

June 13, 2022

[VIA MAIL AND EMAIL]

Ms. Rhonda L. Loftin
Superintendent-Miami Agency
Miami Agency
Bureau of Indian Affairs
P.O. Box 391
Miami, OK 74355
Rhonda.loftin@bia.gov

Re: Notification of the Modoc Nation Election and New Leadership

To Superintendent Rhonda L. Loftin:

In accord with the Modoc Nation Constitution, the Modoc Nation elected new leaders to its Elected Council, consisting of Chief Kirk Miller, 2nd Chief Ben Karnes, Council Member Danny Burkybile, Council Member Edd Miller, and Secretary/Treasurer Anita Williams (collectively, the “Miller Council”). This letter notifies the Bureau of Indian Affairs (“BIA”) that they are the lawful leadership of the Modoc Nation.

The former leadership of the Modoc Nation, Chief Bill Follis, 2nd Chief Robert Burkybile, Secretary/Treasurer Ramona Rosiere, Council Member Mona Craven, and Council Member Tyler Scifers (“Former Council”) have refused to leave office to carry out a mass disenrollment of Modoc Nation citizens. As shown in the attached Modoc Nation Tribal Court filings by the Miller Council, the Former Council is currently engaged in a massive purge of the Modoc Nation enrollment through a membership “audit” of over 400 Modoc Nation members. Indeed, the Former Council has stated that “more than 75% of the Tribe’s members are not fully enrolled.” Under the guise of this “audit,” the Former Council has attempted to push back the Modoc Nation Annual Meeting of the Tribal Council from May 7, 2022 to August 6, 2022. The Former Council has directly violated the Modoc Nation Constitution (“Constitution”) because the Constitution mandates that the Annual Meeting take place “the first Saturday of May.” Article IX, § 1. And at this meeting, the election of the Elected Council takes place. *See* Article IX, § 2 (“elections of the Modoc Elected Council shall take place during the annual meeting of the Modoc Tribal Council.”). These constitutional mandates contain no exceptions—and certainly no exception for a Tribal enrollment audit wherein over 75% of Modoc Nation members’ enrollments are being questioned and challenged.

In accordance with the Constitution, the Modoc Nation Tribal Council held their Annual Meeting on May 7, 2022 and over 80 Tribal Council members attended. *See* Complaint, Exh. 3 (listing each individual signature). At this meeting, the Tribal Council elected the Miller Council

as their Elected Council of the Modoc Nation. Thus, the Miller Council is the rightful governing body under Modoc Nation law. The Modoc Nation Tribal Court, in a June 7, 2022, granted a temporary restraining order and has enjoined the Former Council from “holding themselves out as the lawful Elected Council of the Modoc Nation.” This order also stated that the Former Council is “ordered to immediately stop taking any actions on behalf of the Modoc Nation.”

While the Miller Council understands that the BIA normally takes a hands off approach to tribal membership disputes, *See Hendrix v. Coffey*, 305 F. App'x 495, 497 (10th Cir. 2008) (a dispute over tribal membership is a matter of internal tribal concern), the BIA must pick a side in a leadership dispute like this one. The BIA is “obliged to recognize one side in a[n] [election] dispute as part of its responsibility for carrying on government relations with the Tribe,” at least on a temporary basis. *Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010); *See also Cayuga Nation v. Tanner*, 824 F.3d 321, 328 (2d Cir. 2016) (the BIA “has both the authority and responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe.”). Furthermore, the BIA must recognize Modoc Nation Tribal Court orders because “[o]nce the dispute is resolved through internal tribal mechanisms, the BIA must recognize the tribal leadership embraced by the tribe itself.” *Sac & Fox*, 609 F.3d at 943. This means the BIA cannot recognize the Former Council as the Modoc Nation leadership per the Modoc Nation Tribal Court June 7, 2022 temporary restraining order because this order mandated that the Former Council stop holding themselves out as the lawful Elected Council of the Modoc Nation.

Based on the foregoing, the Miller Council respectfully requests that the BIA (1) recognize the Miller Council as the lawful governing body of the Modoc Nation on an interim basis until the ongoing Modoc Nation Tribal Court litigation is complete, and (2) allow the Miller Council access to Modoc Nation property and Modoc Nation accounts/files (e.g. banking accounts, employee files, etc.) during this time.

The Miller Council respectfully asks for a response to this letter within 14 days. Please let me know if you have questions or would like to discuss.

Sincerely,

/s/Joe Keene

Pipestem Law P.C.
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Tulsa, OK 74103
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Tribal Court Complaint and Exhibits

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4 **MODOC NATION TRIBAL COURT**
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6

7 KIRK MILLER (Chief)) Case No.:
8 BEN KARNES (2nd Chief))
9 DANNY BURKYBILE (Council Member)) **COMPLAINT FOR DECLARATORY**
10 EDD MILLER (Council Member)) **AND INJUNCTIVE RELIEF**
11 ANITA WILLIAMS (Secretary/Treasurer))
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Plaintiffs,

vs.

14 BILL FOLLIS (Former Chief),
15 ROBERT BURKYBILE (Former 2nd Chief),
16 RAMONA ROSIERE (Former
Secretary/Treasurer),
17 MONA CRAVEN (Former Council Member),
18 TYLER SCRIFERS (Former Council
Member),
19

20 Defendants
21

22 Modoc Nation members and newly elected Elected Council members Kirk Miller, Ben
23 Karnes, Danny Burkybile, Edd Miller, and Anita Williams (collectively, "Plaintiffs"), through
24 undersigned counsel, request that the Court grant injunctive relief and issue a temporary restraining
25 order, and state for the cause the following:
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2. As explained further below, the Defendants are currently conducting an “audit” of over 400 Modoc Nation members’ tribal membership using an outside accounting firm, Wipfli LLP. Indeed, the Defendants have made the extraordinary claim that “more than 75% of the Tribe’s members are not fully enrolled,” thus, an audit is warranted.

1 4. The Defendants have relied on their disenrollment actions to push back the Modoc
2 Nation Annual Meeting and Elected Council election until August 6, 2022 so that their audit can be
3 complete. These actions directly violate the Modoc Nation Constitution. The Modoc Nation
4 Constitution (“Constitution”) mandates that the Annual Meeting take place the first Saturday in May.
5 Art. X, § 1. And at this meeting, the Elected Council election takes place. Art. IX, § 2. Defendants are
6 bound by the Constitution and cannot change the Annual Meeting and election to a date other than
7 May 7, 2022.
8

9 5. What seems apparent is that Defendants are using their unlawful disenrollment audit
10 and investigation to *delay* the Annual Meeting and prevent themselves from getting voted out.
11 Defendants’ power grab is so extreme they are willing to disenroll Modoc Nation members like the
12 Plaintiffs in order to remain in power.
13

14 6. Despite Defendants’ brazen attempt to delay the Annual Meeting, the Tribal Council
15 held the Annual Meeting on May 7, 2022 and elected the Plaintiffs as the new lawful Elected
16 Council. The Elected Council now consists of: Kirk Miller-Chief, Ben Karnes-2nd Chief, Danny
17 Burkybile-Council Member, Edd Miller-Council Member, and Anita Williams-Secretary/Treasurer.
18

19 7. For this action, Plaintiffs seek a declaratory judgment that Defendants have violated
20 the Enrollment Code and a temporary restraining order and preliminary injunction prohibiting the
21 Defendants from engaging in any disenrollment activity. Plaintiffs also seek a declaratory judgment
22 recognizing the Tribal Council’s election of the Plaintiffs as the Elected Council at the Annual
23 Meeting on May 7, 2022 and a temporary restraining order and preliminary injunction prohibiting the
24 Defendants from holding themselves out as the lawful Elected Council and prohibiting the
25 Defendants from taking any actions on behalf of the Modoc Nation.
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8. For support for their temporary restraining order and injunction, Plaintiffs have filed a Motion for Temporary Restraining Order and Preliminary Injunction contemporaneously with this Complaint.

PARTIES

9. Plaintiff Kirk Miller is an individual Modoc Nation member who resides in Stigler, Oklahoma. Plaintiff Kirk Miller was elected as Chief of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

10. Plaintiff Ben Karnes is an individual Modoc Nation member who resides in Miami, Oklahoma. Plaintiff Ben Karnes was elected as 2nd Chief of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

11. Plaintiff Danny Burkybile is an individual Modoc Nation member who resides in Quapaw, Oklahoma. Plaintiff Danny Burkybile was elected as a Council Member of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

12. Plaintiff Edd Miller is an individual Modoc Nation member who resides in Broken Arrow, Oklahoma. Plaintiff Edd Miller was elected as a Council Member of the Modoc Nation at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

13. Plaintiff Anita Williams is an individual Modoc Nation member who resides in Wyandotte, Oklahoma. Plaintiff Anita Williams was elected as Secretary/Treasurer at the May 7, 2022 Annual Meeting and brings this action in his official capacity.

14. Defendant Bill Follis is the former Chief of the Modoc Nation and, on information and belief, resides in Miami, Oklahoma.

