

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KAFI, INC.  
Plaintiff

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VS.

C.A. 4:23-cv-4217

FAIRGATE TRUST; ALLIED SERVICING  
CORPORATION; AND MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC.

Defendants

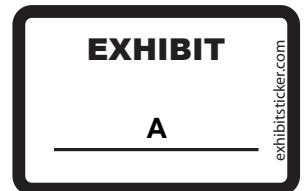
**DEFENDANTS' NOTICE OF REMOVAL**

Defendants, Fairgate Trust (“**Trust**”) and Allied Servicing Corporation (“**Allied**”) (both are collectively “**Defendants**”) hereby remove this case from the 80<sup>th</sup> District Court, Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. Defendants deny the claims and damages alleged in Plaintiff’s Original Petition and file this Notice of Removal without waiving any claims, defenses, exceptions, or obligations that may exist in its favor in state or federal court.

**I. INTRODUCTION**

1. On or about November 2, 2023, Plaintiff, Kafi, Inc. (“**Plaintiff**”) commenced this action by filing Plaintiff’s Original Petition (the “**Complaint**”), Cause No. 2023-76723; In the 80<sup>th</sup> District Court, Harris County, Texas (the “**State Court Action**”).<sup>1</sup> Plaintiff obtained an ex parte temporary restraining order on November 3, 2023. <sup>2</sup> On November 8, 2023, Defendants filed their Original Answer.<sup>3</sup>

<sup>1</sup> See Exhibit C-1.  
<sup>2</sup> See Exhibit C-2.  
<sup>3</sup> See Exhibit C-4.



2. Pursuant to 28 U.S.C. §1446(b) of the Federal Rules of Civil Procedure, this Notice of Removal is timely filed within thirty (30) days of Defendants' first receipt of the initial state court pleading.<sup>4</sup>

## **II. PLEADINGS AND NOTICE TO STATE COURT**

3. True and correct copies of all pleadings, process, orders and other filings in the State Court Action are being filed along with this Notice of Removal as required by 28 U.S.C. §1446(a). Pursuant to 28 U.S.C. §1446(d), written notice of this removal is being served on Plaintiff and filed in the State Court Action.

## **III. BASIS FOR REMOVAL**

4. This action is within the original jurisdiction of the United States District Court based on diversity jurisdiction. Furthermore, venue is proper in the Southern District of Texas, Houston Division, under 28 U.S.C. §1441(a) because the state court where the State Court Action has been pending is located in this district.

## **IV. DIVERSITY JURISDICTION**

### **A. Citizenship of the Parties.**

5. This civil action involves a controversy between citizens of different states. Plaintiff Kafi is a citizen of Texas for purposes of diversity jurisdiction. A corporation is deemed to be a citizen of (1) every state where it has been incorporated and (2) the state where it has its principal place of business (i.e. its "nerve center").<sup>5</sup> Plaintiff is a corporation organized under the laws of the state of Texas with its principal place of business in Texas. Therefore, Plaintiff is a citizen of Texas for diversity purposes.

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<sup>4</sup> *Bd. of Regents of Univ. of Texas Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

<sup>5</sup> 28 U.S.C. §1332(c)(1).

6. Defendant, Allied is a Washington Corporation and is not a citizen of Texas for diversity purposes. A corporation is deemed to be a citizen of (1) every state where it has been incorporated and (2) the state where it has its principal place of business (i.e. its “nerve center”).<sup>6</sup> Allied is a Washington corporation with its principal place of business in Spokane, Washington. Allied is not incorporated in Texas, nor is its principal place of business located in Texas. Therefore, Allied is a citizen of Washington for purposes of diversity jurisdiction and is diverse in citizenship from Plaintiff.

7. Dennis Lanni, is the trustee of Trust (Allied), which is a traditional trust. When determining citizenship of a trust for purposes of diversity jurisdiction, it is the citizenship of the trustee which controls, not the citizenship of the beneficiaries of the trust.<sup>7</sup> Dennis Lanni is domiciled in and is a citizen of California for diversity purposes.<sup>8</sup> Dennis Lanni and thus Trust are citizens of California for diversity purposes and are diverse in citizenship from Plaintiff.

8. Although Defendant, MERS has been improperly joined it is a Delaware corporation with its principal place of business in Atlanta, Georgia and is a citizen of Delaware and Georgia for diversity purposes. A corporation is deemed to be a citizen of (1) every state where it has been incorporated and (2) the state where it has its principal place of business (i.e. its “nerve center”).<sup>9</sup>

9. Since Plaintiff is a resident of Texas for diversity purposes and Defendants are residents of states other than Texas for diversity purposes, complete diversity exists between the parties.

10. Plaintiff has also included MERS as a Defendant. Upon information and belief

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<sup>6</sup> 28 U.S.C.A. § 1332(c)(1).

