

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

TOMAS PAGAN, and other similarly situated
non-exempt employees,

Plaintiff,

v.

BH MANAGEMENT SERVICES, LLC, a
Foreign Limited Liability Company and HARRY
BOOKEY, Individually

Defendants.

_____ /

NOTICE OF REMOVAL

COMES NOW, Defendant, BH MANAGEMENT SERVICES, LLC (“BH”) by and through undersigned counsel, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, hereby files this Notice of Removal of the above-captioned matter from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No.: CACE-17-023527. As grounds therefore, Defendants shows the Court as follows:

1. State Court Action

Plaintiff, TOMAS PAGAN, (“Plaintiff”), initiated an action on his own behalf and on behalf of other similarly situated non-exempt employees, that is currently pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida styled *Tomas Pagan, and other similarly situated non-exempt employees v. BH Management Services, LLC, a Foreign Limited Liability Company and Harry Bookey, Individually*, and designated as Case No.: CACE-17-023527 (the “State Court Action”). Services of Process of State Court Action was made on BH on or about January 16, 2017, and thus removal is timely.

2. Statement of Case

Plaintiff claims that Defendants have violated the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* (the “FLSA”). *See*, Complaint, attached hereto as **Exhibit “A”** at ¶¶17-31. The purported claims arise and stem from Plaintiff’s former employment with BH, which concluded in October of 2017.

3. Basis for Removal Jurisdiction

Removal of the State Court Action to the United States District Court, Southern District of Florida is justified pursuant to 28 U.S.C. §§1331 and 1441(a). Federal questions are raised because of Plaintiff’s allegations that Defendants violated the Fair Labor Standards Act, 29 U.S.C. § 208, *et seq.* (“FLSA”), which arises under the laws of the United States. *See generally*, Ex. A. Whether a claim arises under federal law so as to confer federal question jurisdiction under §1331 is governed by the well-pleaded complaint rule. Under this doctrine, “federal jurisdiction exists...when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

As stated above, removal to the United States District Court is proper because the face of Plaintiff’s Complaint alleges claims arising under the law(s) of the United States, specifically, the FLSA. Claims under the FLSA are civil actions arising under the laws of the United States and are therefore within the jurisdiction of Federal District Courts. *See Barquin v. Monty's Sunset, L.L.C.*, 975 F. Supp. 2d 1309, 1310 (S.D. Fla. 2013)(the court has jurisdiction over FLSA claims as federal questions under 28 USC § 1331). Moreover, removal is proper as federal question jurisdiction exists at the time of removal. *See Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1294-95 (11th Cir. 2008)(stating that the existence of federal jurisdiction is tested at the time of removal.

Here, Plaintiff's alleged cause of action under the FLSA is plainly demonstrated on the face of the Complaint. Prior to asserting his causes of action under the FLSA, Plaintiff first asserts that this action satisfies various statutory pre-requisites; these allegations include that "The jurisdiction of the Court over this controversy is based upon 29 USC § 216(b) and that Plaintiff is a covered employee under the FLSA. *See*, Ex. A at ¶ 2-3. Furthermore, both counts of the Complaint seek to assert a cause of action for violation of the FLSA. *See id.* at ¶¶ 17-31. Based on Plaintiff's well-pleaded complaint, these allegations present a question of federal law and thus, removal is proper.

4. The Procedural Requirements Have Been Satisfied

Removal of this action is timely under 28 U.S.C. §1446(b) as BH was served with a copy of the Complaint on or about January 16, 2018. BH'S deadline to remove this action is thirty (30) days from the date it was served. *See*, 28 U.S.C. §1446(b); *Baily v. Janssen Pharmaceutical, Inc.*, 536 F.3d 1202, 1205 (11th Cir. 2008) ("[I]nterpret[ing] §1446(b) to permit each defendant thirty days in which to seek removal."). Thus, BH'S deadline to remove this action is February 15, 2018. Given that its Notice of Removal has been filed before February 15, 2018, it is timely and proper. *Id.*

Copies of the Circuit Court's docket printed from the Broward County Clerk of Court's website and all process, pleadings, orders, and other papers or exhibits on file in the State Court Action are attached hereto in **Composite Exhibit "B"**, in compliance with 28 U.S.C. §1146(a). BH will file any supplemental papers not available as of the date of this notice if it becomes necessary. Lastly, all procedural requirements have been satisfied as BH has paid the appropriate filing fee to the Clerk of Court upon filing this notice.

