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DISTRICT COURT OF THE UNITED STATES
 DISTRICT OF ARIZONA

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

Plaintiffs,

vs.

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

Defendants.

No. _____

**APPLICATION FOR TEMPORARY
 RESTRAINING ORDER AND ORDER
 TO SHOW CAUSE**

Pursuant to Rule 65, FRCP, Plaintiffs Mel R. Begay, Russell Begaye, Charles Damon and Kenneth Maryboy, as Shareholder Representatives of the Navajo Nation, apply for a temporary restraining order against defendants Mae-Gilene Begay, Diandra Benally, Lennard Eltsosie, Jennifer Hatathlie and Nelson Toledo (“Defendants”) to enjoin and restrain them from taking any actions as directors of Navajo Nation Oil And Gas Company, a federally chartered corporation wholly owned by the Navajo Nation for the benefit of the Nation and its enrolled members (“NNOGC”). This Application is supported by the attached Memorandum of Points and Authorities and exhibits thereto, and the Verified Complaint filed contemporaneously with this Application.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION.**

On March 7, 2014, Plaintiffs, duly appointed shareholder representatives of the Navajo Nation, removed Defendants as directors of the Navajo Nation's wholly owned corporation. On June 20, 2014, the Navajo Nation Supreme Court issued a decision that not only refused to give effect to the removal, but completely stripped Plaintiffs of their delegated authority to oversee operations of the corporation by making it impossible for them to ever have a quorum. That decision, which guarantees Defendants' positions as directors of the corporation despite a history of mismanagement and misconduct, violated due process and ignored the language and purpose of the federal statute authorizing the formation of the tribal corporation.

With Plaintiffs unable to act, the corporation is being subjected to immediate and irreparable harm from, among other things, a reduction in its borrowing base, damage to its reputation, loss of valuable personnel, and loss of business opportunities. As representatives of the Navajo Nation under a federally approved corporate charter, Plaintiffs have nowhere to turn to right these wrongs but this Court. Because this case presents federal questions regarding the interpretation and effect of the statute authorizing the Navajo Nation to form and operate its corporation, this Court should enjoin Defendants from attempting to take any further action as directors of the corporation, including holding an unauthorized July 7, 2014 meeting of the ousted Board.

II. FACTUAL AND PROCEDURAL HISTORY.**The Parties and the Corporate Structure.**

1. NNOGC is a federally chartered corporation under Section 17 of the Indian Reorganization Act, enacted as 25 U.S.C. § 477. As such, NNOGC is organized, incorporated and chartered under the laws of the United States, and entitled to the privileges and immunities granted by 25 U.S.C. § 477.

2. NNOGC's federal charter ("Federal Charter") was approved by the United States Secretary of the Interior on December 23, 1997 and ratified by the Navajo Nation

1 Council on February 5, 1998. A copy of the Federal Charter is attached as **Exhibit 1**.

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

5 4. NNOGC has over 100 employees and more than \$437 million in hard assets.

6 5. On information and belief, NNOGC controls between \$600,000,000 and
7 \$800,000,000 in rights to oil and natural gas beneath the surface of the Navajo
8 Reservation. The judicious preservation, extraction and disposition of those assets are of
9 critical importance to the economic welfare of the Navajo people.

10 6. NNOGC is wholly owned by the Navajo Nation, its sole shareholder, as an
11 instrumentality of the Nation; however, the activities, transactions, obligations, liabilities
12 and property of NNOGC are not those of the Nation. Federal Charter at Article IV(A).

13 7. Pursuant to Articles IV(A) and V(D) of the Federal Charter, the Navajo
14 Nation exercises its ownership powers through shareholder representatives – one from
15 each of the Navajo Nation Council’s standing committees or their successor committees
16 (the “Shareholder Representatives”). Each Shareholder Representative must be a member
17 of the Navajo Nation Council.

18 8. When the Federal Charter was drafted and ratified in the late 1990s, the
19 Navajo Nation Council had eleven standing committees; thus, NNOGC had eleven
20 Shareholder Representatives. Federal Charter at Article V(D) (rights of the “shareholder
21 of the Corporation shall be exercised by eleven (11) shareholder representatives,
22 composed of one member from each of the eleven (11) standing committees of the Navajo
23 Nation Council *or their successor committees*”) (emphasis added).

24 9. In 2009, the Navajo Nation code was amended by an initiative vote of the
25 Navajo voters to, among other things, reduce the number of Navajo Nation Council
26 delegates from 88 to 24. Construing the reduction in number of delegates to include
27 reorganization of the committee system, in 2011, the Navajo Nation Council reduced the
28 number of standing committees from eleven to five.

1 10. Since 2011, the Navajo Nation Council has had five standing committees –
2 Budget & Finance, Law & Order, Health Education & Human Services, Resource &
3 Development, and Naabik'íyátí' (which roughly translates to “talk it out”). Those five
4 committees are the successor committees to the original eleven; thus, since 2011 NNOGC
5 has had five Shareholder Representatives.

6 11. The Shareholder Representatives are Mel R. Begay (Budget & Finance);
7 Russell Begaye (Law & Order); Charles Damon (Health Education & Human Services);
8 Kenneth Maryboy (Naabik'íyátí'); and Leonard Tsosie (Resource & Development).

9 12. The Shareholder Representatives act through a quorum in voting on matters
10 within the scope of the Shareholder's authority.

11 13. Article X of the Federal Charter provides that “[s]even shareholder
12 representatives shall constitute a quorum for any meeting of shareholders.” Federal
13 Charter at Article X(D). However, it is clear from the Federal Charter as a whole that the
14 number seven was used to correspond with the then-existing eleven shareholder
15 representatives from the then-existing eleven standing committees.

16 14. Enforcing Article X to require a minimum of seven members for a quorum
17 despite the reduction in standing committees from eleven to five would strip the Navajo
18 Nation and its Shareholder Representatives of all authority to act because it is impossible
19 for five Shareholder Representatives to achieve a seven-person quorum.

