

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

BORIS GARCIA MENIER,

CASE NO.
JUDGE

Plaintiff,

vs.

MARLINS TEAMCO LLC and
MIAMI MARLINS LP,

Defendants.

NOTICE OF REMOVAL

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA:

Defendants, MARLINS TEAMCO LLC and MIAMI MARLINS LP (collectively referred to as Defendants), hereby give notice of removal of an action pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, styled *Boris Garcia Menier v. Marlins Teamco LLC and Miami Marlins LP*, Case No. 2018-011287 to the United States District Court for the Southern District of Florida, Miami Division, being the district and division within which that action is presently pending. As grounds for the removal, Defendants state as follows:

Introduction

1. On or about April 9, 2018, Plaintiff filed a Complaint with the 11th Judicial Circuit in and for Miami-Dade County, Florida alleging claims for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. §§201-219 (“FLSA”).

2. On May 3, 2018, both Defendants were served with the Complaint in this action.

This is the only pleading Plaintiff has served on Defendants in this action.

3. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

4. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Composite Exhibit A are copies of Plaintiff's Complaint and all state court process, pleadings, and orders served upon Defendants or maintained in the state court civil action.

5. This Notice is filed within thirty (30) days of Defendants having been served with the Complaint. *See* 28 U.S.C. § 1446(b).

6. All Defendants, through their undersigned counsel, join in and consent to the removal of this action.

Plaintiff's Complaint Raises a Substantial Question of Federal Law

7. Title 28 U.S.C. § 1331 states that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." *See* 28 U.S.C. § 1331. Title 28 U.S.C. § 1441(a) further states that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant" *See* 28 U.S.C. § 1441(a). Thus, federal question jurisdiction is triggered where a federal question is presented on the face of a plaintiff's complaint. *See, e.g., Kemp v. Int'l Bus. Machines Corp.*, 109 F.3d 708, 712 (11th Cir. 1997).

8. Plaintiff's Complaint alleges violations of the FLSA. Complaint at ¶¶ 1-2, 55-64. Specifically, Plaintiff claims he was not compensated "at the proper overtime rate for hours worked in excess of forty hours per week." *Id.* at ¶13.

9. Plaintiff, on the face of his Complaint, seeks relief based upon claims arising from federal law. Accordingly, this Court has original jurisdiction of this case under 28 U.S.C. § 1331, and this action is removable from state court pursuant to 28 U.S.C. § 1441(a).

The Court Has Supplemental Jurisdiction Over Plaintiff's State Law Claim

10. In the Complaint, Plaintiff also alleges claims against Defendants for breach of contract, quantum meruit, and unjust enrichment arising from Defendants' purported failure to pay Plaintiff overtime compensation. Plaintiff's pendent state law claims are also properly removable to federal court under this Court's supplemental jurisdiction. Pursuant to 28 U.S.C. § 1367(a), "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

11. Here, Plaintiff's state and federal claims "derive from a common nucleus of operative fact," *Mineworkers v. Gibbs*, 383 U.S. 715, 725 (1966), namely, Plaintiff's claim that he is entitled to overtime compensation during his employment with Defendants. *See* Plaintiff's Complaint, attached as Composite Ex. A. As the Court has supplemental jurisdiction over Plaintiff's state law claims, those claims are properly removed to this Court. *See, e.g., Castellanos v. Starwood Vacation Ownership, Inc.*, 2015 WL 403274, at *3 (M.D. Fla. Jan. 8, 2015) (exercising supplemental jurisdiction in FMLA case over state law discrimination and retaliation claims).

12. Copies of this Notice of Removal and a separate State Court Notice of Removal have been filed with the Clerk of the Circuit Court of the 11th Judicial Circuit and served on Plaintiff's counsel.

13. This Notice of Removal is signed by undersigned counsel pursuant to Fed. R. Civ. P.

11.

WHEREFORE, Defendants, MARLINS TEAMCO LLC and MIAMI MARLINS LP, give notice that the above-styled case now pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, is removed therefrom to this Court.

Respectfully submitted,

s/ Ingrid H. Ponce

INGRID H. PONCE

Florida Bar No.: 166774

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 1, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System. I further certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the below Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

s/Ingrid H. Ponce

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