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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mel R. Begay; Russell Begaye; Charles
Damon; And Kenneth Maryboy, in their
capacities as Representative Shareholders,

Plaintiffs,

vs.

Mae-Gilene Begay; Diandra Benally;
Lennard Eltsosie; Jennifer Hatathlie; And
Nelson Toledo,

Defendants.

No. _____

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

For their Complaint against Defendants Mae-Gilene Begay, Diandra Benally,
Lennard Eltsosie, Jennifer Hatathlie, and Nelson Toledo, Plaintiffs allege as follows:

I. NATURE OF THE ACTION.

1. This is an action for declaratory and injunctive relief arising out of a Navajo Supreme Court decision that violates due process and vitiates a federally issued and approved corporate charter providing for shareholder governance of a corporation formed under federal law.

2. Plaintiffs do not waive sovereign immunity on their own behalf or on behalf of the Navajo Nation by filing this action or seeking the relief prayed for below.

1 **II. PARTIES.**

2 3. Plaintiffs are four of five Shareholder Representatives of the Navajo Nation
3 and Navajo people with certain rights, duties and responsibilities over the management
4 and control of Navajo Nation Oil & Gas Company, a tribal corporation formed under
5 25 U.S.C. § 477 and subject to a federally-approved charter (“NNOGC”).

6 4. Defendants are former members of the Board of NNOGC but are asserting
7 rights to control NNOGC, and taking actions that are resulting in or threatening to result
8 in harm to the corporation, to Plaintiffs, and to the Navajo Nation.

9 **III. JURISDICTION AND VENUE.**

10 5. This Court has subject-matter jurisdiction over the action against the
11 Defendants pursuant to 28 U.S.C. §§ 1362 and 1331. Without limitation, Plaintiffs are
12 bringing this action as duly appointed representatives of the Navajo Nation, and this
13 action arises out of a decision of the Navajo Nation Supreme Court that violates Plaintiffs’
14 due process rights and eliminates the Navajo Nation’s ability to govern its wholly-owned
15 corporation established pursuant to federal law.

16 6. This Court has personal jurisdiction over Defendants, all of whom upon
17 information and belief reside in Arizona or have engaged in an act in Arizona out of
18 which Plaintiffs’ claim arise.

19 7. Venue is proper in this District.

20 **IV. GENERAL FACTUAL ALLEGATIONS.**

21 8. NNOGC is a federally-chartered corporation under Section 17 of the federal
22 Indian Reorganization Act, set forth in 25 U.S.C. § 477.

23 9. NNOGC is organized, incorporated, and chartered under the laws of the
24 United States, and entitled to the privileges and immunities granted by 25 U.S.C. § 477.

25 10. NNOGC’s federal charter (“Charter”) was approved by the United States
26 Secretary of the Interior on December 23, 1997 and ratified by the Navajo Nation Council,
27 Resolution No. CF-22-98, by a vote of 62 in favor, 0 opposed, and 0 abstained, and signed
28 by Navajo Nation Council Speaker Kelsey A. Begaye on February 5, 1998. A true and

1 correct copy of the Charter is attached hereto as **Exhibit 1**.

2 11. NNOGC was organized to own and operate any oil and gas related
3 businesses for the benefit of the Navajo Nation government, including earning profits to
4 assist in financing essential governmental functions. Charter at Article VII.

5 12. NNOGC currently has over 100 employees and more than \$437 million in
6 assets. It operates in the Upstream, Midstream, and Downstream sectors of the oil and gas
7 industry, both on and off Navajo lands.

8 13. On information and belief, NNOGC controls between \$600,000,000 and
9 \$800,000,000 of the Navajo Nation's assets – the rights to the oil and natural gas beneath
10 the surface of the Navajo Reservation. The judicious preservation, extraction, and
11 disposition of those assets are of critical importance to the economic welfare of the
12 Navajo people.

13 14. NNOGC is wholly-owned by the Navajo Nation, its sole shareholder, as an
14 instrumentality of the Nation; however, the activities, transactions, obligations, liabilities,
15 and property of NNOGC are not those of the Nation. Charter at Article IV(A).

16 15. Pursuant to Articles IV(A) and V(D) of the Charter, the Navajo Nation
17 exercises its ownership powers through shareholder representatives – one from each of the
18 Navajo Nation Council's standing committees or their successor committees (the
19 "Shareholder Representatives"). Each Shareholder Representative must be a member of
20 the Navajo Nation Council.

