

Paul C. Echo Hawk (ISB # 5802)
ECHO HAWK LAW OFFICE
P.O. Box 4166
Pocatello, Idaho 83205
Telephone: (208) 705-9503
Facsimile: (208) 904-3878
paul@echohawklaw.com

William F. Bacon, General Counsel (ISB # 2766)
SHOSHONE-BANNOCK TRIBES
P.O. Box 306
Fort Hall, Idaho 83203
Telephone: (208) 478-3822
Facsimile: (208) 237-9736
bbacon@sbtribes.com

*Attorneys for Shoshone-Bannock Tribes and
Fort Hall Business Council*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHOSHONE-BANNOCK TRIBES; and)	
FORT HALL BUSINESS COUNCIL,)	Case No. 4:23-cv-00160-REP
)	
Plaintiffs,)	
)	MOTION FOR REMAND
V.)	28 U.S.C. 1447(c)
)	
VANIR CONSTRUCTION)	
MANAGEMENT, INC.,)	
)	
Defendant.)	
)	

I. INTRODUCTION

Pursuant to 28 USC § 1447(c), Plaintiffs Shoshone Bannock Tribes and Fort Hall Business Council (collectively, “the Tribes”) move this Court to remand this matter to the Shoshone Bannock Tribal Court for the Fort Hall Reservation. This lawsuit arises from a contract for construction improvements to the Tribes’ hotel and casino, under which Defendant Vanir Construction Management, Inc. (“Vanir”) expressly consented to tribal court jurisdiction and the Tribes retained tribal sovereign immunity. Remand is required for any or all of four independently dispositive reasons: (1) because the removal statute does not authorize removal from tribal court, (2) because Vanir failed to timely remove the lawsuit even if it were permitted to do so, (3) because this Court lacks jurisdiction over the Tribes, and (4) because, even if this Court had jurisdiction, well-established principles of comity require deference to the Shoshone-Bannock Tribal Court.

This Court should reject Vanir’s improvident attempt at removal. Failure to remand would not only allow Vanir to skirt its contractual obligation to adjudicate this matter in Shoshone-Bannock Tribal Court, it would fly in the face of tribal sovereignty.

II. BACKGROUND

The Shoshone Bannock Tribes is a federally recognized Indian Tribe located on the Fort Hall Reservation in the State of Idaho. Dkt. No. 1-2, ¶ 2. The Fort Hall Business Council is the governing body of the Shoshone-Bannock Tribes. *Id.*, ¶ 3. This case arises out of construction to expand the Shoshone Bannock Casino Hotel, which is located on the Fort Hall Reservation. *Id.*, ¶ 8. The Project, known as the Phase II Casino Expansion Project, began in 2015. *See Id.*

On July 14, 2015, the Tribes entered a contract with Vanir under which Vanir agreed to provide construction management services to oversee both the completion of the design and the eventual construction of the Project. Dkt. No. 1-2, ¶ 8. Vanir expressly “assume[d] full responsibility for the management of the... Project,” including significant pre-construction activities and procurement of the general contractor, as well as contract administration during the construction phase. *Id.*, ¶ 9.

The Contract between the Tribes and Vanir placed exclusive jurisdiction over any dispute between the Parties with the Shoshone-Bannock Tribal Court:

The parties hereto further agree the laws of the Shoshone-Bannock Tribes shall apply and any disputes will be filed with the Tribal Court of the Shoshone-Bannock Tribes. **The parties further agree that the Shoshone-Bannock Tribes Tribal Court will have exclusive jurisdiction over any and all disputes regarding this agreement.**

Dkt. No. 1-7, p. 19 of 42. The Contract also specified that “the Shoshone-Bannock Tribal Court shall be the sole, proper and exclusive forum and venue” for legal proceedings commenced in connection thereto. *Id.* Finally, the Tribes expressly retained sovereign immunity under the Contract:

Neither the execution of this Agreement, nor any provision contained herein shall be interpreted to act as a waiver of the Shoshone-Bannock Tribes’ sovereign

immunity. **The Shoshone-Bannock Tribes hereby specifically reserves and retains its sovereign immunity and any rights appurtenant thereto.**

Id.

