

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

LINDA and MICHAEL BROWNSTEIN,  
BERNADINE ANTONUCCI, JOHN R.  
CHISHOLM, DENISE A. COLLINSON,  
DIAN FOX-HINDLEY, ROBERT H. HAAS  
and BRIGITTE HAAS-BRUINING,  
STANLEY H. KONEFAL, JR. and JOAN M.  
WALSH-KONEFAL, SANDRA and  
MYRON LEVINE as Trustees of THE  
LEVINE AT NOUVELLE REALTY  
TRUST, CLAIRE SANDELL, ARLENE and  
IRVIN STIGLITZ, MONIKA and VINEET  
VERMANI,

Plaintiffs,

v.

NATICK RESIDENCE, LLC f/k/a GGP  
NATICK RESIDENCE, LLC, HOWARD  
HUGHES CORPORATION, and AARON  
BARTELS,

Defendants.

Civil Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendants Natick Residence, LLC f/k/a GGP Natick Residence, LLC (“Natick Residence”) and The Howard Hughes Corporation (“HHC”) (collectively “Defendants”), by their undersigned attorneys, hereby provide notice that they are removing this action originally commenced in the Superior Court for Middlesex County, Commonwealth of Massachusetts (“State Court”), to the United States District Court for the District of Massachusetts. In support thereof, Defendants state as follows:

1. Defendants exercise their rights under the provisions of 28 U.S.C. §§ 1332, 1441, and 1446, to remove this case from the State Court.
2. On or about October 5, 2011, plaintiffs Linda and Michael Brownstein, Bernadine

Antonucci, John R. Chisholm, Denise A. Collinson, Dian Fox-Hindley, Robert H. Haas and Brigitte Haas-Bruining, Stanley H. Konefal, Jr. and Joan M. Walsh-Konefal, Sandra and Myron Levine as Trustees of The Levine At Nouvelle Realty Trust, Claire Sandell, Arlene and Irvin Stiglitz, and Monika and Vineet Vermani (collectively, "Plaintiffs") filed a Complaint in the State Court under the name and style of Linda and Michael Brownstein, Bernadine Antonucci, John R. Chisholm, Denise A. Collinson, Dian Fox-Hindley, Robert H. Haas and Brigitte Haas-Bruining, Stanley H. Konefal, Jr. and Joan M. Walsh-Konefal, Sandra and Myron Levine as Trustees of The Levine At Nouvelle Realty Trust, Claire Sandell, Arlene and Irvin Stiglitz, Monika and Vineet Vermani v. Natick Residence, LLC f/k/a GGP Natick Residence LLC, Howard Hughes Corporation, and Aaron Bartels, Civil Action No. 11-03556G.

3. 28 U.S.C. § 1441(a) provides, in part, that:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

4. This is a civil action that was instituted in the State Court and has not been tried.

5. Defendants accepted service of the initial pleading setting forth the claims for relief upon which this action is based on October 14, 2011. A true and correct copy of the initial pleading is attached as Exhibit A to this Notice of Removal. True and correct copies of Defendants' respective Acceptance of Service pleadings are attached as Exhibit B to this Notice of Removal.

6. As more fully set forth below, this case is properly removed to this Court, because this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) in that the matter in controversy as set forth in the Complaint exceeds the sum or value of \$75,000, exclusive of

interest and costs, and is between citizens of different states.

**DIVERSITY JURISDICTION EXISTS PURSUANT TO 28 U.S.C. § 1332(a)**

**There Is Complete Diversity Of Citizenship Between Plaintiff And Defendant**

7. In determining whether complete diversity exists, the Court considers the citizenship of all properly joined parties. *See* 28 U.S.C. § 1441(b). In this case, there is complete diversity between Plaintiffs and each of the defendants.

8. The Complaint states that Plaintiffs are “individuals who own one of the residential Units, which are all located in Natick, Massachusetts.” Complaint at ¶¶ 2, 7 (“Plaintiffs all own Units at Nouvelle in Natick, Middlesex County, Massachusetts”). For purposes of diversity of citizenship under 28 U.S.C. § 1332, Plaintiffs are citizens of the Commonwealth of Massachusetts.