21 16. When the NNOGC Charter was drafted and ratified in the late 90s, the
22 Navajo Nation Council had eleven standing committees; thus, NNOGC had eleven
23 corresponding Shareholder Representatives. *See* Charter at Article V(D) (rights of the
24 "shareholder of the Corporation shall be exercised by eleven (11) shareholder
25 representatives, composed of one member from each of the eleven (11) standing
26 committees of the Navajo Nation Council *or their successor committees.*") (emphasis
27 added).

28 17. The Navajo Nation Council has sole discretion as to how many standing

1 committees it needs, and how to allocate its delegates within those committees. However,
2 no delegate can serve on more than one standing committee.

3 18. Effective May 11, 2011, Resolution CAP-10-11 amended Title 2 of the
4 Navajo Nation code. Section 2 found that the number of delegates to the Navajo Nation
5 Council had been reduced in 2009 from eighty-eight to twenty-four members by an
6 initiative vote of the Navajo voters. The Resolution further found that it was necessary to
7 reduce the number of standing committees from eleven to five, and to otherwise modify
8 the legislative process. 2 N.N.C. §§ 300-700.

9 19. Since 2011, the Navajo Nation Council has had five standing committees –
10 Budget & Finance, Law & Order, Health Education & Human Services, Resource &
11 Development, and Naabik'íyátí' (which roughly translates to “talk it out”). Those five
12 committees are the successor committees to the original eleven; thus, at all relevant times,
13 NNOGC has had five corresponding Shareholder Representatives.

14 20. The NNOGC Shareholder Representatives are Mel R. Begay (Budget &
15 Finance); Russell Begaye (Law & Order); Charles Damon (Health Education & Human
16 Services); Kenneth Maryboy (Naabik'íyátí'); and Leonard Tsosie (Resource &
17 Development).

18 21. Shareholder Representatives act through a quorum of their membership in
19 voting on matters within the scope of the Shareholder's authority at the annual meeting or
20 through special meetings. The Shareholder Representatives vote in their capacity as
21 representatives of the sole NNOGC shareholder, and not as members of the Navajo Nation
22 Council.

23 22. Article X of the Charter provides that “[s]even shareholder representatives
24 shall constitute a quorum for any meeting of shareholders.” Charter at Article X(D).
25 However, on the face of the Charter, it is obvious that the number seven was intended to
26 correspond with the then-existing eleven shareholder representatives from the then-
27 existing eleven Navajo Nation Council Standing Committees.

28 23. Enforcing Article X to require a minimum of seven members for a quorum

1 in all instances would effectively strip the Navajo Nation and its Shareholder
2 Representatives of any and all authority to act on behalf or for the benefit of NNOGC
3 because it is impossible for five Shareholder Representatives to achieve a seven-person
4 quorum.

5 24. For over two years prior to this dispute, the five Shareholder
6 Representatives have been voting on issues, passing resolutions, and otherwise exercising
7 their powers under the NNOGC Charter and By-laws without objection from any member
8 of the NNOGC Board of Directors ("Board"), including Defendants. A true and correct
9 copy of the NNOGC By-laws is attached as **Exhibit 2**.

10 25. The Board is comprised of four Presidential nominees and five Agency
11 Council nominees.

12 26. Article XI(M) of the Charter gives the NNOGC Shareholder
13 Representatives the power to exercise all rights of the Shareholder, including the authority
14 to compel the Board to manage NNOGC within the scope of the Charter to obtain the
15 optimum profits for the benefit of the Navajo people, and exclusive authority to remove a
16 sitting member of the NNOGC Board with cause at any time. The Shareholder
17 Representatives also have the power to recommend amendments to the Charter.

18 27. By 2013, NNOGC was facing severe challenges with financial, reporting
19 and management problems, caused by the previous leadership of Wilson Groen and Louis
20 Denetsosie with legal guidance and assistance from Frye Law Firm, P.C. ("Frye Law"),
21 all of whom lacked the relevant skills to identify and address NNOGC's many financial
22 problems.

23 28. In June 2013, the Board hired Robert Joe as President and CEO of NNOGC
24 based upon, in part, his 22 years of industry experience working for a Fortune 100
25 company. Robert Joe immediately began to take actions to turn the company from one
26 that was in serious decline to one that was increasing in value. As part of that effort,
27 Robert Joe used independent financial reviews of operations to uncover mismanagement
28 and improprieties, some of which implicated employee conduct, with the result that the

1 management team ultimately resigned.

2 29. The new management team began working around the clock, strategizing
3 and implementing critical changes in an effort to improve NNOGC's financial state and
4 mitigate the damage caused by the prior management.

