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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JASON MATYASCIK,)	
)	
Plaintiff,)	
)	
v.)	
)	
ARCTIC SLOPE NATIVE)	
ASSOCIATION, LTD. d/b/a SAMUEL)	
SIMMONDS MEMORIAL HOSPITAL,)	Case No. 2:19-cv-00002-HRH
)	
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 Arctic Slope Native Association, Ltd.
("ASNA") files this Notice of Removal pursuant to 28 U.S.C. § 1446. Defendant removes
to the United States District Court for the District of Alaska all claims and causes of action

in the civil action styled *Jason Matyascik v. Arctic Slope Native Association, Ltd. d/b/a Samuel Simmonds Memorial Hospital*, Case No. 2BA-19-86 CI (the “State Court Action”), maintained in the Superior Court for the State of Alaska, Second Judicial District at Utqiagvik. A copy of all process, pleadings and orders served upon defendant in the State Court Action are attached as Exhibit A.

Defendant’s grounds for removal are as follows:

A. This Civil Action Is Founded on Claims or Rights Arising under the Laws and Constitution of the United States.

The State Court Action is removable to this Court pursuant to 28 U.S.C. § 1441(a) as plaintiff’s *Complaint* contains federal questions that arise under the Federal Tort Claims Act (“FTCA”)¹ and the Employee Retirement Income Security Act (“ERISA”).²

First, plaintiff’s *Complaint* alleges tort claims against ASNA, for conversion of his personal belongings left on ASNA property after the end of his employment. ASNA is an Alaska Tribal organization that carries out federal health care programs for Alaska Natives and American Indians as authorized, *inter alia*, by the Indian Health Care Improvement Act (“IHCIA”), 25 U.S.C. § 1616*l*, Section 121 of Pub. L. 94-437, as amended, and Title V of the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. § 5301, *et seq.*, Pub. L. 93-638, as amended. ASNA operates the Samuel Simmonds Memorial Hospital (“SSMH”) in Utqiagvik pursuant to the Alaska Tribal Health Compact

¹ 28 U.S.C. § 2671, *et seq.*

² 29 U.S.C. § 1001, *et seq.*

and annual funding agreements with the Secretary of the Department of Health and Human Services. In so doing, ASNA 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 ASNA, are “deemed to be employees . . . of the Service” when carrying out ASNA’s agreements with the Secretary.³ As such, the FTCA provides the exclusive remedy for money damages against a self-determination contractor, such as ASNA, arising from alleged torts.⁴ FTCA claims are within the exclusive federal question jurisdiction of the United States courts.⁵

Second, plaintiff alleges ASNA failed to provide him with notice of his opportunity to elect continuation coverage for his group health plan under the Congressional Omnibus Budget Reconciliation Act of 1985 (“COBRA”), which has been incorporated into ERISA at Subtitle I, Subchapter B, Part 6.⁶ “Congress enacted ERISA to ‘protect ... the interests of participants in employee benefit plans and their beneficiaries’ by setting out substantive regulatory requirements for employee benefit plans and to ‘provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.’”⁷ Under ERISA, both state

³ 25 U.S.C. § 5321(d); *see also* Pub. L. 101-121, § 315, 103 Stat. 701 (1989) and Pub. L. 101-512, § 314, 104 Stat. 1915 (1990).

⁴ 28 U.S.C. § 2679(a), (b)(1).

⁵ *E.g., Valadez-Lopez v. Chertoff*, 656 F.3d 851, 855 (9th Cir. 2011) (“The FTCA vests the federal district courts with exclusive jurisdiction over suits arising from the negligence of Government employees.”) (citation and internal quotations omitted).

⁶ *Complaint* at 3, 5; 29 U.S.C. § 1162.

⁷ *Aetna Health Inc. v. Davila*, 542 U.S. 200, 221 (2004).

and federal district courts share original jurisdiction over civil actions “by a participant or beneficiary [of a group health plan]—... to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.”⁸ Plaintiff could have pursued his COBRA claim in state or federal court.

Accordingly, the State Court Action is removable to this Court pursuant to 28 U.S.C. § 1441(a) for the federal questions posed under the FTCA and ERISA.

