

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

**FILED**

DEC 08 2017

Clerk, U.S. District Court  
District Of Montana  
Helena

CLAYTON JAMES McCLOSKEY,

Plaintiff,

No. CV-17-91-BU-SEH

vs.

**ORDER**BIG SKY SENIOR LIVING ON  
WATERFORD WAY, WATERFORD  
OPERATING, LLC, and JOHN &  
JANE DOES 1 - 5,

Defendants.

Defendant filed a Notice of Removal in this Court on December 7, 2017.<sup>1</sup> The Notice grounds the Court's jurisdiction in 28 U.S.C. §§ 1331, claiming that Plaintiff's "Complaint seeks judgment against Waterford based upon claims of wrongful discharge from employment, as well as a claim for overtime compensation filed under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*"<sup>2</sup>

A defendant removing a case from state to federal court has the burden of

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<sup>1</sup> Doc.1.

<sup>2</sup> Doc. 1 at 2.

establishing federal jurisdiction.<sup>3</sup> Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.<sup>4</sup> It is well-established that “federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint . . . The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”<sup>5</sup> Moreover, “a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff’s complaint . . .”<sup>6</sup>

Here, Defendant has not met its burden of establishing federal question jurisdiction. Fed. R. Civ. P. 12(h)(3) and applicable case law provide that “[t]he objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any stage in the litigation.”<sup>7</sup>

ORDERED:

This case will be remanded to state court on December 15, 2017, unless

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<sup>3</sup> *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

<sup>4</sup> *Gaus*, 980 F.2d at 566.


<sup>5</sup> *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted).

<sup>6</sup> *Caterpillar Inc.*, 482 U.S. at 393.

<sup>7</sup> *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006)(citation omitted).

Defendant files an amended notice of removal properly alleging jurisdiction on or before that date.

DATED this 8<sup>th</sup> day of December, 2017.

  
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SAM E. HADDON  
United States District Judge