

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

GRISEL SILVA, JOSE COTO, and other)
similarly situated individuals,)
)
Plaintiffs,)
)
vs.) Case No. 1:19-cv-20299
)
COCA-COLA BEVERAGES FLORIDA, LLC)
a Foreign Limited Liability Company,)
)
Defendant.)

NOTICE OF REMOVAL

TO: The Judges of the United States District Court,
Southern District of Florida, Miami Division

Defendant Coca-Cola Beverages Florida, LLC (“Coke Florida”), pursuant to 28 U.S.C. §1441, *et seq.*, hereby gives its Notice of Removal of an action pending in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court, Southern District of Florida, Miami Division, which is the district and division within which this action is presently pending. Defendant provides the following statement as grounds for removal:

1. On December 20, 2018, a Complaint and Demand for Jury Trial (“Complaint”) was filed against Defendant by Plaintiffs Grisel Silva and Jose Coto (“Plaintiffs”) in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, entitled Grisel Silva and Jose Coto v. Coca-Cola Beverages Florida, LLC, Case No. 2018-042175-CA-01.

2. This Notice of Removal is based upon 28 U.S.C. § 1441(a), which 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 or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

3. This Court possesses original jurisdiction over this civil action because it involves a federal question under 28 U.S.C. § 1331. More specifically, Plaintiffs’ Complaint alleges violations of:

(a) the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.* Thus, this Court possesses original jurisdiction over the claim under the FMLA. See 29 U.S.C. § 2617(a)(2) (“An action ... may be maintained against any employer ... in any Federal or State court of competent jurisdiction. . . .”); and

(b) the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 216. Thus, this Court also possesses original jurisdiction over the FLSA claims. See, 29 U.S.C. § 216 (“Plaintiff’s action to recover the liability prescribed in the proceedings sections may be maintained against an employee in any Federal or State court of competent jurisdiction. . . .”).

4. Venue is proper in this district and division pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending (*i.e.*, Miami-Dade County, Florida).

5. Defendant was served with a copy of the Summons and Complaint on January 2, 2019. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint as well as all other “process, pleadings, and orders served” on Defendant to date are attached collectively to this Notice of Removal as “Exhibit A.”

6. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal has been timely filed. Plaintiffs’ Complaint was the first paper from which Defendant could ascertain that Plaintiffs’

case was removable, and this Notice of Removal has been filed within thirty (30) days of service of the Complaint on Defendant.

7. Defendant is simultaneously filing a copy of this Notice of Removal with the Circuit Court of the 11th Judicial Circuit in Miami-Dade County, Florida, and it has given notice of the same to Plaintiffs as required by 28 U.S.C. § 1446(d).

8. In removing this action, Defendant specifically reserves all its defenses including, without limitation, all defenses specified in Rule 12(b) of the Federal Rules of Civil Procedure and Defendant's right to compel arbitration of the claims raised in Plaintiffs' Complaint pursuant to the Federal Arbitration Act based on an arbitration agreement between Plaintiffs and Defendant.

WHEREFORE, Defendant requests that this case be removed from the Circuit Court of the 11th Judicial Circuit in Miami-Dade County, Florida, and proceed in the United States District Court for the Southern District of Florida, Miami Division, as an action properly removed thereto.

Dated this 22nd day of January, 2019.

Respectfully submitted,

MILLER & MARTIN PLLC

By: /s/ Jessica Malloy-Thorpe

Jessica Malloy-Thorpe

Florida Bar No. 109717

832 Georgia Avenue

Suite 1200, Volunteer Building

Chattanooga, TN 37402

Telephone: (423) 756-6600

Facsimile: (423) 321-1534

jessica.malloy-thorpe@millermartin.com

*Attorneys for Defendant Coca-Cola
Beverages Florida, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Notice of Removal was served this 22nd day of January, 2019 by electronic and first class mail on:

Jason S. Remer, Esq.
Remer & Georges-Pierre, PLLC
Courthouse Tower
44 West Flagler Street, Suite 2200
Miami, FL 33130
jremer@rgpattorneys.com

Attorneys for Plaintiffs

By: /s/ Jessica Malloy-Thorpe

1/2/19 10:26 PM
J.M. - CPS 260

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI COUNTY, FLORIDA

CASE NO.: 2018-042175-CA-01

GRISEL SILVA, JOSE COTO,
and other similarly situated individuals

Plaintiffs,

v.