The Project was plagued with difficulties from the outset. Dkt. No. 1-2, ¶ 10. The first project architect, Thalden Boyd Architects, LLC, abandoned the Project based in part on allegations that the Tribes, through Vanir, failed to timely and adequately communicate. *Id.* During the construction phase, numerous disputes arose with the original general contractor, Ormond Builders, Inc. (“OBI”), which stemmed from design and management issues for which Vanir was responsible as the Tribes’ Owner Representative. *Id.*, ¶¶ 13-14. In reliance on Vanir’s advice, the Tribes terminated OBI in early April of 2018 and hired a replacement general contractor. *Id.*, ¶ 15.

In April of 2019, the Tribes and OBI participated in a prolonged arbitration hearing over the design, construction, and contract administration of the Project. Dkt. No. 1-2, ¶ 18. OBI alleged, among other claims, that Vanir mismanaged the Project as the Owner’s representative causing significant cost overruns. *Id.* Ultimately, the arbitration panel issued a \$2.9 million award in favor of OBI against the Tribes. *Id.*, ¶¶ 19-20.

In December of 2019, after arbitration, the Parties executed an Amendment (No. 8) to the Contract which substituted the Shoshone-Bannock Tribal Attorney’s Office for the Fort Hall Business Council as party to the Contract. Dkt. No. 1-7, p. 41 of 42. William Bacon, General Counsel for the Shoshone Bannock Tribes, signed the Amendment on the Tribes’ behalf. *Id.*; Declaration of William Bacon, ¶ 2. The Tribal Counsel’s Office, by which Mr. Bacon is employed, is an administrative government office of the Shoshone Bannock Tribes. Bacon Decl., ¶ 3. The Amendment expressly stated that, except as specifically provided, “all terms and conditions of the Agreement... shall remain in full force and effect.” Dkt. No. 1-7, p. 41 of 42.

The Tribes first filed suit against Vanir in Tribal Court on May 26, 2020, seeking to recover against Vanir for its negligence and failures in causing the Tribes’ losses at arbitration. Dkt. No. 1-2, ¶ 24. The Tribes and Vanir subsequently agreed to toll that lawsuit, which was voluntarily

dismissed without prejudice, to allow the Parties to attempt resolution via non-binding mediation. *Id.* The Parties mediated without success on February 15, 2023, after which, on February 27, 2023, the Tribes filed the instant lawsuit against Vanir in Shoshone-Bannock Tribal Court. *Id.*, ¶ 26. The Tribes effectuated service on Vanir on March 2, 2023. Declaration of Paul C. Echo Hawk, Ex. A. On March 24, 2023, the Tribal Court issued an Entry of Default against Vanir.

Vanir filed a Motion to Dismiss in Shoshone-Bannock Tribal Court on March 27, 2023. Dkt. No. 1-6. Then, on April 7, 2023, before the Tribes' opposition to the Motion to Dismiss was due, Vanir removed the action to this Court on the basis of diversity jurisdiction. Dkt. No. 1. The pending Motion to Dismiss was transferred to this Court. The Tribes' response is due on April 28, 2023.)

Then, on April 14, 2023, well before the 30-day remand period afforded by Section 1447(c) of the removal statute (28 U.S.C. § 1441 et seq.) expired, Vanir filed a Motion to Disqualify all of the Tribes' counsel. Dkt. No. 6. The Tribes' response to that motion is due on May 5, 2023. Upon receipt of Vanir's Notice of Removal, the Tribes determined it would seek remand. Anticipating the procedural and jurisdictional conflicts presented by the Motion for Remand and Vanir's pending motions, the Tribes asked Vanir to set over its Motions to Dismiss and for Disqualification until after this Court's decision on the instant Motion to Remand. Echo Hawk Decl., Ex. B. Vanir declined, asserting, without authority, that this Court must hear the disqualification motion before any others. *Id.*

III. EVIDENCE RELIED UPON

In support of this Motion, the Tribes relies upon the Declarations of William Bacon and Paul C. Echo Hawk and exhibits thereto, along with the pleadings and papers on record.