15. Defendant Robert Burkybile is the former 2nd Chief of the Modoc Nation and, on information and belief, resides in Miami, Oklahoma.

16. Ramona Rosiere is the former Secretary/Treasurer of the Modoc Nation and, on information and belief, resides in Seneca, Missouri.

17. Defendant Mona Craven is a former Council Member of the Modoc Nation and, on information and belief, resides in Seneca, Missouri.

18. Defendant Tyler Scifers is a former Council Member of the Modoc Nation and, on information and belief, resides in Kansas City, Kansas.

JURISDICTION AND VENUE

19. The Modoc Nation Constitution grants this Court jurisdiction over this dispute. Article VIII, § 1, states this Court has “jurisdiction to decide disputes on issues arising under any provision of this constitution or any legislation enacted by the Modoc Tribal Council and/or the Modoc Elected Council.”

20. Venue is proper because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred on Modoc Nation lands.

STATEMENT OF FACTS

Plaintiffs are enrolled members of the Modoc Nation and have never been told they were “temporary” members

21. Plaintiffs have been enrolled members of the Modoc Nation for several years. Plaintiffs have all received a plastic membership card, signifying they are permanent Modoc Nation members. Plaintiff Anita Williams received her plastic membership card in 1987. Plaintiff Ben Karnes received his plastic membership card in 2006. Plaintiff Daniel Burkybile received his plastic membership card in 2006. Plaintiff Edd Miller received his plastic membership card in 2019. Plaintiff Kirk Miller received his plastic membership card in 2019.

22. Plaintiffs identify as Modoc Nation members and are very proud of their tribal membership. Plaintiffs are grateful for the Modoc Nation services they receive and these services

1 greatly improve their lives. These services includes education funding, healthcare funding, childcare
2 funding, and housing funding.

3 23. Before the year 2022, Plaintiffs were never told by any elected official they were
4 “temporary members.”
5

6 ***Defendants pass Resolution No. 22-16 which starts a disenrollment investigation and pushes back***
7 ***the Annual Meeting***

8 24. On April 21, 2022, the Defendants passed Resolution 22-16, which postponed the
9 2022 Annual Meeting scheduled for May 7, 2022 to Saturday, August 6, 2022. In this Resolution, the
10 Defendants stated that an internal review of enrollment records showed “irregularities” and all
11 enrollment records “since 2003” are “in question.” *See* Resolution 22-16, attached as Exh. 1. The
12 Defendants stated that they have “contracted with the accounting firm of Wipfli LLP to audit the
13 enrollment records of the Nation” after which a Final Enrollment Audit Report will be issued.
14

15 25. The Defendants state this Final Enrollment Audit Report is not expected to occur for
16 at least 60 days. The Defendants note that “once completed, the audit of enrollment records could
17 ultimately result in significant changes to the composition of the current purported membership of the
18 Nation.”

19 26. Because of their concerns that “an election in which a significant number of ineligible
20 voters participat[ing] would suppress the vote of eligible voters” and concerns about the “integrity of
21 the tribal election,” the Defendants postponed the Annual Meeting from May 7, 2022 to August 6,
22 2022.
23

24 27. On April 26, 2022, the Defendants sent a letter to the Tribal Council¹ notifying them
25 of the membership audit and the postponement of the Annual Meeting and Elected Council election.
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27
28 ¹ The Tribal Council is the governing body of the Modoc Nation and is composed of all enrolled members of
the Nation who are at least 18 years of age and over. Constitution, Art. 1, § 2.

1 See April 26, 2022 Letter, attached as Exhibit 2. This letter stated that a preliminary audit of
2 enrollment records by tribal staff found “irregularities” and that “at least 419 temporary enrollments
3 by the Tribal Registrar have not been reviewed and more than 75% of the Tribe’s members are not
4 fully enrolled.”

5
6 28. The letter stated that upon receipt of the Final Enrollment Audit Report, the
7 Enrollment Committee—which is the Defendants—will meet and “approve or disapprove the
8 enrollment of each individual members.” The letter then stated that the Defendants will “publish a
9 certified and confirmed list of enrolled members” and “each enrolled member may register to vote if
10 they are not already so registered.” The letter then concludes that the Annual Meeting will take place
11 on August 6, 2022.

12
13 ***The Tribal Council holds the May 7, 2022 Annual Meeting and Election in accordance***
14 ***with the Modoc Nation Constitution and elects the Plaintiffs as the new Elected Council***

15 29. The Constitution mandates that the Annual Meeting take place on the first Saturday in
16 May. It states, “[t]he annual Modoc Tribal Council meeting shall be held the first Saturday of May.”
17 Art. X, § 1.

18 30. The Constitution also mandates that elections of the Elected Council occur during the
19 Annual Meeting. “Elections of the Modoc Elected Council shall take place during the annual meeting
20 of the Modoc Tribal Council.” Art. IX, § 2.

21
22 31. Because the Constitution is the supreme authority for the Modoc Nation, and the
23 Constitution mandates that the Annual Meeting be held and the Elected Council election be held at
24 this meeting, the Tribal Council held the Annual Meeting and elections on May 7, 2022.

25 32. Over 80 Modoc Nation members attended this meeting, thus constituting a proper
26 quorum to do business. See May 7, 2022 Attendance Sheet, attached as Exh. 3. Under the
27 Constitution, ten members of the Modoc Tribal Council shall constitute a quorum. Art. XI, § 1.
28

1 33. At this meeting, the Tribal Council elected a new Elected Council, which consisted of
2 the Plaintiffs as follows: Chief Kirk Miller, Second Chief Ben Karnes, Council Member Danny
3 Burkybile, Council Member Edd Miller, and Secretary Treasurer Anita Williams. The vote totals
4 consisted of Chief Kirk Miller (70 votes), 2nd Chief Ben Karnes (46 votes), Secretary/Treasurer
5 Anita Williams (49 votes), Council Member Daniel Burkybile (34 votes), and Council Member Edd
6 Miller (59 votes). *See* Ballot Totals Sheet, attached as Exh. 4.

7
8 34. The Tribal Council also elected a new Tribal Court Judge, Jason Clark, under Article
9 VII, § 1 of the Constitution. Jason Clark received 65 votes. *See* Ballot Totals Sheet.

10 ***Defendants' actions on disenrollment have damaged Plaintiffs***

11
12 35. Plaintiffs have been damaged by Defendants' disenrollment actions. Plaintiffs have
13 suffered from anxiety and stress worried their Modoc Nation membership will be terminated.
14 Plaintiffs are proud Modoc Nation members and Defendants' attempt to disenroll them in direct
15 violation of Modoc Nation law has caused irreparable harm to Plaintiffs.

16 36. Additionally, Plaintiffs have concerns about losing Modoc Nation services like
17 education funding, healthcare funding, childcare funding, and housing funding due to disenrollment.
18 Plaintiffs have relied on these services for the betterment of their lives and their families' lives. Any
19 loss of membership and services will severely affect Plaintiffs' standard of living and greatly affect
20 the Plaintiffs' ability to care for their families.

21
22 **CLAIMS FOR RELIEF**

23 **Count I: Violation of the Enrollment Code, § 2(B)**

24
25 37. Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs
26 and all paragraphs of this Complaint.

1 38. Section 2(B) of the Enrollment Code prohibits the release of an individual's tribal
2 membership file. It states "[i]nformation contained in the membership files of the tribe is
3 confidential. It shall be released only pursuant to this code or to any subsequent resolution of the
4 tribal council."

5 39. The Enrollment Code has no provision which allows the release of an individual's
6 membership file to an outside accounting firm like Wipfli LLC. And the Tribal Council has not
7 passed a resolution allowing the release of an individual's membership file to an outside accounting
8 firm.
9

10 40. Defendants have violated § 2(B) of the Enrollment Code by giving the Plaintiffs'
11 membership files to the accounting firm of Wipfli LLP to audit the Modoc Nation membership.
12

13 41. Defendants are jointly and severally liable for all damages that resulted from their
14 violation of § 2(B) of the Enrollment Code.

15 **Count II: Violation of the Enrollment Code, § 9(A)**

16 42. Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs
17 and all paragraphs of this Complaint.
18

19 43. Section 9(A) of the Enrollment Code states:

20 New enrollees shall receive a temporary paper membership card until their
21 enrollment is finalized by the enrollment committee. After which, a permanent plastic
card will be issued.

22 44. This provision's plain language means that an individual's membership is "finalized"
23 if the individual receives a permanent plastic membership card.
24

25 45. The Plaintiffs have all received their permanent plastic membership cards and have
26 had these card for many years. This means they are permanent members of the Modoc Nation and are
27 not "temporary members."
28

1 46. The Defendants’ actions in labeling the Plaintiffs-and hundreds of other Tribal
2 members—as only temporary members violates § 9(A) of the Enrollment Code.

