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**IN THE TE-MOAK TRIBE OF WESTERN SHOSHONE
COURT OF INDIAN OFFENSES, ELKO, NEVADA**

SUSAN ZAZUETA; GINA MORROW;
ALICE TYBO; TANYA REYNOLDS;
DALLAS SMALES; BRANDON
REYNOLDS; HARLEY REYNOLDS;
CHERYL MOSE-TEMOKE; ANGELA VAN
DORN; DONNA HILL; CLARINDA
GUZMAN; LYLE SAM; RAYMOND
GONZALEZ; LILLIAN THOMAS; FRANK
LEVYA; FELAND JIM; DONNA HILL;
DALLAS SMALES; and MARLENE
CORTEZ,

Plaintiffs,

v.

STEVEN MCDADE; JOAN WHITNEY;
ZELDA JOHNNY; DANENA IKE; EDITH
SMARTT; BENNIS TINHORN; RHONDA
HICKS; LEAH BRADY; and GAILA
MONTOKA,

Defendants,

TE-MOAK TRIBE OF WESTERN
SHOSHONE INDIANS OF NEVADA and four
constituent bands – BATTLE MOUNTAIN
BAND, ELKO BAND, SOUTH FORK BAND,
AND WELLS BAND,

**DEFENDANTS' MOTION TO
RECONSIDER AND OBJECTION TO
ORDER GRANTING PLAINTIFFS'
REQUEST FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CASE NO.: CIV-24-WR11
Consolidated with CIV-24-WR12

Judge Albert Ghezzi

Counterclaimants,

v.

JOSEPH HOLLEY, ALICE TYBO, DUANE GARCIA SR., ANDREA WOODS, LARRY YAEGER, PAULA GARCIA, JULIUS HOLLEY, DAVIS GONZALEZ, THALIA MARIN, SUSAN ZAZUETA, DONNA HILL, RAYMOND GONZALEZ, FRANK LEYVA, DOYLE TYBO, DERRICK TYBO, CLARINDA GUZMAN, VYONNE WINAP, JENNY KOERBER, SHAWNI HICKS, RONNIE WOODS, HARLEY REYNOLDS, DALLAS SMALES, BRANDON REYNOLDS, TYLER REYNOLDS, AMBER PEAZEY, RAQUEL YEPEZ, AURORA ABOITE, CHARLOTTE HEALEY, JOSE SALAZAR, WENDELL HAYES, and JOHN DOES 1-10 (all as separate individuals) ; and ROE ENTITIES 1-10.

Counterclaim Defendants,

COMES NOW, Defendants/Counterclaimants (hereinafter “Defendants”), the duly elected and federally recognized Te-Moak Tribe of Western Shoshone Indians of Nevada (“Te-Moak Tribe”) Tribal Council (“Tribal Council”) and its four duly elected and recognized constituent bands – Battle Mountain Band, Elko Band, South Fork Band and Wells Band (“Bands”), by and through legal counsel, Paul Tsosie and Kari James from Tsosie Law PLLC, hereby respectfully objects to *Order Granting Plaintiffs’ Request for Declaratory and Injunctive Relief* (hereinafter “Final Order”) issued by Judge Ghezzi on August 14, 2025. The Defendants respectfully request that this Court either: (1) Reconsider its Final Order; and/or (2) Vacate, rescind, quash, amend, or otherwise modify the Final Order consistent with the arguments below:

FACTS

1. The Te-Moak Tribe is comprised of four constituent Bands: Elko Band, South Fork Band, Battle Mountain Band, and Wells Band.

2. The tribal government is designed as a confederation, governed by the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, which includes a Tribal Council and four individual Band Councils.

3. This action centers around a long-standing dispute between two groups known as the Holley Faction and the duly elected Garcia/Ike Council arising from the 2021 Te-Moak Tribal elections.

4. Beginning in 2021, the Te-Moak Tribe became fractured by two groups purporting to represent themselves as the Te-Moak Tribal Council. Both groups filed challenges against the other in court and with Bureau of Indian Affairs (“BIA”) leadership. Each group attempted to set up a Te-Moak Tribal Court or use a BIA Court of Indian Offenses. There was substantial litigation filed both with the BIA and with the respective courts regarding which group had the properly seated Band Councils and Te-Moak Tribal Council.

5. On October 17, 2023, the Regional Director for the Western Region of the Bureau of Indian Affairs (“Regional Director”) issued an Interim Governmental Recognition Decision Letter wherein she identified and recognized the composition of the four respective Band Councils elected in October 2021 and February 2022. The Regional Director recognized Danena Ike to act for a period of ninety (90) days, or until a Tribal Chair was elected, as the “interim Te-Moak Tribal representative” authorized solely “to execute contracts and agreements with the federal government on behalf of the Te-Moak Tribe.”

