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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

EAGLE BEAR INC.

Debtor.

Case No. 22-40035-BPH
Chapter 11

NOTICE OF HEARING

Date: February 10, 2023

Time: 9:00 a.m.

Location: Chief Mountain Courtroom
3rd Floor
Missouri River Courthouse
175 Central Avenue W
Great Falls, Montana

**BLACKFEET NATION'S RESPONSE
TO DEBTOR'S OBJECTION TO PROOF OF CLAIM #11-3
AND NOTICE THEREOF**

COMES NOW the Respondent Blackfeet Nation, by and through counsel, and hereby submits its Response to Debtor Eagle Bear Inc.'s Objection to Proof of Claim #11-3, as follows:

Introduction

1. Debtor Eagle Bear Inc.'s Objection fails to provide any evidentiary support for its assertions. There is no affidavit or declaration that the Debtor has reviewed the Proof of Claim and supporting documentation or made any reasonable effort to research the claim on the debtor's books and records.

2. Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the rules shall constitute *prima facie* evidence of validity and the amount of the claim.

3. The Blackfeet Nation's claim was filed in accordance with the rules and is supported by an accounting from the Blackfeet Treasurer. More importantly, the amount claimed is subject to an Adversary Proceeding currently pending before this Court. The Court should overrule the Debtor's Objection and allow the Blackfeet Nation's Proof of Claim #11-3.

Factual Background

4. On May 23, 2022, the Debtor Eagle Bear Inc. filed its chapter 11 petition for relief under the Bankruptcy Code.

5. On November 18, 2022, governmental unit Blackfeet Nation filed its Proof of Claim for taxes, penalties and interest due and owing to the Blackfeet Nation under the former lease agreement between the Blackfeet Nation and Debtor Eagle Bear Inc.. Claim # 11-3.

6. On April 11, 1997, the Blackfeet Nation and Eagle Bear Inc. entered into a Business and Recreation Lease for approximately 54 acres of Blackfeet Nation land.

7. Because the former lease was a lease of Indian trust land, the Bureau of Indian Affairs (BIA) was responsible for administering the Lease, including collecting rents due from Debtor Eagle Bear Inc. and enforcing the lease in the event of default. While the BIA collects rents due and owing to the Blackfeet Nation under the former lease, it does not collect taxes.

8. Eagle Bear Inc. understood it had numerous obligations under the former lease, foremost of which was its duty to pay rent and taxes without notice or demand.

9. Eagle Bear Inc.'s rents were in the form of a minimum annual rental payment which was fixed on a sliding basis for the first 25 years of the lease; and an annual gross receipts

royalty payment of a percentage of Eagle Bear's annual gross campground registration receipts, which was also fixed on a sliding basis for the first 25 years of the lease.

10. Debtor Eagle Bear Inc. was required to pay interest at the WSJ Prime rate plus 3% for any payment of minimum annual rent or gross receipt royalty, which was past due for more than 30 days. The interest became part of the rent and was due until paid without notice or demand.

11. Interest and late penalties applied in the absence of any specific notice to the tenant from the BIA or the Blackfeet Nation, and the failure to pay interest is a lease violation. *See* 25 CFR 162.614.

12. The former Lease contained a requirement for Eagle Bear Inc. to pay all taxes, assessments, licenses, fees and other like charges levied during the term of the lease or against the leased land. This includes the Lodging Facility Tax, Construction Tax and TERO Tax. As set forth in the former lease, Eagle Bear Inc. negotiated a lower tax rate for the Construction Tax and TERO Tax assessed against improvements Eagle Bear Inc. made to the former leased premises.

13. Eagle Bear was also required to submit a bond in a sum not less than one year's annual minimum rental and that the bond be in effect at all times. From the outset, Eagle Bear was in breach/default under the lease because it failed to post the required performance bond.

14. Eagle Bear failed to pay the first minimum annual rental payment for year 1997 when due on November 30th.

15. While it failed to make payment for more than 30 days after November 30, 1997, it did not pay the required interest on the 1997 annual minimum rental when the payment was finally made.

16. Thereafter Eagle Bear was more than 30 days late on every minimum annual rental payment required under the lease leading up to the 2008 BIA lease cancellation, and such interest payment has remained in delinquency ever since. The Blackfeet Nation is owed \$27,440.31 in past due interest for late rental payments.

