

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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|----------------------------------|---|-------------------------------------|
| DAVID MEYER, |) | |
| |) | |
| Plaintiff, |) | Case No. _____ |
| |) | |
| vs. |) | Removed from the Circuit Court |
| |) | for the City of St. Louis, Missouri |
| NEUMAYER EQUIPMENT COMPANY, |) | (Case. No: 1822-CC10952) |
| SUSAN BURKHARDT, |) | |
| TODD BURKHARDT, JIM SPIROS, JR., |) | |
| and MARCUS MELITA, |) | |
| |) | |
| Defendants. |) | |

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Neumayer Equipment Company (“Neumayer”) hereby gives notice of the removal of the above-styled action to this Court from the Circuit Court of St. Louis City, State of Missouri. Consent to removal by each of Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr. and Marcus Melita are filed herewith pursuant to 28 U.S.C. §1446(2)(A). In support of the Notice of Removal, Neumayer state as follows:

1. Plaintiff David Meyer (“Plaintiff”) commenced the above-captioned action in the Circuit Court of St. Louis City, Missouri on or about August 9, 2018, by filing his Petition in the cause styled *David Meyer v, Neumayer Equipment Company., et al.*, Case No. 1822-CC10952, against Defendants Neumayer Equipment Company, Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr., and Marcus Melita.

2. On or about August 13, 2018, Neumayer was served a summons and a copy of the Petition.

3. On or about August 13, 2018, Susan Burkhardt was served a summons and a copy of the Petition. Ms. Burkhardt consents to the removal of this action as is reflected in her Notice of Consent to Removal filed herewith and marked **Exhibit A**.

4. On or about August 14, 2018, Todd Burkhardt was served a summons and a copy of the Petition. Mr. Burkhardt consents to the removal of this action as is reflected in his Notice of Consent to Removal filed herewith and marked **Exhibit B**.

5. On or about August 14, 2018, Jim Spiros, Jr. was served a summons and a copy of the Petition. Mr. Spiros consents to the removal of this action as is reflected in his Notice of Consent to Removal filed herewith and marked **Exhibit C**.

6. On or about August 19, 2018, Marcus Melita was served a summons and a copy of the Petition. Mr. Melita consents to the removal of this action as is reflected in his Notice of Consent to Removal filed herewith and marked **Exhibit D**.

7. This Notice of Removal is timely because it is filed within the thirty-day period prescribed by 28 U.S.C. § 1446(b). Indeed, the lawsuit was filed less than 30 days ago.

8. This action arises from Plaintiff's former employment with Neumayer.

9. In his Petition, Plaintiff bring three (3) distinct causes of action, *i.e.*, claims for associational race discrimination and harassment, disability discrimination and harassment, and retaliation under the Missouri Human Rights Act ("MHRA").

10. Venue is proper in this Court because Plaintiff filed his Petition in the Circuit Court of St. Louis City, Missouri, which is located in the Eastern District, Eastern Division's jurisdiction. 28 U.S.C. § 1441(a).

11. The Court has original jurisdiction over the state court action under 28 U.S.C. § 1332 because the Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.

I. DIVERSITY OF CITIZENSHIP

12. At the time this action was filed, and at all times since, Plaintiff was a citizen of the state of Kansas. *See* Petition ¶ 3.

13. Defendant Neumayer was and continues to be a Missouri corporation with its principal place of business in Missouri. *See Exhibit E*, Declaration of Susan Burkhardt; *Exhibit F*, Neumayer’s 2018 Annual Registration Report filed with the Missouri Secretary of State.

14. As discussed above, in his Petition, Plaintiff also purports to sue individuals Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr., and Marcus Melita (“the Individual Defendants”) under the MHRA. *See* Petition ¶¶ 7 – 10.

15. Neumayer and the Individual Defendants dispute that they have been properly joined. This is because before Plaintiff ever filed his Charge of Discrimination, and at the time Plaintiff’s right to bring a civil action under the MHRA accrued, the MHRA did not allow Plaintiff to sue individual employees. The law prohibits an “employer” from engaging in discrimination or retaliation, §§ 213.055.1(1), §§ 213.075 RSMo. But the law specifically excludes individual employees from the definition of “employer,” stating: “Employer shall not include . . . (c) An individual employed by an employer . . .” § 213.010(8), RSMo. Accordingly, Defendant disputes that the individuals are proper Defendants in this lawsuit. Because the MHRA does not provide for individual employee liability – and did not so provide at the time Plaintiff’s cause of action accrued – there is no reasonable basis in fact or law to support

Plaintiff's purported claims against individuals Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr., and Marcus Melita. Thus, none of the individually-named Defendants is a "party in interest properly joined." 28 U.S.C. § 1441(b).

