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4 MODOC NATION TRIBAL COURT
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8 KIRK MILLER (Chief)) Case No.:
9 BEN KARNES (2nd Chief))
10 DANNY BURKYBILE (Council Member))
11 EDD MILLER (Council Member))
12 ANITA WILLIAMS (Secretary/Treasurer))
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14 Plaintiffs,)
15 vs.
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20 Defendants

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22 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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:

1

PRELIMINARY STATEMENT

2 1. Plaintiffs seek injunctive relief and a temporary restraining order to protect their rights
3 as Modoc Nation members against the unlawful disenrollment actions being taken by the former
4 Elected Council of Chief Bill Follis, 2nd Chief Robert Burkybile, Secretary/Treasurer Ramona
5 Rosiere, Council Member Mona Craven, and Council Member Tyler Scifers (collectively,
6 “Defendants”). Plaintiffs also seek a declaratory judgment recognizing the Plaintiffs as the proper
7 Elected Council as voted on by the Tribal Council at the May 7, 2022 Annual Meeting and a
8 temporary restraining order and preliminary injunction prohibiting the Defendants from holding
9 themselves out as the lawful Elected Council of the Modoc Nation and prohibiting the Defendants
10 from taking any actions on behalf of the Modoc Nation.

11 2. As explained further below, the Defendants are currently conducting an “audit” of
12 over 400 Modoc Nation members’ tribal membership using an outside accounting firm, Wipfli LLP.
13 Indeed, the Defendants have made the extraordinary claim that “more than 75% of the Tribe’s
14 members are not fully enrolled,” thus, an audit is warranted.

15 3. The “audit” violates Modoc Nation Law. First, the Enrollment Code prohibits the
16 release of membership information in a person’s file unless the Enrollment Code allows it or the
17 Tribal Council has passed a resolution. Enrollment Code, § 2(B). The Enrollment Code does not
18 allow it and the Tribal Council has not passed a resolution allowing the release of an individual’s
19 membership file. Second, under the Enrollment Code, membership is final when an individual
20 receives a “permanent plastic card.” Enrollment Code, § 9(A). The Plaintiffs have all received their
21 permanent plastic card stating they are full members and they have never been notified that they were
22 only “temporary members.”

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

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

16 7. For this action, Plaintiffs seek a declaratory judgment that Defendants have violated
17 the Enrollment Code and a temporary restraining order and preliminary injunction prohibiting the
18 Defendants from engaging in any disenrollment activity. Plaintiffs also seek a declaratory judgment
19 recognizing the Tribal Council’s election of the Plaintiffs as the Elected Council at the Annual
20 Meeting on May 7, 2022 and a temporary restraining order and preliminary injunction prohibiting the
21 Defendants from holding themselves out as the lawful Elected Council and prohibiting the
22 Defendants from taking any actions on behalf of the Modoc Nation.

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

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

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

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

21 27. On April 26, 2022, the Defendants sent a letter to the Tribal Council¹ notifying them
22 of the membership audit and the postponement of the Annual Meeting and Elected Council election.

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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.

See April 26, 2022 Letter, attached as Exhibit 2. This letter stated that a preliminary audit of enrollment records by tribal staff found “irregularities” and 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.”

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

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

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

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

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

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

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

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

Defendants' actions on disenrollment have damaged Plaintiffs

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

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

CLAIMS FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 50. Article X, § 1 of the Constitution states that "[t]he annual Modoc Tribal Council
12 meeting shall be held the first Saturday of May."

13 51. Article IX, § 2 states "[e]lections of the Modoc Elected Council shall take place during
14 the annual meeting of the Modoc Tribal Council."

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

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

20 54. The Constitution is the supreme law of the Modoc Nation and contains no exceptions
21 for the delay of the Annual Meeting and the holding of the Elected Council election on this May 7,
22 2022 date. Defendants cannot use their enrollment "audit" to violate the Constitution.

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

1. The Court declare that the Defendants violated the Election Code, § 2(B), by disclosing the Plaintiffs' membership file to the outside accounting firm of Wipfli LLP;
2. The Court declare that the Defendants violated the Election Code, § 9(A), by labeling Plaintiffs as temporary members;

1 3. The Court declare that the Defendants violated the Constitution, Art. X, § 1, and Art.
2 IX, § 2, by delaying the Annual Meeting to August 6, 2022 and not holding an Elected
3 Council election on May 7, 2022;

4 4. The Defendants be immediately enjoined from engaging in any disenrollment activity;

5 5. The Defendants be ordered to immediately retrieve from Wipfli LLP all Modoc
6 Nation membership files;

7 6. The Court recognize the Plaintiffs as the lawful Elected Council of the Modoc Nation;

8 7. The Defendants be immediately enjoined from holding themselves out as the lawful
9 Elected Council of the Modoc Nation;

10 8. The Defendants be immediately enjoined from taking any actions on behalf of the
11 Modoc Nation;

12 9. For attorney fees under and where allowed by existing law; and

13 10. For such other relief as the Court may deem proper and just.

14 DATED: June 7, 2022

15 _____
16 /s/ Joe Keene
17 Joe Keene OK Bar No. 33085
18 Wilson Pipestem OK Bar No. 16877
19 Pipestem Law P.C.
20 401 S. Boston
21 Suite 2200
22 Tulsa, OK 74103
23 P: 918-936-4705
24 jkeene@pipestemlaw.com
25
26
27
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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.

