

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Daniel Carrion, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

American Concrete Service, Inc.,

Defendant.

CASE NO.: _____

NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT

COMES NOW Defendant, American Concrete Service, Inc. (hereinafter “Defendant”), by and through its undersigned legal counsel, pursuant to 28 U.S.C. §§ 1441 and 1367, and hereby removes this action from the Court of Common Pleas in and for Spartanburg County, South Carolina, to the United States District Court for the District of South Carolina, Spartanburg Division, and in support of such removal states as follows:

1. This action was commenced in the Court of Common Pleas, County of Spartanburg, on February 23, 2015, as Case No. 2015-CP-42-782, and is now pending therein. Thus, venue in this Court is proper pursuant to 28 U.S.C. § 1441(a).

2. Defendant accepted service of Plaintiff’s Summons and Complaint in this action on May 18, 2015. Thus, Defendant’s Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), as Defendant is filing the same within 30 days of service of the Summons and Complaint.

3. The events alleged by Plaintiff giving rise to his claim allegedly occurred in Spartanburg County, South Carolina, and Defendant’s principle place of business is located in

Spartanburg County, South Carolina. Venue properly lies in the United States District Court for the District of South Carolina, Spartanburg Division as the district and division embracing the Court of Common Pleas of Spartanburg County pursuant to 28 U.S.C. § 1441(a) .

4. Under 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendant are attached with removal papers as Exhibit A.

5. Under 28 U.S.C. § 1446(d), written notice of the filing of this Notice will be served on the Plaintiff, the only adverse party at this time, and a copy of this Notice will also be filed with the Court of Common Pleas for the Seventh Judicial Circuit, South Carolina.

Federal Question Jurisdiction

6. This action is properly removable to federal court because Plaintiff's Complaint presents a federal question pursuant to 28 U.S.C. § 1331, inasmuch as Plaintiff alleges a violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*, and specifically states intention to proceed under 29 U.S.C. § 216(b), the collective action provision of the FLSA, which are laws of the United States.

7. Therefore, removal is appropriate pursuant to 28 U.S.C. § 1441(a).

8. Plaintiff's state law claim under the South Carolina Payment of Wages Act, pled under S.C. R. Civ. P. 23, is subject to the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367.

WHEREFORE, on the basis of the foregoing, Defendant respectfully submits that removal of this action from the Court of Common Pleas in the Seventh Judicial Circuit, Spartanburg County, to this Court is proper and prays that the Court of Common Pleas, Seventh Judicial Circuit, Spartanburg County proceed no further with Case No. 2015-CP-42-782, and that

said action be removed to the United States District Court for the District of South Carolina, Spartanburg Division.

Dated this the 17th day of June, 2015.

Respectfully submitted,

s/L. Grant Close III

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