IV. ARGUMENT

Remand is required for at least four separate, independently dispositive reasons. *First*, the removal statute, 28 U.S.C. § 1441 et seq., plainly does not authorize removal from tribal court. *Second*, even if Vanir *could* remove from tribal court, its attempted removal is time-barred. *Third*, this court lacks subject matter jurisdiction because the Tribes did not waive tribal sovereignty with

regard to disputes arising under the Contract. And *fourth*, even if there is concurrent diversity jurisdiction, well-established federal precedent requires this Court to defer to tribal court jurisdiction. Vanir cannot use the removal statute as an end-run around tribal court jurisdiction. Given the impropriety of Vanir's removal of this matter, the Court should, pursuant to 28 U.S.C. § 1447(c), award the Tribes its fees and costs incurred to remand this action to Shoshone-Bannock Tribal Court. Finally, in the absence of subject matter jurisdiction (or in order to extend comity), this Court must refrain from ruling on Vanir's pending motions, and instead defer consideration of those motions to the Tribal Court.

a. Legal Standard

The removal statute is strictly construed against removal and in favor of remand. *Coman v. Int'l Playtex, Inc.*, 713 F. Supp. 1324, 1326 (N.D. Cal. 1989) (citing *Shamrock Oil Corp. v. Sheets*, 313 U.S. 100, 108-109 (1941)). Section 1441(a) provides that “any civil action **brought in a State court** of which the district court of the United States have original jurisdiction, may be removed by the defendant or the defendants” to the local U.S. District Court. 28 U.S.C. § 1441(a) (emphasis added). The Defendant must file the Notice of Removal within 30 days of being served with the Complaint. 28 U.S.C. § 1446(b)(1). A plaintiff opposing removal on a procedural basis must seek remand within 30 days of the Notice of Removal. 28 U.S.C. § 1447(c). The case “**shall** be remanded” if, at any time before final judgment, “it appears that the district court lacks subject matter jurisdiction.” *Id.* (emphasis added). In remanding a case, the district court “may require payment of just costs and any actual expenses, including attorneys’ fees, incurred as a result of the removal.” *Id.*

b. The Removal Statute does not Authorize Removal from Tribal Court

Vanir cannot remove the Tribes' lawsuit against it because the removal statute, which must be strictly construed, does not authorize removal from tribal court. The plain language of Section 1441(a) limits removal to “civil actions brought in a State court.” 28 U.S.C. § 1441(a). “There is no ambiguity in the text of 28 U.S.C. § 1441: it refers specifically to state courts, and state courts only.” *Gorneau v. Love*, 915 F. Supp. 150, 153 (D. North Dakota, 1994); *see also Bodi v. Shingle*

Springs Band of Miwok Indians, 832 F.3d 1011, 1021 (9th Cir. 2016) (noting absence of “dedicated removal provision for tribes” in Section 1441).

Multiple courts interpreting the language in Section 1441 in the context of attempted removal from tribal courts have held that such removal is improper “inasmuch as § 1441 provides only for removal from a ‘state court’ and does not authorize removal from tribal court.” *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d 773, 775 (S.D. Miss. 2001) (collecting cases and secondary sources affirming that Section 1441 does not authorize removal from tribal court); *cf. Becenti v. Vigil*, 902 F.2d 777, 780-81 (10th Cir. 1990) (“Until Congress authorizes the removal of such tribal court proceedings, the federal courts may not exercise jurisdiction over them.” (citing *Martin v. Hunter’s Lessee*, 14 U.S. 1 (1 Wheat.) 304, 349 (1816))); *see also Nevada v. Hicks*, 533 U.S. 353, 368 (2001) (foreclosing §1983 claims in tribal court based, in part, on recognition that § 1441 refers only to removal from state court, and thus, allowing such claims to originate in tribal court would deprive § 1983 defendants of a federal forum).

In short, the removal statute does not contemplate removal from tribal court. Thus, removal of this matter from Shoshone-Bannock Tribal Court to this Court is simply not available. *See Coman, supra*. (Section 1441 is strictly construed against removal). This Court must remand to allow the lawsuit to proceed in Shoshone-Bannock Tribal Court. *See e.g. Gorneau*, 915 F. Supp. at 153 (remanding back to tribal court following improvident removal under Section 1441).

c. Vanir’s Attempted Removal is Time-Barred

Even if Vanir *could* remove this action from tribal court to federal court, its attempt to do so came too late. Section 1446 of the removal statute requires a defendant seeking removal to file a Notice of Removal within 30 days of being served with the initial complaint. 28 U.S.C. § 1446(b)(1). Where an initial pleading “affirmatively reveals on its face the facts necessary for federal court jurisdiction,” the 30 day period runs from defendant’s receipt of that initial pleading. *Eminence Invs., LLP v. Bank of New York Mellon*, 24 F. Supp. 3d 986, 971 (E.D. Cal. 2014) (citing *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 690-91 (9th Cir. 2005)) (internal quotations

omitted). “Failure to remove timely waives the right to remove.” *Id.* (citing *Cantrell v. Great Republic, Inc.*, 873 F.2d 1249, 1256 (9th Cir. 1989)).

