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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SHOSHONE-BANNOCK TRIBES; and
FORT HALL BUSINESS COUNCIL,

Plaintiffs,

v.

VANIR CONSTRUCTION
MANAGEMENT, INC.,

Defendant.

Case No.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Vanir Construction Management, Inc. (“Vanir”), by and through undersigned counsel of record Stoel Rives LLP, hereby give notice of removal of this action, bearing case number 2023-CV-CM-0051 from the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division to the United States District Court for the District of Idaho. Pursuant to 28 U.S.C. § 1446, Defendants provide the following statement of grounds for removal.

I. BACKGROUND

1. Plaintiff commenced this action by filing a Complaint and Demand for Jury Trial (“Complaint”) on February 27, 2023, in the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of following documents are attached hereto:

- a. Attached as **Exhibit A** is the Complaint and Demand for Jury Trial;
- b. Attached as **Exhibit B** is a copy of the Summons for Vanir;
- c. Attached as **Exhibit C** is the Order Authorizing Service;
- d. Attached as **Exhibit D** is the Application for Admission Pro Hac Vice and Notice of Appearance for Elijah Watkins;
- e. Attached as **Exhibit E** is the Motion to Dismiss and Memorandum in Support;
- f. Attached as **Exhibit F** is the Declaration of Elijah Watkins in Support of the Motion to Dismiss;
- g. Attached as **Exhibit G** is the Notice of Appearance as Co-Counsel of Record;
- h. Attached as **Exhibit H** is the Order Granting Admission Pro Hac Vice for Elijah Watkins;
- i. Attached as **Exhibit I** is Vanir’s Motion to Set Aside Entry of Default;
- j. Attached as **Exhibit J** is the Memorandum in Support of Vanir’s Motion to Set Aside Entry of Default;
- k. Attached as **Exhibit K** is the Declaration of Elijah Watkins in Support of Vanir’s Motion to Set Aside Entry of Default;
- l. Attached as **Exhibit L** is the Proposed Order re Motion to Set Aside Entry of Default.

2. Plaintiff asserts four causes of action: (1) negligence, (2) breach of contract, indemnification, and (4) quantum Meruit/Unjust Enrichment. All of the claims relate to the recovery of damages Plaintiff claims it incurred from the design, construction, and contract administration of the Phase II Casino Expansion Project within the exterior boundaries of the Fort Hall Reservation.

II. VENUE AND JURISDICTION

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 92, 1391, 1441(b) and 1446(a) because the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division District, where the Complaint was filed, is a court within the geographical boundaries of the United States District Court for the District of Idaho.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because: (1) there is complete diversity of citizenship between Plaintiff and Defendant; (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs; and (3) all other requirements for removal have been satisfied.

A. There is complete diversity of citizenship between Plaintiff and Defendants.

5. A district court has original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000 and there is diversity of citizenship. *See* 28 U.S.C. § 1332(a).

6. The Shoshone-Bannock Tribes and Fort Hall Business Counsel (collectively, the “Tribes”) are named on the face of the complaint. While preparing its motion to dismiss before the tribal court, Vanir discovered that the at-issue contract was amended to remove the Tribes from the contract and replace it with the Shoshone-Bannock Tribal Attorney’s office (“Attorneys”). Attorneys therefore are the real parties in interest in this breach of contract action. *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 460-461, 100 S.Ct. 1779, 64 L.Ed.2d 425 (1980) (“To determine if

diversity jurisdiction exists, courts must examine the citizenship of the real parties to the controversy, not the citizenship of nominal or formal parties”); *Dulcich, Inc. v. Mayer Brown, LLP*, 954 F. Supp. 2d 1129, 1137–38 (D. Or. 2013) (“Since at least the mid–1800’s, a defendant contending that non-diverse plaintiffs are not real parties in interest has been permitted to remove a case to federal court and invoke diversity jurisdiction.”) The principal place of business for the Attorneys office is Fort Hall, Idaho. Plaintiff is a citizen of the State of Idaho.

7. Defendant Vanir Construction Management, Inc. (“Vanir”) is incorporated in California and has its principal place of business in Sacramento, California. Complaint ¶ 4. Accordingly, Vanir is a citizen of the State of California. *See* 28 U.S.C. § 1332(c)(1).

8. There is complete diversity of citizenship because the real party in interest (Attorneys) is a citizen of Idaho and Defendant is a citizen of California.

B. The Amount in Controversy Exceeds \$75,000

9. Diversity jurisdiction under 28 U.S.C. § 1332 requires that the amount in controversy, exclusive of interest and costs, be in excess of \$75,000.

10. Plaintiff has alleged that the damages exceed \$1,500,000.

11. Based on these allegations, the amount in controversy exceeds \$75,000.

C. The procedural requirements of removal are satisfied.

12. Pursuant to 28 U.S.C. § 1446(a), copies of the tribal court docket and process, pleadings, orders, and other papers filed in the Tribal Court Action are attached here to as **Exhibits A-C**.¹

13. The Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

¹ Defendant was unable to access the Tribal Court Docket. As soon as Defendant gains access to those documents, Defendant will file those additional exhibits.

14. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing Plaintiff with written notice of the filing of this Notice of Removal.

15. Also pursuant to 28 U.S.C. § 1446(d), Defendant is contemporaneously filing a copy of this Notice of Removal and a Notice to Tribal Court of Notice of Removal with the Clerk of the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division.

16. Defendant reserves the right to amend or supplement this Notice of Removal.

17. By filing this Notice of Removal, Defendant does not waive any defense that may be available to them and reserves all such defenses, including but not limited to those related to service of process.

WHEREFORE, Notice is given that this action is removed from the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division to the United States District Court for the District of Idaho.

DATED: April 7, 2023.

STOEL RIVES LLP

/s/ Elijah M. Watkins

Elijah M. Watkins

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 2023, I served a true and correct copy of the foregoing document upon the following named parties by the method indicated below, and addressed to the following:

Paul C. Echo Hawk
ECHO HAWK LAW OFFICE
P.O. Box 4166
Pocatello, ID 83205

Via Facsimile
 U.S. Mail
 Via Email
 Efile & Serve

Attorneys for Plaintiffs

/s/ Elijah M. Watkins
Elijah M. Watkins