

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

KARI L. SCHMIDT,

Plaintiff,

v.

CASE NO. 1:11-cv-228-SPM-GRJ

THE PANTRY, INC.,

Defendant.

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ORDER

On December 21, 2011 the Court conducted a hearing to address Plaintiff's Motion For Remand, Motion For Attorney's Fees & Costs, & Supporting Memorandum. (Doc. 6.) Plaintiff was represented by Daniel Perez of Bogin, Munns & Munns, P.A. and Defendant was represented by Richard Margulies of Jackson Lewis LLP.

The sole issue for the court to determine in resolving Plaintiff's Motion to Remand is whether the Defendant has established based upon a preponderance of the evidence that the amount in controversy in this case exceeds \$75,000. Where, as here, a state statute provides for attorney's fees, such fees are included as part of the amount in controversy for removal purposes. *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720 (5th Cir. 2002); *see also* 14A Charles Allen Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3712 (2d ed. 1985). Because the record as to the amount of reasonable attorney's fees is not fully developed, the Defendant will be afforded an opportunity to file additional information and/or affidavits on this issue.

Additionally, the amount of back wages Plaintiff may be entitled to recover is a measure of damages the Court will look to in determining the amount in controversy.

Counsel for Plaintiff advised the Court at the hearing that the affidavit of Plaintiff, filed as an exhibit to Plaintiff's Motion To Remand (Doc. 6-1), fails to include a full accounting of the wages Plaintiff earned after she was terminated by the Defendant. The Plaintiff therefore requested permission to file an amended and corrected affidavit.

Accordingly, upon due consideration, it is **ORDERED**:

1. Defendant shall have **January 9, 2012** to file additional information or affidavits on the issue of the amount of reasonable attorney's fees to be included in the determination of the amount in controversy in this case.

2. Plaintiff shall have until **January 9, 2012** to file an amended and corrected affidavit of Plaintiff, Kari Schmidt.

3. Defendant may file a response to the corrected affidavit on or before **January 16, 2012**. The Court will take the Motion To Remand under advisement after that date.

DONE AND ORDERED this 22nd day of December, 2011.

s/ Gary R. Jones
GARY R. JONES
United States Magistrate Judge