16. Regardless, at the commencement of this action, and at all times since, each of Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr., and Marcus Melita are and have been citizens of the state of Missouri. *See* Petition ¶¶ 7 – 10, **Exhibit E**, ¶¶ 15 – 16.

17. Accordingly, complete diversity exists between Plaintiff and each of the named Defendants.

II. AMOUNT IN CONTROVERSY

18. Plaintiff seeks an unspecified amount of damages under the MHRA resulting from alleged associational race discrimination and harassment, disability discrimination and harassment, as well as unlawful retaliation. The MHRA allows for potential recovery of lost back pay, front pay, compensatory damages for emotional distress, punitive damages, and attorney's fees. *See* § 213.111.2, RSMo.

19. Where a petition alleges no specific amount of damages or an amount under the jurisdictional minimum, the removing party must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *In re Minnesota Mut. Life Ins. Co. Sales Practices Litig.*, 346 F.3d 830, 834 (8th Cir. 2003).

20. The standard for determining whether the requisite amount in controversy is met is not whether a verdict in plaintiff's favor might ultimately exceed \$75,000.00; instead, the test is whether a fact finder could conclude that it does. *See Goree v. PV Holding Corp.*, No. 4:15-CV-202-CEJ, 2015 WL 2238960, at *2 (E.D. Mo. May 12, 2015) *quoting Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) ("The jurisdictional fact in this case is not whether the damages are

greater than the requisite amount, but whether a fact finder might legally conclude that they are.”).

21. A removing defendant may establish the jurisdictional minimum “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.” *Dixon v. Time Warner, Inc.*, No. 09-CV-00834-W-HFS 2010 WL 11509030, at *1 (W.D. Mo., Feb. 19, 2010). The removing defendant may use a variety of sources to show the amount in controversy. *Id. see also Hicock v. Casino One Corp.*, No. 4:13-CV-02407-ERW, 2014 WL 294426, at *4 (E.D. Mo. Jan. 27, 2014) (Finding the required amount in controversy was met where the employer cited several Missouri service letter cases in which an award of punitive damages in excess of \$75,000 has been affirmed).

22. There is legal certainty in this case that the amount in controversy exceeds \$75,000.00 because Plaintiff’s claim for lost wages alone, if proved and established, could result in a fact finder determining that he is legally entitle him to more than that amount.

23. With respect to Plaintiff’s claim for back pay alone, Plaintiff’s base salary was \$65,000.00 per year. *See Exhibit E*, ¶¶ 8 - 9; *Exhibit G*, Plaintiff’s 2017 Payroll History Report for David Meyer. Plaintiff alleges that his employment with Neumayer was terminated on or about April 10, 2017. Petition ¶ 60. Thus, Plaintiff’s claim for lost wages to-date totals just over \$92,000.00. This amount of lost wages alone exceeds the jurisdictional amount in controversy required for removal.

24. Furthermore, the parties can reasonably expect this case to proceed to trial in approximately the winter of 2019, which would be more than two and a half years after

Plaintiff's termination. In fact, in this Eastern District, the median time interval in months from federal civil case filing to trial is 20 months.¹

25. By the time of trial, Plaintiff's claim for lost wages would increase to approximately \$162,500.00 (i.e., two and one half times his yearly salary). *See Riffert v. Walgreen Co.*, 2008 WL 495643, *2 (E.D. Mo., Feb. 20, 2008) (holding that at time of plaintiff's alleged constructive discharge he was earning approximately \$37,674 per year, and "even without factoring in increases," plaintiff's back pay alone could exceed the amount in controversy requirement by the time this matter is resolved).

26. In addition to wages, Plaintiff also received health benefits, such as dental and health insurance, as part of his employment with Neumayer. During Plaintiff's last full year of employment, Neumayer paid \$2,965.44 on Plaintiff's behalf for benefits. *See Exhibit E*, ¶¶ 10-12 and *Exhibit H*, 2016 Neumayer Employer Health Benefit Contribution Report.

