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FILED
Jan Clark

JUN 07 2022

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MODOC NATION TRIBAL COURT

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 Plaintiffs,

13 vs.
14 BILL FOLLIS (Former Chief),
15 ROBERT BURKYBILE (Former 2nd Chief),
16 RAMONA ROSIERE (Former
Secretary/Treasurer),
17 MONA CRAVEN (Former Council Member),
TYLER SCIFERS (Former Council Member),

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

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

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

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

* * *

WHEREFORE, Plaintiffs request that this Court:

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

¹ Per the Modoc Nation Constitution, Article VIII, § 2, rules of procedure shall be prescribed by the Judicial 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.

1 3. Issue a temporary restraining order prohibiting Defendants from taking any actions on
2 behalf of the Modoc Nation;

3 2. Issue the temporary restraining order on Date, or as soon thereafter as possible;

4 3. Set specific date and time, by agreement of the parties or by order of the Court, for a
5 full and complete hearing on Plaintiffs' Motion after allowing a sufficient period of
6 time to conduct discovery; and

7 4. Grant Plaintiffs' attorney's fees and any such further relief as the Court deems just and
8 proper.

9 Dated this 7th day of June, 2022.

10 By: /s/Joe Keene

11 Joe Keene OK Bar No. 33085
12 Wilson Pipestem OK Bar No. 16877
13 Pipestem Law P.C.
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15 Suite 2200
16 Tulsa, OK 74103
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19 Attorneys for Plaintiffs

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PLAINTIFFS' STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

2

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I. FACTUAL AND PROCEDURAL BACKGROUND

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Plaintiffs incorporate by reference paragraphs 19 through 36 of their Complaint for Injunctive

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Relief.

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II. STANDARD OF REVIEW

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Injunctive relief is proper where a plaintiff can establish under Rule 65 of the Federal Rules of

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Civil Procedure that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm

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in the absence of preliminary relief, that the balance of equities tips in his favor, and that an

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injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A

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party may be granted a preliminary injunction “only when monetary or other traditional legal

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remedies are inadequate, and ‘the right to relief is clear and unequivocal.’” *First W. Cap. Mgmt. Co.*

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v. Malamed, 874 F.3d 1136, 1141 (10th Cir. 2017) (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253,

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1258 (10th Cir. 2005)). Irreparable harm is established by the movant’s showing of “a significant risk

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that he or she will experience harm that cannot be compensated after the fact by money damages.”

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Fish v. Kobach, 840 F.3d 710, 751 (10th Cir. 2016). “Because a preliminary injunction is an

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extraordinary remedy, the movant’s right to relief must be clear and unequivocal.” *Dine Citizens*

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Against Ruining Our Env’t v. Jewell, 839 F.3d 1276, 1281 (10th Cir. 2016).

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III. ARGUMENT

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

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Plaintiffs will likely succeed on their claims that Defendants violated the Modoc Nation

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Constitution (“Constitution”) and the Modoc Enrollment Code because Defendants violated

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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 Additionally, Plaintiffs will likely succeed on their claims that Defendants violated the Modoc
19 Enrollment Code by impermissibly releasing tribal membership information to a third party, the
20 accounting firm of Wipfli LLP. The Enrollment Code § 2(B) mandates that "information contained in
21 the membership files of the tribe is confidential." And information in individual membership files
22 may be released only "to agencies of the federal Government for the purposes of support of an
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² Indeed, if Defendants were allowed to delay the annual meeting and election due to concerns about
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 The Plaintiffs also violated the Enrollment Code by labeling Plaintiffs as “temporary
9 members.” The Enrollment Code is clear that when an individual receives a “permanent plastic card,”
10 they are an enrolled member of the Modoc Nation. Code, at § 9(A). This Section 9(A) explicitly
11 states that once an enrollment is “finalized,” a “permanent plastic card will be issued.” There are zero
12 provisions of the Code which purport to place individuals on a “temporary” membership status.
13 Defendants have fabricated a “temporary” membership status out of whole cloth in violation of
14 Modoc law and baselessly ceased to recognize Plaintiffs as members of the Nation even though
15 Plaintiffs have been enrolled for several years and have plastic membership cards. Compl. ¶ 21-23.
16 Therefore, Plaintiffs are substantially likely to succeed on their claims that Defendants violated the
17 Enrollment Code.

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.

1 If Plaintiffs are permanently denied membership in the Modoc Nation, a Federally recognized
2 tribe, not only will they lose their status a 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 Burkylbile 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.

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).

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
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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.”).

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

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

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

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

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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17 DATED: June 7, 2022
18

/s/ Joe Keene
19 Joe Keene

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

Exhibit 1

MODOC NATION TRIBAL COURT

KIRK MILLER (Chief)) Case No.:
BEN KARNES (2nd Chief))
DANNY BURKYBILE (Council Member))
EDD MILLER (Council Member)) **DECLARATION OF ANITA WILLIAMS**
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, 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 1, 2022.

Anita Williams
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) } Case No.:
Plaintiffs, } DECLARATION OF BEN KARNES

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)) Case No.:
BEN KARNES (2nd Chief))
DANNY BURKYBILE (Council Member))
EDD MILLER (Council Member)) **DECLARATION OF DANNY**
ANITA WILLIAMS (Secretary/Treasurer)) **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)

} Case No.:

} **DECLARATION OF EDD 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, 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)

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.

} Case No.:

DECLARATION OF KIRK MILLER

)

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