The Tribes served Vanir with the Complaint in this action on March 2, 2023. That Complaint stated all the facts necessary for Vanir’s removal of this action on the basis of diversity jurisdiction, namely: that the Tribes are a citizen of the Shoshone-Bannock Nation¹ and Vanir is a citizen of California, and that that the amount in controversy exceeds \$75,000.00. *See* Dkt. No. 1-2. But Vanir did not file its Notice of Removal until April 7, 2023; more than 30 days after it was served with the Tribes’ Complaint. Accordingly, to the extent Vanir ever had any right to remove (which for the reason set forth above, it did not), Vanir lost that right by waiting more than 30 days to do so. On this basis alone, this Court must remand this action to the Shoshone-Bannock Tribal Court.

d. This Court Lacks Subject Matter Jurisdiction Because the Tribes did not Waive Sovereign Immunity

Procedural limitations on removal aside, this Court lacks subject matter jurisdiction to hear this dispute in any event because the Tribes have not waived sovereign immunity. Consequently, this Court must remand pursuant to Section 1447(c) of the removal statute or otherwise dismiss the lawsuit.

Indian tribes are sovereign entities with “power to make their own substantive law in internal matters, and to enforce that law in their own forums.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (internal citations omitted). A core aspect of an Indian tribe’s sovereignty is that it possesses “common law immunity from suit traditionally enjoyed by sovereign powers.” *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (citations

¹ Vanir asserts diversity jurisdiction on the basis that the Tribal Attorneys’ Office is a citizen of Idaho. Dkt. No. 1 at pp. 4-5 of 6. The Tribes assert that, contract Amendment No. 8 notwithstanding, the Shoshone-Bannock Tribes and the Fort Hall Business Council are the proper parties to this suit. This distinction is immaterial for purposes of the removal time-bar however, because regardless of whether the Tribal Attorney’s Office is the proper claimant, Vanir was aware of its diversity from the Tribes and the Council from the face of the March 2, 2023 Complaint. It also bears noting that the Fort Hall Business Council and the Tribal Attorneys’ Office are located in the same building, at the same address, in Fort Hall, Idaho, which is on the Reservation. Bacon Decl., ¶ 4. The notion that there is any meaningful difference between the citizenship of these entities for purposes of diversity, in addition to being immaterial, is simply incorrect.

omitted). Any “waiver of sovereign immunity cannot be implied but must be unequivocally expressed.” *Santa Clara Pueblo* 486 U.S. at 58 (citation omitted). “That expression must also manifest the tribe’s intent to surrender immunity in clear and unmistakable terms.” *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1016 (9th Cir. 2016) (citation omitted).

Here, the Tribes expressly and unequivocally retained, not waived, sovereign immunity pursuant to the Contract.² A tribe *can* waive sovereign immunity as to its own claims by commencing an action in a federal or state jurisdiction.³ *Bodi*, 832 F.3d 1011 at 1017. But a tribe waives nothing by commencing suit *in tribal court*. Consistent with the contractual reservation of immunity, the Tribes commenced this action in Shoshone-Bannock Tribal Court, not federal court. In other words, the Tribes have never, in word or deed, “unequivocally” expressed an intent to waive immunity and thus have not done so. Moreover, the removal statute has no effect on the Tribes’ non-waiver of immunity in this case; “[n]othing in the removal statute, 28 U.S.C. § 1441, abrogates tribes’ sovereign immunity.” *Id.* at 1021. In other words, the removal statute does not limit tribal sovereignty. Nor can it be leveraged as an escape hatch from tribal jurisdiction whenever a tribe initiates its own claims in its own court.