5 30. One such change was to follow through with amending the NNOGC federal
6 Charter to better serve NNOGC's interests.

7 31. The then-sitting NNOGC Board conducted extensive review sessions
8 regarding the NNOGC Charter and developed proposed amendments to address specific
9 issues such as the recent reduction in the number of Navajo Nation Council Standing
10 Committees, application of immunity and tax advantages of NNOGC's wholly owned
11 subsidiaries, and qualifications and skills required for board membership, which certain
12 Board members did not possess.

13 32. On or about August 20, 2013, the NNOGC Board passed Resolution No.
14 181, approving the proposed amendments to the Charter and recommending to the Navajo
15 Nation Council that the amendments be approved, and that the Navajo Nation Council
16 petition the Secretary of the Interior to issues an amended and restated federal Charter.

17 33. On or about October 4, 2013, the Shareholder Representatives passed
18 Resolution No. NNOGC-SR-2013-02, confirming shareholder support of the proposed
19 amendments and joining the Board's recommendations to the Navajo Nation Council.

20 34. The same month, Navajo Nation President Shelly nominated four new
21 NNOGC Board members to fill the four Presidentially appointed seats. The President's
22 nominations were then submitted to the Navajo Nation Council for their review and
23 confirmation.

24 35. On December 11, 2013, at the request of certain Shareholder
25 Representatives, and pursuant to Article X(B) of the Charter and Article II, Section 2.4 of
26 NNOGC's By-laws, Robert Joe called and noticed a special meeting of the Shareholder
27 Representatives for December 21, 2013 to discuss recent conduct of sitting Board
28 members and actions that might be taken, if any, to address such conduct.

1 36. In the months leading up to the December 21 special meeting of the
2 Shareholder Representatives, two significant bills were pending before the Navajo Nation
3 Council – one asking the Council to adopt the amendments to NNOGC’s charter that
4 would add qualifications for Board membership that Defendants did not have, and another
5 asking the Council to confirm the Presidential appointments of four new Board members.

6 37. Around the same time, several of the then-sitting Board members began to
7 hatch a plan of action that would prioritize their own financial interests over those of
8 NNOGC.

9 38. Specifically, certain Defendants knowingly and intentionally made
10 affirmative misrepresentations to various Shareholder Representatives and Navajo Nation
11 Council delegates in lobbying against confirmation of the new Presidential Appointees to
12 the NNOGC Board, and in lobbying against the proposed amendments to the NNOGC
13 Charter that previously had been approved by the Board, of which Defendants were a part,
14 that would cause Defendants’ terms to end.

15 39. The conduct of those Board members contravened their duties under the
16 NNOGC Charter, Bylaws, Oath of Office and Code of Conduct, including without
17 limitation, their duties of loyalty, good faith and to act in NNOGC’s best interests.

18 40. All five Shareholder Representatives attended and participated in the
19 December 21 meeting, and in executive session discussed 19 pages of allegations
20 concerning the conduct of then-sitting Board members and, based on their discussion,
21 voted to remove Diandra Benally and Jennifer Hatathlie from the Board, and to suspend
22 Mae-Gilene Begay, Lennard Eltsosie and Nelson Toledo until reinstated or their
23 replacements seated.

24 41. When the Shareholder Representatives came out of executive session, a
25 motion was made and passed to take action in accordance with the votes cast during the
26 executive session.

27 42. Prior to the December 21 meeting, the Board membership terms of four out
28 of five of the suspended and removed Board members had already expired. Mae-Gilene

1 Begay's term expired in December 2004; Nelson Toledo's term expired in March 2009;
2 Jennifer Hatathlie's term expired in January 2013; and Lennard Eltsosie's term expired in
3 February 2013.

4 43. On the next business day, December 23, 2013, at the direction of a majority
5 of the Shareholder Representatives, NNOGC's legal counsel notified the suspended and
6 removed Board members ("Defendants") of the Shareholder Representatives' decision by
7 email, regular mail, and certified mail, detailing the actions taken at the December 21
8 meeting.

9 44. Defendants did not honor or formally challenge the Shareholder
10 Representatives' decision; instead, they ignored the decision and continued to purport to
11 act on behalf of NNOGC without authority by:

12 (a) Purporting to hold a meeting of the Board on December 30, 2013.

13 (b) Sending a letter with NNOGC's logo pasted on the letterhead to the
14 Navajo Nation Council's Naabik'íyátí Committee without disclosing their suspension and
15 removal.