3 47. Nothing in the Enrollment Code allows the Defendants to label Plaintiffs as temporary
4 members for years on end and then decide in an arbitrary fashion that an “audit” of the enrollment of
5 the Modoc Nation is required.
6

7 48. Defendants are jointly and severally liable for all damages that resulted from their
8 violation of § 9(A) of the Enrollment Code.

9 **Count III: Violation of the Modoc Nation Constitution, Art. X, § 1 and Art. IX, § 2**

10 49. Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs
11 and all paragraphs of this Complaint.
12

13 50. Article X, § 1 of the Constitution states that “[t]he annual Modoc Tribal Council
14 meeting shall be held the first Saturday of May.”

15 51. Article IX, § 2 states “[e]lections of the Modoc Elected Council shall take place during
16 the annual meeting of the Modoc Tribal Council.”
17

18 52. In alignment with the Constitution, the Election Ordinance states that the “General
19 Election shall be held on the first Saturday of May every four years. The next election after this
20 amended Election Ordinance is May 7, 2022.” Election Ordinance, § 6(2).

21 53. Defendants have violated the Constitution, Art. X, § 1, and Art. IX, § 2, by delaying
22 the Annual Meeting scheduled for May 7, 2022 and not holding an election on May 7, 2022.
23

24 54. The Constitution is the supreme law of the Modoc Nation and contains no exceptions
25 for the delay of the Annual Meeting and the holding of the Elected Council election on this May 7,
26 2022 date. Defendants cannot use their enrollment “audit” to violate the Constitution.

27 55. Defendants are jointly and severally liable for all damages that resulted from their
28 violations of the Constitution, Art. X, § 1, and Art. IX, § 2

1 **Count 4: Declaratory Judgment recognizing the election results of the May 7, 2022**
2 **Annual Meeting**

3 56. Plaintiffs repeat and incorporate by reference the allegations in the above paragraphs
4 and all paragraphs of this Complaint.

5 57. Under the Constitution, the Tribal Council is the “governing body” of the Modoc
6 Nation. Art. 1, § 2.

7 58. Under the Constitution, the Tribal Council held their Annual Meeting on May 7, 2022.
8 Over 80 Tribal Council members attended.

9 59. Because over 10 Tribal Council members attended this meeting, a quorum was
10 established. Art. 11, § 1.

11 60. At this meeting, the Tribal Council elected the following individuals as the Elected
12 Council: Chief Kirk Miller, Second Chief Ben Karnes, Council Member Danny Burkybile, Council
13 Member Edd Miller, and Secretary Treasurer Anita Williams. These individuals are the Plaintiffs in
14 this lawsuit.

15 61. The Elected Council elected by the Tribal Council at the Annual Meeting on May 7,
16 2022 is the lawful Elected Council per the Constitution.

17 62. Plaintiffs request a declaratory judgment that names the Plaintiffs as the lawful
18 Elected Council for the Modoc Nation.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that:

- 21
- 22
- 23 1. The Court declare that the Defendants violated the Election Code, § 2(B), by
24 disclosing the Plaintiffs’ membership file to the outside accounting firm of Wipfli
25 LLP;
- 26 2. The Court declare that the Defendants violated the Election Code, § 9(A), by labeling
27 Plaintiffs as temporary members;
- 28

3. The Court declare that the Defendants violated the Constitution, Art. X, § 1, and Art. IX, § 2, by delaying the Annual Meeting to August 6, 2022 and not holding an Elected Council election on May 7, 2022;
4. The Defendants be immediately enjoined from engaging in any disenrollment activity;
5. The Defendants be ordered to immediately retrieve from Wipfli LLP all Modoc Nation membership files;
6. The Court recognize the Plaintiffs as the lawful Elected Council of the Modoc Nation;
7. The Defendants be immediately enjoined from holding themselves out as the lawful Elected Council of the Modoc Nation;
8. The Defendants be immediately enjoined from taking any actions on behalf of the Modoc Nation;
9. For attorney fees under and where allowed by existing law; and
10. For such other relief as the Court may deem proper and just.

DATED: June 7, 2022

/s/Joe Keene

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Exhibit 1



MODOC NATION

22 N. Eight Tribes Trail
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415



RESOLUTION 22-16

POSTPONING AND RESCHEDULING THE 2022 ANNUAL MEETING TO SATURDAY, AUGUST 6, 2022.

- WHEREAS, the Modoc Nation is a federally recognized Indian tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution approved by the United States Secretary of the Department of the Interior on July 27, 1990, and
- WHEREAS, the Tribal Council is the governing body of the Modoc Nation pursuant to Article I, Section 2 of the Constitution and the Elected Council is the representative governing body of the Tribal Council pursuant to Article IV, Section 1 of the Constitution; and
- WHEREAS, pursuant to Article V of the Constitution, the Elected Council is empowered to exercise all powers of the Nation not reserved to the Tribal Council; and
- WHEREAS, Article II of the Constitution and the Modoc Tribal Enrollment Code enumerate the requirements and internal procedures for membership in the Nation, including the process for membership by enrollment, and
- WHEREAS, Article II, Section 4 of the Constitution provides that the Elected Council shall serve as the Enrollment Committee, and
- WHEREAS, under Section 3 of the Modoc Tribal Enrollment Code, the Enrollment Committee is empowered to approve or disapprove enrollment actions submitted by the Tribal Registrar, and also possesses oversight authority of all enrollment activities, and
- WHEREAS, a limited internal review of enrollment actions taken by the Tribal Registrar during the past three years has indicated potential irregularities in the investigation and processing of enrollment applications, and
- WHEREAS, the Elected Council, sitting as the Enrollment Committee, is now informed that the condition, status, completeness, and accuracy of a significant number of

enrollment records of the Nation, as well as the validity of the enrollment actions submitted by the Tribal Registrar since 2003, are in question, and

WHEREAS, the Elected Council, sitting as the Enrollment Committee, is informed that enrollment records of certain individuals and families contain significant gaps in lineal genealogy links, and

WHEREAS, the Elected Council, sitting as the Enrollment Committee, desires that every individual member file be audited for completeness and accuracy according to the enrollment eligibility requirements in effect at the time of enrollment, and

WHEREAS, the Elected Council has contracted with the independent certified public accounting firm of Wipfli LLP to audit the enrollment records of the Nation in accordance with generally accepted government auditing standards and to prepare a Final Enrollment Audit Report, and

WHEREAS, the issuance of the Final Enrollment Audit Report is not expected to occur for at least sixty days, and

WHEREAS, within a reasonable time following the receipt of the Final Enrollment Audit Report from Wipfli LLP, the Enrollment Committee will meet to either approve or disapprove the enrollment of each individual member of the Nation, and

WHEREAS, the Elected Council finds that, once completed, the audit of enrollment records could ultimately result in significant changes to the composition of the current purported membership of the Nation, and

WHEREAS, Article X, Section 1 of the Constitution requires that the annual meeting of the Tribal Council be held on the first Saturday of May and Article IX, Section 2 of the Constitution requires that the election of the Elected Council shall take place during the annual meeting, and

WHEREAS, in accordance with Article IX, Section 4 of the Constitution, any properly enrolled member is eligible to vote in the election for Elected Council who is at least eighteen (18) years of age on election day and is properly registered according to the Modoc Election ordinance, and

WHEREAS, the Elected Council finds that a genuine and credible election depends, in part, on a transparent electoral process, equal voting opportunities for all enrolled members, and accurate tabulation and acceptance of the electoral results, and

WHEREAS, the Elected Council finds that the existence of substantive questions regarding the proper enrollment of a significant number of individuals necessarily means that the accuracy and reliability of the voter list and the eligibility of certain voters are also in question, and

WHEREAS, the Elected Council is justifiably concerned that an election in which a significant number of ineligible voters participate would suppress the vote of eligible voters and adversely affect the acceptance of the electoral results, and

WHEREAS, the Nation continues to be impacted by the novel coronavirus pandemic, including the inadvisability to hold large in-person events and meetings, and

WHEREAS, given the rapidly changing nature of the coronavirus pandemic outbreak, the Elected Council has previously postponed and rescheduled the annual meeting to protect the health, safety, and general welfare of the members of the Nation, and

WHEREAS, the Elected Council finds that it is inadvisable under all of these circumstances to hold the annual meeting, as scheduled on Saturday, May 7, 2022, and

WHEREAS, the Elected Council finds that in order to protect the health and safety of the Nation and to preserve the integrity of the tribal election, it is necessary and in the best interests of the Nation to postpone the annual meeting to Saturday, August 6, 2022, subject to the issuance of the Final Enrollment Audit Report and in consideration of the existing protocols and health and safety guidance related to the coronavirus pandemic.

NOW THEREFORE BE IT RESOLVED that the aforementioned recitals are hereby incorporated and made a part of this Resolution as if more fully set forth herein.

BE IT FURTHER RESOLVED that the annual meeting will be postponed and rescheduled to Saturday, August 6, 2022, at such time and place to be noticed in accordance with the Constitution.