20 15. For over two years prior to this dispute, the five Shareholder
21 Representatives met and voted, passed resolutions, and otherwise exercised their powers
22 under the Federal Charter and Bylaws without objection from any member of the NNOGC
23 Board of Directors (“Board”). A copy of the NNOGC Bylaws is attached as **Exhibit 2**.

24 16. Article XI(M) of the Federal Charter gives the Shareholder Representatives
25 the power to exercise all rights of the Shareholder, including the authority to compel the
26 Board to manage NNOGC within the scope of the Federal Charter to obtain the optimum
27 profits for the benefit of the Navajo people, and exclusive authority to remove a sitting
28 member of the NNOGC Board with cause at any time. The Shareholder Representatives

1 also have the power to recommend amendments to the Federal Charter.

2 **Prior Mismanagement of NNOGC**

3 17. By 2013, NNOGC was facing severe challenges with financial, reporting
4 and management problems. In June 2013, Robert Joe was hired as President and CEO of
5 NNOGC, and immediately began to take actions to turn the company from one that was in
6 serious decline to one that was increasing in value. *See generally* Declaration of Robert
7 Joe (“Joe Dec.”), attached as **Exhibit 3**. As part of that effort, Robert Joe used
8 independent financial reviews of operations to uncover mismanagement and
9 improprieties, some of which implicated employee conduct, with the result that the then-
10 existing management team ultimately resigned. *Id.*, ¶10-14.

11 **The December 21, 2013 Meeting and Its Aftermath.**

12 18. On December 11, 2013, at the request of certain Shareholder
13 Representatives, Robert Joe called and noticed a special meeting of the Shareholder
14 Representatives for December 21, 2013 to discuss recent conduct of sitting Board
15 members and actions that might be taken, if any, to address such conduct. *Id.*, ¶ 15;
16 Notice of December 21 Meeting, attached as **Exhibit 4**

17 19. In the weeks before the December 21 meeting, and in an attempt to protect
18 their own financial interests at the expense of NNOGC, certain Defendants made
19 misrepresentations to Shareholder Representatives and Navajo Nation Council delegates
20 to lobby against confirmation of four presidential appointees to the Board and against
21 proposed amendments to the Federal Charter that previously had been approved by the
22 Board, of which Defendants were a part, that would cause Defendants’ terms to end.

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

28 21. When the Shareholder Representatives came out of executive session, a

1 motion was made and passed to take action in accordance with the votes cast during
2 executive session.

3 22. On December 23, 2013, at the direction of a majority of the Shareholder
4 Representatives, NNOGC's legal counsel notified the suspended and removed Board
5 members (Defendants) of the Shareholder Representatives' decision via email, regular
6 mail, and certified mail, detailing the actions taken at the December 21 meeting. *See*
7 Letters dated December 23, 2013, attached as **Exhibit 5**.

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

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

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

14 24. On January 9, 2014, the Naabik'íyátí Committee confirmed three new
15 NNOGC Board members: Perry Shirley (Chairman), Francis Totsoni, and Carlos V.
16 Duno, all of whom had been appointed on or about October 28, 2013 by Navajo Nation
17 President Ben Shelly. President Shelly had also appointed a fourth nominee, Eddie
18 Sandoval, who was confirmed by the Naabik'íyátí Committee on January 23, 2014. Joe
19 Dec., ¶53.

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

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

Institution of the Tribal Court Action.

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

28. On January 17, 2014, the Board directed the law firm of Johnson, Barnhouse & Keegan LLP ("JBK") to file an action in Navajo Nation District Court ("NNDC") to enjoin Defendants from continuing to hold themselves out as NNOGC board members and continuing to purport to act on behalf of NNOGC. Joe Dec., ¶24.

29. The same day, JBK filed an action on behalf of NNOGC in NNDC seeking to enjoin Defendants from purporting to act on behalf of NNOGC, NNDC Case No. WR-CV-32-14 (the "NNDC Action"). *Id.*, ¶¶24-25.

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

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

(a) Purporting to hold a Board meeting on January 21, 2014. *Id.*, ¶26-32.

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

(c) Drafting, signing, and distributing three purported Board resolutions dated January 21, 2014 that: (i) purported to terminate the employment of NNOGC President and CEO Robert Joe; (ii) purported to terminate JBK, NNOGC's attorneys of record in the NNDC Action; and (iii) purported to retain Frye Law Firm, P.C. ("Frye Law") to replace JBK as counsel. All three resolutions were signed by suspended Board members Eltsosie and Begay. *Id.*, ¶41.

(d) Drafting, signing and sending a letter dated January 21, 2014, with the NNOGC logo pasted on the letterhead, notifying Mr. Joe of the Board's

1 purported decision to terminate his employment, and instructing him to vacate his
2 corporate offices, turn in all company property, and cease use of his NNOGC email
3 account. The letter was signed by suspended Board member Lennard Eltsosie. *Id.*

4 (e) Directing counsel to file an unauthorized notice of voluntary
5 dismissal and other pleadings and motions in the NNDC Action purportedly on
6 behalf of NNOGC.

7 (f) On information and belief, attempting to modify signature
8 authorizations on NNOGC's bank accounts. Declaration of Reuben Mike ("*Mike*
9 *Dec.*"), ¶20, **Exhibit 6**.

10 32. A hearing was held on January 31, 2014, at which time the parties advised
11 the NNDC that they had agreed to modify the TRO, in pertinent part, as follows
12 ("Stipulated and Modified TRO"), attached as **Exhibit 7**:

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

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

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

23 (d) Instructing all parties, Shareholder Representatives and their
24 respective legal counsel to meet with the Office of the Speaker of the Navajo
25 Nation Council, the Office of the Navajo Nation President & Vice President, and
26 the Office of the Navajo Nation Attorney General to attempt to resolve the issues in
27 the NNDC Action on or before February 21, 2014.

28 33. In light of the parties' agreement, no evidence was introduced at the January

1 31 hearing, and the NNDC entered the Stipulated and Modified TRO that day.

2 34. The parties were unable to reach an agreement on or before February 21,
3 2014; however, a Special Master was never appointed.