1 6. On June 20, 2024, the Director the Bureau of Indian Affairs (“BIA Director”) issued
2 a Decision upholding the Regional Director’s identification of validly elected Band Councils, but
3 vacating the Regional Director’s recognized interim governmental representative for the Tribe.
4 The Director recognized the “Garcia-Ike Council” as the interim governmental representative for
5 the Tribe for purposes of “conducting business with the federal government for preparing for the
6 next election cycle.”

7
8 7. On November 27, 2024, the Assistant Secretary of Indian Affairs (“AS-IA”)
9 stepped in to resolve the leadership dispute. The AS-IA exercised his legal authority to determine
10 that the Garcia/Ike Council conducted a proper election in October 2021, which resulted in validly
11 seated Band Councils and Tribal Council. The AS-IA recognized the Garcia/Ike Council as the
12 government of Tribe “for purposes of conducting business with the federal government and for
13 preparing for the next election cycle . . . effective immediately.”

14
15 8. The Garcia/Ike Council prepared for the 2024 Te-Moak Election cycle pursuant to
16 the AS-IA’s recognition as the duly elected tribal government. The Garcia/Ike Council held Band
17 Elections on October 12, 2024, and Tribal Chairperson Elections on November 2, 2024, which
18 resulted in the election of the Smartt/Tinhorn Council. However, the Holley Faction was not
19 deterred by the AS-IA’s decision. The Holley Faction continued their pursuit to assert control over
20 the Te-Moak Tribe by conducting an illegal Band Council election on October 8, 2024, and an
21 illegal Te-Moak Tribal Council election on October 29, 2024.

22
23 9. The Holley Faction brought suit to dispute the validity of the Garcia/Ike Tribal
24 Council elections held in 2024.

25
26 10. On December 5, 2024, the individually-named Plaintiffs filed a Complaint, CV-
27 24-WR11, with the Court seeking declaratory and injunctive relief from the 2024 Band Council
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1 elections and 2024 Tribal Chairperson elections for the Te-Moak Tribe of Western Shoshone
2 Indians of Nevada. On December 9, 2024, the Holley Faction Battle Mountain Band (“BMB”)
3 Plaintiffs filed another Complaint, CV-24-WR12, with the Court also seeking declaratory and
4 injunctive relief.
5

6 11. On December 9, 2024, the Holley Faction BMB motioned for preliminary
7 injunctive relief to enjoin the Smartt-Tinhorn Council from acting as the duly elected Tribal
8 Council.
9

10 12. On January 3, 2025, the Plaintiffs motioned to consolidate CV-24-WR11 and CV-
11 24-WR12, which this Court granted.

12 13. On February 1, 2025, the Holley Faction’s Te-Moak Housing Authority
13 (hereinafter “Holley Faction TMHA”) moved to intervene as petitioners, which this Court
14 granted.
15

16 14. On May 5, 2025, all Plaintiffs motioned for leave to amend their complaint to
17 focus solely on the Garcia/Ike Council’s election and ignore their own illegal elections, which
18 this Court granted.

19 15. On May 12, 2025, the consolidated Plaintiffs filed a joint request for evidentiary
20 hearing on motion for preliminary injunction and proposed discovery case plan, which requested
21 expedited case plan for discovery. On May 16, 2025, the Defendants filed a response to the
22 Plaintiff’s request for evidentiary hearing and proposed discovery case plan by requesting that
23 this Court not deviate from the deadlines in the Federal Rules of Civil Procedure and Local Rules.
24 The Court responded by ordering the evidentiary hearing on the preliminary injunction but made
25 no orders on the proposed discovery case plan.
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1 16. The Court held evidentiary hearings on July 2, 2025, July 3, 2025, July 11, 2025,
2 and July 23, 2025, without the parties having engaged in discovery.

3 17. The parties stipulated to admit the following into evidence:

- 4 a. October 2023 BIA RD Decision;
- 5 b. June/July 2024 BIA Director Decision;
- 6 c. November 2024 AS-IA Decision;
- 7 d. Te-Moak Constitution; and
- 8 e. Te-Moak Election Ordinance.

9 18. During the July 2, 2025, hearing, the Court recognized that Defendant, Zelda
10 Johnny, Te-Moak Housing Authority Executive Director and Election Board Officer, was not
11 served by the Plaintiffs and ordered that no action would be taken against her. The Court
12 acknowledged it had no jurisdiction over Zelda Johnny.