CERTIFICATION

We, the undersigned, do hereby certify that the foregoing resolution 22-16 was adopted by the Elected Council of the Modoc Nation, by a vote of 4 for, 0 against, with 1 absent, at a duly called meeting on April 21, 2022, at which a quorum was present.

ATTEST:


Troy L. Little Axe

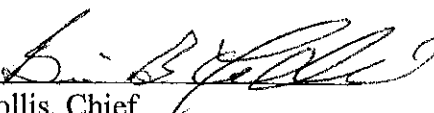

Bill G. Follis, Chief

Exhibit 2



MODOC NATION

22 North Eight Tribes Trl.
Miami, OK 74354
Phone: 918-542-1190
Fax: 918-542-5415



MEMORANDUM

TO: Modoc Tribal Council
FROM: Modoc Elected Council
DATE: April 26, 2022
RE: Enrollment Audit and Postponement of Annual Meeting

The Elected Council recognizes that any time enrollment concerns arise within the Tribe, those issues can be difficult and emotional. We want to assure Tribal members that the Elected Council has had the strength and integrity of the Tribe as its singular goal in recent decisions to audit enrollment and postpone elections.

These are related issues. Proper enrollment is important, because only enrolled members of the Tribe may vote in elections. Understanding the genealogy of our lineal and extended families is also important to ensure that the Tribe knows what accommodations or changes may need to be made moving forward so that our nation thrives.

ENROLLMENT AUDIT

The Modoc Tribal Enrollment Code authorizes the Tribal Registrar to make temporary enrollment decisions. Those temporary decisions must be submitted to the Enrollment Committee for a determination on each person's full enrollment. Under our Constitution, the Elected Council serves as the Enrollment Committee.

A preliminary audit of enrollment records by tribal staff found that the temporary enrollment decisions of the Tribal Registrar contained irregularities, including numerous instances where the Tribal Registrar did not correctly verify lineal descent. According to the preliminary audit, the Enrollment Committee has not reviewed enrollment actions submitted by the Tribal Registrar since the Modoc Tribal Enrollment Code was enacted in 2003. This means that at least 419 temporary enrollments by the Tribal Registrar have not been reviewed and more than 75% of the Tribe's members are not fully enrolled. We are concerned that the Tribal Registrar may not have adequately verified lineal descent for many of these temporary enrollments.

WHAT WE HAVE DONE:

Every enrollment file should be independently audited: The Elected Council decided that every individual member file should be audited for completeness and accuracy according to the enrollment eligibility requirements in effect at the time of enrollment. In order to avoid the appearance of impropriety, the Elected Council has contracted with the independent certified public accounting firm of Wipfli LLP to audit the enrollment records in accordance with generally



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accepted government auditing standards and to prepare a Final Enrollment Audit Report. We will audit all enrollments so that no person feels unfairly targeted.

WHAT WE HAVE NOT DONE:

- No member of the Tribe has been disenrolled.
- No member of the Tribe has been or will be denied any due process in the review of their enrollment with the Tribe.

POSTPONEMENT OF ANNUAL ELECTIONS

Only enrolled members may vote in elections during the annual meeting of the Tribal Council. Given the findings of the preliminary audit, the Elected Council must ensure the integrity of tribal elections by determining whether all temporarily enrolled persons meet the qualifications under Article II of our Constitution.

WHAT WE HAVE DONE:

Temporarily postponed the Annual Meeting and Election. The Elected Council adopted Resolution 22-16 resolving that the Annual Meeting will be postponed and rescheduled to **Saturday, August 6, 2022**, so that the enrollment audit can be performed to ensure the integrity of the election process, as well as to mitigate the potential for exposure to COVID-19.

WHAT WE HAVE NOT DONE:

- No candidate for Elected Council has been removed from the election.
- No changes have been made to voter registration.
- No changes have been made to the official term of any Elected Council member.

ENROLLMENT REVIEW AND ANNUAL ELECTION

The Elected Council is committed to a careful, thorough, and transparent audit of the enrollment records. We have been assured by Wipfli LLP that the Final Enrollment Audit Report can be issued quickly. Upon receipt of the Final Enrollment Audit Report, we will schedule a meeting of the Enrollment Committee, which will meet to either approve or disapprove the enrollment of each individual member. After the Enrollment Committee makes final enrollment decisions, Chief Follis will call a Special Meeting of the Tribal Council to present the findings and recommendations of the independent auditor Wipfli and the enrollment decisions of the Enrollment Committee.

If the independent audit finds an enrollment application does not establish a person's qualifications for membership under Article II of our Constitution, the Enrollment Committee may disapprove final enrollment for that person. In accordance with Article II, Section 3 of the Constitution, any person whose final enrollment was disapproved will be permitted to file (or have filed on his/her



MODOC NATION

22 North Eight Tribes Trl.
Miami, OK 74354
Phone: 918-542-1190
Fax: 918-542-5415



behalf) an appeal to the Tribal Council. If there are enrollment appeals, Chief Follis will call a series of Special Meetings of the Tribal Council so that the appeals may be heard and decided. These Special Meetings will include an organizational meeting wherein the Tribal Council may propose and adopt the rules for addressing the appeals. The decision of the Tribal Council with respect to each appellant will be final.

Following the completion of the appeals process, the Enrollment Committee will publish a certified and confirmed list of enrolled members. Each enrolled member may register to vote if they are not already so registered. The Secretary/Treasurer will then publish notice of the time and place of the Annual Meeting, scheduled for August 6, 2022. Elections for the Elected Council will take place during the Annual Meeting.

THE ELECTED COUNCIL'S GOALS IN AUDITING ENROLLMENT

This is an extraordinary situation requiring us to proceed with caution and deliberation. Our goals are to:

- Produce a certified and confirmed list of fully enrolled members.
- Develop procedures for ensuring that enrollment decisions by the Enrollment Committee occur timely and regularly.
- Recruit and hire a qualified candidate possessing training in genealogical research to serve as the Tribal Registrar.
- Continue to protect the integrity of the Tribe's elections and foster confidence in the outcomes.

We acknowledge that this disruption in the election cycle is disappointing to many of you. At the same time, we must also acknowledge our duty is to ensure that a genuine and credible election occurs, which means that the elections must fairly and accurately represent the will of the Tribe's qualified voters. To ensure the fairness and the accuracy of the election, we must ensure that all candidates meet the eligibility requirements to run for office and that all voters are qualified to participate in the election. The validity of our elections is necessarily founded in accurate enrollment records.

If you have any questions regarding the enrollment audit process, please feel free to contact Chief Bill Follis or Second Chief Robert Burkybile.

Exhibit 3

Modoc Nation Annual Meeting

Members


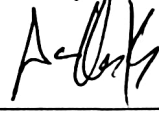
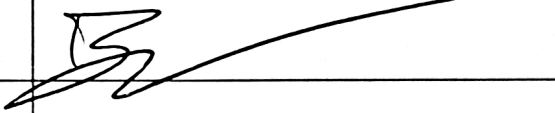

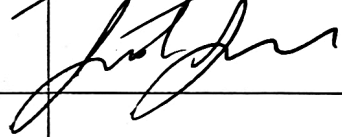

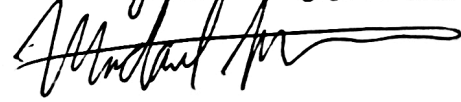
May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|----------------------|----------------------|-------------------------------|
| ✓27 | Stephanie Hailey | Stephanie Hailey | 0022 |
| ✓28 | Catherine G. Gilmore | Catherine G. Gilmore | 0017 |
| ✓29 | Susan Glerup | Susan Glerup | 260 |
| ✓30 | Savannah Glerup | Savannah Glerup | 0263 |
| ✓31 | EDD miller | Eddy miller | 0411 |
| ✓32 | Wanda Jean Winters | Wanda J. Winters | 0412 |
| ✓33 | Seth Ford | Seth Ford | 0419 |
| ✓34 | LARRY BOGGS | Larry Boggs | 0425 |
| ✓35 | John Boggs | John Boggs | 0444 |
| ✓36 | Amber Boggs | Amber Boggs | 0480 |
| ✓37 | Norma Poe | Norma Poe | 0427 |
| ✓38 | Karlie Schmidt | Karlie Schmidt | 0467 |
| ✓39 | Katherine L. Hoag | Katherine L. Hoag | 0436 |

13

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|----------------------|--|-------------------------------|
| ✓40 | Jason T Grovenburg |  | 0498 |
| ✓41 | Betty J. Eddings | Betty J Eddings | 0035 |
| ✓42 | Jason Clark |  | 25 |
| ✓43 | Ben Karnes |  | 237 |
| ✓44 | Anita Williams | Anita William | 0048 |
| ✓45 | Rachel Bullard | Rachel Bullard | 0463 |
| ✓46 | Alisha Shoemaker | alisha shu | 0382 |
| ✓47 | Linda Fuller | Linda Fuller | 0481 |
| ✓48 | Jesse Joyner |  | 0545 |
| ✓49 | Joshua Joyner |  | 0488 |
| ✓50 | Jordan Blain Garrett |  | 00514 |
| ✓51 | Riley Quinn | Riley Quinn | 0429 |
| ✓52 | MICHAEL MILLER |  | 0401 |