9. The citizenship of an unincorporated entity, such as a limited liability company, is determined by the citizenship of all of its members. *Pramco, LLC v. San Juan Bay Marina, Inc.*, 435 F.3d 51, 54 (1st Cir.2006); *Getty Petroleum Marketing, Inc. v. 2211 Realty, LLC*, No. 11–40003–FDS, 2011 WL 2489988, at \*2 (D. Mass. June 17, 2011). Further, “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c)(1); *see also Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010) (holding that “the phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities”).

10. Defendant Natick Residence is a Delaware limited liability company, with its principal place of business in Dallas, Texas. *See* Declaration of Peter Riley in support of Defendants’ Notice of Removal at ¶ 2 (“Riley Decl.”), filed contemporaneously herewith; Complaint at ¶ 3. The sole member of Natick Residence is The Howard Research and

Development Corporation (“Howard Research and Development”). *See* Riley Decl. at ¶ 2.

Howard Research and Development is a Maryland corporation with its principal place of business in Dallas, Texas. *Id.* For purposes of diversity of citizenship under 28 U.S.C. § 1332, Natick Residence is a citizen of a state other than the Commonwealth of Massachusetts.

11. Defendant HHC is a Delaware corporation with its principal place of business in Dallas, Texas. *See* Riley Decl. at ¶ 3; Complaint at ¶ 4. For purposes of diversity of citizenship under 28 U.S.C. § 1332, HHC is a citizen of a state other than the Commonwealth of Massachusetts.

12. The Complaint states that defendant “Aaron Bartels is an individual with a last and usual place of address of 10340 S. Leavitt St., Chicago, IL 60643.” Complaint at ¶ 5. For purposes of diversity of citizenship under 28 U.S.C. § 1332, Mr. Bartels is a citizen of a state other than the Commonwealth of Massachusetts.

13. There is complete diversity of citizenship for purposes of federal jurisdiction under 28 U.S.C. § 1332(a).

**The Amount In Controversy Exceeds \$75,000, Exclusive Of Interest And Costs**

14. The Complaint alleges, among other things, that Plaintiffs bought 11 residential luxury condominium units (the “Units”) “in detrimental reliance upon the intentional and/or negligent misrepresentations of Defendants,” and that had Defendants made accurate representations to them, they would not have closed on their purchase of the Units. Complaint at ¶¶ 1, 29, 37-39;

15. The purchase price of each of Plaintiffs’ Units far exceeds \$75,000, and for several Plaintiffs, exceeds \$1 million. *See* Chapter 93A Demand Letters, attached as Exhibit A to Complaint. Indeed, the purchase prices for the Units ranges from \$459,900 to \$1,225,835.

*Id.*

16. The Complaint asserts counts for misrepresentation/fraud and violation of Massachusetts General Laws Chapter 93A (“Chapter 93A”), and seeks the rescission of each of the real estate transactions and all direct, consequential and benefit-of-the bargain damages, in addition to Plaintiffs’ attorneys’ fees and multiple damages. *See* Complaint at Counts I and II and Prayers for Relief at ¶¶ 2, 3.

17. In their Chapter 93A demand letters, attached as Exhibit A to the Complaint and incorporated by reference therein, Plaintiffs claim that their benefit-of-the bargain damages should be measured as the difference between what they paid for their Units in reliance upon Mr. Bartels’ alleged misrepresentations and the true value of what they received. *See* Exhibit A to Complaint. In short, Plaintiffs claim that they should receive the difference between what they paid for their Units and the prices that other units in the condominium complex sold for at an auction in October 2009 and beyond – allegedly 25-60 percent of the original asking price. Complaint at ¶ 31.

18. Regardless of the amount of monetary damages that Plaintiffs may seek, the amount in controversy requirement is satisfied by Plaintiffs’ request to rescind the sales of the Units. It is well settled that “the value of the matter in controversy is measured not by the monetary judgment which the plaintiff may recover, but by the judgment’s pecuniary consequences to those involved in the litigation.” *Richard C. Young & Co., LTD. v. Leventhal D.D.S., M.S.*, 389 F.3d 1, 3 (1st Cir. 2004).