13 19. During the July 23, 2025, hearing, the Court found a “substantial part of evidence”
14 was offered during the evidentiary hearings and *sua sponte* ordered an advancement and
15 consolidation of trial on the merits. Prior to the Court’s announcement of advancing trial, the
16 Defendants decided to rest their case and present no further evidence.

17 20. The Defendants objected to the court advancing trial and rested their case. The
18 Petitioners announced that they will not offer testimony or evidence in rebuttal.

19 21. The Court issued a written order from the hearing on July 23, 2025, which ordered
20 an advancement of trial on the merits in part.

21 22. On August 11, 2025, the Defendants filed a written objection to the July 23,
22 2025, Order to memorialize their objection for appeal.

1 23. On August 14, 2025, the Court entered the *Order Granting Plaintiffs' Request*
2 *for Declaratory and Injunctive Relief* (hereinafter "Final Order"), which this court issued the
3 following orders:
4

5 a. New Band Council elections and a new Tribal Chairperson election shall
6 be conducted within approximately sixty (60) days. *Final Order*, p. 37, ¶1.

7 b. The new elections shall be the regular elections **relating back** to the
8 October 2024 election cycle with the terms of office lasting until the next regularly
9 scheduled elections in October 2027. *Id.* at p. 38, ¶2 (emphasis added).
10

11 c. Pending the final results of the new elections, the Band Councils
12 recognized by the Regional Director's October 17, 2023 Decision Letter remain
13 empowered to act as the Band Councils of their respective Bands. *Id.* at p. 38, ¶3.

14 d. The South Fork, Wells and Battle Mountain Bands of the Te-Moak Tribe,
15 by and through the Band Election Committees recognized as valid herein at pages 10-11,
16 paragraphs 20, 22 and 24, respectively, shall conduct new Band Council elections as
17 ordered herein. *Id.* at p. 38, ¶4.
18

19 e. The Elko Band of the Te-Moak Tribe, by and through the Band Election
20 Committee, as appointed prior to the 2024 election cycle by the Elko Band Council as
21 recognized by the Regional Director's October 17, 2023 Decision Letter, shall conduct a
22 new Band Council election as ordered herein. *Id.* at p. 38, ¶5.
23

24 f. Within fourteen (14) days of the Court's entry of this Order, the Band
25 Councils as recognized in the Regional Director's October 17, 2023 Decision Letter, shall
26 appoint their representatives to the Tribal Council to function pending the results of the
27 new elections. *Id.* at p. 38, ¶7.
28

1 g. Within fourteen (14) days of the establishment of the provisional Tribal
2 Council, such Council shall appoint one member of the Council to serve as the temporary
3 interim Tribal Chairperson pending the results of the new election. *Id.* at p. 38, ¶8.

4 h. Pending the final results of the new elections, Band and Tribal staff and
5 employees and Board members of the Te-Moak Housing Authority pre-October 12, 2024
6 shall be reinstated and/or continue to function in their prior positions. *Id.* at p. 39, ¶13.

7 i. Defendants/Counterclaimants and any individuals elected on October 12,
8 2024 as members of the constituent Band Councils of the Te-Moak Tribe or subsequently
9 appointed to the Tribal Council of the Te-Moak Tribe by said Band Councils or thereafter
10 elected Tribal Chairperson or Tribal Vice-Chairperson are enjoined from exercising the
11 duties, responsibilities and authorities of those offices and from taking any further action
12 based upon, or in reliance upon, the results of the October 12, 2024 and November 2,
13 2024 elections. *Id.* at p. 39, ¶14.

14 j. Defendants/Counterclaimants and any individuals elected on October 12,
15 2024 as members of the constituent Band Councils of the Te-Moak Tribe or subsequently
16 appointed to the Tribal Council of the Te-Moak Tribe by said Band Councils or thereafter
17 elected Tribal Chairperson or Tribal Vice-Chairperson, and any persons currently
18 employed by or for a Band or the Tribe or by or for the Te-Moak Housing Authority by
19 said individuals or governmental bodies, are enjoined from removing any Band or Tribal
20 property, of any type or kind, from Band or Tribal administration buildings and premises
21 or from the premises of any usual or common location of keeping or storing Band or
22 Tribal property, of any type or kind. *Id.* at p. 40, ¶15.