B. 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 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. ASNA 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.⁹

⁸ 29 U.S.C. § 1132(a)(1)(B), (e); *see also, e.g., Metro. Life Ins. Co. v. G.M. Corp.*, 481 U.S. 58 (1987) (Congressional intent to preempt area of employment benefits so strong that complaint that only alleges state law causes of action and that does not cite to ERISA can still be removed to federal court).

⁹ *See, inter alia*, 25 U.S.C. § 1601(3) (“A major national goal of the United States is 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 and to encourage the maximum participation of Indians in the planning and management of those services.”); 25 U.S.C. § 1602(3) (Indian Health Service has the responsibility “to ensure maximum Indian

ASNA carries out these programs pursuant to the Alaska Tribal Health Compact and Funding Agreements with the Secretary of the Department of Health and Human Services under Title V of ISDEAA, to perform certain federal “programs, functions, services, or activities [of the Department.]”¹⁰ ASNA is thus a federal contractor “operating federal programs and carrying out federal responsibilities” at SSMH under ISDEAA, and as such is a person acting under the direction of a federal official or agency within the meaning of 28 U.S.C. § 1442(a).¹¹ Additionally, in carrying out federal health care programs, ASNA 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 ASNA, are “deemed to be employees . . . of the Service.”¹² All claims “resulting from [ASNA’s] performance of functions” under its ISDEAA Compact and Funding Agreements are deemed to be claims against IHS under

participation in the direction of health care services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities”); *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); S. Rep. No. 100-274 (1987), *reprinted in* 1988 U.S.C.C.A.N. 2620.

¹⁰ See, e.g., Exhibit B, Annual Funding Agreement at 1.

¹¹ S. Rep. No. 100-274; see *Cherokee Nation of Oklahoma v. Leavitt*, 543 U.S. 631 (2005).

¹² 25 U.S.C. § 5321(d); see also Pub. L. 101-121, § 315, 103 Stat. 701 (1989) and Pub. L. 101-512, § 314, 104 Stat. 1915 (1990).

P.L. 101-121, § 315. Therefore, the State Court Action is removable under 28 U.S.C. §1442(a).

C. Removal is Appropriate Based on Diversity of Citizenship.

Additionally, the State Court Action is removable to this Court pursuant to 28 U.S.C. § 1441(b) based on diversity of citizenship between plaintiff and ASNA. ASNA is organized as an Alaska non-profit corporation and is therefore considered a citizen of Alaska for the purposes of diversity jurisdiction. 28 U.S.C. § 1332(c). Plaintiff asserts in the *Complaint* that he is a resident of Pennsylvania, but does not specify the state of which he is a citizen.¹³ On information and belief, plaintiff is a physician licensed in and a citizen of the State of Pennsylvania, and currently resides in Pennsylvania.¹⁴ The amount in controversy also meets the \$75,000 threshold requirement of 28 U.S.C. § 1332(a).¹⁵

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

1. Defendant first received notice of this action on April 19, 2019. Therefore, this Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

¹³ *Complaint* at 1; *see, e.g., Barrera v. W. United Ins. Co.*, 567 Fed. App'x 491, 492 n.1 (9th Cir. 2014) (residency is distinguishable from citizenship for the purposes of establishing jurisdiction).

¹⁴ *See Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1088 (9th Cir. 2014) (“[W]hen information regarding a [party] that is necessary to establish diversity of citizenship is not reasonably available to [the other party], the [other party] should be permitted to plead jurisdictional allegations...on information and belief and without affirmatively asserting specific details regarding the citizenship of [the opposing party].”).

¹⁵ *Complaint* at 6.

2. This Court has personal jurisdiction over the parties.
3. ASNA is the only defendant to this action.
4. Defendant has provided written notice of this Notice of Removal to counsel of record for plaintiff. A true and complete copy of this Notice of Removal has been filed in the State Court Action.
5. The documents attached as Exhibit A comprise all process, pleadings and orders served upon defendant to date.

DATED May 9, 2019, at Juneau, Alaska.

SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP

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Counsel for Arctic Slope Native
Association, Ltd.

Certificate of Service

I certify that on May 9, 2019 a copy of the foregoing document was served via ECF on:

Michael Rose, Esq.,
contact@northstarlawgroup.com

By: /s/ Richard D. Monkman
Richard D. Monkman