19. In this case, there can be no dispute that the relief requested by Plaintiffs puts more than \$75,000 at issue, as the object of Plaintiffs’ suit is, among other things, to rescind the sales of all eleven Units, each of which sold for far more than \$75,000. *See* Exhibit A to Complaint. Thus, the “pecuniary consequence” of Plaintiffs’ request for rescission exceeds

\$75,000. *See id.*; *see also Fitzgerald Railcar Servs. of Omaha, Inc. v. Chief Indus., Inc.*, 141 Fed. Appx. 491, 493 (8th Cir. 2005) (stating that “the value of the object of litigation is not measured simply by the amount in alleged default,...but also by the value of the lease agreement if terminated”); *Rosen v. Chrysler Corp.*, 205 F.3d 918, 921 (6th Cir. 2000) (stating that “in cases where a plaintiff seeks to rescind a contract, the contract’s entire value, without offset, is the amount in controversy”).

20. The jurisdictional amount in controversy requirement, therefore, is satisfied.

21. Because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of costs and interests, this Court has original jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1332(a).

#### **PROCEDURAL COMPLIANCE**

22. In accordance with the requirements of 28 U.S.C. § 1446, this Notice of Removal is filed within thirty (30) days after Defendants’ receipt of the initial pleading setting forth the claims for relief upon which this action is based. Defendants remove this action without waiving any objections or defenses that they may have.

23. Pursuant to 28 U.S.C. §§ 1441, *et seq.*, the right exists to remove this case from the State Court to the United States District Court for the District of Massachusetts, Eastern Division.

24. The United States District Court for the District of Massachusetts embraces the county in which the State Court action is now pending, and thus, this Court is a proper venue for this action pursuant to 28 U.S.C. § 101.

25. A true and correct copy of the initial pleading served on Defendants is attached as Exhibit A to this Notice of Removal. In addition, pursuant to 28 U.S.C. § 1446(a) and Local

Rule 81.1 of this Court, Defendants will file certified or attested copies of all records and proceedings in the State Court and a certified or attested copy of all docket entries in the State Court within 28 days after filing this Notice of Removal.

26. As set forth in the consent to removal filed contemporaneously herewith, Defendants remove this action with the consent of each of the defendants that have been served with process, namely Aaron Bartels.

27. Written notice of the filing of this Notice of Removal will be served upon counsel for Plaintiffs as required by law.

28. A true and correct copy of this Notice of Removal will be filed with the clerk of the State Court, as required by law, and served upon counsel for Plaintiffs.

29. Defendants reserve any and all rights to assert any and all defenses to the Complaint, and to amend or supplement this Notice of Removal as necessary.

30. WHEREFORE, Defendants hereby remove this action from the State Court, where it is now pending, to this honorable Court, and respectfully request that this Court accept jurisdiction of this action, and henceforth that this action be placed upon the docket of this Court for further proceedings, as though this case had originally been initiated in this Court.

Respectfully submitted,

NATICK RESIDENCE, LLC f/k/a GGP  
NATICK RESIDENCE, LLC and HOWARD  
HUGHES CORPORATION,

By their attorneys,

/s/Lindsay S. Bishop

John C. Blessington (BBO# 549754)

john.blessington@klgates.com

Lindsay S. Bishop (BBO# 670251)

lindsay.bishop@klgates.com

K&L GATES LLP

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Tel.: (617) 261-3100

Fax: (617) 261-3175

Dated: November 1, 2011



**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent by United States First Class Mail, postage prepaid, to those indicated as non-registered participants as set forth below, on this 1st day of November 2011.

*By First Class Mail:*

Tyler E. Chapman  
tchapman@toddweld.com  
Michael Thad Allen  
mallen@toddweld.com  
Todd & Weld, LLP  
28 State Street, 31st Floor  
Boston, MA 02109  
(617) 720-2626

*By First Class Mail:*

Martin M. Fantozzi  
mfantozzi@goulstonstorrs.com  
Jonathan E. Small  
jsmall@goulstonstorrs.com  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333  
(617) 574-3510

/s/Lindsay S. Bishop  
Lindsay S. Bishop