COCA-COLA BEVERAGES FLORIDA, LLC,
a Foreign Limited Liability Company

Defendant.

SUMMONS IN A CIVIL CASE

TO: COCA-COLA BEVERAGES FLORIDA, LLC through its Registered Agent:

CORPORATION SERVICE COMPANY
1201 HAYS STREET
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 amended 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.

12/28/2018

CLERK [Signature] 309876

DATE _____

(BY) DEPUTY CLERK



IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI COUNTY, FLORIDA

CASE NO.: 2018-042175-CA-01

GRISEL SILVA, JOSE COTO,
and other similarly situated individuals

Plaintiffs,

vs.

COCA-COLA BEVERAGES FLORIDA, LLC,
a Foreign Limited Liability Company

Defendant.

COMPLAINT

COMES NOW, the Plaintiffs, GRISEL SILVA and JOSE COTO (Collectively "Plaintiffs") by and through the undersigned counsel, hereby sue Defendant, COCA-COLA BEVERAGES ("Defendant") and in support avers as follows:

JURISDICTION AND VENUE

1. This is an action by the Plaintiffs for damages exceeding \$15,000.00 excluding attorneys' fees or costs for damages as a result of unpaid wages under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"); and damages resulting from Defendant's violations of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
2. The jurisdiction of the Court over this controversy is based upon FLSA.
3. Plaintiffs were at all times relevant to this action, and continues to be, a resident Miami Dade County Florida, within the jurisdiction of this Honorable Court. Further, Plaintiffs are covered employees for purposes of the FCRA.

4. Defendant, COCA-COLA BEVERAGES FLORIDA, LLC., is authorized to conduct business in the State of Florida and operates in Miami Dade County, Florida, where Plaintiff worked for Defendant and at all times material hereto was and is engaged in interstate commerce.
5. Defendant employs fifty (50) or more employees within a seventy-five (75) mile radius for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year.
6. Venue is proper in Miami-Dade because all of the actions that form the basis of this Complaint occurred within Miami-Dade County, payment was due in Miami Dade County, the discriminatory acts took place in Miami Dade County, and damages are due and owing in Miami-Dade County.
7. All conditions precedent for the filing of this action before this Court has been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

GRISEL SILVA'S FACTUAL ALLEGATIONS AS TO THE FMLA CLAIMS

8. Plaintiff, GRISEL SILVA began employment with Defendant on or about March 2015 through on or about November 7, 2018
9. On or about March 2018, Plaintiff, GRISEL SILVA requested intermittent leave under the FMLA from, on or about April 6, 2018 until on or about October 5, 2018 because her father was very ill.
10. Accordingly, Defendant approved Plaintiff's request and was in and out of work from April 6, 2018 through October 5, 2018.
11. However, on or about May 2018, Defendant issued Plaintiff a write-up due to Plaintiff not achieving her numbers (referring to a goal of seventeen new accounts monthly) despite

Defendant's knowledge that Plaintiff was not going to achieve her monthly goal due her intermittent leave.

12. Further, Plaintiff's colleagues, not on FMLA leave, were not given a write-up for not achieving the monthly goal of seventeen new accounts monthly.

13. In fact, Plaintiff was the only employee given a write-up and Defendant placed Plaintiff into a probation period for approximately ninety-days.

14. Nonetheless, Defendant failed to remove Plaintiff from probation, which was scheduled to end on or about July 2018.

15. During Plaintiff's probation, Plaintiff received several write-ups for not achieving her monthly goals and was ultimately terminated on or about November 7, 2018.

16. Upon information and belief, Defendant's reason, if any, to terminate Plaintiff is merely pretextual.

17. Therefore, Plaintiff's termination was predicated and/or motivated in retaliation for requesting medical benefits.

**GRISEL SILVA'S AND JOSE COTO'S FACTUAL ALLEGATIONS AS TO THE
FLSA CLAIMS**

18. Plaintiff JOSE COTO began employment with Defendant from on or about May 11, 1989 through September 25, 2018.

a. Plaintiff was paid a salary working approximately fifty-two hours and a half hour weekly.

19. Plaintiff GRISEL SILVA began employment with Defendant on or about March 2015 through on or about November 7, 2018

a. Plaintiff was paid a salary working approximately fifty-seven hours and a half hour weekly.