4 **The March 7, 2014 Meeting.**

5 35. On February 25, 2014, at the direction of the Speaker of the Navajo Nation
6 and at the request of a majority of Shareholder Representatives, Robert Joe called and
7 noticed a special meeting of the Shareholder Representatives to be held on March 7, 2014.
8 Proper notice of the March 7 meeting was provided and all former board members, the
9 Navajo Nation President, Navajo Nation Council Speaker, and Navajo Nation Department
10 of Justice were invited to attend. Attorneys for the terminated and suspended board
11 members were also contacted and given verbal and written notice of the meeting. Joe
12 Dec., at ¶35-38.

13 36. On March 6, 2014, the Shareholder Representatives filed a Motion for
14 Leave to intervene in the NNDC Action and to replace the Stipulated and Modified TRO.

15 37. The Shareholder Representatives held their duly noticed Special Meeting on
16 March 7 at the designated time to provide an opportunity to all removed and suspended
17 Board members to reconsider their actions since December 21, 2013, with a court reporter
18 present, and allowed each former member to bring their legal counsel. However, not one
19 of the removed and suspended members attended the March 7 meeting. *Id.* at ¶36-38.

20 38. At the March 7 meeting, attendees considered a list of 45 issues, which had
21 been provided to Defendants. One purpose of the meeting was to allow Defendants to
22 explain their positions. Even though Defendants and their counsel chose not to attend, the
23 Shareholder Representatives reviewed information concerning NNOGC and the Board
24 since December 21. *Id.* Based upon the information available before and after the
25 December 21 meeting, and because no contradicting information was provided, the
26 Shareholder Representatives duly passed resolutions reaffirming the removal of Diandra
27 Benally and Jennifer Hatathlie, removed Lennard Eltsosie, reaffirmed the suspension of
28 Mae Gilene Begay, and took no action on Nelson Toldeo since he had already been

1 officially replaced by one of the new Presidential appointees in January 2014. *Id.*

2 **The Filing of the Unauthorized Navajo Nation Supreme Court Case.**

3 39. Before the NNDC had an opportunity to resolve issues raised in various
4 pending motions and pleadings, on January 17, 2014, Frye Law filed an unauthorized
5 Petition for Writ of Prohibition in the Navajo Nation Supreme Court (“NNSC”), NNDC
6 Case No. SC-CV-25-14 (the “NNSC Action”), purportedly on behalf of NNOGC, but in
7 reality at the direction of Defendants, asking the NNDC to direct the lower court to
8 dismiss the NNDC Action for lack of subject matter jurisdiction.

9 40. As of the date the NNDC Action was initiated, the Court had not yet ruled
10 on the Shareholder Representatives’ Motion to Intervene (among other pending motions),
11 and none of the parties or interested parties had been provided an opportunity to present
12 evidence on the merits of their claims. The only “evidence” that had been provided to the
13 NNDC were documents attached to various notices and pleadings, none of which had
14 been formally offered or accepted into evidence.

15 41. NNOGC as a party, and the Shareholder Representatives as amicus,
16 submitted briefs in opposition to the Petition for Writ of Prohibition.

17 42. The NNDC held a hearing on May 1, 2014, but the Shareholder
18 Representatives were not allowed to argue because their Motion to Intervene in the
19 NNDC Action had not yet been granted. The parties that were allowed to participate in
20 the May 1 hearing made legal arguments, but were not given an opportunity to present
21 evidence. The May 1 hearing was the only hearing held in the NNDC Action.

22 43. On the same day, the NNDC issued a Writ of Prohibition directing the lower
23 court to dismiss the NNDC Action based on its finding that the NNDC lacked subject
24 matter jurisdiction over the issues and claims. *See* NNDC Writ of Prohibition, attached as
25 **Exhibit 8.**

26 44. Following the issuance of the Writ, Frye Law filed a Motion for Additional
27 Clarifying Opinion in the NNDC Action purportedly on behalf of NNOGC, but in reality
28 at the direction of Defendants, that asked the NNDC to find in favor of Defendants on the

merits of their defenses and counterclaims in the NNDC Action.

45. NNOGC, Robert Joe and the Shareholder Representatives opposed the Motion for Clarifying Opinion, based on, among other things, the fact that the NNSC had just determined that the Navajo Nation courts lacked subject matter jurisdiction over the very issues raised in the Motion for Additional Clarifying Opinion.

The NNSC Ignores The March 7 Meeting Removing Defendants, Makes Findings of Fact Without Evidentiary Support and Concludes that Plaintiffs Lacked a Quorum to Act.

46. Despite the NNSC's recent jurisdictional ruling, and despite the facts that NNOGC, Robert Joe and the Shareholder Representatives had not been afforded an opportunity to present evidence or otherwise be heard on the merits of their claims, that the NNSC itself had concluded that many of the allegations presented by the parties were more appropriately left to a fact finder, and without holding oral argument, on June 20, 2014, the NNSC granted the Motion for Additional Clarifying Opinion, copy attached as **Exhibit 9**, made findings of fact and conclusions of law not supported by the record and held, in pertinent part:

(a) The Court lacked jurisdiction because Defendants are immune from liability on the claims asserted in NNOGC's NNDC complaint (which is consistent with the NNSC's Writ of Prohibition, but inconsistent with its decision to effectively rule in favor of Defendants on the merits of some issues);

(b) Both the January 17 TRO and the January 31, 2014 Stipulated and Modified TRO entered by the NNDC are invalid.

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

(d) Defendants "were not validly suspended or removed on December 21, 2013" and, therefore, "continue to actively serve without interruption prior to and following December 21, 2013," *Id.* at 16, (which ignores the fact that a duly

1 noticed special meeting was held on March 7 that reaffirmed the December 21
 2 decision and cured every arguable error allegedly made in connection therewith);
 3 critically, the NNSC stated that this holding “dispose[s] of an ultimate issue” over
 4 which it believed it lacked subject matter jurisdiction, stating: “we must now apply
 5 the law as the court of last resort, since the parties are unable to deal with each
 6 other equitably as we encouraged.” *Id.* at 9;

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

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

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

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

21 47. In so holding, the NNSC ignored the March 7 meeting that validly removed
 22 Defendants, violated its own jurisdictional ruling, exceeded its authority, and deprived
 23 NNOGC and the Shareholder Representatives of due process.

