engaged in procedural manipulation, remand is improper.
Howery v. Allstate (2001)	The burden is on the removing party.	Fitzpatrick can meet this burden by showing retaliation-based legal maneuvers.
In re Hot-Hed Inc. (2007)	Third-party claims don't create federal jurisdiction.	If whistleblower retaliation is central, removal is valid.
Johnson v. Heublein (2000)	The removal clock starts when removability is clear.	If AFG concealed federal claims, Fitzpatrick's removal remains timely.
Manguno v. Prudential (2002)	Doubts favor remand.	Bad faith by AFG shifts the balance toward retention in federal court.
Polizzi v. Cowles Magazines (1953)	Venue is controlled by the removal statute.	If venue is improper, transfer, not remand, is appropriate.
Rivet v. Regions Bank (1999)	The artful pleading doctrine applies when federal issues are concealed.	If AFG strategically omitted federal claims, removal is proper.
Schulz v. Amalgamated Mgmt. (1999)	Strict construction favors remand.	Whistleblower retaliation alters the analysis in favor of removal.

Shamrock Oil & Gas Corp. v. Sheets (1941)	Removal statutes are strictly construed.	Retaliation and bad faith override procedural strictness.
Smith v. Baker Hughes (2001)	Removal requires a federal claim on the face of the complaint.	If AFG omitted securities fraud claims, removal is valid.

Table 1

VII. FITZPATRICK REQUESTS A STAY IF NECESSARY

41. If the Court is Inclined to Consider Remand, Fitzpatrick requests that the Court first:

- a) Stay any decision on remand until it rules on the *Motion to Intervene*.
- b) Set a hearing to determine whether federal jurisdiction is proper before remand is considered.

VIII. CONCLUSION

42. The artful pleading doctrine applies where AFG manipulated pleadings to intentionally skirt around federal jurisdiction.

43. Venue defects require transfer, not remand. Transfer in this case defies judicial efficiency.

44. Bad-faith state court proceedings provide grounds for overriding strict removal rules.

45. AFG and its attorneys cannot exploit state courts to retaliate against or sustain retaliation against a whistleblower and then argue for remand to avoid federal scrutiny.

IX. PRAYER FOR RELIEF

WHEREFORE, Defendant Fitzpatrick respectfully requests that this Court:

1. Take Judicial Notice of AFG's and their counsel's continuing conduct.
2. Schedule an expedited hearing on the following at the earliest available date:
 - a. *Motion to Proceed In Forma Pauperis* (Dkt # 22)
 - b. *Motion to Intervene* (Dkt #21)
 - c. *Notices of Removal* and Consolidation (Dkt #21, Exhibits A and B)

- d. *Motions for Judicial Notice* (Dkt #'s 35, 36, 37, and 39)
- e. *Defendant AFG's Motions for Remand* (Dkt #'s 40 and 41) and *Fitzpatrick's Response In Opposition to Motions to Remand* (Dkt # 42).
3. Deny AFG's argument(s) for remand of both state cases in their entirety.
4. Deny the AFG Motions for Remand (Dkt #'s 40 and 41) and retain jurisdiction over the removed cases.
5. Grant Fitzpatrick's *Motion to Intervene*, the relief requested therein, officially recognize Fitzpatrick's party status, and allow Fitzpatrick to participate fully in the ongoing litigation including leave to finalize and file his official Complaint against Plaintiff BEN, original named Defendants, and other co-conspirators.
6. Finalize the removal process for both cases and consolidate them with the existing federal case (3:25-CV-00114-S).
7. Alternatively, stay any remand proceedings until the Court has ruled on Fitzpatrick's *Motion to Intervene* and federal jurisdictional issues.
8. Issue Rule 11 sanctions against AFG for filing pleadings designed to deceive the Court regarding jurisdictional facts.
9. Sanction attorneys Mark Hill and any other attorney at Scheef & Stone LLP who aided Mark Hill in abusing legal proceedings and engaging in retaliation against Fitzpatrick.
10. Refer AFG's attorneys for possible disciplinary action due to their role in obstructing Fitzpatrick's rights and federal oversight.
11. Enter an order disqualifying Mark Hill and any other attorney at Scheef & Stone LLP who aided Mark Hill in misconduct, unethical conduct, violations of rules of professional conduct, from participating any further in this litigation.
12. Award attorney's fees and costs to Fitzpatrick for defending against AFG's improper lawsuits, motions, procedural delays and obstruction.
13. Grant such other and further relief as the Court deems just and proper.

Courts have repeatedly held that remand motions filed in bad faith warrant sanctions. See *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). Fitzpatrick respectfully requests that the Court hold AFG and its legal counsel accountable for its improper conduct and the substantial harm it has caused him.

Dated: March 14, 2025

Respectfully submitted,

/s/ Maurice Fitzpatrick

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CERTIFICATE OF SERVICE

Defendant Fitzpatrick hereby certifies that a copy of the foregoing, *Defendant Fitzpatrick's Response In Opposition To AFG's Motions To Remand*, was served upon the attorneys of record of all parties to the above cause through the Court's CM/ECF e-filing system on March 14, 2025.

Dated: March 14, 2025

Respectfully submitted,

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