

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

Civil Case No.

DRB REALTY & PROPERTIES, LLC, a Georgia LLC,

Plaintiff,

v.

NUTRIEN AG SOLUTIONS, INC., a Delaware Corporation,

Defendant.

**DEFENDANT NUTRIEN AG SOLUTIONS, INC.’S NOTICE OF REMOVAL
WITH INCORPORATED MEMORANDUM OF LAW**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Nutrien Ag Solutions, Inc. (“Nutrien” or “Defendant”), through undersigned counsel, respectfully submits this Notice of Removal and states as follows.

BACKGROUND

1. On June 24, 2021, Plaintiff DRB Realty & Properties, LLC (“Plaintiff” or “the Plaintiff LLC”) filed a Complaint (“Complaint”) upon Defendant Nutrien and now-dismissed Defendant Mills Forestry Service, LLC, titled *DRB Realty & Properties, LLC v. Nutrien Ag Solutions, Inc. and Mills Forestry Service, LLC*, in the Circuit Court of the Superior Court of Gwinnett County, Georgia, Case No. 21-

A-04860-7 (“State Court Action”). A true and correct copy of the Complaint is attached hereto as Exhibit A. Plaintiff asserts claims for, among other causes of action, Negligence and Breach of Contract, and seeks damages in excess of \$20,000,000.00. Ex. A, p. 6.

2. Defendant Nutrien was served a copy of the Complaint on July 1, 2021. A true and correct copy of the Service of Process Transmittal is attached hereto as Exhibit B.

3. At the time of filing of the Complaint, the identities and citizenships of the Plaintiff LLC’s members were unknown.

4. On November 19, 2021, Plaintiff dismissed Defendant Mills Forestry Service, LLC from the case.

5. On January 27, 2022, Nutrien deposed David Blount, a member of the Plaintiff LLC. Mr. Blount testified that there are three members of the Plaintiff LLC: David Blount, his wife Brenda Blount, and their son Rhett Blount. All of the Plaintiff LLC’s members are residents and citizens of Georgia. None of the Plaintiff LLC’s members are citizens of Colorado or Delaware.

STATEMENT OF GROUNDS FOR REMOVAL

6. Removal is timely pursuant to 28 U.S.C. § 1446(b)&(c) because less than thirty days have passed since Defendant became aware that it is completely

diverse from the Plaintiff LLC's members, and less than one year has passed since the commencement of the action.

7. This action is subject to removal pursuant to 28 U.S.C. §§ 1441 and 1446 because of the original jurisdiction conferred by 28 U.S.C. § 1332. Federal alienage, diversity jurisdiction exists in this case because the amount in controversy exceeds \$75,000 and the case is between citizens of different states. 28 U.S.C. § 1332.

JURISDICTION AND VENUE

8. None of the Plaintiff LLC's members are citizens of Delaware or Colorado. All of the Plaintiff LLC's members are citizens of Georgia.

9. Defendant Nutrien is a Delaware corporation with its principal place of business in Loveland, Colorado. *See* 28 U.S.C. § 1332(c)(1).

10. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1446(c)(2)(B) (“[R]emoval of the action is proper on the basis of an amount in controversy asserted [in the notice of removal] if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds” \$75,000.).

11. Plaintiff's Complaint seeks damages for alleged injuries to trees, which Plaintiff values at over \$20,000,000.00. Ex. A, p. 6.

12. The United States District Court for the Northern District of Georgia is the proper court to which this action should be removed pursuant to 28 U.S.C. § 1441(a) because the original action was filed in the Superior Court of Gwinnett County, Georgia, and the Northern District of Georgia encompasses Gwinnett County, Georgia.

PROCESS, PLEADINGS AND ORDERS SERVED

13. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 1.06(b), a copy of all process, pleadings, motions, and orders served upon Defendant or otherwise listed on the docket of the State Court Action are attached hereto as Exhibits A–P.

14. There are no pending motions in the State Court Action.

15. No hearings have been set in the State Court Action.

NOTICE OF REMOVAL

16. Pursuant to 28 U.S.C. § 1446(d), Defendant Nutrien will promptly file a Notice of Filing of Notice of Removal with the Superior Court of Gwinnett County, Georgia, and will serve the same upon Plaintiff. A copy of such Notice is attached as Exhibit Q.

17. Pursuant to Local Rule 1.06(b), along with the filing of this Notice, Defendant Nutrien will file a current docket sheet (register of actions) and will separately file each pending motion, petition, and related response, reply, and brief.

WHEREFORE, Defendant Nutrien respectfully gives notice that this action has been removed from the Superior Court of Gwinnett County, Georgia, to the United States District Court for the Northern District of Georgia.

Respectfully submitted this 28th day of January, 2022.

/s/William V. Custer

William V. Custer
Ga. Bar No. 202910
Ann W. Ferebee
Ga. Bar No. 431941
Brooke B. Ingoglia
Ga. Bar No. 808110

**BRYAN CAVE LEIGHTON PAISNER
LLP**

1201 W. Peachtree Street, N.W.
Suite 1400
Atlanta, Georgia 30309
(404) 572-6600 (phone)
(404) 572-6999 (fax)

Counsel for Nutrien Ag Solutions, Inc.

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