24 **Defendants Continue Mismanagement of the Corporation.**

25 48. Wasting no time, on June 24, 2014, Defendants notified NNOGC Secretary
 26 and Treasurer Rueben Mike that he had been terminated pursuant to a resolution
 27 Defendants had purported to pass on June 7, 2014. Reuben Mike Declaration (“Mike
 28 Dec.”), ¶¶ 1 and 30. The resolution was signed by then-suspended Board members

1 Eltsosie and Begay.

2 49. Plaintiffs believe Defendants and those acting in concert with them plan to
3 change the locks at NNOGC's offices, change the check signing authority on NNOGC's
4 bank accounts, terminate the employment of NNOGC employees who were loyal to
5 NNOGC under President & CEO Robert Joe's management, hold multiple Board
6 meetings in early July, including a July 7 meeting to pass various resolutions, and rehire
7 the management team that created the financial chaos prior to Mr. Joe's tenure, among
8 other things.

9 50. Defendants' wrongful actions based on the NNSC's June 20 Order have
10 jeopardized NNOGC's relationships with its lenders and business partners in a manner
11 that could realistically result in lost business and legal action against NNOGC. Mike
12 Dec., ¶¶21-28, 33-34.

13 51. If Defendants' conduct is allowed to continue, it is very likely that NNOGC
14 will lose important business opportunities, will lose key employees, will be unable to
15 consummate pending transactions, and will be unable to honor financial obligations, all of
16 which will irreparably damage NNOGC's business opportunities, credit and reputation.
17 Joe Dec. ¶¶47, 48 and 51; Mike Dec. ¶¶34-35.

18 52. 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 ability to govern the Board or NNOGC.

21 **The Proposed Amendments to the Federal Charter.**

22 53. In April 2013, the then-sitting Board, including Defendants, proposed
23 amendments to the Federal Charter to address issues such as reducing the number of
24 standing committees, applying immunity and tax advantages for NNOGC's wholly owned
25 subsidiaries, and adding minimum qualifications and skills for board membership, which
26 Defendants would not meet.

27 54. On or about April 22, 2014, the Navajo Nation Council approved the
28 amendments to the Federal Charter, which were certified by Speaker Pro Tem, Jonathan

1 Hale on May 1, 2014, then sent to the Secretary of the Interior for review. Joe Dec., ¶42.

2 **III. THIS COURT HAS JURISDICTION OVER THIS DISPUTE.**

3 **A. This Action Involves A Federal Question.**

4 28 U.S.C. § 1331 gives this Court jurisdiction over civil actions involving a federal
5 question. Defendants' and the NNSC's interpretation of the Federal Charter presents a
6 federal question involving the effect of Section 17 on management of the federally
7 chartered corporation.

8 Section 17 of the Indian Reorganization Act ("IRA") provides in pertinent part:

9 The Secretary of the Interior may, upon petition by any tribe, issue a charter
10 of incorporation to such tribe: *Provided*, That such charter shall not become
11 operative until ratified by the governing body of such tribe . . . Any charter
so issued shall not be revoked or surrendered except by Act of Congress.

12 25 U.S.C. § 477.

13 The Navajo Nation petitioned for approval of a corporate charter of NNOGC,
14 which established Shareholder Representatives to act on behalf of the Navajo Nation and,
15 by extension, the Navajo people. In that federally approved role, Plaintiffs protect the
16 Navajo Nation's interests in the operation of NNOGC by overseeing the actions of the
17 Board of Directors, including the right to remove directors for cause.

18 The purpose of Section 17 of the IRA is to allow a tribe to incorporate pursuant to
19 a federally approved charter. *See Gaines v. Ski Apache*, 8 F.3d 726, 729 (10th Cir. 1993)
20 ("An Indian tribe *may become a corporation* by being chartered under the Indian
21 Reorganization Act, 25 U.S.C. § 477") (emphasis added). Although a tribe and a Section
22 17 corporation may be legally distinct entities, the clear purpose was to allow tribes to act
23 through corporate forms. Under the federally approved charter, the Navajo Nation is the
24 only shareholder of NNOGC, but controls the corporation through its Representative
25 Shareholders. Yet according to the NNSC's opinion and Defendants' interpretation, the
26 five Representative Shareholders cannot do anything – including remove directors for
27 cause – because a quorum of seven is required for any action. The effect is to take all
28 governance of NNOGC away from the Navajo Nation. The resulting federal question is

1 whether an interpretation of the IRA permitting the Federal Charter, as approved by the
2 federal government, to remove the ability of the Navajo Nation to govern its own
3 federally-established corporation, violates the primary purpose of Section 17.

4 A dispute over the interpretation of a federal charter is a federal question. *See*
5 *District of Columbia v. Group Hospitalization and Medical Services, Inc.*, 576 F.Supp.2d
6 51 (D. D.C. 2008) (holding that a contested interpretation of a corporation's federal
7 charter involved a federal issue where a statutory interpretation of the charter concerned
8 the core mission and obligations of the corporation). Article III of the Federal Charter
9 provides: "The Corporation is organized, incorporated and chartered under the laws of the
10 United States as a federally chartered corporation under 25 U.S.C. § 477, as amended, and
11 shall have the powers, privileges and immunities granted by that statute embodied in this
12 Charter." Despite the Navajo Nation being the sole shareholder of NNOGC, and despite
13 the Shareholder Representatives being tasked with ensuring the corporate purposes are
14 met, the NNSC and Defendants interpret the Federal Charter to eliminate the Shareholder
15 Representatives' ability to take any act in performance of their duties, and to strip away
16 any "powers, privileges and immunities" expressly conferred by the Federal Charter.

17 As a Section 17 corporation, NNOGC functions as an "instrumentality of the
18 Navajo Nation." Charter ¶ IV(A). As such, the Navajo Nation must have the ability to
19 govern its instrumentality, which it does through its Shareholder Representatives. By
20 making that impossible for perpetual lack of a quorum, the NNSC and Defendants have
21 revoked a core check and balance of the federally issued and approved charter, which
22 violates Section 17.

