

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

(1) MODOC NATION a/k/a MODOC TRIBE  
OF OKLAHOMA; (2) RED CEDAR  
ENTERPRISES, INC.; (3) EAGLE TG, LLC;  
(4) BUFFALO MTE, LLC; (5) TALON MTE,  
LLC; (6) MODOC MTE, LLC; and (7)  
WALGA MTE, LLC,

Plaintiffs,

v.

RUSTY BOHL,

Defendant, and

(1) RAJESH SHAH; (2) SHARAD  
DADBHAWALA; (3) SOFTEK  
MANAGEMENT SERVICES, LLC; (4)  
SOFTTEK FEDERAL SERVICES, LLC; and  
(5) SOFTEK SOLUTIONS, INC.,

Defendants, Counterclaimants, and Third Party  
Plaintiffs,

v.

BLAKE FOLLIS,

Third Party Defendant.

NO. 19-cv-00588-CVE-JFJ

**RAJESH SHAH, SHARAD DADBHAWALA, SOFTEK MANAGEMENT  
SERVICES, LLC, SOFTEK FEDERAL SERVICES, LLC, AND SOFTEK  
SOLUTIONS, INC.'S COUNTERCLAIMS AND THIRD-PARTY COMPLAINT**

**JURY TRIAL DEMANDED**

Pursuant to Fed. R. Civ. P. 13, 14, 19, and 20, Rajesh Shah, Sharad Dadbhawala, Softek Management Services, LLC, Softek Federal Services, LLC, and Softek Solutions, Inc. (collectively, "Softek"), in response to Plaintiffs' Complaint and Jury Demand, in

addition to their Answer, assert Counterclaims and Third Party Claims as follows:

### **PARTIES**

1. Rajesh Shah is a resident of Union City, California.
2. Sharad Dadbhawala is a resident of Campbell, California.
3. Softek Management Services, LLC, is a business organized and existing under the laws of California, with its principal place of business in California.
4. Softek Federal Services, LLC, is a corporation organized and existing under the laws of California, with its principal place of business in California.
5. Softek Solutions, Inc., is a business organized and existing under the laws of the California, with its principal place of business in California.
6. Modoc Nation a/k/a Modoc Tribe of Oklahoma (“Modoc”) is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the state of Oklahoma, with its principal place of business in Miami, Oklahoma.
7. Red Cedar Enterprises, Inc. (“RCE”), is a domestic for-profit corporation organized and existing under the laws of the Modoc Tribe of Oklahoma with its principal place of business in Oklahoma. RCE was, at all relevant times, registered as a foreign for-profit business corporation with the State of Oklahoma pursuant to Oklahoma’s General Corporation Act, Okla. Stat. tit. 18, § 1130, since 2005. RCE was also, at all relevant times, a qualified 8(a) company that has agreed to “be sued” pursuant to 13 C.F.R. § 124.109.
8. Eagle TG, LLC (“Eagle”), is a domestic company organized and existing under the laws of Texas, with its principal place of business in Texas. Eagle was, at all relevant times, a qualified 8(a) company that has agreed to “be sued” pursuant to 13

C.F.R. § 124.109.

9. Talon MTE, LLC (“Talon”) is a domestic company organized and existing under the laws of Texas, with its principal place of business in Texas.

10. Buffalo MTE, LLC (“Buffalo”), is a domestic company organized and existing under the laws of Utah, with its principal place of business in Utah. Buffalo was, at all relevant times, a qualified 8(a) company that has agreed to “be sued” pursuant to 13 C.F.R. § 124.109.

11. Modoc MTE, LLC (“Modoc MTE”) (d/b/a Fantasy Sports Markets and Fantasy Sports Games), is a domestic corporation organized and existing under the laws of the Modoc Tribe of Oklahoma with its principal place of business in Oklahoma. Modoc MTE was, at all relevant times, a qualified 8(a) company that has agreed to “be sued” pursuant to 13 C.F.R. § 124.109.

