

Vastine Brothers, LLC. On information and belief Defendant V2's limited partners are also Texas citizens.¹

II. JURISDICTION

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000, exclusive of interest and costs and Plaintiff is a citizen of Alabama while Defendant is a citizen of Texas.

4. This Court has personal jurisdiction over Defendant because (1) its principal place of business is in Texas; (2) it transacts business within the State of Texas; (3) it has continuous and systematic contacts with the State of Texas; (4) it has purposefully availed itself of the privileges and benefits of conducting business in the State of Texas; and (5) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Texas and involved Defendant.

¹ In order to comply with this Court's order, issued May 8, 2020, Plaintiff conducted a search of the Texas Secretary of State's website as well as a Dun and Bradstreet Hoovers report to ascertain Defendant's corporate citizenship. In addition, Plaintiff requested member citizenship information from Defendant V2's counsel. Counsel for V2 did not respond. Plaintiff believes the above information is sufficient to satisfy federal diversity jurisdiction pleading requirements and Defendant's answer will serve to confirm this information. *See Lincoln Benefit Life Co. v. AEI Life, LLC*, 800 F.3d 99, 107-110 (3d Cir. 2015) (Court stated that "[d]epriving a party of a federal forum simply because it cannot identify all of the members of an unincorporated association is not a rational screening mechanism. The membership of an LLC is often not a matter of public record." The Court allowed diversity jurisdiction pleading based on information and belief.). However, if additional information is needed, Plaintiff, with the Court's approval, will file a Motion for Leave to Conduct Jurisdictional Discovery, seeking limited jurisdictional discovery regarding Defendant's corporate citizenship. *See Unified 2020 Realty Partners, L.P. v. Proxim Wireless Corp.*, Civil Action No. 3:11-CV-0861-D, 2011 WL 2650199 at *2 (N.D.Tex. July 6, 2011) (Court granted limited jurisdictional discovery where Defendant had information that would bear directly on whether the court had subject matter jurisdiction); *Murchison Capital Partners, L.P. v. Nuance Communications, Inc.*, 3:12-CV-4749-P, 2013 WL 12094167 at *3 (N.D.Tex. Mar. 22, 2013) (Court granted limited jurisdictional discovery to conclusively establish corporate citizenship Plaintiff possessed, refused to disclose, and which was not otherwise publicly available).

5. Venue is proper in the Northern District of Texas, Fort Worth Division, pursuant to 28 U.S.C. §§ 1391 and 1400, since that is the judicial district where a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

III. FACTUAL BACKGROUND

A. Plaintiff's Trip to Scotland and Agreement with Defendant V2

6. Plaintiff is a wholesale retail mercantile business providing novelty and grocery products to convenience stores throughout the Southeast. As part of its relationships with vendors and customers, Petrey organizes trips to support and show appreciation for vendor and customer employees.

7. In the summer of 2019, Petrey began planning its next appreciation trip to Edinburgh, Scotland. To help plan and make arrangements for the trip, Petrey retained Defendant V2, a marketing and incentive travel company based out of Aledo, Texas. V2's job was to procure all hotel and transportation reservations (including airline tickets) and to make arrangements for food and beverage events and recreational activities. V2's services would also include onsite program management, event production, providing promotional collateral, and handling administrative details such as participant registration and special requests. *See* Exhibit A - Letter of Agreement ("Agreement") at 1.

8. On July 1, 2019, Plaintiff and Defendant entered into a "Letter of Agreement" ("Agreement") in which V2 detailed Petrey's "2020 customer incentive trip to Edinburgh, Scotland." ("2020 Edinburgh Trip"). *See* Agreement at 1. Those details include (but are not limited to) the following:

- Dates: June 1-7, 2020
- Flight: Overnight flights to Edinburgh, Scotland

- Hotel: The Balmoral, 1 Princes Street, Edinburgh, EH2 2EQ United Kingdom
- Participants: 80
- Price Per Person: \$5, 627 (including estimated air cost - \$1,350)
- VIP travel to and from airport
- Travel to and from planned events
- Welcome Lunch
- Highland Games at the Glamis Castle
- Formal Dinner on the Yacht Britannia
- Farewell Dinner at Hotel
- Extensive Leisure time for exploration

See Agreement at 1-2.

9. V2 also agreed to provide a travel team that included a Travel Program Manager, Program Coordinator, Air Specialist, Onsite Travel Staff, and Hospitality Desk. *See Agreement at 5.*

10. The Agreement required Plaintiff to pay V2 \$450,160 by February 27, 2020. *See Agreement at 7.* Plaintiff timely made that payment and has made additional payments since that time. Plaintiff has now paid Defendant approximately \$530,671.36 for the Edinburgh trip.