23 In addition, the NNSC interpreted Section 17 to require federal approval for
24 amendments to the Federal Charter. June 20 Order at 15. However, the only federal
25 action expressly contemplated by Section 17 is *issuance* of a charter. The Navajo Nation
26 Council has approved amendments that would make Defendants unqualified to continue
27 to act as directors and clarify the quorum issues. Whether the amendments are effective
28 immediately is a federal question.

B. Plaintiffs Have Exhausted Their Tribal Court Remedies.

Plaintiffs obtained a final decision from the Navajo Nation Supreme Court, albeit one that violates their due process rights and deprives them of control over a federally chartered corporation. Plaintiffs have no further recourse in Navajo Nation courts.

C. Defendants Do Not Have Sovereign Immunity.

The Shareholder Representatives removed Defendants from the NNOGC Board, at the latest, in March 2014. As a result, the Defendants are acting outside of the scope of their authority and are being sued in their individual capacity – not in their capacity as NNOGC directors. Because they are being sued individually and are acting outside the scope of their authority, they are not immune from suit. *See* 1 N.N.C. § 552 (only certain governmental bodies and officials are immune from suit); *United States v. State of Oregon*, 657 F.2d 1009, 1013 (9th Cir. 1981) (tribal sovereign immunity extends only to “tribal officials when acting in their official capacity and within their scope of authority”).

IV. THIS COURT SHOULD ENJOIN DEFENDANTS FROM CONTINUING TO TAKE ANY ACTS AS DIRECTORS OF NNOGC.

A. Plaintiffs Are Likely to Succeed On The Merits.

1. The NNSC committed due process violations by making findings of fact without allowing Plaintiffs an opportunity to participate and without any evidentiary support.

As the NNSC acknowledged, NNOGC is a public asset and the Shareholder Representatives “are, essentially, trustees of a public trust asset for the Navajo people . . .” June 20 Order at 14. Moreover, it was the Shareholder Representatives’ actions that were at issue in the NNDC Action – namely, their vote to remove and/or suspend the Defendants from the Board. Yet the Shareholder Representatives – the very people charged with protecting the Navajo people’s interest in NNOGC and its assets, and whose actions were being challenged – were given no meaningful opportunity to participate in the tribal court proceedings. The Shareholder Representatives sought to intervene, but were never given leave to do so. At the only hearing before the NNSC, the Shareholder Representatives were not allowed to argue. In short, they were given no real opportunity

1 to be heard, in violation of due process. *See Burrell v. Armijo*, 456 F.3d 1159, 1171 (10th
2 Cir. 2006) (due process requires “that there has been a full and fair trial before an
3 impartial tribunal”).

4 Yet, the NNSC found (among many other things) that the Shareholder
5 Representatives improperly removed the Defendants from the Board in December 2013,
6 having failed to provide “due process formalities” – a fact that the Court said was
7 “undisputed.” **Exhibit 7**, June 20 Order at 9-10. There was no evidence (much less
8 uncontroverted evidence) that the removals were improper. Had the Shareholder
9 Representatives been given the opportunity to be heard, the Court would have learned that
10 the Defendants were properly removed on March 7, 2014, and that the March 7 action
11 cured every arguable infirmity that allegedly plagued the earlier removal.

12 This Court is not bound by (and need not recognize) the NNSC’s opinion because
13 the NNSC acted without jurisdiction and in violation of the Shareholder Representatives’
14 due process rights. “[F]ederal courts must neither recognize nor enforce tribal judgments
15 if: (1) the tribal court did not have both personal and subject matter jurisdiction; or (2) the
16 defendant was not afforded due process of law.” *Wilson v. Marchington*, 127 F.3d 805,
17 810 (9th Cir. 1997). “[T]ribal court proceedings must afford the defendant the basic
18 tenets of due process or the judgment will not be recognized by the United States.” *Id.* at
19 811. *See also Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136 (9th Cir. 2001) (“our
20 precedents make clear that a district court cannot properly give comity to a tribal court
21 judgment if the tribal court proceedings violated due process”).

22 While it is true that federal courts take heed not to “exercise unnecessary judicial
23 paternalism in derogation of tribal self-governance,” *Wilson*, 127 F.3d at 811, “the
24 concerns for respecting a sovereign’s procedures and avoiding paternalism are reduced
25 when tribal court laws and procedures governing trials and appeals track those of our
26 federal courts.” *Bird*, 255 F.3d at 1143. Such is the case here: the Navajo Rules of Civil
27 Procedure are taken practically verbatim from the Federal Rules of Civil Procedure. Thus,
28 for purposes of the Court’s analysis, there is “no reason to depart from traditional due

1 process values requiring fundamental fairness.” *Bird*, 255 F.3d at 1144.

2 In addition to the due process violations noted above, the NNSC acted without
3 jurisdiction. When the NNSC found that “jurisdiction was lacking,” its inquiry should
4 have ended. *See Exhibit 8*, Writ of Prohibition at 2 (without jurisdiction “the court lacks
5 authority to sit in judgment over any portion of the matter”). Instead, ignoring its own
6 ruling that it lacked jurisdiction, the court found there was a “desperate need for a
7 remedy” and proceeded to consider “multiple issues” that were supposedly raised by
8 Defendants’ motion to clarify, which culminated with the Court disposing of the “ultimate
9 issue” in the case – namely, whether Defendants’ removal was proper. *Exhibit 7*, June 20
10 Order at 5, 9. Having exceeded its jurisdiction and having committed serious due process
11 violations, the NNSC’s June 20 Order is subject to review by this Court.

12 **2. The NNSC ignored the March 7 meeting and misconstrued the**
13 **Navajo Nation’s Section 17 corporate rights.**

14 Defendants were provided with proper notice and opportunity to be heard before
15 being removed and/or suspended by the Representative Shareholders on March 7, 2014.
16 Joe Dec., ¶¶35-38. The only question is whether the Representative Shareholders had a
17 quorum to act.