16 45. On January 9, 2014, the Naabik'íyátí Committee of the Navajo Nation
17 Council confirmed three new NNOGC Board members: Perry Shirley (Chairman),
18 Francis Totsoni, and Carlos V. Duno, all of whom had been appointed on or about
19 October 28, 2013 by Navajo Nation President Ben Shelly. President Shelly had also
20 appointed a fourth nominee, Eddie Sandoval, who was confirmed by the Naabik'íyátí
21 Committee on January 23, 2014.

22 46. After the Navajo Nation litigation court litigation began, Mr. Sandoval's
23 employer instructed him to postpone his seating on the NNOGC Board until all disputes
24 and litigation concerning the Board and officer leadership of NNOGC have been resolved.

25 47. The fact that Mr. Sandoval has been confirmed, but not seated due to
26 conflict created by Defendants is just one example of the many ways in which
27 Defendants' actions have caused and continue to cause immediate and potentially
28 irreparable harm to NNOGC.

1 48. Upon the confirmation of Messrs. Duno and Sandoval, Defendant Toledo
2 had officially been replaced because all four Presidentially-appointed NNOGC Board
3 seats had been filled, leaving no room for Defendant Toledo, who was already serving an
4 expired term when he was suspended from the Board, and who President Shelly did not
5 reappoint in October 2013 or at any time thereafter.

6 49. On January 13, 2014, and pursuant to his authority under the Charter and
7 By-laws, Robert Joe terminated the Frye Law legal services agreement, in part, for
8 working to inflict harm on NNOGC.

9 50. Since December 21, 2013, Frye Law had been covertly and strategically
10 planning and coordinating with the Defendants and NNOGC's former financial
11 management team to intentionally and severely damage the financial operations of
12 NNOGC by, for example:

13 (a) Drafting unauthorized purported Board resolutions for Defendants
14 following their suspension and removal;

15 (b) Conducting the unauthorized purported Board meeting held on
16 December 30, 2013 in direct violation of Section 3.6 of the NNOGC Bylaws; and

17 (c) Billing NNOGC for Frye Law's time spent advising Defendants to
18 continue holding themselves out as board members despite their removal and suspension,
19 and to otherwise violate the NNOGC Charter and By-laws.

20 51. Shortly thereafter, the active and newly-confirmed Board members
21 unanimously adopted a resolution determining that it was necessary to take immediate
22 action to protect NNOGC from Defendants' unauthorized acts.

23 52. On January 17, 2014, and pursuant to Article VIII(F) and (L) of the Charter,
24 the Board directed that the law firm of Johnson, Barnhouse & Keegan LLP ("JBK")
25 institute legal action in the Navajo Nation District Court ("NNDC") to obtain an
26 injunction to prohibit Defendants from continuing to hold themselves out as NNOGC
27 board members and continuing to purport to act on behalf of NNOGC.

28 53. Per the Charter, NNOGC was fully authorized to hire JBK as legal counsel

1 for NNOGC “without the approval of the Navajo Nation or the Secretary of the Interior.”

2 54. On January 17, 2014, JBK also filed an action on behalf of NNOGC in
3 NNDC seeking a TRO, preliminary injunction, and permanent injunction preventing
4 Defendants from purporting to act on behalf of NNOGC, NNDC Case No. WR-CV-32-14
5 (the “NNDC Action”).

6 55. The NNDC immediately entered a TRO prohibiting Defendants from
7 individually holding themselves out as members of the NNOGC Board, meeting as a
8 group claiming to act as the Board, and continuing in any other manner to purport to act
9 on behalf of NNOGC.

10 56. Despite having been served with the TRO or at least aware of its provisions,
11 Defendants continued to purport to act on behalf of NNOGC by:

12 (a) Purporting to hold a Board meeting on January 21, 2014.

13 (b) Purporting to hold a vote to terminate NNOGC’s attorneys-of-record
14 in the NNDC Action and NNOGC’s President and CEO.

15 (c) Drafting, signing, and distributing three purported Board resolutions
16 dated January 21, 2014 that: (i) purported to terminate the employment of NNOGC
17 President and CEO Robert Joe; (ii) purported to terminate JBK, NNOGC’s attorneys-of-
18 record in the NNDC Action; and (iii) purported to retain Frye Law to replace JBK as
19 counsel-of-record for NNOGC in the NNDC Action. All three resolutions were signed by
20 suspended Board members Lennard Eltsosie and Mae-Gilene Begay.

21 (d) Drafting, signing, and sending a letter dated January 21, 2014, with
22 the NNOGC logo pasted on the letterhead, notifying Mr. Joe of the Board’s purported
23 decision to terminate his employment, and instructing Mr. Joe to immediately vacate his
24 corporate offices, turn in all company property, and cease use of his NNOGC email
25 account. The letter was signed by suspended Board member Lennard Eltsosie.