5. Venue

The Fort Lauderdale Division of the United States District Court for the Southern District of Florida is the judicial district embracing the place where the State Court Action was brought and pending, therefore, it is the proper district court to which this case should be removed. *See*, 28 U.S.C. §§ 89(c), 1441(a) & 1446(a). Moreover, and although BH is a Florida Foreign Corporation with its principal place of business in Des Moines, Iowa, the Fort Lauderdale Division is the proper division within the Southern District of Florida since Plaintiff alleges that all acts complained of occurred in Broward County, Florida and that BH conducts its business within said county, and by conclusively alleging venue is proper in Broward County, Florida. *See*, Ex. A at ¶¶ 4, 6.

6. Notice to State Court and Plaintiff

Simultaneously with filing this Notice of Removal, BH shall give written notice to all adverse parties and shall file a copy of this Notice of Removal with the Clerk of the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida.

7. Consent of all Defendants

Removal is proper as all defendants consent. *See* 28 U.S.C. § 1446(b)(2)(A). Defendant, HARRY BOOKEY (“Bookey”), was not served properly, and a motion will be filed on his behalf to quash service of process. However, Bookey has not indicated any opposition to the removal of this action.

Case No. _____

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on the 12th day of February, 2018, we electronically filed the foregoing document with the Clerk of the Seventeenth Judicial Circuit, Broward County Circuit Court by using the ECF System. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

COLE, SCOTT & KISSANE, P.A.
Counsel for Defendants
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401
jonathan.vine@csklegal.com
stefanie.copelow@csklegal.com
Telephone: (561) 383-9200
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By: /s/ Stefanie S. Copelow
JONATHAN VINE
FBN: 10966
STEFANIE S. COPELOW
FBN: 85403

SERVICE LIST

Jason S. Remer, Esq.
REMER & GEORGES-PIERRE, PLLC
44 W. Flagler Street
Suite 2200
Miami, FL 33130
VIA ECF

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Tomas Pagan, and other similarly situated non-exempt employees DEFENDANTS BH Management Services, LLC a Foreign Limited Liability Company and Harry Boockey,

(b) County of Residence of First Listed Plaintiff Broward County, Florida (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Polk County, Iowa (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jason S. Remer, Esq., Remer & Georges-Pierre, PLLC, 44 West Flagler Street, Suite 2200, Miami, FL 33130, (305) 416-5000 Stefanie S. Copelow, Esq., Cole Scott & Kissane, PA, 222 Lakeview Avenue, Suite 120, West Palm Beach, FL 33401, (561) 681-5532

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT TORTS

- 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Med. Malpractice
CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education
PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care: Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability
PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence
Other: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee Conditions of Confinement

- FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC 881 690 Other
LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act
BANKRUPTCY 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent Abbreviated New Drug Application 840 Trademark
SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RS1 (405(g))
OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC 3729 (a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable Sat TV 850 Securities/Commodities Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Fair Labor Standards Act, as amended 29 U.S.C. §201 LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint. JURY DEMAND: YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD DATE February 12, 2018 Stefanie S. Copelow

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA.

Case No. _____

TOMAS PAGAN,
and other similarly situated non-exempt employees,

Plaintiff,

v.

BH MANAGEMENT SERVICES, LLC a
Foreign Limited Liability Company
and HARRY BOOKEY, Individually.

Defendants.