18 Interpreting Shareholder Representative action under the Federal Charter requires
19 an understanding of the makeup of the Tribe when the Federal Charter was initially
20 approved and ratified by the Navajo Nation Council in 1983. At that time, the Navajo
21 Nation Council was composed of 88 members. Those 88 Council members were placed
22 into eleven (11) different standing committees. The Navajo Nation Council may, through
23 its legislative powers, reduce the number of available Navajo Nation Council positions.
24 The number of standing committees is also subject to change. In practice, the number of
25 standing committees is tied directly to the number of Navajo Nation Council members.

26 As a result, the Federal Charter provided that “all rights of the shareholder of the
27 Corporation [the Navajo Nation] shall be exercised by eleven (11) shareholders
28 representatives, composed of one member from each of the standing committees of the

1 Navajo Nation *or their successor committees*, in accordance with this Charter or
2 applicable tribal law” Article V.D (emphasis added). Article V.D. further provides
3 that only one shareholder representative is allowed from each committee (e.g., “Each
4 standing committee shall select its own shareholder representative.”).

5 When the Federal Charter was adopted, there were eleven shareholders because the
6 88 members of the Tribe composed eleven different standing committees, each of which
7 selected one council member to be a Shareholder Representative of NNOGC. However,
8 the Federal Charter expressly provided that if the number of standing committees
9 changed, then the number of NNOGC’s shareholder representatives would be the
10 available number of representatives from all such future “successor committees.”

11 By 2011, the Navajo Nation Council was reduced to 24 members and five standing
12 committees. As a result, the number of possible shareholders that could be selected from
13 Navajo Nation standing committees was likewise reduced to five. The current five
14 standing committees are the “successor committees” contemplated in the Charter. And
15 the five current Shareholder Representatives selected from those “successor committees”
16 are the maximum number of shareholder representatives that may exist pursuant to the
17 Charter – one from each standing committee.

18 The genesis of *this* dispute, coming nearly three years into the reorganized Navajo
19 Nation Council and shareholder representative make-up, is little more than a transparent
20 attempt by certain board members who were appropriately removed by the Shareholder
21 Representatives to retain their power and the benefits of board membership. They have,
22 therefore, manufactured a dispute about whether the five Shareholder Representatives
23 selected from the five successor committees to the original eleven standing committees
24 can ever have a quorum to take shareholder action under Article X of the Charter. This,
25 despite the fact that these same board members have operated for years without
26 challenging the Shareholder Representatives’ authority to act based on a majority quorum.

27 Defendants claim that the five Shareholder Representatives cannot remove them –
28 or take action under the Charter at all – because Article X.D. states “Seven shareholders

1 shall constitute a quorum for any meeting of the shareholders.” Defendants (and the
 2 NNSC) claim that since seven members constitute a quorum, the current five Shareholder
 3 Representatives can *never* be a quorum, and can, therefore, take no valid action under the
 4 Charter (nor could they have at any point after the number of standing committees was
 5 reduced in 2011, notwithstanding that they never objected until they were removed from
 6 the Board). Defendants persuaded the NNSC to accept this argument without adequate
 7 opportunity for rebuttal, which has stripped the Shareholder Representatives of all
 8 authority to act on behalf of the Navajo Nation, the Navajo people, or NNOGC in
 9 violation of the Federal Charter.

10 Defendants’ position is incorrect as a matter of simple charter interpretation (and
 11 common sense) when considered in context of the Federal Charter’s provisions and
 12 purpose of forming a Section 17 corporation. First, this position completely ignores
 13 Article X.C., which provides:

14 “On any issue or question presented to the shareholder [at a special
 15 meeting], a vote shall be taken of those SHR present, *if a quorum is*
 16 *present. The presence or absence of a quorum shall be determined with*
reference to the quorum requirements of the Navajo Nation Council itself.
 (Emphasis added)

17 Pursuant to the 2 N.N.S. § 169 (Quorum), “A quorum shall consist of a *simple*
 18 *majority* of all voting members of the Navajo Nation Council” (emphasis added). Putting
 19 Article X.B. together with Article V.D. (“all rights of the SHR shall be exercised by . . .
 20 their successor committees”), the clear intent of the Federal Charter is that the only
 21 quorum requirement for a valid and binding Shareholder Representative vote is that there
 22 be a “simple majority” of those voting. The Quorum requirement in Article X.D cannot
 23 be read to contradict the voting requirements in Article X.C. Moreover, to read Article
 24 X.D as requiring seven shareholders to vote would expressly contradict the “simple
 25 majority” requirement of Article X.C (*e.g.*, a “simple majority” of 11 shareholders would
 26 be six, not seven). In short, both Article V.D and Article X.C clearly express a quorum
 27 number different than the seven contained Article X.D.

28 Defendants’ quorum contentions, which were accepted by the NNSC, cannot be

1 correct for a more practical but equally significant reason. The Navajo Nation is the sole
2 shareholder of NNOGC. While the corporation was set up to keep NNOGC from direct
3 political control by the Navajo Nation Council, the intent of Section 17 and the Federal
4 Charter is to provide the Navajo Nation with ownership and governance of NNOGC. If
5 the Federal Charter is read such that more than the existing five Shareholder
6 Representatives are required for the Navajo Nation to exercise its shareholder rights under
7 the Charter, then the Navajo Nation has effectively lost the ability to exercise any of its
8 shareholder rights and to govern NNOGC in its shareholder capacity.

9 As a matter of federal law, 25 U.S.C § 477 cannot countenance operation of a
10 federally-chartered corporation that is no longer subject to oversight by its sole
11 shareholder. Not only have Defendants disregarded the rights of the Navajo people by
12 ignoring the Shareholder Representatives' actions, but they continue to act in direct
13 contravention of the Federal Charter and the purposes for which it was adopted and
14 approved by the federal government. Under a common sense construction of Section 17
15 and the Federal Charter, it cannot be the case that a board of directors is not subject to
16 removal or tribal supervision. If the Federal Charter means anything, it means that the
17 Navajo Nation must be able to exercise oversight, through the Shareholder
18 Representatives, conferred on it by the federally-approved charter. Plaintiffs can only
19 accomplish that function if a quorum is a majority of the members, not seven of five.
20 Plaintiffs had a quorum when voting to remove Defendants on March 7.