26 (e) Directing Frye Law to file an unauthorized notice of voluntary
27 dismissal and other pleadings and motions in the NNDC Action purportedly on behalf of
28 NNOGC.

1 (f) On information and belief, attempting to modify signature
2 authorizations on NNOGC's bank accounts.

3 57. Notwithstanding the TRO, Frye Law continued to act in concert with
4 Defendants by, for example:

5 (a) Drafting the unauthorized and prohibited resolutions that Defendants
6 purportedly approved on January 21, 2014;

7 (b) Attending the unauthorized and prohibited meeting held on January
8 21, 2014; and

9 (c) Filing various documents in the NNDC Action and NNSC Action
10 (defined below) purportedly on behalf of NNOGC, but in actuality at Defendants'
11 direction.

12 58. On January 31, 2014, the Navajo Nation Office of the Attorney General
13 filed a Motion to Intervene on behalf of the Navajo Nation and to amend the TRO.

14 59. A hearing was held on January 31, 2014, at which time the parties advised
15 the NNDC that they had agreed to modify the TRO, in pertinent part, as follows
16 ("Stipulated & Modified TRO"):

17 (a) Enjoining all active, suspended, and removed NNOGC Board
18 members and all Shareholder Representatives from taking any action concerning NNOGC
19 except as consistent with the Stipulated & Modified TRO;

20 (b) Directing NNOGC President and CEO Robert Joe to be responsible
21 for NNOGC's day-to-day affairs until a Special Master could be appointed, limited to
22 routine activities that would reasonably be considered to have been approved by
23 NNOGC's Board prior to December 21, 2013;

24 (c) Prohibiting active, suspended and removed NNOGC Board members
25 and Shareholder Representatives from meeting or taking official action in those capacities
26 unless agreed to by the parties or requested by the Special Master; and

27 (d) Instructing all parties, Shareholder Representatives, and their
28 respective legal counsel to meet with the Office of the Speaker of the Navajo Nation
Council, the Office of the Navajo Nation President & Vice President, and the Office of the

1 Navajo Nation Attorney General to attempt to resolve the issues in the NNDC Action on
2 or before February 21, 2014, after which time a Special Master recommended by the
3 Office of the Navajo Nation Attorney General would be appointed to manage and
4 investigate NNOGC.

5 60. In light of the parties' agreement, no evidence was introduced at the January
6 31 hearing, and the NNDC entered the Stipulated & Modified TRO that day.

7 61. The parties were unable to reach an agreement on or before February 21,
8 2014; however, for reasons unknown, the Navajo Nation Department of Justice never
9 appointed a Special Master.

10 62. On February 25, 2014, and at the direction of Navajo Nation Speaker
11 Johnny Naize and the request of a majority of the NNOGC Shareholder Representatives,
12 Robert Joe followed the Charter and called and noticed a special meeting of the
13 Shareholder Representatives to be held on March 7, 2014. Notice of the March 7 meeting
14 was provided the same day Robert Joe received Mr. Naize's letter directing him to call the
15 meeting at the designated date and time.

16 63. All former board members, the Navajo Nation President, Navajo Nation
17 Council Speaker, and Navajo Nation Department of Justice were invited to attend. Legal
18 counsel for the terminated and suspended board members were also contacted and given
19 verbal and written notice of the meeting.

20 64. On March 6, 2014, the Shareholder Representatives filed a Motion for
21 Leave to intervene in the NNDC Action and to replace the Stipulated & Modified TRO.

22 65. The Shareholder Representatives held their duly noticed Special Meeting on
23 March 7 at the designated time to provide a reconsideration opportunity to all removed
24 and suspended Board members to reconsider their actions since December 21, 2013, with
25 a court reporter present, and allowed each former member to bring their legal counsel.

26 66. However, not one of the removed and suspended members attended the
27 March 7 meeting.

28 67. At the March 7 meeting, attendees considered a list of 45 issues, which had

1 been provided to Defendants. One purpose of the meeting was to allow Defendants to
2 explain their positions. Even though Defendants and their counsel chose not to attend, the
3 Shareholder Representatives reviewed information concerning NNOGC and the Board
4 since December 21. Based upon the information available before and after the December
5 21 meeting, and because no contradicting information was provided, the Shareholder
6 Representatives duly passed resolutions reaffirming the removal of Diandra Benally and
7 Jennifer Hatathlie, removed Lennard Eltsosie, reaffirmed the suspension of Mae Gilene
8 Begay, and took no action on Nelson Toldeo since he had already been officially replaced
9 by one of the new Presidential appointees in January 2014.