12. Walga MTE, LLC (“Walga”), is a domestic company organized and existing under the laws of Kansas, with its principal place of business in Kansas. Walga was, at all relevant times, a qualified 8(a) company that has agreed to “be sued” pursuant to 13 C.F.R. § 124.109.

13. Upon information and belief, Blake Follis (“Follis”) is a resident of Miami, Oklahoma. He is sued in his personal capacity.

#### **JURISDICTION AND VENUE**

14. This Court has jurisdiction under 28 U.S.C. § 1332, in that the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial portion of the events giving rise to the claims asserted herein occurred in this

district. Venue is also proper in this federal district pursuant to 28 U.S.C. § 1397 because one or more of the claimants reside in this judicial district.

### **FACTS**

16. Softek was introduced to Modoc in early 2010. Modoc's for-profit business corporation, RCE, was struggling financially and looking for outside investment, risk capital, and management and operations support.

17. After some discussions, Softek, Modoc, and RCE, began working together.

18. In August of 2010, Modoc, RCE, and Softek entered into a Letter of Intent ("LOI") whereby Softek would:

- (1) Incur startup and supporting operational funds for RCE.
- (2) Provide loans for working capital purposes, as needed.
- (3) Create and operate certain entities certified under the Small Business Administration's 8(a) program ("MTEs").

In return, Softek would receive 49% of the MTEs' profits.

19. Modoc and Softek acted consistent with and in furtherance of the LOI in December of 2010 when Softek purchased 49% of RCE.

20. Softek then created and/or operated at least four state-incorporated MTEs with sue-and-be-sued clauses in their originating documents: Eagle, Buffalo, Modoc MTE, and Walga. As 49% owner, Softek is entitled to 49% of the net income generated by each of these four entities.

21. In July of 2019, a dispute arose between Rusty Bohl, who had been assisting to manage the on-the-ground aspects of some of the MTEs for Softek, and Follis, who had been managing a fledgling and now failed daily fantasy sports operation

that was losing Eagle capital and exposing Eagle to significant risk and liability.

22. Upon information and belief, Follis demanded to use the resources of these one or more of the MTEs—including the time of contracted personnel on military bases working on legitimate, income-generating enterprises—to benefit his personal, failed fantasy sports operation.

23. When Softek and others objected to Follis's scheme for a variety of reasons, upon information and belief Follis retaliated, interfered with Softek's good faith endeavors to meet its contractual obligations, fabricated a false narrative that Softek had defrauded Modoc and the MTEs, and has now directed Plaintiffs to commence this litigation against Softek.

24. Upon information and belief, when Follis was unsatisfied with the improper use of an MTE's contracted personnel on a military base to develop software for his failed fantasy sports operation, he demanded Rusty Bohl travel several hours to the military base where these personnel were working and terminate them all personally. Rusty Bohl refused, which refusal enraged Follis.

25. Follis's acts and omissions as described above and as will be developed through discovery interfered with Softek's contractual agreements with Modoc and the profitable operation of the MTEs. Follis knew about Softek's contractual agreements. Follis's acts of interference were intentional, he employed improper or unfair means in furtherance of his interference, and as a result of Follis's tortious interference, Softek has suffered and is continuing to suffer damages.

26. On or about July 24, 2019, Softek was told, without warning, that they were to have no contact with anyone from Modoc, access the books for any of the MTEs,

and were constructively terminated from their management position with RCE and the MTEs.

27. As of July of 2019, Softek was owed at least \$3,153,761 in loan proceeds and fees. This amount continues to grow, exponentially, with each passing day that the MTEs Softek helped build into profitable enterprises remain profitable for Modoc.