21 As a result, the removal of Defendants on March 7 was proper, but Plaintiffs were
22 prevented from making their case in tribal court by the NNSC's erroneous decision. As
23 explained above, this Court is not bound by the NNSC's ruling, and when all the evidence
24 is presented Plaintiffs will succeed on the merits of their claim that Defendants have no
25 authority to act as board members.

26 **3. The Federal Charter amendments are effective, at least as to the**
27 **Navajo Nation, without further federal approval.**

28 Amendments to the Federal Charter were approved by the Navajo Nation Council

on April 22, 2014, under which Defendants are not qualified as directors of NNOGC. In addition, the amendments clarify that a majority of Shareholder Representatives constitute a quorum. The NNSC incorrectly concluded that federal approval was necessary before the amendments would be effective. Nothing in federal law requires amendments to approved tribal charters to be subject to further approval by any federal agency before they become effective. Because of the due process violations, and because the NNSC improperly got to the merits of the case after explicitly finding it lacked jurisdiction over the parties, this Court is not bound by the NNSC's decision about the amendments.

B. Plaintiffs Will Suffer Irreparable Harm If Relief Is Not Granted.

1. Plaintiffs Request Only To Maintain The *Status Quo Ante*.

In the Tribal Court case, the parties stipulated to a stay to preserve the status quo pending judicial resolution. Now that the NNSC has issued an opinion that violates Plaintiffs' due process rights and improperly strips them of all ability to exercise any rights on behalf of the sole shareholder under the Federal Charter, Plaintiffs request that this Court continue the *status quo ante* by issuing temporary injunctive relief based on the stipulation in the Tribal Court action pending resolution on merits in this Court.¹ Since the parties previously agreed to the terms of the stipulation, there is no prejudice to Defendants in continuing it in this Court pending more complete resolution on the merits. In contrast, Plaintiffs and the Navajo Nation face substantial harm with no adequate remedy at law.

2. NNOGC faces action by its lenders that could irreparably impact its operations.

There is no question that NNOGC's lenders are nervous about the uncertainty in management of the corporation. Joe Dec., ¶47; Mike Dec., ¶18-25. The competing claims for control of NNOGC's board and its management have prompted NNOGC's lenders to demand reasonable assurances and certainty about which persons had authority

¹ Plaintiffs do not request appointment of a special master. The parties in the Tribal Court case did not appoint a special master, despite the stipulation, because of the risk that having a third party make decisions would breach loan covenants and trigger a default.

1 to act on behalf of NNOGC on May 15, 2014. Joe Dec., ¶47; Mike Dec. ¶21. Efforts
 2 were immediately taken by Mr. Joe and Mr. Rueben to provide confidence to NNOGC's
 3 lenders in order to avoid a reduction in NNOGC's borrowing base. Mike Dec., ¶22.
 4 Despite attempts to reassure the lenders' administrative agent, and with the dispute for
 5 control ongoing, the lenders' administrative agent sent a letter on June 9, 2014 notifying
 6 NNOGC that its borrowing base was reduced from \$170 million to \$110 million and
 7 demanding that a \$42 million deficiency be remedied immediately. Joe Dec., ¶47; Mike
 8 Dec., ¶24-27. There is a very real possibility that the lenders will take even more drastic
 9 action should the uncertainties caused by Defendants remain. Joe Dec., ¶47; Mike Dec.,
 10 ¶¶24-27, 32-35.

11 **3. NNOGC faces loss of key personnel.**

12 Defendants' refusal to accede to their removal has caused more than the lenders to
 13 be concerned. Employees of NNOGC who are critical to operations and future growth of
 14 NNOGC are expressing great dissatisfaction with the disruption. Joe Dec. ¶49.
 15 Furthermore, many employees have already been let go and are being threatened with
 16 termination. *Id.* ¶¶ 55-56. If these key employees with unique skill set leave, it will be
 17 difficult if not impossible to replace them. *Id.* Moreover, there are a number of
 18 employees who are terrified of Defendants and reprisals from Defendants if they are
 19 allowed to act as if they are in control of NNOGC. *Id.* ¶50. There has been a drop in
 20 productivity and morale in NNOGC's office, which is directly caused by Defendants
 21 actions do to fear of termination. *Id.* These losses are an irreparable injury warranting
 22 injunctive relief. *Global Computer Enterprises, Inc. v. United States*, 88 Fed. Cl. 350, 454
 23 modified on reconsideration, 88 Fed. Cl. 466 (Fed. Cl. 2009) ("GCE has demonstrated
 24 that the loss of skilled employees critical to its ability to perform audit-supporting federal
 25 financial management systems services constitutes an irreparable harm").

26 **4. NNOGC faces loss of business opportunity and growth.**

27 Defendants' attempt to take back control of NNOGC in reliance on the NNSC's
 28 decisions also threatens to irreparably damage NNOGC from unspecifiable millions in

1 lost business opportunities. Joe Dec. ¶51. For the past several months, Mr. Joe and other
 2 executives at NNOGC have been negotiating the signing of initial documents with a
 3 company (including a confidentiality agreement) to develop a shale resource. *Id.*
 4 NNOGC stands to lose the potential business partner, along with the potential revenue
 5 from the partnership, due to the continued management disputes caused by Defendants'
 6 actions. Joe Dec. ¶51. If Defendants are not enjoined from purporting to have authority
 7 to fire acting CEO Mike Reuben, NNGOC stands to lose significant business
 8 opportunities. *Id.*

9 The total value of such lost business opportunity is incalculable do to the long term
 10 nature of shale development, which is sufficient to warrant an injunction to prevent
 11 against irreparable injury. *See Technologies, LLC v. Christmas*, CIV. S-11-1541 KJM,
 12 2012 WL 33031 (E.D. Cal. Jan. 6, 2012) ("lost business, lost business opportunities" may
 13 constitute irreparable harm").