10 68. Prior to and following the NNDC's entry of the Stipulated & Modified
11 TRO, the parties filed various pleadings in the NNDC Action including, without
12 limitation: NNOGC's Motion for Order to Show Cause filed January 29, 2014;
13 NNOGC's motion for preliminary injunction filed January 30, 2014; Defendants' Motion
14 to Dismiss Complaint filed February 21, 2014; Defendants' Answers, Defenses,
15 Counterclaims and Third Party Complaints filed February 27, 2014; Frye Law's Motion
16 for Order to Show Cause filed February 27, 2014; Defendants' Application for
17 Preliminary Injunction; and related responsive pleadings.

18 69. Before the NNDC had an opportunity to resolve the issues raised in the
19 various pending motions and pleadings, on January 17, 2014, Frye Law filed an
20 unauthorized Petition for Writ of Prohibition in the Navajo Nation Supreme Court
21 ("NNSC"), NNSC Case No. SC-CV-25-14 (the "NNSC Action"), purportedly on behalf
22 of NNOGC, but in reality at the direction of Defendants, asking the NNSC to direct the
23 lower court to dismiss the NNDC Action for lack of subject matter jurisdiction.

24 70. As of the date the NNSC Action was initiated, the Court had not yet ruled
25 on the Shareholder Representatives' Motion to Intervene (among other pending motions),
26 and none of the parties or interested parties had been provided an opportunity to present
27 evidence on the merits of their claims. The only "evidence" that had been provided to the
28 NNDC were documents that the parties and interested parties had attached to various

1 notices and pleadings, none of which had been formally offered or accepted into evidence
2 in accordance with the applicable rules.

3 71. NNOGC, by and through JBK, and the Shareholder Representatives, by and
4 through their attorneys, submitted briefs in opposition to Frye Law's Petition for Writ of
5 Prohibition.

6 72. On or about April 22, 2014, the Navajo Nation Council passed Legislation
7 0352-13 which approved the amendments to NNOGC's charter. The legislation was
8 certified by Speaker Pro Tem, Jonathan Hale on May 1, 2014, then sent to the Secretary of
9 the Interior for review.

10 73. Notwithstanding the pending review by the Secretary of Interior, the
11 amendments are effective immediately, at least as to the internal operations of the Navajo
12 Nation.

13 74. The NNSC held a hearing on May 1, 2014 at which counsel for the
14 Shareholder Representatives was not allowed to argue because the Shareholder
15 Representatives' Motion to Intervene in the NNDC action had not yet been granted. The
16 parties that were allowed to participate in the May 1 hearing made legal arguments, but
17 were not given an opportunity to present evidence. The May 1 hearing was the only
18 hearing held in NNSC Case No. SC-CV-25-14.

19 75. Notwithstanding opposition from NNOGC and the Shareholder
20 Representatives, on the same day the NNSC issued the requested Writ of Prohibition
21 directing the lower court to dismiss the NNDC Action based on its finding that the NNDC
22 lacked subject matter jurisdiction over the issues and claims raised by NNOGC, Robert
23 Joe, and the Shareholder Representatives. The Court further held that the TRO and
24 Stipulated & Modified TRO were invalid.

25 76. Following the issuance of the Writ, Frye Law filed a Motion for Additional
26 Clarifying Opinion purportedly on behalf of NNOGC, but in reality at the direction of
27 Defendants, that essentially asked the NNSC to dismiss NNOGC's complaint in the
28 NNDC Action by deciding the merits of Defendants' defenses to NNOGC's claims, and

1 by finding in favor of Defendants on the merits of their counterclaims asserted against
2 NNOGC and the Shareholder Representatives.

3 77. NNOGC, Robert Joe, and the Shareholder Representatives filed briefs in
4 opposition to the Motion for Additional Clarifying Opinion identifying various problems
5 with Frye Law's request, including the fact that the NNSC had just determined that the
6 Navajo Nation Courts lacked subject matter jurisdiction over some of the very issues
7 raised in the Motion for Additional Clarifying Opinion.