Insofar as the Tribes expressly *retained* sovereign immunity related to matters arising out of the Contract, this court is without subject matter jurisdiction to hear this dispute. “Without an unequivocal waiver of sovereign immunity from a tribe or authorization from Congress, federal courts lack the requisite subject matter jurisdiction to rule on matters involving tribes.” *Cadet v. Snoqualmie Casino*, 469 F.Supp.3d 1011, 1015 (W.D. Wash. 2020) (citing *Santa Clara Pueblo*, 486 U.S. at 58-59); *see also Demontiney v. U.S. ex. rel. Dept. of Interior, Bureau of Indian Affairs*,

² The Tribes anticipates that Vanir may argue this reservation of sovereign immunity is of no effect, insofar as Amendment 8 was signed by the Tribal Attorney’s Office. This distinction is immaterial however, because the Amendment expressly incorporated and retained the original Dispute Resolution provision (Article 14), which reserved the Tribes’ immunity. *See* Dkt. No. 1-7, pp. 41 and 19 of 42. In any event, the Tribal Attorneys’ Office is an “arm of the tribe” in every relevant legal sense and thus enjoys tribal immunity. *See Cadet v. Snoqualmie Casino*, 469 F.Supp.3d 1011, 1017 (W.D. Wash. 2020).

³ Note also, that even where a tribe waives immunity by filing *its own* claims in federal court, such waiver does not automatically extend to counterclaims that might be raised against it in the same suit. *Bodi*, 832 F.3d at 1017 (citing *McLendon v. United States*, 885 F.2d 627, 630 (9th Cir. 1989)). This precedent underscores that a tribe’s waiver of immunity must be express, and is strictly and narrowly interpreted.

255 F.3d 801, 811-13 (9th Cir. 2001) (affirming district court dismissal of claims against tribe for lack of jurisdiction absent express waiver of sovereign immunity). In the absence of subject matter jurisdiction, this court must remand to the Shoshone-Bannock Tribal Court. 28 U.S.C. § 1447(c).

e. Under the Tribal Exhaustion Rule, this Court Must Defer Jurisdiction to the Tribal Court

Even if this Court had subject matter jurisdiction over the Tribes on the basis of diversity (it does not), well-established principles of comity and tribal exhaustion require deference to Shoshone-Bannock Tribal Court jurisdiction.⁴ Vanir cannot leverage the removal statute as an end-run around either (1) its contractual obligation to litigate this dispute in Shoshone-Bannock Tribal Court, or (2) long-standing federal precedent requiring deference to that body.

Through its Contract with the Tribes, Vanir unambiguously consented to the Shoshone-Bannock Tribal Court's *exclusive* jurisdiction over disputes arising out of the Contract. The purpose and scope of the Contract, and Vanir's activities performed thereunder, was to construct an expanded Casino Hotel on tribal land. There can thus be no credible dispute that the Shoshone-Bannock Tribal Court has personal jurisdiction over Vanir and subject matter jurisdiction over this lawsuit. *See Montana v. U.S.*, 450 U.S. 544, 565 (1981) ("A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements.") (internal citations omitted); *FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 932 (9th Cir. 2019) (test for objective consent to tribal jurisdiction is "whether under the circumstances the non-Indian defendant should have reasonably anticipated that its interactions might have triggered tribal authority.") (internal citations omitted).

Well-established precedent thus requires this Court to defer to tribal jurisdiction under basic principles of comity and tribal sovereignty—which, as set forth above, the Tribes expressly

⁴ This principle applies with equal force to the issue of whether removal from tribal court is available under the removal statute, discussed in Section (b) of this Motion. To the extent that issue presents a close question—the Tribes respectfully submit that it does not—the tie goes to the Tribes. In other words, the tribal exhaustion rule requires this Court to construe the removal statute against removal and in favor of tribal court jurisdiction. *Williams-Willis*, 139 F.Supp.2d at 777.

retained under the Parties' Contract. The tribal exhaustion rule dictates that "when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims." *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Housing Auth.*, 207 F.3d 21, 31 (1st Cir. 2000); *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008) (adopting tribal exhaustion rule, citing *Iowa Mut. Insurance Co. v. LaPlante*, 480 U.S. 9 (1987) and *National Farmers Union Insurance Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985)). The existence of parallel diversity jurisdiction does not nullify this rule; even where it has diversity jurisdiction, a federal court must defer to concurrent tribal court jurisdiction.⁵ See *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1229 (9th Cir. 1989) ("[t]he diversity statute ... makes no reference to Indians and nothing in the legislative history suggests any intent to render inoperative the established federal policy promoting tribal self-government.") (quoting *Iowa Mutual*, 480 U.S. at 17).

