



**PLEASE TAKE FURTHER NOTICE** that Plaintiffs make this Motion under the following specific provisions of the Federal Rules of Civil Procedure, Local Rules of the District of New Jersey.

**PLEASE TAKE FURTHER NOTICE** that in support of this Motion, Plaintiffs are submitting the Declarations of Elizabeth Silver Fagan and Edward D. Fagan, plaintiffs pro se.

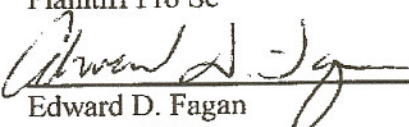
**PLEASE TAKE FURTHER NOTICE** that Plaintiffs will also rely upon the accompanying Letter Memorandum in support of the Motion.

**PLEASE TAKE FURTHER NOTICE** that defendants shall serve their opposition, if any, in accordance with the Federal Rules of Civil Procedure and the Local Rules of the District of New Jersey and/or at such other date as may be set by the Court.

Dated: February 6, 2008  
Short Hills, NJ

  
Elizabeth Silver Fagan  
10 Ferncliff Terrace  
Short Hills, NJ 07078  
Tel. (973) 699-3380  
Plaintiff Pro Se

Dated: February 6, 2008  
New York, NY

  
Edward D. Fagan  
10 Ferncliff Terrace  
Short Hills, NJ 07078  
Tel. (917) 239-4989  
- and -  
5 Penn Plaza, 23<sup>rd</sup> Floor  
New York, NY 10001  
Tel. (646) 378-2225  
Plaintiff Pro Se

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused the foregoing

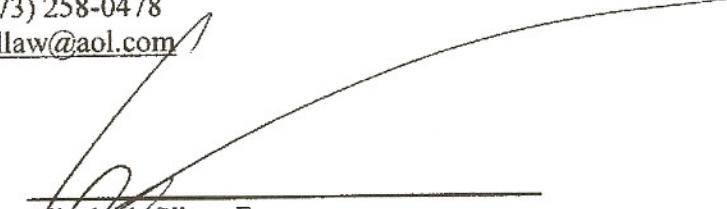
**NOTICE OF MOTION FOR (i) SUMMARY REMAND PURSUANT TO 28 U.S.C. §1446 ( c) (4), IMPOSITION OF COSTS AGAINST DEFENDANTS COUNSEL PURSUANT TO 28 U.S.C. § 1927 AND FOR OTHER RELIEF**

to be filed with the Clerk of the Court and served on Defendants' counsel by 1<sup>st</sup> class mail postage prepaid, fax and email to:

Peter W. Till  
105 Morris Avenue, Suite 201  
Springfield, NJ 07081  
Tel. # (973) 258-0064  
Fax # (973) 258-0478  
Email: [tilllaw@aol.com](mailto:tilllaw@aol.com)

Dated: February 6, 2008  
Short Hills, NJ

Dated: February 6, 2008  
New York, NY

  
\_\_\_\_\_  
Elizabeth Silver Fagan

  
\_\_\_\_\_  
Edward D. Fagan



08-cv-640

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

----- X  
Elizabeth Silver – Fagan et al, :  
: Plaintiffs, :  
: :  
- vs - :  
: :  
David H. Jaffe, et al :  
: Defendants :  
----- X

08-cv-640  
(subject names)

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**DECLARATIONS OF ELIZABETH SILVER FAGAN AND EDWARD D. FAGAN IN SUPPORT OF MOTION FOR (i) SUMMARY REMAND PURSUANT TO 28 U.S.C. §1446 ( c) (4), IMPOSITION OF COSTS AGAINST DEFENDANTS’ COUNSEL PURSUANT TO 28 U.S.C. § 1927 AND FOR OTHER RELIEF**

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Elizabeth Silver – Fagan and Edward D. Fagan, hereby declare as follows:

