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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ELENA BARRON,)	
)	
Plaintiff,)	
)	
v.)	
)	
ALASKA NATIVE TRIBAL HEALTH)	Case No. 3:18-cv-00118-SLG
CONSORTIUM,)	
)	
Defendant.)	
)	
)	

**NOTICE OF REMOVAL OF STATE COURT ACTION
TO UNITED STATES DISTRICT COURT**

TO: THE HONORABLE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ALASKA

PLEASE TAKE NOTICE that defendant Alaska Native Tribal Health Consortium (ANTHC) has removed to the United States District Court for the District of Alaska all claims and causes of action in the civil action styled *Elena Barron v. Alaska Native Tribal Health Consortium*, Case No. 3AN-18-04962 CI (the “State Court Action”) now pending in the Superior Court for the State of Alaska, Third Judicial District at Anchorage pursuant to 28 U.S.C. § 1446. A copy of all

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process, pleadings and orders served upon defendants to date in the State Court Action are attached as Exhibit A.

Defendant's grounds for removal are as follows:

1. This Civil Action is Founded on a Claim or Right Arising under the Laws of the United States.

A. 42 U.S.C. § 1981. The State Court Action is removable to this Court pursuant to 28 U.S.C. § 1441(a) as plaintiff's cause of action is a federal question arising under the laws of the United States, specifically, the Civil Rights Act of 1866, 42 U.S.C. § 1981, as amended. Plaintiff alleges that during her employment by ANTHC, ANTHC violated § 1981 by subjecting her to disparate treatment and retaliation based on race. Plaintiff does not allege any other federal or state law claims. Accordingly, this matter presents a federal question and removal is appropriate under 28 U.S.C. § 1441(a).

B. 28 U.S.C. § 5321(d). In addition, while framed as a discrimination claim, the facts alleged by plaintiff and the remedies she seeks show that the cause of action is essentially for the tort of intentional infliction of emotional distress, therefore constituting a federal question that arises under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, *et seq.*¹ The FTCA provides the exclusive remedy for money damages against ANTHC arising from alleged torts. 25 U.S.C. 5321(d); 28 U.S.C. § 2679(a) and (b)(1). FTCA claims are within the exclusive federal question jurisdiction of the United States courts. *Davila v. Patel*, 415 F.Supp. 2d 528, 529 (E.D. Pa. 2005) ("The claims against the United States under FTCA confer federal question jurisdiction on the

¹ Under Alaska law, to present a prima facie case of intentional infliction of emotional distress, "a plaintiff must show '(1) the conduct is extreme and outrageous, (2) the conduct is intentional or reckless, (3) the conduct causes emotional distress, and (4) the distress is severe.'" *Cornelison v. TIG Insurance*, 376 P.3d 1255, 1276 (Alaska 2016) (quoting *Chizmar v. Mackie*, 896 P.2d 196, 208 (Alaska 1995)).

[District] Court pursuant to 28 U.S.C. section 1331.”). As such, the State Court Action is removable to this Court pursuant to 28 U.S.C. § 1441(a).²

2. This Civil Action is in the Nature of an Action Brought Against the United States or an Officer of the United States.

The State Court Action is also removable to this Court pursuant to 28 U.S.C. §1442(a) because it is in the nature of a civil action brought against the United States, an agency or officer of the United States or a person acting under the direction of a federal official or agency.³ ANTHC is a federal contractor “operating federal programs and carrying out federal responsibilities” at ANMC under the ISDEAA, 25 U.S.C. § 5301 *et seq.*, and as such is a person acting under the

² ANTHC is an Alaska Native tribal organization organized pursuant to federal law, Section 325 of Public Law 105-83, for the purpose of “provid[ing] all statewide health services provided by the Indian Health Service of the Department of Health and Human Services through the Alaska Native Medical Center and the Alaska Area Office” as authorized, *inter alia*, by the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1601, *et seq.*, Pub. L. 94-437, as amended, and the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 5301 *et seq.*, Pub. L. 93-638, as amended. Through Section 325, Congress authorized ANTHC to enter contracts, compacts, or funding agreements with the federal government to provide these services. *See* Exhibit B, Alaska Tribal Health Compact. In so doing, ANTHC is “deemed to be part of the Public Health Service in the Department of Health and Human Services,” and its officers, its employees and other individuals who provide health care under contract to ANTHC, are “deemed to be employees . . . of the Service” when carrying out ANTHC’s agreements with the Secretary, and any tort claims brought against ANTHC must proceed, if at all, under the FTCA. 25 U.S.C. § 5321(d); *see also* Pub. L. 101-121, § 315, Pub. L. 101-512 § 314.

³ Pursuant to the Alaska Tribal Health Compact and annual funding agreements with the Secretary, ANTHC carries out federal health care programs for Alaska Natives and American Indians that the federal government ordinarily would provide in furtherance of the uniquely federal responsibility and interest to provide health care to American Indians and Alaska Natives under numerous Treaties, the Snyder Act, ISDEAA and IHCIA. *See, inter alia*, 25 U.S.C. § 1601(1) & (2) (Indian Health Service has the responsibility to foster the “major national goal . . . to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level.”); 25 U.S.C. § 1602; *Fairbanks N. Star Borough v. Dená Nená Henash*, 88 P.3d 124, 135 (Alaska 2004) (ISDEAA “has the purposes of improving the provision of federal services by making them more responsive to tribal needs, and improving the functioning of the tribes through increased self-government.”) (emphasis added).

direction of a federal official or agency within the meaning of 28 U.S.C. § 1442(a). *See Cherokee Nation of Oklahoma v. Leavitt*, 543 U.S. 631 (2005). This is underscored by the fact that ANTHC and its officers, employees, and other individuals providing health care services under contract with the federal government are “deemed to be employees...of the Service” protected by the FTCA.

3. This Notice of Removal is Timely and Complete and Has Been Properly Served.

a. Defendant first received notice of this action on May 1, 2018. This Notice is therefore timely filed pursuant to 28 U.S.C. § 1446(b).

b. This Court has personal jurisdiction over the parties.

c. Defendant is the only named defendant in the *Complaint*. All requirements for removal are met. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988).

d. Defendant has provided written notice of this Notice to counsel or record for plaintiff. A true and complete copy of this Notice will be filed in the State Court Action.

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Dated: May 21, 2018, at Juneau, Alaska.

SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP

/s/ Richard D. Monkman

By: _____

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Certificate of Service

The undersigned certifies that on
May 21, 2018, a copy of the
foregoing document was served via
U. S. Mail, postage prepaid, to:

Isaac Zorea
P.O. Box 210434
Anchorage, AK 99521

/s/ Richard D. Monkman