14 Additionally, the irreparable harm to NNGOC's current technical capabilities
 15 (through loss of credit, key employee recruitments, reputation, and business opportunities)
 16 will have a drastic impact on NNOGC's current and future prospects for growth. Joe Dec.
 17 ¶51-54. NNOGC is currently in an excellent position for explosive growth and expansion.
 18 However, all of that potential may be erased by the infighting and confusion that
 19 Defendants are causing internally and externally. *Id.*, ¶45. If NNOGC suffers further
 20 credit reduction, loss to reputation, loss of opportunities, and key employee resignations, it
 21 will be irreparably harmed from its inability to capitalize on its current position, which is
 22 directly threatened by Defendants' actions.

23 **5. Irreparable Harm to NNOGC and Navajo Nation Reputation.**

24 Without an injunction, NNOGC will suffer permanent irreparable harm to its
 25 business reputation. Joe Dec. ¶¶ 52-53; Mike Dec. ¶¶32-35. As evidenced by NNOGC's
 26 lender group reducing its borrowing base by \$60,000,000, NNOGC's reputation is being
 27 irreparably harmed. Mike Dec. ¶33. For example, the reduction in borrowing base
 28 already has an immediate impact on NNOGC's credit-worthiness reputation and impacts

its ability to secure additional capital investments and loans. *Id.* ¶¶32-35. Courts have long held that damage to brand, business reputation or goodwill constitutes irreparable harm. *See, e.g., Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (“[I]ntangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm.”).

6. The incorrect application of the quorum requirement eliminates shareholder governance that lies at the heart of the Section 17 corporate structure, which is irreparable harm.

Equally as important as the potential harm to its business, the Navajo Nation, through Plaintiffs as Shareholder Representatives, has lost its actual ability to govern the corporation. Although NNOGC is a separate legal entity, the Navajo Nation as sole shareholder is intended by Section 17 and the federally approved charter to have rights of governance, including the ability to remove, suspend or direct the Board members. By making factual findings that ignore Plaintiffs’ March 7, 2014 actions and are without evidentiary support, and by misreading the Federal Charter to require a mathematically impossible seven of five Shareholder Representatives as a quorum, the NNSC has effectively given Defendants their own fiefdom. As long as that situation exists, the Navajo Nation will be subject to the whims of directors whose actions cannot be challenged in any effective manner by Plaintiffs. Without the ability for Plaintiffs to act, the Navajo Nation cannot govern NNOGC, which defeats the purpose of Section 17 to allow the Navajo Nation to own and operate a federally chartered corporation.

C. The Balance Of Hardship Weighs Heavily In Plaintiffs’ Favor.

The NNSC’s opinion leaves Plaintiffs, and by extension the Navajo Nation, without any way to govern NNOGC or the directors. If Plaintiffs cannot satisfy the quorum requirement as interpreted by the NNSC, they cannot take any action whatsoever, or even hold a meeting. Plaintiffs cannot suspend, terminate, replace, direct, admonish or restrain the Board in any way. Plaintiffs cannot carry out their obligation to act on behalf of the Navajo Nation and the Navajo people at all. As a result, the Navajo Nation is completely at the mercy of Defendants in the operation of its own corporation.

1 Defendants can continue to shake the foundations of the corporation by worrying the
 2 lenders (which has already resulted in a significant drop in NNOGC's borrowing base),
 3 shedding employees and damaging the business and reputation of NNOGC. The potential
 4 of harm to a business with hundreds of millions of dollars in assets is incalculable.

5 In contrast, Defendants' only "hardship" will be the loss of power they presently
 6 enjoy. As Defendants implicitly conceded in agreeing to the stipulated stay in Navajo
 7 Nation Tribal Court, that loss is transient at best and must be subordinate to the larger
 8 good of the Navajo Nation.

9 **D. Public Policy Interests Favor Injunctive Relief.**

10 **1. Public policy favors rights of Navajo Nation, as sole shareholder**
 11 **of NNOGC, to have operational control over the corporation.**

12 The public policy reflected in Section 17 of the IRA is to authorize creation of
 13 federally-sanctioned tribal corporations to benefit tribes. The Navajo Nation is the sole
 14 shareholder of NNOGC and, through the Representative Shareholders, is supposed to
 15 exercise oversight over the operations of the corporation. Allowing Defendants unfettered
 16 discretion to act without being subject to that oversight – and to be completely free even
 17 from removal – frustrates rather than advances the public policy behind Section 17 to
 18 allow tribes to govern their corporations.

19 **2. The interests of the Navajo people in the benefits from NNOGC**
 20 **must be protected, and the risk of adverse consequences can be**
 21 **avoided by preserving the status quo.**

22 This dispute is bigger than a fight between two competing groups of individuals for
 23 control of a corporation. With nearly half a billion dollars in hard assets, NNOGC is a
 24 substantial resource for the Navajo people. Indeed, all shares of the corporation are
 25 owned by the Navajo Nation for the benefit of the Navajo people. Strong public policy
 26 reasons justify avoiding any risk of impairing such a valuable public asset. That risk is
 27 more than just likely or theoretical – lenders are reacting, employees are leaving and
 28 business is suffering. Joe Dec., ¶¶47-55; Mike Dec., ¶¶32-35. Preserving the status quo
 by following the stipulated stay in Tribal Court protects the Navajo people from the risk

1 of further erosion of NNOGC's business and reputation, while only temporarily affecting
2 management of the corporation.

3 **D. There Is No Reason For A Bond.**

4 Plaintiffs are requesting declaratory and injunctive relief to prevent Defendants
5 from taking any action as directors of NNOGC. Defendants cannot demonstrate any harm
6 that would flow to them from a wrongful injunction.

7 **V. CONCLUSION.**

8 For the foregoing reasons, Plaintiffs request that this Court issue a Temporary
9 Restraining Order enjoining Defendants from taking any action as directors of NNOGC
10 pending preliminary injunctive relief, and requiring Defendants to appear and show cause
11 why injunctive relief should not be granted. A proposed form Temporary Restraining
12 Order and Order to Show Cause is being submitted herewith; a copy is attached hereto as
13 **Exhibit 10.**

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

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