<sup>7</sup> *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464, 100 S. Ct. 1779, 64 L. Ed. 2d 425 (1980).

<sup>8</sup> See 28 U.S.C. § 1446(x).

<sup>9</sup> 28 U.S.C. § 1332(c)(1).

MERS has not been served, therefore its consent for removal is not required. MERS is also a nominal party or has been improperly joined therefore its consent for removal is not required for that additional reason. Consent to the removal is not required from unserved or improperly joined parties.

**B. Amount in Controversy.**

11. This case places an amount in controversy that exceeds the \$75,000 threshold. A party may remove an action from state court to federal court if the action is one over which the federal court possesses subject matter jurisdiction.<sup>10</sup> Such jurisdiction exists as long as the parties are completely diverse and the amount in controversy exceeds \$75,000.00.<sup>11</sup>

12. When ascertaining the amount in controversy in the context of a motion to remand, district courts query whether a plaintiff's state court petition, as it existed at the time of removal, alleged damages in excess of the statutory minimum.<sup>12</sup>

13. If the petition does not allege a specific amount of damages, the removing party must prove by a preponderance of the evidence that the amount in controversy requirement is satisfied.<sup>13</sup> The removing party satisfies this burden if the court finds it "facially apparent" that the plaintiff's claimed damages likely exceed \$75,000.00.<sup>14</sup> In this instance, Plaintiff's Complaint makes it facially apparent that Plaintiff's claimed damages exceed \$75,000.00 given that Plaintiff seeks to preclude Trust from conducting a foreclosure sale relating to the Property, and the value of the Property exceeds \$75,000.00.

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<sup>10</sup> 28 U.S.C.A. § 1441(a).

<sup>11</sup> 28 U.S.C.A. § 1332(a).

<sup>12</sup> *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996).

<sup>13</sup> *Lewis v. State Farm Lloyds*, 205 F. Supp. 2d 706, 708 (S.D. Tex. 2002) citing *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993); see also *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (explaining that the removing party bears the burden of showing that federal jurisdiction exists and that removal is proper).

<sup>14</sup> *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

14. Plaintiff has sought and obtained an ex parte temporary restraining order which has precluded foreclosure proceedings by Trust on property located at 14826 El Grande Drive, Houston, TX 77083 (the “**Property**”) and seeks injunctive relief regarding same.<sup>15</sup> The value of the Property according to the Harris County Appraisal District for 2023 is no less than \$292,887.00.<sup>16</sup>

15. Federal jurisdiction can be established by facts alleged in the petition for removal that support a conclusion that the amount in controversy requirement is satisfied.<sup>17</sup> “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.”<sup>18</sup> Plaintiff seeks relief which has, at least temporarily, precluded enforcement of the contractual loan obligations and Trust’s right to take possession of the Property.

16. “[W]hen the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in controversy.”<sup>19</sup> “[T]he amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.”<sup>20</sup> The value of the subject property in this instance for diversity purposes is no less than \$292,887.00 per the records of the Harris County Appraisal District for 2023.<sup>21</sup> The value of the Property in this instance satisfies the jurisdictional amount of \$75,000.00 for diversity purposes and the claim for money damages and attorney’s fees further support the requisite amount in controversy for diversity jurisdiction.

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<sup>15</sup> Complaint, Exhibit C-1.

<sup>16</sup> Exhibit D.

<sup>17</sup> *Menendez v. Wal-Mart Stores, Inc.*, 364 F. App’x 62, 66 (5th Cir. 2010) (unpublished) (citing *Garcia v. Koch Oil Co. of Texas Inc.*, 351 F.3d 636, 638–39 (5th Cir. 2003)).

<sup>18</sup> *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 347, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (U.S. 1977).

<sup>19</sup> *Waller v. Prof’l Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961).

<sup>20</sup> *Webb v. Investacorp, Inc.*, 89 F.3d 252 (5th Cir. 1996), citing *Leininger v. Leininger*, 705 F.2d 727 (5th Cir. 1983).

<sup>21</sup> Exhibit D.

**V. JURY DEMAND**

17. Plaintiff has made a jury demand in the State Court Action.

**VI. CONCLUSION**

18. For the foregoing reasons, Defendants ask the Court to remove this suit to the United States District Court, Southern District of Texas, Houston Division.

Respectfully submitted,

By: /s/ Michael F. Hord Jr.

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of November, 2023, a true and correct copy of Defendants' Notice of Removal was forwarded as follows:

Jeffrey C. Jackson  
Jeffrey Jackson & Associates, LLP  
2500 E. TC Jester Blvd., Suite 285  
Houston, TX 77008  
**Via Email and U.S. Regular Mail**

/s/ Michael F. Hord Jr.

Michael F. Hord Jr.