

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**G2, INC.,**

(b) County of Residence of First Listed Plaintiff Tulsa  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 D. Mitchell Garrett, Jr., OBA #20704 - Garrett Law Center, PLLC  
 P. O. Box 1349; Tulsa, OK 74101-1349  
 (918) 895-7216; fax (918) 895-7217

**DEFENDANTS**  
**PONCA TRIBE OF INDIANS OF OKLAHOMA**

County of Residence of First Listed Defendant Key  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input checked="" type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1362

Brief description of cause:  
Breach of Contract, Conversion, Unjust Enrichment

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 08/22/2013    SIGNATURE OF ATTORNEY OF RECORD: /s/D. Mitchell Garrett, Jr.

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

**IN THE UNITEDE STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1.	<b>G2, INC.,</b>	)	
		)	
	<b>Plaintiff,</b>	)	
		)	
	v.	)	<b>Case No:</b> <u>CIV-13-898-F</u>
		)	
1.	<b>PONCA TRIBE OF INDIANS OF OKLAHOMA,</b>	)	
		)	
	<b>Defendant.</b>	)	

**COMPLAINT**

**COMES NOW** the Plaintiff, G2, Inc., (“G2”), a Sac and Fox Corporation, by and through its attorneys of record, D. Mitchell Garrett, Jr. of Garrett Law Center, PLLC, and for its claims and allegations against the Defendant, PONCA TRIBE OF INDIANS OF OKLAHOMA (the “Ponca Tribe”), a federally recognized Indian tribe, doing business as BLUE STAR GAMING AND CASINO (“Blue Star”), and in support thereof, states as follows:

1. The Ponca Tribe is a federally recognized Indian tribe. In addition to its status as a federally-recognized Indian tribe, upon information and belief, the Ponca Tribe is and at all times relevant hereto was a federal corporation chartered under the *Oklahoma Indian Welfare Act*, 25 § USCS 501, *et seq.*, and the *Indian Reorganization Act*, 25 USCS § 465, *et seq.*, recognized by the United States Department of the Interior and ratified by Corporate Charter on or about September 20, 1950.

2. As a federally recognized Indian tribe, the Ponca Tribe possesses a limited sovereign immunity from civil actions. Due to the intentional nature of these torts, the tribe has waived its immunity and proper jurisdiction lies with this Court. A copy of the Construction Loan is attached hereto and made a part hereof as *Exhibit 1*.

3. The Ponca Tribal Court would not have subject matter jurisdiction in which case to regulate a non-Indian. *Montana v. United States*, 450 U.S. 544. Nor does the Plaintiff G2 maintain minimum contacts to give Tribal Courts personal jurisdiction over this case.

4. Venue is proper in this Court pursuant to 28 USC 1362.

### **COUNT I - BREACH OF CONTRACT**

5. On March 1, 2010, the Ponca Tribe executed a "Construction Loan" in favor of G2 in the principal amount of \$750,000.00, with a rider that all construction should be performed at cost plus 10%.

6. G2 performed all of its obligations under the Construction Loan contract.

7. The Ponca Tribe had been substantially performing on this Construction Loan by making payments to G2 in the amount of \$35,000.00 per month. See attached *Exhibit 2*.

8. Despite G2's notice of default and demand for repayment, the Ponca Tribe has defaulted on repayment pursuant to the terms of the Construction Loan. Said failure constitutes an event of default pursuant to the Construction Loan. The Ponca Tribe breached its contract with G2 by failing to make payments on the principal balance, and failing to otherwise cure the default.

9. G2 has sustained damages in connection with the Ponca Tribe's breach of contract.

10. G2 has sustained damages and costs in connection with the Ponca Tribe's continued use of its tax license, incurring fees and monies owed (OTC Case No. P-13-037-K).

11. G2 is entitled to recover damages it has sustained, including repayment of the remaining principal balance of \$350,000.00, interest which continues to accrue, plus the expenses related to filing this action and reasonable attorneys' fees.

**COUNT II – CONVERSION**

12. G2 incorporates and reasserts each of the allegations in paragraphs 1-11 as if fully asserted herein.

13. At the time the Ponca Indian Tribe and its Gaming Commissioner locked G2 and G2's CEO Gary Watkins out of their offices, each had personal property and corporate assets located inside the office. A list of the corporate property believed to be present in the offices is attached hereto as *Exhibit 3*. The list is based primarily on G2's memories and is not intended to be exhaustive.

14. On August 31, 2011, counsel for G2 called counsel for the Ponca Tribe requesting that counsel and/or one of its employees be allowed entry to the offices to remove G2's personal and corporate property and/or make inventory of it. However, counsel for the Ponca Tribe said that (a) an inventory was underway; (b) representatives for G2 to reclaim their personal and corporate property are not necessary and (c) in no way were G2 or its CEO, Mr. Watkins, to enter the property and attempt to reclaim any of their personal or corporate property. See attached *Exhibit 4*.

15. G2 has a right to possess the property in question, and the Ponca Tribe have wrongfully interfered with that right. Therefore, the Ponca Tribe is liable to G2 for conversion.

16. G2 seeks punitive damages due to the intentional nature of these acts.

**COUNT III – UNJUST ENRICHMENT**

17. G2 incorporates and reasserts each of the allegations contained in paragraphs 1-16 as if fully asserted herein.

18. Pursuant to its responsibilities as an employee and contractor, G2 has incurred expenses on two (2) personal credit cards for the purpose of funding Two River Casino's

operations. This amount was incurred for the benefit of and on behalf of the Ponca Tribe, and is properly the debt of the Ponca Tribe.

19. Failure of the Ponca Tribe to pay this amount would result in unjust enrichment to the detriment of G2.

**COUNT IV – ANTICIPATORY REPUDIATION**

20. G2 incorporates and reasserts each of the allegations contained in paragraphs 1-19 as if fully asserted herein.

21. G2 has served as an employee of the Ponca Tribe for Two Rivers Casino, for which it has not been paid. Pursuant to this contract, G2 and its employees are owed back salaries and wages.

22. In a letter from the Ponca Tribal Gaming Commissioner sent on August 31, 2011 the Ponca Gaming Commissioner represented that Mr. Watkins was not to enter the premises to claim any of G2's property and thus this owed amount would not be paid. The Ponca Tribe has therefore anticipatorily repudiated its contractual obligations to G2.

**COUNT V – UNJUST ENRICHMENT**

23. G2 incorporates and reasserts each of the allegations contained in paragraphs 1-22 as if fully asserted herein.

24. G2 obtained a Mixed Beverage Tax License and paid the taxes. The Ponca Tribe continued to operate under G2's Mixed Beverage Tax License without any reimbursement to G2 for its taxes and costs incurred.

**WHEREFORE**, Plaintiff, G2, Inc., a Sac and Fox Corporation, respectfully requests that this Court (1) enter judgment in favor of G2 and against the Defendant, PONCA TRIBE OF INDIANS OF OKLAHOMA, a federally recognized Indian tribe; (2) order the Ponca Tribe to

pay G2 the amount of \$350,000.00, along with interest, and reasonable attorneys' fees and the costs of this action; (3) enter judgment in favor of G2 and against the Defendant, PONCA TRIBE OF INDIANS OF OKLAHOMA, a federally recognized Indian tribe, for conversion and allow G2 to reclaim its property; and (4) for such other and further relief as this Court deems just and equitable.

Respectfully submitted this 22nd day of August, 2013.

**GARRETT LAW CENTER, PLLC**

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