1. We are plaintiffs in this action and we make this Declaration in support of the Motion for Summary Remand and other relief.
2. The facts and/or procedural posture relevant to this Motion are relatively simple.
3. This is a simple tort case for (i) damages that were caused by the un-emancipated daughter and/or granddaughter of Defendants David H. Jaffe (“D. Jaffe”), Margaret E. Jaffe (“M. Jaffe”), Mindy Rogers (“M. Rogers”) and Kenn Kim Rogers (“K. Rogers”) (hereinafter collectively “Defendants”) and (ii) injunctive relief to prevent from further diminution, waste, concealment or transfer outside the jurisdiction of New Jersey Courts, Defendants assets necessary to satisfy Plaintiffs damages.
4. Defendants’ daughter and/or grand-daughter, also a Defendant in the underlying State Court case, suffered and continues to suffer from “very serious” psychological, psychiatric, emotional or other related conditions that made and make her a danger to herself and others.
5. Defendants are and were responsible for the acts of their daughter and/or granddaughter.

6. The damages Plaintiffs suffered were acts made possible, and were entirely foreseeable, by Defendants.
7. There is no federal question and no federal laws involved in this case that would have allowed it to be originally brought in this Court, pursuant to 28 U.S.C. § 1331. *See Exh. 1 - Amended Complaint – ¶¶ 27, 28 & 29.*
8. There is no diversity of citizenship between plaintiffs and Defendants that would have allowed the case to be originally brought in this Court, pursuant to 28 U.S.C. § 1332. *See Exh. 1 - Amended Complaint, ¶¶ 1 – 5 and 8 – 18.*
9. Plaintiffs reside in New Jersey. *See Exh. 1 - Amended Complaint, ¶¶ 1 – 2.* Defendants Margaret Rogers and D. Jaffe, M. Jaffe and their companies reside and/or domiciled in New Jersey. *See Exh. 1 - Amended Complaint, ¶¶ 3, 4, 5 and 8 - 18.* Defendants M. Rogers and K. Rogers are the only Defendants who are not residents of or domiciled in New Jersey. *See Exh. 1 - Amended Complaint, ¶¶ 6 – 7.*
10. We were trying to work cooperatively with Defendants as we sought to preserve and gain access to certain evidence. In that regard, we called and tried to communicate with Defendants directly. We sought to avoid unnecessary fights as we sought to preserve evidence and to deal with other issues that warrant expedited attention by the parties and the Court.
11. When Defendants refused to cooperate, we were compelled to start taking actions such as issuing subpoenas.
12. We called Defendants and informed them of this and again they refused.
13. Defendants retained counsel whose first act was to threaten us with potential imposition of costs, accusing us of engaging in frivolous litigation. *See Exh. 2 – Defendants Counsel’s Jan. 30, 2008 letter.*



14. Then on Feb. 5, 2008, we received a Lawyers Service delivery that Defendant had purportedly filed a Notice of Removal. *See Exh. 3 – Feb. 5, 2008 Cover Letter, with attached Notice of Filing – Notice of Removal dated Jan. 30, 2008, Certification of Service dated Jan. 30, 2008, Notice of Motion (on Short Notice to Quash Subpoena) dated Feb. 5, 2008 and Till Certification dated Feb. 5, 2008.*
15. There are many irregularities and/or contradictory statements about when and in what manner the Notice of Removal was filed. There was no notice served on Jan. 30, 2008 and any certification to that affect is misleading and untrue.
16. What is clear from the Notice of Removal is that it is an attempt to stall or delay Plaintiffs' ability to secure and gain access to evidence, and to prevent and/or enjoin further diminution of assets and/or removal of assets from the jurisdiction.
17. Plaintiffs sought (i) to preserve evidence, including electronically stored and hard copies, which are within Defendants' exclusive custody, possession and/or control, relevant to the claims that are being concealed and are in danger of being destroyed and/or lost; (ii) to compel limited production of certain evidence from Defendants' necessary to expeditious resolution of certain procedural matters including but not limited to motions for partial summary judgment; (iii) to compel Defendants to identify and disclose insurance coverage for plaintiffs' claims; (iv) to requiring Defendants to provide proof that they notified their insurers of the existence of plaintiffs' claims; and (v) to compel Defendants D. Jaffe and M. Jaffe (who are both over 80 years of age with health problems) to appear for expedited depositions .
18. Instead of cooperating with Plaintiffs, Defendants' counsel filed the Notice of Removal that is defective for reasons including but not limited to the following:
  - a. The Notice does not contain a "short and plain statement of the grounds for

removal” – as required by 28 USC 1446 (a);