8 78. Despite the NNSC's recent jurisdictional ruling, and despite the facts that
9 NNOGC, Robert Joe, and the Shareholder Representatives have not been afforded an
10 opportunity to present evidence or otherwise be heard on the merits of their claims, that
11 the NNSC itself had concluded that many of the allegations presented by the parties were
12 more appropriately left to a fact-finder, and without allowing oral argument, the NNSC
13 granted Frye Law's Motion for Additional Clarifying Opinion, made various findings of
14 fact and conclusions of law that are not supported by the record and held, in pertinent part,
15 as follows:

16 (a) Defendants are immune from liability on the claims asserted in
17 NNOGC's NNDC complaint (which is consistent with the NNSC's Writ of Prohibition,
18 but inconsistent with its decision to effectively rule in favor of Frye Law on the merits of
19 some issues);

20 (b) Both the January 17 TRO and the January 31, 2014 Stipulated &
21 Modified TRO entered by the NNDC are invalid;

22 (c) There is, nevertheless, a "desperate need for a remedy, and [] it
23 [must] be provided quickly" to "protect a valuable public asset," June 20 Order at 5
24 (which apparently justified the NNSC's decision to effectively rule in favor of Frye Law
25 on the merits without first giving those affected an opportunity to present evidence);

26 (d) Defendants "were not validly suspended or removed on December
27 21, 2013" and, therefore, "continue to actively serve without interruption prior to and
28 following December 21, 2013," *Id.* at 16, (which ignores the fact that a duly noticed
Special Meeting was held on March 7 that reaffirmed the December 21 decision and cured

every arguable error allegedly made in connection therewith); critically, the NNSC expressly recognized that this holding “dispose[s] of an ultimate issue” over which it believed it lacked subject matter jurisdiction, stating: “we must now apply the law as the court of last resort, since the parties are unable to deal with each other equitably as we encouraged.” *Id.* at 9;

(e) All of Defendants’ purportedly official actions following the December 21, 2013 suspension and removal were valid;

(f) Robert Joe exceeded his authority by initiating the NNDC Action on behalf of NNOGC and his filing must be taken as an *ultra vires* act (which ignores the fact that the NNDC Action was filed pursuant to an emergency Board resolution passed by the then-active Board members, and further ignores the fact that Frye Law filed Counterclaims in the NNDC Action *and* initiated the NNSC Action purportedly on behalf of NNOGC, but in fact at Defendants’ direction, in violation of the Stipulated & Modified TRO, the contents of which had been agreed to in writing by Defendants and Frye Law);

(g) The NNDC is obligated to address Defendants’ counterclaims on the merits as speedily as possible and even allow Defendants to amend their counterclaims to address any jurisdictional issues; and

(h) The proposed amendments to the NNOGC Charter are not yet “operative.” *Id.* at 15.

79. In so holding, the NNSC violated its own jurisdictional ruling, exceeded its authority, and deprived NNOGC and the Shareholder Representatives of due process.

80. Wasting no time, on June 24, 2014, Defendants notified NNOGC’s Secretary and Interim Vice President/Acting CFO Rueben Mike that he had been terminated by the Board pursuant to a resolution Defendants had purported to pass on June 7, 2014. The resolution was signed by then-suspended Board members Lennard Eltsosie and Mae-Gilene Begay.

81. Plaintiffs are informed that Defendants and those acting in concert with Defendants plan to immediately change the locks at NNOGC’s offices, change the check signing authority on NNOGC’s bank accounts, terminate the employment of all NNOGC

1 employees who were loyal to NNOGC under President & CEO Robert Joe's management,
 2 hold multiple Board meetings in early July to pass various resolutions, and rehire the
 3 management team that created the financial chaos prior to Mr. Joe's tenure, among other
 4 things. Defendants' actions, which could occur at any moment, will likely cause
 5 substantial and potentially irreversible harm to NNOGC's reputation, corporate interests
 6 and financial interests.

7 82. Defendants' wrongful actions and the NNSC's June 20 Order purporting to
 8 ratify those actions have jeopardized NNOGC's relationships with its lenders and business
 9 partners in a manner that could realistically result in lost business and legal action against
 10 NNOGC.

11 83. If Defendants' conduct is allowed to continue, it is very likely that NNOGC
 12 will lose important business opportunities, will be unable to consummate pending
 13 transactions, and will be unable to honor financial obligations, all of which will
 14 irreparably damage NNOGC's credit and reputation in the business community.

15 84. Defendants are causing events to occur outside the Navajo Reservation,
 16 including, upon information and belief, closure of a corporate office in Farmington, New
 17 Mexico, and discussions with lenders.

18 85. By requiring a quorum of seven for any official action when there are only
 19 five Shareholder Representatives, the NNSC's ruling has deprived the Shareholder
 20 Representatives of any control over the Board or NNOGC without due process of law.