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(B))

COMES NOW, the Plaintiff, TOMAS PAGAN (“Plaintiff”), on behalf of himself and other current and former similarly situated employees, by and through undersigned counsel, hereby files this Complaint against Defendants, BH MANAGEMENT SERVICES, LLC a Foreign Limited Liability Company and HARRY BOOKEY, Individually (collectively the “Defendants”) and states as follows:

JURISDICTION

1. This is an action by the Plaintiff and other similarly-situated non-exempt employees for damages exceeding \$15,000 excluding attorneys’ fees or costs pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid overtime and/or minimum wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorneys’ fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).
3. Plaintiff was at all times relevant to this action, and continues to be, a resident of Broward County Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the FLSA.
4. Defendant, BH MANAGEMENT SERVICES, LLC, having its main place of business in Broward County, Florida, where Plaintiff worked for Defendant and at all times material hereto was and is engaged in interstate commerce.
5. Defendant, HARRY BOOKEY, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, BH MANAGEMENT SERVICES, LLC.
6. Venue is proper in Broward County because all of the actions that form the basis of this Complaint occurred within Broward County and payment was due in Broward County.
7. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. Plaintiff was employed by Defendants from approximately January 2004 through on or about October 28, 2017, as a non-exempt laborer.
9. At all times material hereto, Plaintiff and Defendants were engaged in an implied agreement whereby Plaintiff would be employed by Defendants and that Plaintiff would be properly paid as provided for by, and not in violation of, the laws of the United States and the State of Florida.

10. During Plaintiff's employment, Defendant failed to compensate Plaintiff the required overtime and/or minimum wages at a rate of one and a half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) within a single work week.
11. At all times material hereto Defendants had or should have had full knowledge of all hours worked by Plaintiff, including those hours worked by Plaintiff in excess of forty (40) in a given week.
12. Plaintiff is also owed forty five (45) hours of accumulated Paid time off.
13. Plaintiff was paid approximately seventeen seventy (\$17.70) dollars an hour per hours worked weekly.
14. Plaintiff claims there are other similarly situated current and former non-exempt employees working, or previously working, for Defendants/Defendant.
15. Plaintiff and other similarly-situated current and former non-exempt employees performed similarly duties for Defendants/Defendant and were subject to similar policies as to compensation.
16. Plaintiff and other similarly-situated current and former non-exempt employees of Defendants/Defendant would benefit from joining this collective action alleged herein.

COUNT I

***Wage & Hour Federal Statutory Violation Against
BH MANAGEMENT SERVICES, LLC***

17. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 16 of this complaint as if set out in full herein.
18. This action is brought by Plaintiff to recover from Defendant unpaid overtime wage compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 *et seq.*

19. Jurisdiction is conferred on this Court by Title 29 U.S.C. § 216(b).
20. At all times pertinent to this Complaint, Defendant operated as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.
21. Upon information and belief, the annual gross revenue of the Defendant was at all times material hereto in excess of \$500,000 per annum, and, by virtue of working in interstate commerce, otherwise satisfies the FLSA's coverage requirements.
22. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the FLSA, 29 U.S.C. § 203(r) and 203(s). Defendant's business activities involve those to which the Fair Labor Standards Act applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.
23. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire.
24. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff these unpaid wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

25. To the extent that Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to overtime and minimum wage payments, the statute of limitations for Plaintiff's FLSA claims is equitably tolled. *See, e.g., Cruz v. Maypa*, 773 F.3d 138, 147 (4th Cir. 2014) (extending failure-to-post tolling in the ADEA context to the FLSA); *Yu G. Ke v. Saigon Grill, Inc.*, 595 F. Supp. 2d 240, 259 (S.D.N.Y. 2008) ("[F]ailure to provide required notice of the governing legal requirements may be a sufficient basis for tolling."); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Pa. 1984) ("An employer's failure to post a statutorily required notice of this type tolls the running of any period of limitations.").

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid overtime wage compensation for hours worked in excess of forty (40) weekly, with interest;
- C. Award Plaintiff an equal amount in double damages/liquidated damages;
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II

***Wage & Hour Federal Statutory Violation Against
HARRY BOOKEY
(Non-Payment of Wages)***

26. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 16, of this Complaint as if set out in full herein.

