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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RENATO M. BRITO,

PLAINTIFF,

VS.

**WORLD AUTO GROUP; NISSAN
WORLD, LLC, TOM PICCOLO, JOHN
DOES 1-10, AND XYZ CORP. 1-10,**

Defendants.

CIVIL ACTION NO.:

**NOTICE AND PETITION OF MOTION
TO REMAND TO SUPERIOR COURT
OF NEW JERSEY, UNION COUNTY,
LAW DIVISION**

Returnable: July 28, 2003

Plaintiff, Renato M. Brito (“Brito” or “Plaintiff”), by way of this Notice and Petition of Motion to Remand, opposes defendants’ petition seeking the removal of his Complaint filed in Superior Court of New Jersey, Union County, Law Division brought by Defendants, World Auto Group; Nissan World, LLC (“Nissan World”), Tom Piccolo (“Piccolo”), John Does 1-10, and XYZ Corp. 1-10 (hereinafter collectively the “Defendants”) for the following reasons:

1. Defendants seek removal of the entirety of Plaintiff’s Complaint, which was properly filed in Superior Court of New Jersey, Union County, Law Division, pursuant to 28 U.S.C. § 1441(b).
2. Plaintiff received defendants’ petition on June 26, 2003.
3. Exhibit “2” to defendants’ petition reflects that plaintiff’s Complaint enumerates 7 different causes of action to include the following: (1) a violation of Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58 (1980); (2) a violation of the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, *et seq.*; (3) a violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et seq.*; (4) a violation of the New Jersey Worker’s Compensation Statute, N.J.S.A. 34:15-1 *et seq.*; (5) a violation of the New Jersey Wage and Hour Law, N.J.S.A.

34:11-56a *et seq*; (6) a violation of the Family Medical Leave Act, 29 U.S.C. § 2651(b) *et seq*; and (7) tortious interference with an employee's reasonable expectations.

4. Defendants omit the fact from their application that only one of the seven counts reflects a federal cause of action.
5. Further, when one examines the Complaint, it is easily discernable that plaintiff's Complaint is predominated by non-federal questions. The action centers around retaliatory actions taken by defendants following plaintiff's application for worker's compensation benefits. Thus, in accordance with 28 U.S.C. § 1441(c), the action should not be removed as the State law predominates the action.
6. However, what gives rise to plaintiff's request for fees and costs is the fact that plaintiff's Complaint clearly sets forth a cause of action under the New Jersey Worker's Compensation Statute, N.J.S.A. 34:15-1 *et seq*
7. The rules cannot be more clear in specifically disallowing the action filed by defendants in designating as a nonremovable action, "A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States." 28 U.S.C. § 1445(c).
8. Thus, plaintiff requests the attorneys' fees and costs associated with filing this Notice and Petition to Remand. 28 U.S.C. § 1447(c).

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WHEREFORE, Defendant respectfully requests that the within action be remanded to the Superior Court of New Jersey, Law Division, Union County.

Respectfully submitted,

LAW OFFICES OF TY HYDERALLY, PC
Attorneys for Plaintiff

By:

Ty Hyderally, Esq. (TH 6035)

DATED: June 26, 2003

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