This fundamental principle squarely applies where a tribal court proceeding is "removed" to federal court. See e.g. *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d at 777-78. Vanir has not directly challenged the Tribes' jurisdiction over this matter—presumably because it lacks any credible basis to do so. See Dkt. No. 1. Had Vanir challenged the Shoshone-Bannock Tribal Court's jurisdiction, the Tribal Court would have first rights to determine its own jurisdiction under the tribal exhaustion rule. The removal statute, invoked on the basis of diversity jurisdiction, cannot constitute an end-run around this fundamental principle. Moreover, Vanir consented to tribal court jurisdiction; having done so, it must adjudicate this matter in tribal court. Even if this court disagrees that the Tribes' case is subject to remand for any of the reasons discussed above, well-established precedent requiring comity in instances of parallel jurisdiction amongst a tribal and federal court should compel this Court to remand.

⁵ Again, to be clear, the Tribes does not concede diversity jurisdiction in this case—the Court lacks subject matter jurisdiction because the Tribes did not waive sovereign immunity as to disputes arising out of the Contract.

f. The Court should Award the Tribes its Fees Under 1447(c)

The Tribes' bases for remand of this action present no issues of first impression, or even any difficult or close questions of law. Vanir's removal was entirely improvident, running contrary to (1) the plain language of the federal removal statute, (2) Vanir's own contractual consent to litigate in Shoshone-Bannock Tribal Court under the express terms of the Parties' Contract, (3) the Tribes' express, unequivocal reservation of its sovereign immunity, and (4) fundamental principles of comity that require federal courts to defer to tribal jurisdiction where, as here, there is no credible debate that the Tribal Court has jurisdiction over the case. Under any rational assessment, Vanir "lacked an objectively reasonable basis for seeking removal." *Martin v. Franklin Corp.*, 546 U.S. 132, 141 (2005). The Tribes thus ask the Court, in its discretion, to award the Tribes its attorneys' fees and costs incurred in bringing this Motion for Remand pursuant to Section 1447(c) of the removal statute. 28 U.S.C. § 1447(c). Should the Court grant the Tribes' request for fees, the Tribes will submit supplemental briefing in support of this fee request.

g. This Court Cannot (or at Minimum Should Not) Rule on any Other Pending Motions

As set forth in section (d) above, this Court is without subject matter jurisdiction to hear this dispute because the Tribes retained, not waived, sovereign immunity. Thus, this Court's only authority is to remand this action (and award the Tribes its fees); it lacks jurisdiction to rule on Vanir's pending Motions to Dismiss and for Disqualification of Counsel. *See e.g. Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1066 (9th Cir. 2019) ("[I]f, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated.") (internal citations omitted); *Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005) ("[O]nce a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.") (internal citations omitted). As such, Vanir's Motion to Dismiss, which Vanir filed in the Tribal Court pre-removal, must be left to the Tribal Court's adjudication. Its Motion to Disqualify Counsel must be re-filed in the Tribal Court upon remand if it is to be heard at all. The same result should lie even if the Court disagrees that it is without subject matter jurisdiction in

light of the Tribes' sovereign immunity but remands the case on the basis of comity; in such case, the Court should defer to the Tribal Court's ruling on Vanir's pending motions.

At minimum, the Court should, upon the filing of this Motion for Remand, stay consideration on the Motions to Dismiss and for Disqualification of Counsel so that it may rule on this Motion prior to the briefing deadlines for Vanir's pending motions. Doing so will avoid the need to vacate any ruling(s), if the Court later determines it is without subject matter jurisdiction over this dispute. As such, staying consideration of the pending motions may save considerable resources for both the Court and the parties.

V. CONCLUSION

For each or any of the foregoing reasons, this Court should reject Vanir's improvident attempt to remove this case from Shoshone-Bannock Tribal Court and remand to that body for proper adjudication. Any contrary outcome would endorse Vanir's use of the removal statute as an end-run around both its contractual obligations and the Tribes' sovereignty. Such a result is wholly unsupported by the plain text of the removal statute and entirely contrary to fundamental principles of both tribal sovereignty and comity.

Respectfully submitted this 27th day of April 2023.

/s/ Paul C. Echo Hawk
Paul C. Echo Hawk

*Attorney for the Shoshone-Bannock Tribes and
Fort Hall Business Council*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2023, I filed the foregoing MOTION FOR REMAND, electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing:

Elijah M. Watkins
elijah.watkins@stoel.com

/s/ Paul Echo Hawk

Paul C. Echo Hawk