27. At the times mentioned, Defendant **HARRY BOOKEY** was, and is now, a corporate officer of corporate Defendant **BH MANAGEMENT SERVICES, LLC**.
28. Defendant **HARRY BOOKEY** was an employer of Plaintiff within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that Defendant **HARRY BOOKEY** acted directly in the interests of the corporate Defendant-employer in relation to the employees of the corporate Defendant-employer, including Plaintiff.
29. The FLSA defines the term "employer" broadly to include "both the employer for whom the employee directly works as well as 'any person acting directly or indirectly in the interests of an employer in relation to an employee.'"¹
30. Based on this broad definition, Defendant **HARRY BOOKEY**, in his status as a corporate officer with operational control of a Defendant-corporation's covered enterprise is an employer along with the Defendant-corporation, jointly and severally liable under the FLSA for unpaid wages."²
31. Defendant **HARRY BOOKEY** willfully and intentionally refused to properly pay Plaintiff wages as required by the law of the United States as set forth above and remains owing Plaintiff these wages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant **HARRY BOOKEY**:

- A. Adjudge and decree that Defendant **HARRY BOOKEY** has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Adjudge and decree that Defendant **HARRY BOOKEY** is an individual with operational control and is, thus, jointly and severally liable under the FLSA for unpaid wages at issue;

¹ *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1298 (11th Cir. 2011)

² *Patel v. Wargo*, 803 F.2d 632, 637-38 (11th Cir.1986)

- C. Award Plaintiff actual damages in the amount shown to be due for unpaid wages, with interest; and
- D. Award Plaintiff an equal amount in double damages/liquidated damages; and
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees;
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances; and
- G. Grant Plaintiff a Trial by Jury.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated 12-22-17

Respectfully submitted,



Jason S. Remer, Esq.

Florida Bar No.: 0165580
jrem@rgpattoeys.com
Brody M. Shulman, Esq.
Fla. Bar No.: 092044

REMER & GEORGES-PIERRE, PLLC

44 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

COMPOSITE EXHIBIT "B"



BRENDA D. FORMAN
CLERK OF THE COURTS
 browardclerk.org ■ BROWARD COUNTY, FLORIDA



1



Case Detail - Public



Tomas Pagan **Plaintiff vs. BH Management Services LLC , et al** **Defendant**

Broward County Case Number: CACE17023527
State Reporting Number: 062017CA023527AXXXCE
Court Type: Civil Division - Circuit Court
Case Type: Other - Discrimination Employment or Other
Incident Date: N/A
Filing Date: 12/28/2017
Court Location: Central Courthouse
Case Status: Pending
Magistrate Id / Name: N/A
Judge ID / Name: 18 Garcia-Wood, Marina

+ Party(ies) Total: 3

+ Disposition(s) Total: 0

- Event(s) & Document(s) Total: 7

Date ↕	Description	Additional Text	View	Pages ↕
12/28/2017	Civil Cover Sheet			2
12/28/2017	Complaint (eFiled)	Party: <i>Plaintiff</i> Pagan , Tomas		7
12/28/2017	eSummons Issuance	BH MANAGEMENT SERVICES, LLC		1
12/28/2017	eSummons Issuance	HARRY BOOKEY		1
12/28/2017	Filing Fee	Payor: JASON S REMER ; Userid: CTS-fg/t ; Receipt: 20171FA1A177600; ; Amount: \$401.00		
12/28/2017	Summons Issued Fee	Payor: JASON S REMER ; Userid: CTS-fg/t ; Receipt: 20171FA1A177600; ; Amount: \$10.00		
12/28/2017	Summons Issued Fee	Payor: JASON S REMER ; Userid: CTS-fg/t ; Receipt: 20171FA1A177600; ; Amount: \$10.00		

+ Hearing(s) Total: 0

+ Related Case(s) Total: 0

Brenda D. Forman

Clerk of Court

Broward County
17th Judicial Circuit

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Main Courthouse Location

201 SE 6th Street

Fort Lauderdale
Florida, US 33301
Phone: (954) 831-6565

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IN THE CIRCUIT COURT OF THE 17TH
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TOMAS PAGAN,
and other similarly situated non-exempt employees,

Plaintiff,

v.

BH MANAGEMENT SERVICES, LLC a
Foreign Limited Liability Company
and HARRY BOOKEY, Individually.