- b. The Notice of Removal was not accompanied by a Case Information Statement, signed by Defendants’ counsel, which would also have shown the grounds for removal; and
- c. The Notice of Removal is accompanied by a Notice of Motion (on Short Notice) to Quash Subpoenas, which is accompanied by a Certification of Counsel in which Attorney Till states *“I am fully familiar with the facts and circumstances surrounding the within matter”* and which then fails to provide a *“short and plain statement of the grounds for removal”*; suggests that the requested information and documents from Defendants’ non-lawyer business manager (Schlossman) and Defendants personal bookkeeper (Nowlin) are somehow protected by attorney-client privilege and work product doctrine or are over-broad and was not accompanied by a Memorandum of Law.

19. There are other incurable infirmities that made and make removal improper.

20. Defendants know that they are domiciled and/or residents of New Jersey. Defendants know that Plaintiffs are domiciled and/or residents of New Jersey. Defendants also know that the complaint does not allege any violations of Federal law and does not present or argue any Federal question.

21. Defendants counsel - who certified he *“was fully familiar with the facts and circumstances surrounding the within matter”* – also knows that (i) there is no Federal Question involved, (ii) there is not complete diversity of citizenship and (iii) this case is not removable to Federal Court. Defendants’ counsel had to know that the Notice of Removal should not have been filed in the first place.

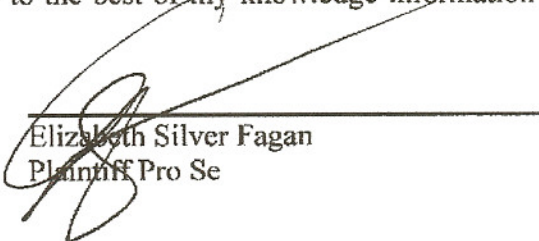


22. Therefore, the Notice of Removal should be viewed for exactly what it is, i.e. an attempt to delay and unreasonably and vexatiously multiply the proceedings.
23. The Notice of Removal is also an attempt to interfere with Plaintiffs' reasonable efforts to (i) locate, secure and preserve evidence relevant to Plaintiffs' cause of action, (ii) preserve the testimony of aged and/or infirm Defendants D. Jaffe and M. Jaffe, (iii) preserve evidence that is at risk of being destroyed and (iv) prevent the ongoing diminution of assets and/or concealment and/or transfer outside the jurisdiction of New Jersey Courts of Defendants assets needed to satisfy Plaintiffs damages.
24. We have expended and will in the future have to expend significant time, energy and resources, and take time away from other work to respond to this improvidently filed Notice of Removal and to respond to Defendants' ongoing efforts to interfere with our efforts to locate, identify and preserve evidence, to secure deposition testimony from elderly and infirm parties, as well as our efforts to stop alleged improper diminution, concealment and/or transfer of assets. We urge the Court to retain jurisdiction for the limited purpose of allowing us to make formal submissions upon which the Court could base and award proper damages that are directly attributable to the unnecessary and vexatious conduct of Defendants and/or their counsel, which was designed to improperly delay and/or multiply the proceedings by Defendants and their counsel.
25. We urge the Court to grant our Motion in its entirety.

**DECLARATION UNDER 28 USC § 1746**

I declare, verify, certify and state under the penalty of perjury that the facts and statements contained above are true and accurate to the best of my knowledge information and belief.

Dated: February 6, 2008  
Short Hills, NJ


  
Elizabeth Silver Fagan  
Plaintiff Pro Se



**DECLARATION UNDER 28 USC § 1746**

I declare, verify, certify and state under the penalty of perjury that the facts and statements contained above are true and accurate to the best of my knowledge information and belief.

Dated: February 6, 2008  
New York, NY

  
Edward D. Fagan  
Plaintiff Pro Se