

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CYNTHIA ZOTTER,

Plaintiff,

v.

CASEPRO, INCORPORATED,

Defendant.

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Civil Action No. 5: 11-CV-815

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendant, CASEPRO, INCORPORATED, and files this its Notice of Removal (the "Notice"), and pursuant to 28 U.S.C. §§ 1331 and 1446, on the grounds that this case is subject to the Court's jurisdiction, and in support hereof would show the Court as follows:

**I.
PROCEDURAL HISTORY**

On or about August 29, 2011, Plaintiff, Cynthia Zotter ("Plaintiff"), filed her Original Petition in County Court at Law No. 3 of Bexar County, Texas, Cause No. 371788, alleging, among other things, that she was "retaliated against and/or discharged in violation of the Family and Medical Leave Act", 29 U.S.C. §§ 2601, *et seq.* ("FMLA"). (See Pl.'s Orig. Pet. ¶ 21). Defendant was subsequently served with citation on September 3, 2011. Accordingly, Defendant timely filed its Original Answer and Affirmative Defenses to Plaintiff's Original Petition on September 26, 2011. This Notice is filed within thirty (30) days of receipt of Plaintiff's Original Petition and Citation by Defendant, and is, thus, timely filed under 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders in this case are attached hereto as Exhibit "A."

II.
REMOVAL IS PROPER BECAUSE OF THE EXISTENCE OF A FEDERAL QUESTION

This Court has original federal question jurisdiction over claims that arise under the laws of the United States. 28 U.S.C. § 1331; *see also* 28 U.S.C. § 1441. A lawsuit filed in state court is removable if it affirmatively alleges a federal claim. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003). The presence or absence of a federal question is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists when a federal question is presented on the face of a plaintiff's complaint. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004); *Hoskins v. Bekins Van Lines*, 343 F.3d 769, 772 (5th Cir. 2003). Whenever a plaintiff's complaint contains both a claim over which the Court has original federal question jurisdiction and a claim which is otherwise non-removable, the entire case may be removed. 28 U.S.C. § 1441 (c).

In the instant lawsuit, Plaintiff asserts that she was terminated and/or otherwise retaliated against in violation of the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.* (*See* Pl.'s Orig. Pet. ¶ 21). As Plaintiff's claims are based on alleged violations of federal statute, her asserted causes are ones over which this Court has original jurisdiction. Given that this Court has original jurisdiction over this action, removal to this Court by Defendant is proper pursuant to 28 U.S.C. § 1441. *See also* 28 U.S.C. § 124(d)(4) (specifying that Bexar County falls within the United States District Court for the Western District of Texas, San Antonio Division). Accordingly, Defendant files this Notice of Removal in this Court. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to counsel for Plaintiff; a copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit "B."

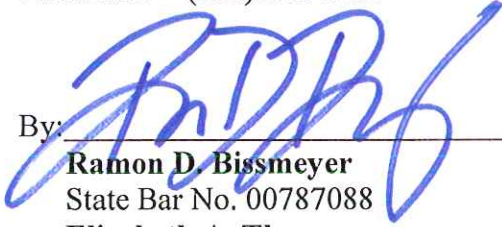
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that this Court accept this Notice of Removal, assume jurisdiction of this cause, and grant Defendant such other and further relief, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

Cox Smith Matthews Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
Telephone: (210) 554-5500
Facsimile: (210) 226-8395

By: _____


Ramon D. Bismeyer
State Bar No. 00787088
Elizabeth A. Thompson
State Bar No. 24075160


ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served via United States certified mail, return receipt requested, on October 3, 2011, to the following:

VIA CMRRR 7160 3901 9849 2921 3400

Mr. Javier Espinoza
THE LAW OFFICE OF JAVIER ESPINOZA, P.C.
719 S. Flores Street, Ste. 100
San Antonio, TX 78204


Counsel for Defendant