Defendants.

SUMMONS IN A CIVIL CASE

TO: HARRY BOOKEY

400 LOCUST ST - STE 790
DES MOINES, IA 50309

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

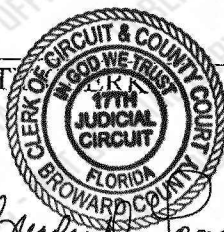
an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DEC 28 2017

CLERK

DATE

(BY) DEPUTY



BRENDA D. FORMAN

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA.

Case No. _____

TOMAS PAGAN,
and other similarly situated non-exempt employees,

Plaintiff,

v.

BH MANAGEMENT SERVICES, LLC a
Foreign Limited Liability Company
and HARRY BOOKEY, Individually.

Defendants.

SUMMONS IN A CIVIL CASE

TO: BH MANAGEMENT SERVICES, LLC., through its Registered Agent:

REGISTERED AGENT SOLUTIONS, INC
155 OFFICE PLAZA DR
STE A
TALLAHASSEE, FL 32301

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

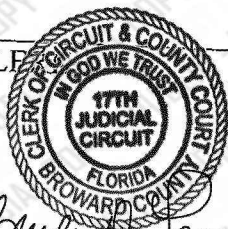
an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DEC 28 2017

CLERK

DATE

(BY) DEPUTY CLERK



Brenda D. Forman
BRENDA D. FORMAN

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA.

Case No. _____

TOMAS PAGAN,
and other similarly situated non-exempt employees,

Plaintiff,

v.

BH MANAGEMENT SERVICES, LLC a
Foreign Limited Liability Company
and HARRY BOOKEY, Individually.

Defendants.

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(B))

COMES NOW, the Plaintiff, TOMAS PAGAN (“Plaintiff”), on behalf of himself and other current and former similarly situated employees, by and through undersigned counsel, hereby files this Complaint against Defendants, BH MANAGEMENT SERVICES, LLC a Foreign Limited Liability Company and HARRY BOOKEY, Individually (collectively the “Defendants”) and states as follows:

JURISDICTION

1. This is an action by the Plaintiff and other similarly-situated non-exempt employees for damages exceeding \$15,000 excluding attorneys’ fees or costs pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid overtime and/or minimum wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorneys’ fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).
3. Plaintiff was at all times relevant to this action, and continues to be, a resident of Broward County Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the FLSA.
4. Defendant, BH MANAGEMENT SERVICES, LLC, having its main place of business in Broward County, Florida, where Plaintiff worked for Defendant and at all times material hereto was and is engaged in interstate commerce.
5. Defendant, HARRY BOOKEY, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, BH MANAGEMENT SERVICES, LLC.
6. Venue is proper in Broward County because all of the actions that form the basis of this Complaint occurred within Broward County and payment was due in Broward County.
7. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. Plaintiff was employed by Defendants from approximately January 2004 through on or about October 28, 2017, as a non-exempt laborer.
9. At all times material hereto, Plaintiff and Defendants were engaged in an implied agreement whereby Plaintiff would be employed by Defendants and that Plaintiff would be properly paid as provided for by, and not in violation of, the laws of the United States and the State of Florida.

10. During Plaintiff's employment, Defendant failed to compensate Plaintiff the required overtime and/or minimum wages at a rate of one and a half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) within a single work week.
11. At all times material hereto Defendants had or should have had full knowledge of all hours worked by Plaintiff, including those hours worked by Plaintiff in excess of forty (40) in a given week.
12. Plaintiff is also owed forty five (45) hours of accumulated Paid time off.
13. Plaintiff was paid approximately seventeen seventy (\$17.70) dollars an hour per hours worked weekly.
14. Plaintiff claims there are other similarly situated current and former non-exempt employees working, or previously working, for Defendants/Defendant.
15. Plaintiff and other similarly-situated current and former non-exempt employees performed similarly duties for Defendants/Defendant and were subject to similar policies as to compensation.
16. Plaintiff and other similarly-situated current and former non-exempt employees of Defendants/Defendant would benefit from joining this collective action alleged herein.

