

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FREDERICK CARROLL, individually
and on behalf of his minor child, THC,

Plaintiff,

v.

CASE NO: 8:08-cv-2451-T-26MAP

UNITED MARITIME GROUP, LLC, et al.,

Defendants.

ORDER

Before the Court is Plaintiff's Motion to Tax Fees and Costs or, in the alternative, Motion to Clarify Ruling as to Awarding Fees and Costs. (Dkt. 25). After careful consideration of the Motion, the Court finds it unnecessary to order a response, and concludes that the motion should be denied in its entirety.

This Court may grant attorney's fees in its discretion¹ if the removal was "patently improper" and the defendant made no viable argument for removal. Devine v. Prison Health Servs., Inc., 212 Fed.Appx. 890, 892 (11th Cir. Dec. 27, 2006) (quoting Tran v. Waste Mgmt., Inc., 290 F.Supp.2d 1286, 1295 (M.D. Fla. 2003)). In this case, the Court finds that the removal was not "patently improper" and therefore declines to grant an award of attorney's fees.²

¹ An award of attorney's fees pursuant to 28 U.S.C. § 1447(c) is discretionary. Smith v. Health Ctr. of Lake City, Inc., 252 F.Supp.2d 1336, 1346 (M.D. Fla. 2003).

² See also Legg v. Wyeth, 428 F.3d 1317 (11th Cir. 2005) (holding that facts of removal case was not one of "improvident removal" where defendant provided affidavits

The nature of the Complaint in this case, from which removal was predicated, was arguably violative of the rule against shotgun pleading.³ Plaintiff cannot claim that the Complaint was such a model of clarity to make it abundantly clear that the unpaid wages claim was clearly related to the maintenance and cure claim. Because shotgun pleadings have been “condemned repeatedly” by the Eleventh Circuit, see Magluta v. Samples, 256 F.3d 1282, 1284 (11th Cir. 2001), this Court finds that removal by Defendant was not “patently improper.”

It is **ORDERED AND ADJUDGED** as follows:

- (1) Plaintiff’s Motion to Tax Fees and Costs (Dkt. 25) is **DENIED**.
- (2) Plaintiff’s Motion to Clarify Ruling as to Awarding Fees and Costs (Dkt. 25) is **DENIED as moot**.

DONE AND ORDERED at Tampa, Florida, on March 3, 2009.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record

of individual defendant sales representatives to refute claim of fraudulent joinder).

³ See Defendants’ Response to Motion to Remand at docket 21, pp. 18-19.