17. Eagle Bear also failed to pay the Lodging Facility Tax during the entire time it legally (and illegally) occupied Blackfeet Nation land. The Blackfeet Nation is owed \$4,009,053.40 in past due lodging facility tax it is required to pay under the former Lease.

18. Additionally, Eagle Bear failed to pay the Blackfeet Nation's TERO tax and Construction Tax on its \$4.5 million in improvements. The Blackfeet Nation is owed \$3,182,750.18 in Construction and TERO Taxes it is required to pay under the former Lease.

19. Debtor Eagle Bear Inc. owes the Blackfeet Nation \$7,219,243.89 that is subject to priority pursuant to 11 U.S.C. § 507(a)(8).

Argument

20. The Court should overrule the Debtor's Objection and allow the Blackfeet Nation's Proof of Claim. Eagle Bear makes false accusations without any evidentiary support. Its argument is and has been based on a series of fabrications and should be rejected.

21. There are many establishments throughout the Blackfeet Nation that pay the Blackfeet Nation's Lodging Facility Tax. Glacier Park, Inc. pays the Blackfeet Nation's lodging facility tax in both St. Mary and East Glacier, as do others. Lodging facility tax revenue is critical to the function of the Blackfeet Nation government and the provision of essential government services to the Blackfeet People. It is a tax that is required to be collected or withheld by Eagle Bear Inc. and William Brooke under the former Lease, and for which both

Eagle Bear Inc. (and William Brooke personally) are liable. Thus, Eagle Bear Inc.'s past due Lodging Facility Tax is subject to priority under 11 U.S.C. 507(a)(8)(C).

22. Additionally, Section 37(A) of the former lease requires Eagle Bear Inc. to pay the Blackfeet Nation's Construction Tax and TERO Tax on some \$4.5 million in improvements to the former leased premises. Eagle Bear Inc.'s claim that it is not a "contractor" and therefore not subject to such taxes, disregards the four-corners of the former Lease. As part of its bargained-for negotiation with the Blackfeet Nation, Eagle Bear Inc. contractually agreed under the former lease to collect and withhold the Blackfeet Nation's Construction and TERO Taxes for all of its improvements. Such past due tax is subject to priority under 11 U.S.C. 507(a)(8)(C).

23. Finally, under Sections 5 and 6 of the former Lease, Eagle Bear was required to pay an annual minimum rental payment by November 30th of each year and late payments were subject to the required interest. Eagle Bear made late payments every year until the Lease was cancelled in 2008. But it never paid the required interest that was due without notice or demand.

24. The Blackfeet Nation will prove in the Adversary Proceeding that it is owed \$3,182,750.18 in Construction and TERO taxes; \$27,440.31 in past due rent interest; and \$4,009,053.40 in Lodging Facility Tax, totaling \$7,219,243.89 due and owing to the Blackfeet Nation under the former lease of Blackfeet Indian Nation land.

25. Under Ordinance 51 and the Blackfeet Rules of Civil Procedure, there are no statute of limitations for the Blackfeet Nation to pursue collection of debt owed to the Blackfeet Nation, including tax debt. The Blackfeet Nation's tax code does not limit recovery to four years prior to assessment. Eagle Bear again makes false assertions and fails to provide the basic evidentiary proof to justify its claims.

26. The Blackfeet Nation has provided Debtor Eagle Bear Inc. with supporting documentation to its proof of claim and that documentation, and any further supporting documentation, will be provided at any evidentiary hearing or trial on this matter.

Conclusion

27. Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the rules shall constitute *prima facie* evidence of validity and the amount of the claim. The Blackfeet Nation's claim was filed in accordance with the rules and is supported by an accounting from the Blackfeet Treasurer. More importantly, the amount claimed is subject to an Adversary Proceeding currently pending before this Court. The Court should overrule the Debtor's Objection and allow the Blackfeet Nation's Proof of Claim #11-3.

WHEREFORE, the Blackfeet Nation respectfully requests the following affirmative relief:

1. Overrule the Debtor's Objection and allow Proof of Claim #11-3.
2. For any and all relief the Court deems fair and just under the circumstances.

DATED this 12th day of January, 2023

Respectfully submitted,

/s/ Derek E. Kline

Attorney for the Blackfeet Indian Nation

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the penalty of perjury that on the 12th day of January, 2023, a copy of the foregoing was served by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court's ECF transmission facilities.

DATED this 12th day of January, 2023

/s/ Derek E. Kline