27. Additionally, compensatory damages (including emotional distress, as claimed by Plaintiff in his Petition), have been awarded in recent discrimination cases in the same St. Louis City Circuit Court venue, ranging from \$167,000.00 to \$750,000.00. *See, e.g., Lin v. Washington Univ. et al.*, 1422-CC09377 (St. Louis City Circuit Court, August 25, 2017) (\$269,000.00 judgment entered after jury verdict in this amount for actual damages); *Kader v. Board of Regents of Harris Stowe State Univ.*, Case No. 1222-CC02913 (St. Louis City Circuit Court, April 4, 2017) (\$750,000.00 judgment entered after jury verdict in this amount for actual damages); *Horn v. St. Louis Univ.*, Case No. 1222-CC09870 (St. Louis City Circuit Court, September 22, 2016) (\$167,000.00 judgment entered after jury verdict in this amount for actual damages).

¹ *See* Table C-5, U.S. District Courts – Median time Intervals From Filing to Disposition of Civil Cases, <http://www.uscourts.gov/statistics/table/c-5/statistical-tables-federal-judiciary/2018/06/30>

28. Plaintiff also seeks punitive damages, which have been awarded in other discrimination cases brought under the MHRA in this venue. *See, e.g., Lin v. Washington Univ. et al.*, 1422-CC09377 (St. Louis City Circuit Court, August 25, 2017) (\$500,000.00 judgment entered after jury verdict in this amount for punitive damages); *Kader v. Board of Regents of Harris Stowe State Univ.*, Case No. 1222-CC02913 (St. Louis City Circuit Court, April 4, 2017) (\$1,750,000.00 judgment entered after jury verdict in this amount for punitive damages); *Horn v. St. Louis Univ.*, Case No. 1222-CC09870 (St. Louis City Circuit Court, September 22, 2016) (\$200,000.00 judgment entered after jury verdict in this amount for punitive damages).

29. Under the MHRA, a successful plaintiff is also entitled to recover reasonable attorneys' fees. If Plaintiff prevails on his discrimination, harassment and retaliation claims at trial, it is probable that his attorneys' fees alone will exceed \$75,000.00. *See, e.g., Lin v. Washington Univ. et al.*, 1422-CC09377 (St. Louis City Circuit Court, August 25, 2017) (\$319,635.00 judgment entered for attorneys' fees); *Kader v. Board of Regents of Harris Stowe State Univ.*, Case No. 1222-CC02913 (St. Louis City Circuit Court, April 4, 2017) (\$180,000.00 judgment entered for attorneys' fees); *Green v. City of St. Louis et al.*, Case No. 1422-CC09588 (St. Louis City Circuit Court, September 1, 2016) (\$120,000.00 judgment entered for attorneys' fees).

30. Accordingly, Defendants have shown by a preponderance of the evidence that if Plaintiff prevails on his claims as pled, his damages and attorneys' fees will exceed \$75,000 and the jurisdictional amount in controversy requirement is met.

31. There is complete diversity of citizenship between Plaintiff and Neumayer, the only proper Defendant in this case. See 28 U.S.C. § 1332(a)(1). However, as explained above, even were the Court to consider the citizenship of Susan Burkhardt, Todd Burkhardt, Jim Spiros,

Jr., and Marcus Melita, they are citizens of Missouri. *See* Petition ¶¶ 7 – 10. Therefore, there is complete diversity of the parties in this case.

III. CONCLUSION

32. Defendants properly remove this case to federal court pursuant to 28 U.S.C. § 1332 because there is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.

33. Pursuant to U.S.C. § 1446(d), Defendants have given written notice of their filing of this Notice of Removal to counsel for Plaintiff. Defendants have also filed a copy of this Notice with the Circuit Court of St. Louis City, State of Missouri.

34. Pursuant to 28 U.S.C. 1446(a), the state court file is attached to this Notice as **Exhibit I**.

WHEREFORE, Defendant Neumayer Equipment Company, with the consent of Susan Burkhardt, Todd Burkhardt, Jim Spiros, Jr., and Marcus Melita, remove this civil action to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: September 7, 2018

Respectfully submitted,

GREENSFELDER, HEMKER & GALE, P.C.

By: /s/ Amy L. Blaisdell
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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and served same via email on:

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