21 86. To the extent required, NNOGC, Robert Joe and the Shareholder
 22 Representatives have exhausted tribal remedies because the NNSC has definitively ruled
 23 against them and is the Navajo "court of last resort." *See* June 20 Order at 9.

24 25 **COUNT ONE**

26 **(Declaratory Relief – Corporate Governance)**

27 87. Plaintiffs incorporate the previous paragraphs of the Complaint by reference
 28 as if fully set forth in this Count One.

1 88. For the foregoing reasons, the March 7, 2014 action taken by Plaintiffs was
2 valid, in that Plaintiffs satisfied all necessary notice and due process requirements prior to
3 removing Defendants as Directors of NNOGC, and had a quorum to act.

4 89. The decision by the NNSC to the contrary, which made findings of fact
5 without evidentiary support and without Plaintiffs' participation, were rendered without
6 due process of law.

7 90. The decision by the NNSC to the contrary, deprives Plaintiffs of all
8 authority to govern NNOGC, has the effect of negating the benefits of incorporating
9 NNOGC as a Section 17 corporation, and is contrary to the purpose of 25 U.S.C. § 477.

10 91. Plaintiffs are entitled to declaratory relief as follows:

- 11 a. Plaintiffs had a quorum to take action on March 7, 2014 to remove
- 12 Defendants as Directors of NNOGC;
- 13 b. Plaintiffs satisfied all necessary notice and due process requirements
- 14 prior to removing Defendants as Directors of NNOGC; and
- 15 c. Defendants are no longer Directors of NNOGC and have no rights to
- 16 take any actions on behalf of NNOGC.
- 17 d. The amendments to the Charter are effective immediately, at least as to
- 18 the Navajo Nation, without further governmental approvals.

19 COUNT TWO

20 (Injunctive Relief)

21 92. Plaintiffs incorporate the previous paragraphs of the Complaint by reference
22 as if fully set forth in this Count Two.

23 93. Defendants are acting or threatening to take actions purportedly as Directors
24 of NNOGC despite having been properly removed from their positions.

25 94. Plaintiffs are likely to succeed on the merits of their claim that Defendants
26 are not Directors of NNOGC and cannot take any action on behalf of the corporation.

27 95. Plaintiffs would be irreparable injured if Defendants are not enjoined from
28 taking actions as Directors of NNOGC, including, but not limited to, the following:

- a. Because of uncertainty in corporate governance created by Defendants' claims to have authority to act as Directors of NNOGC, the corporation's lenders have reduced the company's borrowing base by \$60 million, have declared a deficiency in the amount of \$42.750 million and are expressing concern about future lending decisions that could make NNOGC unable to operate;
- b. Defendants are interfering in the management of NNOGC by, among other things, firing officers and terminating employees over the objections of Plaintiffs ;
- c. There is a reasonable likelihood that key employees crucial to the operations of NNOGC will leave the company if Defendants are not enjoined from further interference;
- d. The uncertainty created by Defendants' claims to act on behalf of NNOGC has reduced employee morale and is threatening the continued viability of the corporation; and
- e. Defendants' conduct has resulted in or is threatening to result in damage to NNOGC's reputation and harm to its business in many other ways.

96. The balance of harm and public policy considerations in granting injunctive relief weigh in Plaintiffs' favor.

V. PRAYER FOR RELIEF.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants as follows:

A. For declaratory relief, as set forth herein, declaring that Plaintiffs had a quorum to act in March 2014 to remove Defendants from the Board of NNOGC, that all notice and due process requirements predicate to the removal of Defendants have been met, and that Defendants are no longer on the Board of NNOGC;

B. For temporary, preliminary, and permanent injunctive relief, as set forth herein, enjoining Defendants from taking any action on behalf of NNOGC;

1 C. For costs of suit and related non-taxable expenses; and

2 D. For such other and further relief as the Court deems just and proper.

3 RESPECTFULLY submitted this 27th day of June, 2014.

4 GALLAGHER & KENNEDY, P.A.

5 By: /s/ Jeffrey D. Gross

6 Jeffrey D. Gross

7 Kiersten A. Murphy

8 Christopher W. Thompson

9 Laura E. Antonuccio

10 2575 East Camelback Road

11 Phoenix, Arizona 85016-9225

12 Attorneys for Plaintiffs

VERIFICATION

I, Charles Dawson, am a Plaintiff in the above-entitled action, and I am authorized and qualified to make this Verification on behalf of Plaintiffs. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief. The statements made therein are true to the best of my knowledge. As to those matters alleged upon information and belief, I believe them to be true. I verify under penalty of perjury that the foregoing is true and correct.

EXECUTED on June 27, 2014.