**COUNTERCLAIMS**  
**(Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, Walga)**

**FIRST COUNTERCLAIM – BREACH OF CONTRACT**

28. Modoc and RCE entered into an agreement with Softek whereby Softek would create and manage at least four MTEs: Eagle, Buffalo, Modoc MTE, and Walga. In exchange, Softek would receive 49% of the profit from these MTEs. In furtherance of this agreement, Softek created and managed Eagle, Buffalo, Talon, Modoc MTE, Walga. As of July of 2019, however, Modoc and RCE have refused to compensate Softek with the 49% profit owed to them, damaging Softek in an amount to be determined at trial, but at least \$3,153,761 in loan proceeds and fees.

**SECOND COUNTERCLAIM – ACCOUNTING**

29. Modoc and RCE entered into an agreement with Softek whereby Softek would create and manage at least four MTEs: Eagle, Buffalo, Modoc MTE, and Walga. In exchange, Softek would receive 49% of the profit from these MTEs. In furtherance of this agreement, Softek created and managed Eagle, Buffalo, Modoc MTE, and Walga. As of July of 2019, however, Modoc and RCE have refused to compensate Softek with the 49% profit and loan proceeds owed to Softek, and refuse to allow Softek to access the books of Modoc, RCE, and the MTEs. Hundreds of thousands of dollars, at least, belonging to the Softek are in the unlawful possession of Modoc, RCE, and their MTEs,

and Softek had no adequate remedy at law to account for these funds. Softek is entitled to an accounting to determine precisely how much profit and loan proceeds is owed.

#### **THIRD COUNTERCLAIM – CIVIL CONSPIRACY**

30. Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, Walga, and Follis have agreed to and have acted in a concerted action to push Softek out of its role with the MTEs so that they could keep all MTE profits to themselves. As a result of this concerted act, Softek has been deprived of outstanding loan proceeds, the 49% profit owed to them, their management role with RCE and the MTEs and compensation for the same, damaging Softek in an amount to be determined at trial, but at least \$3,153,761.

#### **FOURTH COUNTERCLAIM – CONVERSION**

31. Softek has been deprived of loan proceeds owed to them, 49% profit owed to them, and their management role with RCE and the MTEs and compensation for the same. Softek has right to possession of this property. Defendants Modoc and RCE have committed a distinct, intentional, and unauthorized act of dominion over Softek's property—at least over \$3,153,761 in profit and loan proceeds owed, continued rights to profit, and shares in RCE. Softek did not consent to Modoc and RCE's intentional and unauthorized possession of its property and Softek has suffered harm as a result.

#### **FIFTH COUNTERCLAIM – NEGLIGENT ENTRUSTMENT**

32. Modoc and RCE, directly or through a third person, permitted Follis to manage the MTEs in a manner that: (1) they knew or had reason to know was likely to create unreasonable risk to Softek; and (2) violated agreements between Softek, Modoc, RCE, and the MTEs. As a result of this entrustment, Softek has been damaged in that (1) profits from the MTEs—which Softek is entitled to 49% of—have been declining and are

in decline; (2) Softek has been pushed out of their management role with the MTEs and RCE; and (3) Softek, as owners of the MTEs, has had at least \$3,153,761 of fees and loan proceeds withheld without justification.

#### **SEVENTH COUNTERCLAIM – PROMISSORY ESTOPPEL**

33. Modoc and RCE promised to pay Softek loan proceeds and 49% of all MTE profit. Modoc and RCE knew and/or should reasonably have expected that this promise would induce action or forbearance by Softek. Softek did, in fact, reasonably rely on the promise, to Softek's detriment. Modoc and the RCEs' promises must be enforced to prevent injustice.

#### **EIGHTH COUNTERCLAIM – UNJUST ENRICHMENT**

34. Modoc and RCE have received, and are currently receiving, benefits in MTE profits and investment funds provided by Softek. These benefits—including at least \$3,153,761 of fees and loan proceeds withheld without justification—are being enjoyed by Modoc and RCE at Softek's expense and are being received under circumstances that would make it unjust for Modoc and RCE to retain without commensurate compensation to Softek.