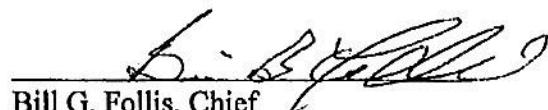
CERTIFICATION

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



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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

13

	<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	EDD miller	0411
✓32	Wanda Jean Winters	Wanda Jean Winters	0412
✓33	Seth Ford.	Seth Ford	0419
✓34	Larae Boggs	Larae 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 Seal	Katherine Seal	0436

B

Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u>
			<u>Roll #</u>
✓40	Jason T Groenbuss	X	0498
✓41	Betty J. Eddings	Betty J. Eddings	0055
✓42	Jason Clarke	Clarke	25
✓43	Ben Karnes	BK	237
✓44	Anita Williams	Anita Williams	0048
✓45	Rachel Bullard	Rachel Bullard	0463
✓46	Alisha Shoemaker	alishashm	0382
✓47	Linda Fuller	Linda Fuller	0481
✓48	Jesse Joyner	Jesse Joyner	0545
✓49	Joshua Joyner	Joshua Joyner	0488
✓50	Jordan Blain Garrett	Jordan B. Garrett	00514
✓51	Riley Quinn	Riley, Quinn	0429
✓52	MICHAEL MILLER	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	J. Poe	0439
✓56	Jeff Poe	Jeff Poe	0470
✓57	Brookelyn Owens	Brookelyn Owens	399
✓58	Daniel Miller	Daniel Miller	406
✓59	Taylor Broules	Taylor Broules	457
✓60	Donald C. Miller	Donald C. Miller	434
✓61	Angela A. Graves	Angela Graves	0516
✓62	Jamie Worthy	Jamie Worthy	0556
✓63	Zachary H. Miller	Zachary H. Miller	0431
✓64	Janice A. Miller	Janice A. Miller	0587
✓65	Rey H. Battaille	Rey H. Battaille	0236

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	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u>
			<u>Roll #</u>
✓66	Richard Craft	Richard Craft	0532
67	Jason Clark	JK	25
✓68	Justin Garvin	Justin Garvin	62
✓69	Staci Hudson	Staci Hudson	0416
✓70	Cade Hudson	Cade Hudson	0417
✓71	Makisha White	Makisha White	0084
✓72	Lisa Brock	Lisa Brock	144
✓73	Jennifer Morrisson	Jennifer Morrisson	0049
✓74	Katri Bullard	Katri Bullard	0466
✓75	Cynthia Bullard Cindy Bullard	Cynthia Bullard	0462
✓76	Thomas Hansche	Thomas Hansche	0487
✓77	Misty Joyner	Misty Joyner	0487
✓78	Marnie Witt	Marnie Witt	0426

Modoc Nation Annual Meeting

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	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u>
			<u>Roll #</u>
✓79	Brandon Boggs	Brandon Boggs	0428
✓80	Natalie Bateman	Natalie Bateman	0494
✓81	Daniel Burklybile	~~~~~	0233
✓82	Kirk Miller	Kirk Miller	0400
✓83	John Neaberry	John Neaberry	0099
✓84	Roy Steen Mads	Roy Steen Mads	0414
✓85	Mitzg Lynn	Mitzg Lynn	402
✓86	Ky Lynn	Ky Lynn	403
✓87	Kolton Lynn	Kolton Lynn	405
✓88	James T. Woodey	James T. Woodey	129
89	Scott Yeater	Scott Yeater	5018222014
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Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
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Modoc Nation Annual Meeting

May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓131	MAGGIE HAMMONS	Maggie Hammons	0454
✓132	Betty Caudill	Betty Caudill	0439
✓133	Reginal Brown	Reginal Brown	0475
✓134	Lucy Poe	Lucy Poe	0490
✓135	Heath Glerup	Heath Glerup	0261
✓136	Libby M Owens	Libby M Owens	398
✓137	Donna Marshall	Donna Marshall	0459
✓138	Barbara Richards	Barbara Richards	0494
✓139	John Miller	John Miller	0572
✓140	Reagan Casey	Reagan Casey	0548
✓141	Ricky L Hollingback	Ricky L Hollingback	0430
✓142	Amber Clouse	Amber Clouse	0234
143	Jessica Miller	Jessica Miller	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	1/8 Duplicate Daniel Burley	✓	0233
✓146	Jeremy Chetan	—	0047
147	Jim D. Miller	Jim D. Miller	0397
✓148	Josh Arnold	Josh Arnold	0370
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May 7, 2022

	<u>Printed Name</u>	<u>Signature</u>	<u>Modoc</u> <u>Roll #</u>
✓157	Sienna Burklybile	Sienna Burklybile	235
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Modoc Nation Annual Meeting

May 7, 2022

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

BALLOT TOTALS

CHIEF

Names by number of votes	# of Votes
Robert Burklybile	5
Sydney Colombe	1
Kirk Miller	70

SECRETARY/TREASURER

Names by number of votes	# of Votes
Ramona Rosier	15
Anita Williams	49

2ND CHIEF

Names by number of votes	# of Votes
Johnny Boaggs	17
Benjamin Kernes	46
Gina McGaughy	121

COUNCIL MEMBERS

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

BALLOT TOTALS

JUDGE

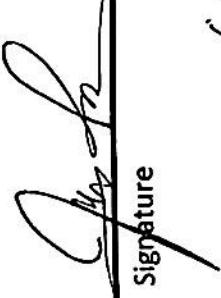
Names by number of votes

Jason Clark 65

Election Commission Signatures

Natalie Bateman May 7, 2022

Signature

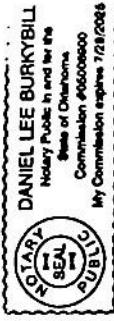


Date

5/7/2022

Date

Daniel Lee Bushfield 5/7/2022



Justin Poe

Printed Name



Printed Name