

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-CV-00903

TIMOTHY CILA,
Plaintiff,

v.

JBS USA FOOD COMPANY HOLDINGS a/k/a
JBS USA HOLDINGS, INC. a/k/a JBS USA
PROMONTORY HOLDINGS I LLC a/k/a JBS
USA PROMONTORY HOLDINGS II LLC,
Defendant.

NOTICE OF REMOVAL

Defendant JBS USA Food Company Holdings (“JBS”) files this Notice of Removal to remove this action to the United States District Court for the District of Colorado pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. Plaintiff Timothy Cila originally filed this action in the District Court for Weld County, Colorado, Case No. 2022CV30189, where the action is currently pending.

I. NATURE OF THE ACTION

1. While presented as a personal injury case, Mr. Cila’s state court lawsuit against a meat-processing facility due to his alleged exposure to COVID-19 during the global pandemic implicates and necessarily raises serious and substantial federal issues involving the Federal Meat Inspection Act, (“FMIA”), 21 U.S.C. §§ 601 *et seq.*, and the operation of a facility declared critical infrastructure by the United States President under the powers vested in the Executive Branch by the Defense Production Act (“DPA”).

2. On March 27, 2020, Mr. Cila provided contract security guard services at a beef harvesting facility located in Greeley, Colorado. *See* Complaint and Jury Demand (“Compl.”) attached hereto as Exhibit (“Ex.”) A, ¶¶ 6-10. According to the Complaint, Mr. Cila was exposed to COVID-19 by two unidentified female employees of the plant as they were attempting to enter the facility. *Id.* ¶¶ 10-23.

3. Mr. Cila alleges that the two women were attempting to meet with the human resources department for purposes of “presenting letters from their doctors stating that they should quarantine at home for 14 days due to COVID-19.” *Id.* ¶¶ 10-11.

4. Mr. Cila also contends that neither woman was wearing a mask or gloves when he “encountered” them. *Id.* ¶ 12.

5. On the other hand, Mr. Cila avers that he was wearing a mask and gloves “at the time of his interaction with the two JBS employees.” *Id.*

6. Two to three days later, Mr. Cila alleges that he was hospitalized for 35 days as a result of COVID-19. *Id.* ¶ 23.

7. Among other things, Mr. Cila alleges JBS failed to exercise reasonable care in the operation of its meatpacking facility by failing to follow federal regulations and guidance issued by the Occupational Safety and Health Administration (“OSHA”) and the Centers for Disease Control and Prevention (“CDC”). *See, e.g.,* Compl. ¶¶ 38, 52(f), and 58(d).

8. His Complaint also implicitly blames JBS for keeping the facility open during the pandemic. *See, e.g., id.* ¶¶ 52(b), (d), & (h).

9. Additionally, Mr. Cila accuses JBS of failing to “put proper safety protocols in place” by not providing adequate personal protective equipment, not erecting or placing barriers

of any nature between individuals working at the harvesting plant, and not requiring staggered start and end of shift times for plant employees. *See, e.g., id.* ¶ 31.

10. Although Mr. Cila's alleged exposure to and sickness from the virus occurred nearly two years ago, he waited until the eve of the second anniversary of the event to file a lawsuit against JBS. *See generally id.*

11. Mr. Cila's Complaint includes claims for negligence, negligence per se, premises liability, and negligent training and supervision. *Id.* ¶¶ 28-65.

II. REMOVAL IS TIMELY

12. On March 23, 2022, Mr. Cila filed his Complaint and Jury Demand in the District Court for Weld County, Colorado, styled *Timothy Cila v. JBS USA Food Company Holdings a/k/a JBS USA Holdings, Inc. a/k/a JBS USA Promontory Holdings I LLC a/k/a JBS USA Promontory Holdings II LLC*, Case Number 2022CV30189. *See Compl.*

13. Service was made on JBS USA Food Company Holdings on March 25, 2022. *See Exhibit B.*

14. No other entity has been served.

15. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon JBS are attached as follows: The Complaint is attached as Exhibit A; the Summons is attached as Exhibit C. In addition, the civil case cover sheet from the state court action is attached as Exhibit D, and an Initial Case Management Order issued by the Weld County District Court is attached as Exhibit E.

16. Pursuant to 28 U.S.C. § 1446(b), this Notice is filed within thirty (30) days of the date JBS was served with the Complaint.

17. To the extent necessary, JBS USA Promontory Holdings I LLC and JBS USA Promontory Holdings II LLC consent to removal. *See* Exhibit F.

18. JBS USA Holdings, Inc. has not existed for nearly seven (7) years and thus its consent is unnecessary.

III. REMOVAL IS PROPER

19. Removal is proper pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United States.

A. **Federal Question Jurisdiction Exists Over This Dispute.**

20. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). Under *Grable*, a state law claim can give rise to federal question jurisdiction as long as it appears from the lawsuit that the right to relief depends upon the construction or application of federal law.

21. A claim purportedly arising under state law may be removed to federal court pursuant to federal question jurisdiction when the federal issue is: (1) necessarily raised; (2) actually disputed; (3) substantial; and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable*, 545 U.S. at 314). “Where all four of these requirements are met . . . jurisdiction is proper because there is a ‘serious federal interest in claiming the advantages thought to be inherent in a federal forum,’ which can be vindicated without disrupting Congress’s intended division of labor between state and federal courts.” *Id.* (quoting *Grable*, 545 U.S. at 313–14).

22. All four of those requirements for removal under federal question jurisdiction are met here.

23. **Mr. Cila’s Claims Necessarily Raise a Federal Issue.** As to the first requirement, Mr. Cila’s Complaint explicitly refers to federal statutes and regulations, as well as government-promulgated standards, guidelines and protocols applicable to the national meat-processing industry, particularly with respect to the COVID-19 pandemic that was declared a national emergency by the President of the United States. Compl. ¶¶ 38, 52(f), & 58(d).

24. Indeed, one essential question is embedded in each of Mr. Cila’s claims: In the midst of a presidentially declared national emergency, how must America’s meat processing facilities balance the interests of safeguarding workplace health and safety with their ongoing obligation to feed the American people? Any duty ascribed to JBS unavoidably implicates the President’s explicit directive regarding the safe operation of meat processing facilities during the pandemic, as well as federal policies governing the nation’s food supply, national security, and economy. *See* Exec. Order No. 13917, “Delegating Authority Under the Defense Production Act With Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19,” 85 Fed. Reg. 26313 (Apr. 28, 2020) (“Food Supply Chain Order”) (invoking authority under the Defense Production Act, 50 U.S.C. § 4501 *et seq.*).

25. Besides explicitly citing to and relying on federal statutes and CDC and OSHA regulations as the basis of his claims, the Food Supply Chain Order also dispels any doubt that a unique federal interest is implicated here. The Greeley meatpacking plant where Mr. Cila provided security guard services supplies “a scarce and critical material essential to the national defense,” as defined by the Defense Production Act of 1950. *See* 85 Fed. Reg. 26313 (meat and poultry suppliers constitute “critical infrastructure during the national [COVID-19] emergency”).

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