### **THIRD-PARTY CLAIMS (Follis)**

#### **FIRST CLAIM – CIVIL CONSPIRACY**

35. Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, Walga, and Follis have agreed to and have acted in a concerted action to push Softek out of its role with the MTEs, so that they could keep all MTE profits to themselves. As a result of this concerted act, Softek has been deprived of outstanding loan proceeds, the 49% profit owed to them, their management role with RCE and the MTEs—damaging Softek in an



amount to be determined at trial, but at least \$3,153,761.

**SECOND CLAIM – INTENTIONAL INTERFERENCE WITH A CONTRACTUAL  
RELATIONSHIP**

36. Contracts existed between Softek, Modoc, RCE, and the MTEs, and Follis was well aware of this fact. Follis engaged in conduct that prevented or hindered performance of these contracts on the part of Softek, Modoc, RCE, and the MTEs—a result that Follis intended and knew was likely. As a result of Follis’ interference in Softek’s contractual relations, Softek has been deprived of outstanding loan proceeds, the 49% profit owed to them, and its management role with RCE and the MTEs, damaging Softek in an amount to be determined at trial, but at least \$3,153,761.

**THIRD CLAIM – CONVERSION**

37. Softek has been deprived of loan proceeds owed to them, 49% profit owed to them, and their management role with RCE and the MTEs and compensation for the same. Softek has right to possession of this property. Follis has committed a distinct, intentional, and unauthorized act of dominion over Softek’s property—at least over \$3,153,761 in profit and loan proceeds owed, continued rights to profit, and shares in RCE. Softek did not consent to Follis’s intentional and unauthorized possession of its property and Softek has suffered harm as a result.

**FOURTH CLAIM – NEGLIGENCE**

38. Follis, a Missouri lawyer, managed the MTEs in a manner that: (1) created unreasonable risk to Softek; and (2) violated an agreement between Softek, Modoc, RCE, and the MTEs. As a professional attorney, Follis had a duty to use his best judgment and apply with ordinary care and diligence the knowledge and skill that is possessed and used by other attorneys in good standing engaged in the same special field of practice at that

time. As a result of Follis' failure to manage the MTEs in a reasonable manner, Softek has been damaged in that (1) profits from the MTEs—which Softek is entitled to 49% of—have been declining and are in decline; (2) Softek has been pushed out of their management role with the MTEs and RCE; and (3) Softek had at least \$3,153,761 of fees and loan proceeds withheld.

#### **FIFTH CLAIM – UNJUST ENRICHMENT**

39. Follis has received, and is currently receiving, benefits in MTE profits and investment funds provided by Softek. These benefits—including at least \$3,153,761 of fees and loan proceeds withheld without justification—are being enjoyed Follis at Softek's expense and are being received under circumstances that would make it unjust for Blake Follis to retain without commensurate compensation to Softek.

#### **SIXTH CLAIM – TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

40. Softek had a reasonable expectation of future profits from its business dealings with Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, and Walga. And Follis was well aware of this fact. In order to funnel these future profits to himself and his associates, Follis engaged in conduct that prevented or hindered Softek's realization of expected future profits—a result that Follis intended and knew was likely. As a result of Follis' interference in Softek's business dealings with Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, and Walga, Softek has been deprived of all reasonably expected future profits.

#### **PRAYER**

Wherefore, Rajesh Shah, Sharad Dadbhawala, Softek Management Services, LLC, Softek Federal Services, LLC, and Softek Solutions, Inc., respectfully pray that the

Court enter judgment:

- (a) Fashioning an appropriate remedy and awarding general, special, and punitive damages in an amount to be proven at trial;
- (b) Awarding reasonable attorneys' fees and costs;
- (c) Declaring Modoc, RCE, Eagle, Buffalo, Talon, Modoc MTE, Walga, and Follis jointly and severally liable;
- (d) Awarding any and all applicable interest on the judgment; and
- (e) Awarding such other and further relief as the Court deems just and proper.

Dated: December 24, 2019.

Respectfully submitted,

s/ Gabriel S. Galanda

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s/ D. Michael McBride III

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 24, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/ Wendy Foster  
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