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|---------------------|-------------------|-------------------------------|
| ✓53 | Debra Shelton | Debra Shelton | 0123 |
| ✓54 | Jason L. Brown | Jason L. Brown | 0478 |
| ✓55 | Justin Poe | Justin Poe | 0489 |
| ✓56 | Teff Poe | Teff Poe | 0470 |
| ✓57 | Brooklyn Owens | Brooklyn Owens | 399 |
| ✓58 | Daniel Miller | Daniel Miller | 406 |
| ✓59 | Taylor Broules | Taylor Broules | 457 |
| ✓60 | Donald C Miller | Donald C Miller | 434 |
| ✓61 | Angela G. Graves | Angela Graves | 0516 |
| ✓62 | Samie Workley | Samie Workley | 0556 |
| ✓63 | Zachary Halliwell | Zachary Halliwell | 0431 |
| ✓64 | Samie A. Miller | Samie A. Miller | 0587 |
| ✓65 | Rex H. Barkyble | Rex H. Barkyble | 0236 |




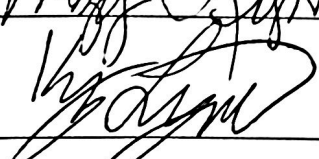

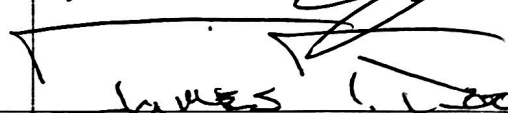
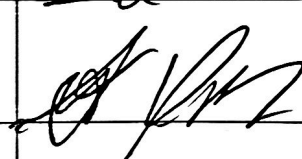
Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|----------------------------------|---------------------|-------------------------------|
| ✓66 | Richard Grant Byers | Richard Grant Byers | 0532 |
| 67 | JASON CLARK | [Signature] | 25 |
| ✓68 | Justin Garvin | Justin Garvin | 62 |
| ✓69 | Staci Hudson | [Signature] | 0416 |
| ✓70 | Cade Hudson | [Signature] | 0417 |
| ✓71 | Makisha White | Makisha White | 0084 |
| ✓72 | Lisa Brock | Lisa Brock | 144 |
| ✓73 | Jennifer Morrison | Jennifer Morrison | 0049 |
| ✓74 | Kati Bullard | Kati Bullard | 0464 |
| ✓75 | Cynthia Bullard Cindy Bullard | Cynthia Bullard | 0462 |
| ✓76 | Thomas Hansche | Thomas Hansche | 0487 |
| ✓77 | Misty Joyner | [Signature] | 0487 |
| ✓78 | Marnie Nila | [Signature] | 0426 |

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|--------------------------|--|-------------------------------|
| | Brandon Boggs | | |
| ✓79 | Brandon Boggs |  | 0428 |
| ✓80 | Natalie Bateman | Natalie Bateman | 0494 |
| ✓81 | Daniel Burkbyhle |  | 0233 |
| ✓82 | Kirk Miller | Kirk Miller | 0400 |
| ✓83 | John Newberry |  | 0099 |
| ✓84 | Roy Steven Utho | Roy Steven Utho | 0414 |
| ✓85 | Mitzzy Lynn | Mitzzy Lynn | 402 |
| ✓86 | Ky Lynn |  | 403 |
| ✓87 | Kolton Lynn |  | 405 |
| ✓88 | James T. Wodey |  5078222014 | 129 |
| 89 | Scott Yeohay |  | |
| 90 | | | |
| 91 | | | |

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
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| 103 | | | |
| 104 | | | |

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|------|---------------------|---------------------|-------------------------------|
| ✓131 | MARGIE HAMMONS | Margie Hammons | 0454 |
| ✓132 | Betty Caudill | Betty Caudill | 0439 |
| ✓133 | Regina L Brown | Regina L Brown | 0475 |
| ✓134 | Lucy Poe | Lucy Poe | 0490 |
| ✓135 | Heath Glerup | Heath Glerup | 0261 |
| ✓136 | Libby M Owens | Libby M Owens | 398 |
| ✓137 | Donna Minshall | Donna Minshall | 0459 |
| ✓138 | Barbara Richards | Barbara Richards | 0494 |
| ✓139 | John Miller | John Miller | 0572 |
| ✓140 | Reagan Cosen | Reagan Cosen | 0548 |
| ✓141 | Ricky L Hollingback | Ricky L Hollingback | 0430 |
| ✓142 | AMBER CLOUSE | Amber Clouse | 0234 |
| 143 | Immi A McEl | Immi A McEl | 0587 |

Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|------|----------------------------------|------------------|-------------------------------|
| ✓144 | Tara Moore | Tara Moore | 227 |
| 145 | 116 Duplicate Daniel Burghoff | | 0233 |
| ✓146 | Jeremy Chifon | | 0047 |
| 147 | Jim D. Miller | Jim D. Miller | 0397 |
| ✓148 | Josh Arnold | Josh Arnold | 0370 |
| 149 | | | |
| 150 | | | |
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Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|------|---------------------|-------------------|-------------------------------|
| ✓157 | Sierra Burkhibile | Sierra Burkhibile | 235 |
| 158 | | | |
| 159 | | | |
| 160 | | | |
| 161 | | | |
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Modoc Nation Annual Meeting

May 7, 2022

| | <u>Printed Name</u> | <u>Signature</u> | <u>Modoc</u> <u>Roll #</u> |
|-----|---------------------|------------------|-------------------------------|
| 170 | | | |
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Exhibit 4

BALLOT TOTALS

CHIEF

| Names by number of votes | # of Votes |
|--------------------------|------------|
| Robert Burkybile | 5 |
| Sydney Colombe | 1 |
| Kirk Miller | 70 |

2ND CHIEF

| Names by number of votes | # of Votes |
|--------------------------|------------|
| Johnny Baggs | 17 |
| Benjamin Karnes | 46 |
| Gina McGaughey | 14 |

SECRETARY/TREASURER

| Names by number of votes | # of Votes |
|--------------------------|------------|
| Ramona Rosiere | 15 |
| Anita Williams | 49 |

COUNCIL MEMBERS

| Names by number of votes | # of Votes |
|--------------------------|------------|
| Daniel Burkybile | 34 |
| Ed Miller | 59 |
| Jessica Mullin | 14 |
| John Newberry | 11 |
| Jay Shadwick | 9 |

BALLOT TOTALS

JUDGE

| Names by number of votes | # of Votes |
|--------------------------|------------|
| Jason Clark | 65 |
| | |
| | |
| | |

Election Commission Signatures

Natalie Bateman

Printed Name

Justin Poe

Printed Name

Natalie Bateman

Signature

[Signature]

Signature

May 7, 2022

Date

5/7/2022

Date

Daniel Lee Burkbybill

5/7/2022



Tribal Court Motion for TRO and Exhibits

1
2
3
4 **MODOC NATION TRIBAL COURT**
5
6

7 KIRK MILLER (Chief))
8 BEN KARNES (2nd Chief))
9 DANNY BURKYBILE (Council Member))
10 EDD MILLER (Council Member))
11 ANITA WILLIAMS (Secretary/Treasurer)) Case No.
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Plaintiffs,

vs.

14 BILL FOLLIS (Former Chief),
15 ROBERT BURKYBILE (Former 2nd Chief),
16 RAMONA ROSIERE (Former
17 Secretary/Treasurer),
18 MONA CRAVEN (Former Council Member),
19 TYLER SCIFERS (Former Council Member),
20
21
22
23
24
25
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28

Defendants

22 **PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND**
23 **PRELIMINARY INJUNCTION**

24 Modoc Nation members and newly elected Elected Council members Kirk Miller, Ben
25 Karnes, Danny Burkybile, Edd Miller, and Anita Williams (collectively, "Plaintiffs"), through
26 undersigned counsel, request that the Court enter a temporary restraining order ("TRO") under
27
28

1 Federal Rule of Civil Procedure 65(a)-(b)¹ enjoining the Defendants—Bill Follis, Robert Burkybile,
2 Ramona Rosiere, Mona Craven, and Tyler Scifers—from engaging in any disenrollment activity and
3 ordering them to stop holding themselves out as the lawful Elected Council of the Modoc Nation and
4 prohibiting them from taking any actions on behalf of the Modoc Nation. Plaintiffs request this TRO
5 to prevent irreparable harm until a full and complete hearing on Plaintiffs’ motion for preliminary
6 injunction/permanent injunction can be held. This motion is supported by the Plaintiffs’ Complaint
7 and accompanying exhibits. Plaintiffs also rely upon their Statement of Points and Authorities, filed
8 contemporaneously herewith.