1 k. Defendants/Counterclaimants and any individuals elected on October 12,
2 2024 as members of the four Band Councils of the Te-Moak Tribe or subsequently
3 appointed to the Tribal Council of the Te-Moak Tribe by said Band Councils or thereafter
4 on November 2, 2024 elected Tribal Chairperson or Tribal Vice-Chairperson, and any
5 persons currently employed by or for a Band or the Tribe or by or for the Te-Moak
6 Housing Authority by said individuals or governmental bodies, are ordered to return all
7 Band or Tribal property, of any type or kind, in their possession or control, to its usual or
8 common location of keeping or storing Band or Tribal property, of any type or kind, to
9 its usual place of keeping or storage, whether that be Band or Tribal administration
10 buildings and premises or other Band or Tribal premises. *Id.* at p. 40, ¶16.

13 l. Defendants/Counterclaimants and any individuals elected on October 12,
14 2024 as members of the four Band Councils of the Te-Moak Tribe or subsequently
15 appointed to the Tribal Council of the Te-Moak Tribe by said Band Councils or thereafter
16 on November 2, 2024, elected Tribal Chairperson or Tribal Vice-Chairperson, and any
17 persons currently employed by or for a Band or the Tribe or by or for the Te-Moak
18 Housing Authority by said individuals or governmental bodies, shall have until August
19 17, 2025 at 5:00 p.m. to vacate their workplace premises of the Band or Tribe and to
20 remove all their personal property and items. In the event any person to whom this
21 provision applies is unable to remove their personal property and items by the designated
22 date and time, reasonable accommodation for retrieval or delivery of personal property
23 of any such person shall thereafter be made by the Band Councils recognized by the
24 Regional Director's October 17, 2023 Decision Letter. *Id.* at pp. 40-41, ¶17.

m. The Band Councils recognized by the Regional Director's October 17, 2023 Decision Letter and found to have continuing power to act as the Band Councils of their respective Bands may utilize and assert control over the premises of Band administrative, governmental and service buildings, facilities and equipment commencing on August 18, 2025 at 8:00 a.m., in the performance of the duties of their respective offices. *Id.* at p. 41, ¶18.

ARGUMENT

The Defendants argue that this Court's orders are unjust for the following reasons: (1) the Final Order ignores the fact that the BIA and the AS-IA recognized the Garcia/Ike Council as the government of Tribe, (2) the Court imposes orders on individuals that are not parties to this action, (3) the Court imposes judgment against Defendant, Zelda Johnny, without due process, (4) removal of the Smartt/Tinhorn Council disrupts the Tribe's ability to self-govern, and (5) in the alternative, the Final Order should relate back to the Garcia/Ike Council.

1. The Final Order ignores the fact that the BIA and the AS-IA recognized the Garcia/Ike Council as the government of Tribe.

First, this Court blatantly ignores the fact that both the BIA and the AS-IA recognized the Garcia/Ike Council as the government of Tribe “for purposes of conducting business with the federal government and for preparing for the next election cycle . . . effective immediately.” This fact is not contested by any party in this litigation. Both parties stipulated to enter the June/July 2024 BIA Director Decision and November 2024 AS-IA Decision into evidence. The Court accepted the BIA Director Decision and AS-IA Decision into evidence. As a result, this Court must recognize the AS-IA’s decision to recognize the Garcia/Ike Council as the government of

1 Tribe “for purposes of conducting business with the federal government and for preparing for the
2 next election cycle . . . effective immediately” as an undisputed fact.

3 The Defendants recognize that the Plaintiffs are engaged in ongoing appeal of the AS-IA
4 decision in the Nevada federal district court. However, the fact that the AS-IA decision is being
5 appealed does not make it invalid. The decision is still valid and operative. It has not been struck
6 down by the Nevada federal district court. As such, the Defendants requests that this court amend
7 its Final Order to include the undisputed fact that the AS-IA Decision is evidence and find that the
8 AS-IA recognized the Garcia/Ike Council as the government of Tribe “for purposes of conducting
9 business with the federal government and for preparing for the next election cycle . . . effective
10 immediately.”

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12
13 2. The Court imposes orders on individuals that are not parties to this action.

14 The Court seriously erred in depriving current tribal employees from their positions and
15 duties without having jurisdiction over them and without due process. In the Final Order, the Court
16 issued the following:

17
18 15. [A]ny persons currently employed by or for a Band or the Tribe or by or for the
19 Te-Moak Housing Authority by said individuals or governmental bodies, are
20 enjoined from removing any Band or Tribal property, of any type or kind, from
21 Band or Tribal administration buildings and premises or from the premises of any
usual or common location of keeping or storing Band or Tribal property, of any
type or kind.