11. The Agreement includes cancellation and attrition provisions along with a Force Majeure clause. *See Agreement at 6.* The Force Majeure clause states:

If either party is prevented from performing hereunder by reason of an act of God, insurrection, fire, explosion, strike, labor dispute, casualty, accident, flood, war, civil commotion, terrorism, or any law, order or decree of any government or subdivision thereof or cause beyond its reasonable control (“Force Majeure”), except for the payment of money, then this Agreement shall be suspended without penalty and all monies refunded immediately unless the trip can be relocated or rescheduled to Client’s satisfaction. If this agreement is terminated under this paragraph, parties shall be excused from this agreement without penalty or liability of any kind to the other.

See Letter of Agreement, pg. 7.

B. Governmental Lockdowns and Decrees Due to the Coronavirus Pandemic Have Rendered the Trip Impossible

12. In December 2019, media outlets started reporting that a new virus had emerged in China's Wuhan region. On January 20, 2020 the first case of COVID-19, the illness resulting from the novel coronavirus, was identified in the United States. On January 30, 2020, the first person-to-person transfer of the coronavirus in the United States was identified in Chicago, Illinois. That same day, the U.S. government declared a public health emergency, imposed a mandatory 14-day quarantine for any U.S. citizens who had visited the Hubei Province in China within the preceding two weeks, and began denying entry of non-U.S. nationals who had traveled to China within the preceding two weeks. On February 29, 2020, the first death from the coronavirus in the U.S. was reported in Kirkland, Washington.

13. On March 11, 2020 the U.S. government announced a ban on travel from Europe, excluding the U.K. and Ireland. Less than a week later, officials expanded the ban to the U.K. and Ireland. See <https://www.cnn.com/2020/03/14/politics/uk-ireland-travel-restrictions-coronavirus/index.html>. Similarly, on March 20, 2020, the U.S. borders with Mexico and Canada were closed to all non-essential travel. See <https://www.usatoday.com/story/travel/news/2020/03/19/u-s-mexico-officials-look-ban-non-essential-travel-across-border/2874497001/>. As of March 31, 2020, the U.S. State Department issued a global level 4 health advisory, advising U.S. citizens not to travel. This is the current status on the U.S. Department of State – Bureau of Consular Affairs website. See <https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html>.

14. Similar restrictions have been imposed by governments around the world, including Scotland and the U.K. Citizens of the United Kingdom were instructed that they should only leave home for strictly limited purposes and were prohibited from gathering in public with anyone not from the same household. Further, all non-essential shops in the U.K. were closed. *See* <https://www.thesun.co.uk/news/11304061/uk-coronavirus-lockdown-month-lasting-start-end/>.

15. Critically, several material parts of the trip Defendant was planning for Plaintiff have been cancelled or postponed indefinitely. The Delta Airlines flights from Atlanta that Defendant was to arrange for trip participants have been cancelled. The American Airlines flights from Birmingham and Montgomery that Defendant was to arrange for trip participants have also been cancelled. In short, virtually all of the trip participants currently have no ability to travel to Edinburgh.

16. Even if the trip participants could get to Edinburgh, they would not likely have any place to stay or go; and they would not have anything to do since all the planned activities have been cancelled. The Strathmore Highland Games, taking place at Glamis Castle, along with all Highland Games through July 2020 have been cancelled. *See* <https://scotlandwelcomesyou.com/scottish-highland-games/>.

17. The Royal Yacht Britannia is closed until further notice. *See* <https://www.royalyachtbritannia.co.uk/visit/>.

18. The Balmoral Hotel is closed until further notice and is not taking reservations. *See* <https://www.roccofortehotels.com/hotels-and-resorts/the-balmoral-hotel/rooms-and-suites/>.

19. It also appears that the national and local governments have prohibited tour buses from transporting passengers in Edinburgh, which means that even if the eighty trip participants could fly to Edinburgh and participate in the planned activities (and they cannot), they would not

have pre-arranged ground transportation to and from the airport or to and from the planned activities.

20. Moreover, the same governmental lockdown decrees have limited the availability of unplanned local business visits and general community exploration. There is no way to identify what is or is not open in Edinburgh and Defendant has not provided any information on or alternatives to the portions of the itinerary presuming that Edinburgh will be generally accessible and explorable.

C. Plaintiff and Defendant's Response to the Global Coronavirus Pandemic

21. Despite Plaintiff's repeated requests that Defendant provide some information concerning whether and how the planned trip could possibly occur, Defendant has provided no such information. Instead, Defendant has vaguely and unrealistically suggested that the trip might still go forward despite all the information Plaintiff has gathered establishing that it cannot possibly occur.

22. Specifically, in late February 2020, Plaintiff's Vice President and General Manager reached out to Scott Vastine, part owner of V2, to discuss how the coronavirus might impact the trip. On February 25, 2020, Mr. Vastine replied that Plaintiff would be protected by the Agreement's Force Majeure clause along with force majeure clauses in V2's supplier agreements. V2 also provided potential alternative trips that might be planned on later dates after the coronavirus had become less of a threat and the government lockdowns and decrees had been lifted or terminated. Defendant would not provide Plaintiff with key financial information concerning how and where Defendant had spent or used the \$530,671.36 Plaintiff had paid Defendant, how those funds might be transferred over to a new trip in a financially-secured way, or what potential trip rescheduling refunds or money transfers might be necessary to facilitate a new trip.