10 The undersigned counsel certifies that notice of this Motion was provided to counsel for
11 Defendants. Counsel called Defendants’ counsel, Troy Little Axe, on June 7, 2022 at 2:57 p.m. and
12 told Mr. Little Axe that his clients were filing these papers. A copy of this Motion and the
13 accompanying documents have been mailed to Defendants at:

15 Modoc Nation
16 22 N. Eight Tribes Trail
17 Miami, OK 74354

18 Counsel also emailed the Motion and accompanying documents to Mr. Little Axe’s email at
19 troy.littleaxe@modocnation.com.

20 * * *

21 WHEREFORE, Plaintiffs request that this Court:

- 22 1. Issue a temporary restraining order enjoining Defendants from engaging in any
23 disenrollment activity, which includes ordering the retrieval of any membership
24 records held by a third party;
- 25 2. Issue a temporary restraining order prohibiting Defendants from holding themselves
26 out as the lawful Elected Council of the Modoc Nation;

27 ¹ Per the Modoc Nation Constitution, Article VIII, § 2, rules of procedure shall be prescribed by the Judicial
28 Department within 60 days of the judge taking office. Judge Jason Clark was voted into office on May 7, 2022
and has yet to prescribe rules of procedure. Because there are no rules of procedure currently, the Plaintiffs are
using the Federal Rules of Civil Procedure for the Court’s guidance.

3. Issue a temporary restraining order prohibiting Defendants from taking any actions on behalf of the Modoc Nation;
2. Issue the temporary restraining order on Date, or as soon thereafter as possible;
3. Set specific date and time, by agreement of the parties or by order of the Court, for a full and complete hearing on Plaintiffs' Motion after allowing a sufficient period of time to conduct discovery; and
4. Grant Plaintiffs' attorney's fees and any such further relief as the Court deems just and proper.

Dated this 7th day of June, 2022.

By: /s/Joe Keene

Joe Keene OK Bar No. 33085
Wilson Pipestem OK Bar No. 16877
Pipestem Law P.C.
401 S. Boston Ave.
Suite 2200
Tulsa, OK 74103
P: 918-936-4705
jkeene@pipestemlaw.com

Attorneys for Plaintiffs

1 **PLAINTIFFS' STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiffs incorporate by reference paragraphs 19 through 36 of their Complaint for Injunctive
5 Relief.
6

7 **II. STANDARD OF REVIEW**

8 Injunctive relief is proper where a plaintiff can establish under Rule 65 of the Federal Rules of
9 Civil Procedure that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm
10 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
11 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A
12 party may be granted a preliminary injunction “only when monetary or other traditional legal
13 remedies are inadequate, and ‘the right to relief is clear and unequivocal.’” *First W. Cap. Mgmt. Co.*
14 *v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017) (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253,
15 1258 (10th Cir. 2005)). Irreparable harm is established by the movant’s showing of “a significant risk
16 that he or she will experience harm that cannot be compensated after the fact by money damages.”
17 *Fish v. Kobach*, 840 F.3d 710, 751 (10th Cir. 2016). “Because a preliminary injunction is an
18 extraordinary remedy, the movant's right to relief must be clear and unequivocal.” *Dine Citizens*
19 *Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016).
20
21

22 **III. ARGUMENT**

23 **A. Plaintiffs Have Demonstrated a Substantial Likelihood of Success on the Merits**

24 Plaintiffs will likely succeed on their claims that Defendants violated the Modoc Nation
25 Constitution (“Constitution”) and the Modoc Enrollment Code because Defendants violated
26
27
28

1 Constitution election procedures and unlawfully engaged in disenrollment actions in clear violation
2 of Modoc law. Compl. ¶ 37-62.

3 The Constitution mandates that the Annual Meeting take place the first Saturday in May.
4 Const. Art. X, § 1. And at this meeting, elections of the Elected Council take place. Const. Art. IX, §
5 2. The Constitution contains no exceptions to these mandates. *Id.* Thus, Defendants violated the
6 Constitution by delaying the Annual Meeting from May 7, 2022 to August 6, 2022 which in turn
7 delayed the Elected Council election. Defendants have no Constitutional basis for their actions and
8 have violated the will of the Modoc People by running afoul of the Nation’s governing documents.
9 As a result, Plaintiffs are likely to succeed on their claims that Defendants violated the Constitution.²
10 Furthermore, pursuant to the Constitution, the Plaintiffs are also entitled to the declaration of them as
11 the lawful Elected Council and an order by this Court prohibiting the Defendants from holding
12 themselves out as the Elected Council. As the complaint shows, the Tribal Council met on May 7,
13 2022 with a lawful quorum of over 80 members and voted the Plaintiffs as the Elected Council. The
14 Tribal Council’s election conducted in accordance with the Constitution warrants this Court’s
15 recognition and an order prohibiting Defendants from unlawfully holding themselves out as the
16 Elected Council.
17
18
19

20 Additionally, Plaintiffs will likely succeed on their claims that Defendants violated the Modoc
21 Enrollment Code by impermissibly releasing tribal membership information to a third party, the
22 accounting firm of Wipfli LLP. The Enrollment Code § 2(B) mandates that “information contained in
23 the membership files of the tribe is confidential.” And information in individual membership files
24 may be released only “to agencies of the federal Government for the purposes of support of an
25

26
27 ² Indeed, if Defendants were allowed to delay the annual meeting and election due to concerns about
28 membership, nothing prevents the Defendants from indefinitely delaying the election and staying in power
until their “audit” is complete. Such an extraordinary abuse of power by the Defendants should not be
tolerated.

1 application of the individual for a federal program if the information is necessary to prove the
2 individuals eligibility for the program.” *Id.* In enacting the Enrollment Code, the Modoc People had a
3 strong interest in maintaining the integrity and privacy of tribal membership information. Defendants
4 violated this interest in turning over confidential membership information to the third party
5 accounting firm of Wipfli LLP. Compl. ¶ 24. The Enrollment Code contains no provision or process
6 related to the auditing of confidential membership information, leaving no legal basis for Defendants’
7 actions.
8

9 The Plaintiffs also violated the Enrollment Code by labeling Plaintiffs as “temporary
10 members.” The Enrollment Code is clear that when an individual receives a “permanent plastic card,”
11 they are an enrolled member of the Modoc Nation. Code, at § 9(A). This Section 9(A) explicitly
12 states that once an enrollment is “finalized,” a “permanent plastic card will be issued.” There are zero
13 provisions of the Code which purport to place individuals on a “temporary” membership status.
14 Defendants have fabricated a “temporary” membership status out of whole cloth in violation of
15 Modoc law and baselessly ceased to recognize Plaintiffs as members of the Nation even though
16 Plaintiffs have been enrolled for several years and have plastic membership cards. Compl. ¶ 21-23.
17 Therefore, Plaintiffs are substantially likely to succeed on their claims that Defendants violated the
18 Enrollment Code.
19
20

21 **B. Plaintiffs Will Incur Irreparable Harm if Injunctive Relief is Denied**

22 Absent injunctive relief, Plaintiffs face imminent irreparable injury that is both procedural and
23 substantive. Injunctive relief is necessary to prevent the permanent loss of Plaintiffs’ right to
24 membership and the benefits flowing therefrom in the Modoc Nation and the permanent destruction
25 of a functioning Modoc government under the Constitution.
26
27
28

1 If Plaintiffs are permanently denied membership in the Modoc Nation, a Federally recognized
2 tribe, not only will they lose their status as citizens of a sovereign nation, but also they will lose certain
3 federal benefits which accompany membership in a federally recognized tribe. *See* Declarations of
4 Plaintiffs, attached as Exhibit 1; Daniel Burkybile Decl. ¶ 5; Kirk Miller Decl. ¶ 5; Ben Karnes Decl.
5 ¶ 5; Anita Williams Decl. ¶ 5; Edd Miller Decl. ¶ 5. These include, but are not limited to, social and
6 financial assistance programs through the Bureau of Indian Affairs, statutorily guaranteed healthcare
7 through the Indian Health Service, housing benefits, job preference, and educational benefits,
8 including federally funded scholarships. Compl. ¶ 22. Displacement from their tribe, and loss of tribal
9 membership and federal benefits would be devastating and life-altering to Plaintiffs, constituting “a
10 significant risk that [...] that cannot be compensated after the fact by money damages.” *Fish*, 840
11 F.3d at 751. If Defendants are not enjoined from any further disenrollment activities, Plaintiffs will
12 suffer irreparable harm.

13
14
15 Additionally, Defendants have already damaged the integrity of Modoc Nation enrollment
16 procedures by turning over confidential documents to a third party. Compl. ¶ 24. If Defendants are
17 permitted to continue their illegal actions absent an injunction, further harm will be done to
18 undermine the integrity of founding Modoc Nation documents and there will be an increase in
19 confidential information shared with third parties. This constitutes permanent damage to the
20 sovereignty of the Modoc Nation and irreparable harm for which “monetary or other traditional legal
21 remedies are inadequate, and the right to relief is clear and unequivocal.” *First W. Cap. Mgmt. Co. v.*
22 *Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017) (quotations omitted).