20. During Plaintiffs' employment with Defendant, Defendant misclassified Plaintiffs as overtime exempt employees. As a result, Defendant failed to pay Plaintiffs at the proper overtime rate for each hour worked in excess of forty in a given workweek.
21. Throughout Plaintiffs' employment with Defendant, Plaintiffs worked in excess of forty (40) hours per week.
22. At all times material hereto, Defendant had or should have had full knowledge of all hours worked by Plaintiffs.
23. Therefore, Plaintiffs were not paid at or above the applicable overtime wage rate during the course of their employment with Defendant.

COUNT I
INTERFERENCE WITH RIGHTS UNDER THE FMLA AGAINST
COCA-COLA BEVERAGES FLORIDA, LLC,

24. Plaintiff, GRISEL SILVA re-adopts each and every factual allegation as stated in paragraphs 1 through 17 above as if set out in full herein.
25. Plaintiff, GRISEL SILVA is an individual entitled to protection under the FMLA.
26. Plaintiff, GRISEL SILVA was an employee within the meaning of the FMLA.
27. Plaintiff, GRISEL SILVA engaged in protected activity within the meaning of the FMLA.
28. Defendant's actions interfered with Plaintiff's lawful exercise of FMLA rights.
29. Defendant's actions constitute violations of the FMLA.
30. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

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

- A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;

- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- D. Require Defendant to reinstate Plaintiff to this position at the rate of pay and with the full benefits he would have, had he not been discriminated against by Defendant, or in lieu of reinstatement, award his front pay;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT III
FLSA Violation Against
COCA-COLA BEVERAGES FLORIDA, LLC

- 31. Plaintiffs re-adopt each and every factual allegation as stated in paragraphs 1-7, 18-23 of this complaint as if set out in full herein.
- 32. This action is brought by Plaintiffs to recover from the Defendant unpaid minimum wage and/or overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of the FLSA.
- 33. At all times pertinent to this Complaint, Defendant had two or more employees who regularly handled goods and/or materials which had been 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.

34. Upon information and belief, at all times material hereto, Defendant's annual gross revenue exceeded \$500,000 per annum on its own, or as part of a joint enterprise with the other corporate Defendant named herein, or which are as of yet unknown but will be revealed through further discovery. To the extent that Defendant operated as part of a joint enterprise, it did so with corporate entities that performed related activities, under the common control of the individual Defendant, and for common business purposes related to the work performed by Plaintiff for Defendant.

35. 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 FLSA applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.

36. Plaintiffs seek to recover for unpaid wages accumulated from the date of hire and/or from three (3) years from the date of the filing of this complaint.

37. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of minimum and/or overtime wages as required by the FLSA and remain owing Plaintiff these wages since the commencement of Plaintiffs' employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

WHEREFORE, Plaintiffs respectfully pray 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 rights;

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

JURY DEMAND

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

Dated: 12-19-18

Respectfully submitted,

REMER & GEORGES-PIERRE, PLLC

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

By: 

Jason S. Remer, Esq.
Fla. Bar No.: 0165580
Brody M. Shulman, Esq.
Fla. Bar No.: 092044
Miriam Colmenarez, Esq.
Fla. Bar No.: 0118144

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 GRISEL SILVA, JOSE COTO, and other similarly situated individuals,

DEFENDANTS COCA-COLA BEVERAGES FLORIDA, LLC, a Foreign Limited Liability Company,

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hillsborough (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jason S. Remer, Remer & Georges-Pierre, PLLC 44 West Flagler Street, Suite 2200, Miami, FL 33130

Attorneys (If Known)

Jessica Malloy-Thorpe, Miller & Martin PLLC 832 Georgia Avenue, Suite 1200, Chattanooga, TN 37402

(d) Check County Where Action Arose: [X] 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) [X] 3
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III) [] 4

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

- Citizen of This State PTF DEF [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Foreign Nation [] 6 [] 6

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

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding []
2 Removed from State Court [X]
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 [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Plaintiffs make claims under 29 U.S.C. 201-219; 29 U.S.C. 2601 et seq. for alleged violations of FLSA and FMLA.

LENGTH OF TRIAL via 0 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 [] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE January 22, 2019

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of J. Malloy

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Coca-Cola Beverages Florida Hit with FMLA, Wage and Hour Class Action Lawsuit](#)