COUNT I

***Wage & Hour Federal Statutory Violation Against
BH MANAGEMENT SERVICES, LLC***

17. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 16 of this complaint as if set out in full herein.
18. This action is brought by Plaintiff to recover from Defendant unpaid overtime wage compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 *et seq.*

19. Jurisdiction is conferred on this Court by Title 29 U.S.C. § 216(b).
20. At all times pertinent to this Complaint, Defendant operated as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.
21. Upon information and belief, the annual gross revenue of the Defendant was at all times material hereto in excess of \$500,000 per annum, and, by virtue of working in interstate commerce, otherwise satisfies the FLSA's coverage requirements.
22. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the FLSA, 29 U.S.C. § 203(r) and 203(s). Defendant's business activities involve those to which the Fair Labor Standards Act applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.
23. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire.
24. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff these unpaid wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

25. To the extent that Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to overtime and minimum wage payments, the statute of limitations for Plaintiff's FLSA claims is equitably tolled. *See, e.g., Cruz v. Maypa*, 773 F.3d 138, 147 (4th Cir. 2014) (extending failure-to-post tolling in the ADEA context to the FLSA); *Yu G. Ke v. Saigon Grill, Inc.*, 595 F. Supp. 2d 240, 259 (S.D.N.Y. 2008) ("[F]ailure to provide required notice of the governing legal requirements may be a sufficient basis for tolling."); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Pa. 1984) ("An employer's failure to post a statutorily required notice of this type tolls the running of any period of limitations.").

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid overtime wage compensation for hours worked in excess of forty (40) weekly, with interest;
- C. Award Plaintiff an equal amount in double damages/liquidated damages;
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II

***Wage & Hour Federal Statutory Violation Against
HARRY BOOKEY
(Non-Payment of Wages)***

26. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 16, of this Complaint as if set out in full herein.

27. At the times mentioned, Defendant **HARRY BOOKEY** was, and is now, a corporate officer of corporate Defendant **BH MANAGEMENT SERVICES, LLC**.
28. Defendant **HARRY BOOKEY** was an employer of Plaintiff within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that Defendant **HARRY BOOKEY** acted directly in the interests of the corporate Defendant-employer in relation to the employees of the corporate Defendant-employer, including Plaintiff.
29. The FLSA defines the term "employer" broadly to include "both the employer for whom the employee directly works as well as 'any person acting directly or indirectly in the interests of an employer in relation to an employee.'"¹
30. Based on this broad definition, Defendant **HARRY BOOKEY**, in his status as a corporate officer with operational control of a Defendant-corporation's covered enterprise is an employer along with the Defendant-corporation, jointly and severally liable under the FLSA for unpaid wages."²
31. Defendant **HARRY BOOKEY** willfully and intentionally refused to properly pay Plaintiff wages as required by the law of the United States as set forth above and remains owing Plaintiff these wages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant **HARRY BOOKEY**:

- A. Adjudge and decree that Defendant **HARRY BOOKEY** has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Adjudge and decree that Defendant **HARRY BOOKEY** is an individual with operational control and is, thus, jointly and severally liable under the FLSA for unpaid wages at issue;

¹ *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1298 (11th Cir. 2011)

² *Patel v. Wargo*, 803 F.2d 632, 637-38 (11th Cir.1986)

- C. Award Plaintiff actual damages in the amount shown to be due for unpaid wages, with interest; and
- D. Award Plaintiff an equal amount in double damages/liquidated damages; and
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees;
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances; and
- G. Grant Plaintiff a Trial by Jury.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated 12-22-17

Respectfully submitted,



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Fla. Bar No.: 092044

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FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: _____
Judge: _____

TOMAS PAGAN
Plaintiff

vs.

BH MANAGEMENT SERVICES, LLC, HARRY BOOKEY
Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 – 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical
 - Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

III. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

2

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Jason S Remer FL Bar No.: 165580
Attorney or party

(Bar number, if attorney)

Jason S Remer 12/28/2017
(Type or print name)

Date

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: BH Management Services Withholds Employees' Due Wages](#)