23
24
25 Finally, Defendants’ insistence that they are the lawful Elected Council and not the Plaintiffs
26 directly infringes on the Plaintiffs’ ability to exercise their leadership responsibilities as directed by
27 the Tribal Council. The Tribal Council—which is the voice of the Modoc people—elected the
28

1 Plaintiffs as their Elected Council and *not* the Defendants. These actions by the Defendants constitute
2 an infringement on the sovereignty of the Modoc Nation, which the Tenth Circuit has held is
3 irreparable injury. *See Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006) (“an
4 invasion of tribal sovereignty can constitute irreparable injury.”).

6 **C. The Balance of Equities Favors Granting Injunctive Relief**

7 The balance of equities tip in favor of granting injunctive relief. Courts reviewing the balance
8 of equities factor have concluded that injunctive relief which “alter[s] the status quo,” is disfavored.
9 *Rudnick v. Raemisch*, 731 F. App'x 753, 755 (10th Cir. 2018). In this instance, Plaintiffs ask the
10 Court to not alter the status quo, but *to maintain it*. Here, the current status quo of Modoc Nation law
11 entitles Plaintiffs to enrollment in the Modoc Nation and representation by a government which acts
12 in accordance with the Constitution and Enrollment Code. Compl. ¶ 37-62. Denial of the injunction
13 would upend the status quo and irreparably alter existing law and protections related to enrollment in
14 the Modoc Nation and operation of a fair tribal government. Indeed, if Defendants’ actions are
15 allowed to stand, an unlawful Elected Council would continue to govern the Modoc Nation in direct
16 violation of the Modoc Nation Constitution. In examining the equities, there is no harm to Defendants
17 if the injunction is granted because Defendants are currently acting in violation of the law. There can
18 be no harm in requiring Defendants to conform their conduct to Modoc Nation law. In contrast, if
19 injunctive relief is denied to Plaintiffs, there will be permanent harm and inequitable loss of their
20 rights. Accordingly, granting injunctive relief will not disrupt the status quo of Modoc Nation law
21 and equity tips in Plaintiffs’ favor.

25 **D. Issuance of an Injunction Would Serve, Not Harm, the Public Interest**

26 The public interest supports an injunction against Defendants. In enacting the Constitution,
27 the Modoc People sought to “maintain the traditions of the Modoc Nation, promote the general
28

1 welfare and exercise the powers or self-government.” Const. Preamble. An injunction is in
2 accordance with the Constitution because it recognizes that for the powers and self-government of the
3 Modoc People to continue, the laws of the Modoc Nation must be followed by those in power.
4 Further, upholding the Constitution and enforcing the Enrollment Code honors the public interest by
5 maintaining the traditions and general welfare of the Modoc Nation for generations to come. The
6 public interest is served by enforcing Modoc Nation law that puts processes in place to keep bad
7 actors from arbitrarily changing the very foundations and composition of the Modoc Nation.
8

9 **IV. CONCLUSION**

10 For the above reasons, all four factors support the imposition of injunctive relief and the
11 granting of the Plaintiffs’ motion.
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18 DATED: June 7, 2022

19 /s/ Joe Keene
Joe Keene

20 Pipestem Law P.C.
21 401 S. Boston Ave.
22 Suite 2200
Tulsa, OK 74103
23 P: 918-936-4705
jkeene@pipestemlaw.com
24
25
26
27
28

Exhibit 1

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Plaintiffs,

vs.

BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),

Defendants

) Case No.:

) **DECLARATION OF ANITA WILLIAMS**

Under the penalty of perjury, I, Anita Williams, state the following:

1. I submit this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction filed by myself and the other Plaintiffs (Kirk Miller, Ben Karnes, Danny Burkybile, and Edd Miller). This Declaration is based on my personal knowledge. If called as a witness, I could and would testify competently to such facts under oath.
2. The Modoc Nation is a federally recognized Indian Tribe and is governed by the Modoc Nation Constitution.
3. I am an enrolled member of the Modoc Nation and have been a member since 1987. I received my plastic membership card in 1987.
4. I am a proud member of the Modoc Nation and cherish my membership. I receive services from the Modoc Nation.
5. If I were to lose these services and benefits, my family and I would suffer. Our quality of

life would decrease and I would experience financial difficulty.

6. In a letter dated April 26, 2022, I was informed by the Elected Council that an audit of the membership records of the Modoc Nation was being performed because there were numerous “irregularities” with the current membership. The letter stated that over 75% of the Modoc Nation’s members are not fully enrolled. The letter noted that after the audit is complete, the Enrollment Committee—which is the current Defendants—will “approve or disapprove the enrollment of each individual [Modoc Nation] member.” The letter concluded that the Annual Meeting would be delayed to August 6, 2022.


7. This letter has made me worried about my membership with the Modoc Nation and that I will be disenrolled with no due process. This letter has caused me great anxiety and stress.

8. On May 7, 2022, the Annual Meeting of the Modoc Nation Tribal Council was held in accordance with the Modoc Nation Constitution. At this meeting, the Tribal Council held the Elected Council election as required by the Constitution.

9. I was elected as the Secretary/Treasurer at the May 7, 2022 Annual Meeting. I received 49 votes for Secretary/Treasurer.

10. I am prepared and willing to exercise my authority as Secretary/Treasurer of the Modoc Nation. However, I am prohibited from exercising my constitutional authority due to Defendant’s actions on disenrollment and their attempt to delay the Annual Meeting and election. Defendants’ actions have created confusion on who the proper leadership of the Modoc Nation is.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7, 2022.


Anita Williams

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Plaintiffs,

VS.

BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),

Defendants

Under the penalty of perjury, I, Ben Karnes, state the following:

1. I submit this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction filed by myself and the other Plaintiffs (Kirk Miller, Danny Burkybile, Edd Miller, and Anita Williams). This Declaration is based on my personal knowledge. If called as a witness, I could and would testify competently to such facts under oath.
2. The Modoc Nation is a federally recognized Indian Tribe and is governed by the Modoc Nation Constitution.
3. I am an enrolled member of the Modoc Nation and have been a member since 2006. I received my plastic membership card in 2006.
4. I am a proud member of the Modoc Nation and cherish my membership. I receive

services from the Modoc Nation and these services include eye glasses reimbursement, housing improvement grants, higher education benefits, disabled Veteran auto tags, and elder/disabled member utility assistance.

5. If I were to lose these services and benefits, my family and I would suffer. Our quality of life would decrease and I would experience financial difficulty due to the cost of state auto tags, higher education costs, and the rising cost of utilities.

6. In a letter dated April 26, 2022, I was informed by the Elected Council that an audit of the membership records of the Modoc Nation was being performed because there were numerous “irregularities” with the current membership. The letter stated that over 75% of the Modoc Nation’s members are not fully enrolled. The letter noted that after the audit is complete, the Enrollment Committee—which is the current Defendants—will “approve or disapprove the enrollment of each individual [Modoc Nation] member.” The letter concluded that the Annual Meeting would be delayed to August 6, 2022.

7. This letter has made me worried about my membership with the Modoc Nation and that I will be disenrolled with no due process. This letter has caused me great anxiety and stress and has triggered PTSD episodes due to the anxiety and stress. My familial relationships have been stressed due to fears of family members potentially losing benefits.

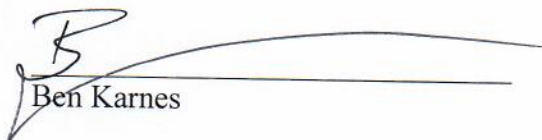
8. On May 7, 2022, the Annual Meeting of the Modoc Nation Tribal Council was held in accordance with the Modoc Nation Constitution. At this meeting, the Tribal Council held the Elected Council election as required by the Constitution.

9. I was elected as 2nd Chief of the Modoc Nation at the May 7, 2022 Annual Meeting. I received 46 votes for 2nd Chief.

10. I am prepared and willing to exercise my authority as the 2nd Chief of the Modoc Nation.

However, I am prohibited from exercising my constitutional authority due to Defendant's actions on disenrollment and their attempt to delay the Annual Meeting and election. Defendants' actions have created confusion on who the proper leadership of the Modoc Nation is.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7, 2022.


Ben Karnes

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Case No.:

DECLARATION OF DANNY BURKYBILE

Plaintiffs,

VS.

**BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),**

Defendants

Under the penalty of perjury, I, Danny Burkybile, state the following:

1. I submit this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction filed by myself and the other Plaintiffs (Kirk Miller, Ben Karnes, Edd Miller, and Anita Williams). This Declaration is based on my personal knowledge. If called as a witness, I could and would testify competently to such facts under oath.

2. The Modoc Nation is a federally recognized Indian Tribe and is governed by the Modoc Nation Constitution.

3. I am an enrolled member of the Modoc Nation and have been a member since 2006. I received my plastic membership card in 2006.

4. I am a proud member of the Modoc Nation and cherish my membership. I receive services from the Modoc Nation and these services include vehicle tags, housing grants, prescription vision assistance, utility assistance, cultural based knowledge.