23. On April 21, 2020, upon realizing that the trip had become impossible and that Defendant would not likely be able to offer an alternative trip that is satisfactory to Plaintiff, Defendant speciously suggested that Plaintiff had cancelled the Agreement on April 10, 2020, notwithstanding communications on April 17, 2020 discussing potential alternative trips. Inconsistent with that position, Defendant then informed Plaintiff its only options were to (1) agree to an alternative, future trip; (2) cancel Agreement and trip and forfeit all monies paid; or (3) wait and see if the flights, hotel, and other aspects of the planned trip are available on the date of travel.

24. Plaintiff has not cancelled the Agreement. Rather, Plaintiff attempted to work with Defendant and identify its options concerning the trip or an alternative trip. During those discussions, Defendant attempted to assuage Plaintiff's concerns by pointing Plaintiff to the Agreement's Force Majeure clause. And again, when attempting to determine the viability of an alternative trip and how the funds it had paid Defendant could be applied toward such a trip, Plaintiff requested information regarding how its funds had been spent or used. But again, Defendant suspiciously refused to provide that information, which indicates it has not preserved or spent those funds for Plaintiff's exclusive benefit or for purposes of the trip Plaintiff has retained Defendant to plan.

25. The Force Majeure clause allows Plaintiff a refund of all the money it has paid Defendant once it becomes clear that the planned trip cannot possibly occur. Those are the present circumstances. Plaintiff has indicated its preference for a refund, but Defendant has refused to provide that refund, which constitutes a breach of the Force Majeure clause. And while Plaintiff was willing to consider any viable, financially-secured, and otherwise satisfactory alternative trips that Defendant could offer, Defendant has refused to provide transparency to Plaintiff and work

with it in good faith, begging with Defendant's refusal to reveal to Plaintiff how and where Plaintiff's \$530,671.36 has been spent or used.

IV. CONDITIONS PRECEDENT

26. All conditions precedent to the filing of this suit have been performed or have occurred.

V. CAUSES OF ACTION AGAINST DEFENDANT

COUNT ONE: BREACH OF CONTRACT

27. Plaintiff re-alleges and incorporates the facts and allegations set forth above as if they were fully set forth herein.

28. Plaintiff and Defendant entered into a valid enforceable contract (the Agreement). Plaintiff is therefore a proper party to assert individual, direct claims for breach of contract. Plaintiff has performed, tendered performance of, or was excused from performing its contractual obligations. Specifically, Plaintiff has provided full payment, as dictated by the Deposit Amount Schedule laid out in the Agreement.

29. Defendant has and continues to materially breach the Agreement by failing to refund Plaintiff's money, as the Force Majeure clause requires. Specifically, the entire planned trip to Edinburg or, at the very least, material portions of it are no longer possible. Plaintiff's flights to Edinburgh, Scotland have been cancelled. The Highland Games scheduled on June 3, 2020, have been cancelled, and Glamis Castle is closed. The Yacht Britannia has also been closed indefinitely. The major events planned for Plaintiff's trip are no longer possible due to the U.K.'s and Scotland's coronavirus lockdown decrees.

30. Moreover, this trip cannot be "relocated or reschedule to *Client's satisfaction*" as outlined in the provision, despite Plaintiff's attempts to do so. *See* Agreement at 7 (emphasis

added). Among other things, Defendant refuses to provide the financial information necessary to satisfactorily prove to Plaintiff that any rescheduled trip is guaranteed by the money Plaintiff has already paid. To force Plaintiff to reschedule or relocate, without providing this key information to prove that Plaintiff's money is secure, and the new trip is protected is not an acceptable solution. In short, Defendant has proven itself to be untrustworthy and incapable of providing Plaintiff with a satisfactory alternative trip.

31. As such, the Force Majeure clause applies and all money should be refunded to Plaintiff immediately. Because Defendant refuses to do so and has refused to provide a satisfactory alternative trip, Defendant has breached its contract.

32. Defendant's breach is material as it denies Plaintiff the refund of all monies Plaintiff has paid Defendant, as required under the Force Majeure clause. As a result of that breach, Plaintiff has suffered economic damages exceeding \$530,671.36.

VI. DEMAND FOR JURY TRIAL

33. Plaintiff demands a trial by jury on all issues so triable.

VII. PRAYER

34. WHEREFORE, PREMISES CONSIDERED, Plaintiff W.L. Petrey respectfully prays that upon final trial by jury that Plaintiff Petrey recover a judgment against Defendant V2 as follows:

- a. Entry of judgment in favor of Plaintiff against Defendant on all claims for relief;
- b. All compensatory damages sustained by Plaintiff as a result of Defendant's breaches of the Agreement;
- c. Consequential and special damages caused by Defendant's breach of the Agreement;

- d. Pre-judgment and post-judgment interest in the amounts permitted under Texas law; and
- e. Any and all other legal and equitable relief as may be available under law that the Court may deem proper.

Dated: May 19, 2020

Respectfully submitted,

By: /s/ William S. Snyder

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