5. If I were to lose these services and benefits, my family and I would suffer. Our quality of life would decrease and I would experience financial difficulty paying monthly bills. It would also increase the yearly costs of my vehicle tags and maintaining my home.

6. In a letter dated April 26, 2022, I was informed by the Elected Council that an audit of the membership records of the Modoc Nation was being performed because there were numerous “irregularities” with the current membership. The letter noted that over 75% of the Modoc Nation’s members are not fully enrolled. The letter concluded that after the audit is complete, the Enrollment Committee—which is the current Defendants—will “approve or disapprove the enrollment of each individual [Modoc Nation] member.” The letter concluded that the Annual Meeting would be delayed to August 6, 2022.

7. This letter has made me worried about my membership with the Modoc Nation and that I will be disenrolled with no due process. This letter has caused me great anxiety and stress. It has also caused friction between me and family members as they are worried about the outcome.


8. On May 7, 2022, the Annual Meeting of the Modoc Nation Tribal Council was held in accordance with the Modoc Nation Constitution. At this meeting, the Tribal Council held the Elected Council election as required by the Constitution.

9. I was elected as a Council Member at the May 7, 2022 Annual Meeting. I received 34 votes for Council Member.

10. I am prepared and willing to exercise my authority as a Council Member of the Modoc Nation. However, I am prohibited from exercising my constitutional authority due to

Defendant's actions on disenrollment and their attempt to delay the Annual Meeting and election. Defendants' actions have created confusion on who the proper leadership of the Modoc Nation is.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7_, 2022.



Danny Burkybile

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Plaintiffs,

) Case No.:

) **DECLARATION OF EDD MILLER**

vs.

BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),

Defendants

Under the penalty of perjury, I, Edd Miller, state the following:

1. I submit this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction filed by myself and the other Plaintiffs (Kirk Miller, Ben Karnes, Danny Burkybile, and Anita Williams). This Declaration is based on my personal knowledge. If called as a witness, I could and would testify competently to such facts under oath.
2. The Modoc Nation is a federally recognized Indian Tribe and is governed by the Modoc Nation Constitution.
3. I am an enrolled member of the Modoc Nation and have been a member since 2019. I received my plastic membership card in 2019.

4. I am a proud member of the Modoc Nation and cherish my membership. I receive services from the Modoc Nation.

5. If I were to lose these services and benefits, my family and I would suffer. Our quality of life would decrease and I would experience financial difficulty.

6. In a letter dated April 26, 2022, I was informed by the Elected Council that an audit of the membership records of the Modoc Nation was being performed because there were numerous “irregularities” with the current membership. The letter stated that over 75% of the Modoc Nation’s members are not fully enrolled. The letter noted that after the audit is complete, the Enrollment Committee—which is the current Defendants—will “approve or disapprove the enrollment of each individual [Modoc Nation] member.” The letter concluded that the Annual Meeting would be delayed to August 6, 2022.

7. This letter has made me worried about my membership with the Modoc Nation and that I will be disenrolled with no due process. This letter has caused me great anxiety and stress.

8. On May 7, 2022, the Annual Meeting of the Modoc Nation Tribal Council was held in accordance with the Modoc Nation Constitution. At this meeting, the Tribal Council held the Elected Council election as required by the Constitution.

9. I was elected as a Council Member at the May 7, 2022 Annual Meeting. I received 59 votes for Council Member.

10. I am prepared and willing to exercise my authority as a Council Member of the Modoc Nation. However, I am prohibited from exercising my constitutional authority due to Defendant’s actions on disenrollment and their attempt to delay the Annual Meeting and election. Defendants’ actions have created confusion on who the proper leadership of the Modoc Nation is.

Nation is.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7, 2022.

Edd Miller
Edd Miller

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Case No.:

DECLARATION OF KIRK MILLER

Plaintiffs,

VS.

**BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),**

Defendants

Under the penalty of perjury, I, Kirk Miller, state the following:

1. I submit this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction filed by myself and the other Plaintiffs (Ben Karnes, Danny Burkybile, Edd Miller, and Anita Williams). This Declaration is based on my personal knowledge. If called as a witness, I could and would testify competently to such facts under oath.
2. The Modoc Nation is a federally recognized Indian Tribe and is governed by the Modoc Nation Constitution.
3. I am an enrolled member of the Modoc Nation and have been a member since 2019. I received my plastic membership card in 2019.

4. I am a proud member of the Modoc Nation and cherish my membership. I receive services from the Modoc Nation, including Health and Dental, Educational Benefits for my children and me, and first-time homeowners buyers' assistance.

5. If I were to lose these services and benefits, my family and I would suffer. Our quality of life would decrease, and I would experience financial difficulty with the cost of medical and dental benefits and the unnecessary cost burden of a Secondary Educational Degree.

6. In a letter dated April 26, 2022, I was informed by the Elected Council that an audit of the membership records of the Modoc Nation was being performed because there were numerous "irregularities" with the current membership. The letter stated that over 75% of Modoc Nation's members are not fully enrolled. The letter noted that after the audit is complete, the Enrollment Committee—which is the current Defendants—will "approve or disapprove the enrollment of each individual [Modoc Nation] member." The letter concluded that the Annual Meeting would be delayed to August 6, 2022.

7. This letter has made me worried about my membership with the Modoc Nation and that I will be disenrolled with no due process. This letter has caused me great anxiety and stress.

8. On May 7, 2022, the Annual Meeting of the Modoc Nation Tribal Council was held in accordance with the Modoc Nation Constitution. At this meeting, the Tribal Council held the Elected Council election as required by the Constitution.

9. I was elected as Chief of the Modoc Nation at the May 7, 2022 Annual Meeting. I received 70 votes for Chief.

10. I am prepared and willing to exercise my authority as Chief of the Modoc Nation. However, I am prohibited from exercising my constitutional authority due to Defendant's actions on disenrollment and their attempt to delay the Annual Meeting and election. Defendants'

actions have created confusion on who the proper leadership of the Modoc Nation is.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7th, 2022.

Kirk Miller
Kirk Miller

Tribal Court Order Granting TRO

FILED JUN 07 2022

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)
BEN KARNES (2nd Chief)
DANNY BURKYBILE (Council Member)
EDD MILLER (Council Member)
ANITA WILLIAMS (Secretary/Treasurer)

Case No.:

**ORDER GRANTING PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiffs,

vs.

BILL FOLLIS (Former Chief),
ROBERT BURKYBILE (Former 2nd Chief),
RAMONA ROSIERE (Former
Secretary/Treasurer),
MONA CRAVEN (Former Council Member),
TYLER SCRIFERS (Former Council
Member),

Defendants

Before the Court is the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") filed on June 7, 2022. The Plaintiffs seek a temporary restraining order specifically requesting an order that: (1) prohibits the Defendants from engaging in any disenrollment activity, (2) requires the Defendants to retrieve Modoc Nation member files from the third party accounting firm, Wipfli LLP, (3) prohibits the Defendants from holding themselves out as the lawful

1 Elected Council of the Modoc Nation, and (4) prohibits the Defendants from taking any actions on
2 behalf of the Modoc Nation. Having reviewed the Plaintiffs' Complaint, Motion, and accompanying
3 exhibits, and finding that Plaintiffs have met their burden under Fed. R. Civ. P. 65(b) establishing the
4 necessity of a temporary restraining order, the Court hereby **GRANTS** the Plaintiffs' Motion and
5 **ORDERS** the following:
6

- 7 1. Defendants, and any other persons or entities acting in concert with or on behalf of the
8 Defendants, are temporarily restrained and enjoined from engaging in any
9 disenrollment activity, which includes any ongoing membership audit.
- 10 2. Defendants, and any other persons or entities acting in concert with or on behalf of the
11 Defendants, are ordered to immediately retrieve all Modoc Nation membership files
12 from Wipfli, LLP.
- 13 3. Defendants are ordered to immediately stop holding themselves out as the lawful
14 Elected Council of the Modoc Nation.
- 15 4. Defendants are ordered to immediately stop taking any actions on behalf of the Modoc
16 Nation.

17 In addition, the Court **ORDERS** the following:

- 18 1. A hearing will be held on **June 14th, 2022, at 10:00am** to determine whether a
19 preliminary injunction should be issued. This hearing shall be held at Modoc Nation
20 Headquarters.
- 21 2. At the hearing, the Plaintiffs shall be prepared to show cause why a preliminary
22 injunction should be issued.
- 23 3. At the hearing, the Defendants shall be prepared to show cause why they should not be
24 preliminary enjoined during the pendency of this action.
- 25 4. In accordance with Fed. R. Civ. P. 65(b)((2), this order expires in 14 days or on or
26 before June 21st, 2022, unless the Court, for good cause, extends the order for a
27 like period or the adverse party consents to a longer extension.

28 **IT IS SO ORDERED.**

Dated this 7th day of June, 2022.

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/s/ 

Jason Clark
Modoc Nation Tribal Court Judge

FILED JUN 07 2022