22 16. [A]ny persons currently employed by or for a Band or the Tribe or by or for the
23 Te-Moak Housing Authority by said individuals or governmental bodies, are
24 ordered to return all Band or Tribal property, of any type or kind, in their possession
25 or control, to its usual or common location of keeping or storing Band or Tribal
property, of any type or kind, to its usual place of keeping or storage, whether that
be Band or Tribal administration buildings and premises or other Band or Tribal
premises.

26 17. [A]ny persons currently employed by or for a Band or the Tribe or by or for the
27 Te-Moak Housing Authority by said individuals or governmental bodies, shall have
28 until August 17, 2025 at 5:00 p.m. to vacate their workplace premises of the Band
or Tribe and to remove all their personal property and items. In the event any person

1 to whom this provision applies is unable to remove their personal property and
2 items by the designated date and time, reasonable accommodation for retrieval or
3 delivery of personal property of any such person shall thereafter be made by the
4 Band Councils recognized by the Regional Director's October 17, 2023 Decision
5 Letter.

6 *Final Order*, p. 40-41, ¶¶15-17. The Court essentially deprives all people currently
7 employed by or for a Band or the Tribe or by or for the Te-Moak Housing Authority from removing
8 any Band or Tribal property. In addition, the Court orders these individuals to return any Band or
9 Tribal property. Finally, the Court orders all persons currently employed by or for a Band or the
10 Tribe or by or for the Te-Moak Housing Authority to vacate their workplace premises, removal all
11 personal property and items. The Court cannot order individuals that are not parties to this action
12 to be effectively terminated from their employment. These individuals are being deprived of their
13 employment without the Court having jurisdiction over them and without due process. They are
14 not parties to this action. Therefore, the Court cannot order all people currently employed by or
15 for a Band or the Tribe or by or for the Te-Moak Housing Authority to do anything without
16 asserting proper jurisdiction over them and by giving them due process first.

17
18 3. The Court imposes judgment against Defendant, Zelda Johnny, without due process.

19 The Court entered judgment against Zelda Johnny for her role as the Election Board
20 Officer and the Te-Moak Housing Authority. The Final Order made findings against the actions
21 of the Garcia/Ike Election Board for which Ms. Johnny was an officer. During the hearing on July
22 2, 2025, this Court recognized that Ms. Johnny was not served by the Plaintiffs, that the Court did
23 not have proper jurisdiction over her, and ordered that no action be taken against her. However,
24 this Court imposed judgment against her. Ms. Johnny is currently employed as the Executive
25 Director of the Te-Moak Housing Authority. As argued above, this Court has essentially
26 terminated Ms. Johnny from her current employment as the Executive Director of the Te-Moak
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1 Housing Authority. Thus, this Court has deprived Ms. Johnny from her constitutional right to due
2 process and acted against her by terminating her current employment with the Tribe.

3 4. Removal of the Smartt/Tinhorn Council disrupts the Tribe's ability to self-govern.

5 The Court seriously erred in depriving current Smartt-Tinhorn Council from acting
6 pursuant to its lawful authority as the duly elected and federally recognized Te-Moak Tribe of
7 Western Shoshone Indians of Nevada. The removal of the Smartt/Tinhorn Council has severe
8 implications on the Te-Moak Tribe's ability to self-govern. The Smartt/Tinhorn Council is making
9 tremendous progress in remedying the damage the Plaintiffs have done to the Tribe. The Te-Moak
10 Housing Authority is finally able to gain funding by securing grants and gaining reimbursements.
11 However, the Plaintiffs are still funneling tribal funds for attorneys in non-compliance with federal
12 regulations. Additionally, this Court's Final Order will reverse any and all land assignments and
13 housing placements that the Smart/Tinhorn Council have approved for tribal members. Employees
14 are in jeopardy of losing their employment. Pending grants are in jeopardy of being cancelled
15 and/or halted because of this court's orders. The tribe simply cannot afford to lose the
16 Smartt/Tinhorn Council at this time. The Court's order throws the entire tribe into disarray. Thus,
17 this Court's order directly impacts the tribe's ability to self-govern.

18 19 20 5. In the alternative, the Final Order should relate back to the Garcia/Ike Council.

21 In the event this Court decides not to vacate, rescind, quash, amend, or otherwise modify
22 its Final Order enjoining the Smartt/Tinhorn Council from acting as to the duly elected and
23 federally recognized Te-Moak Tribe of Western Shoshone Indians of Nevada, then this Court
24 should relate the order back to the Garcia/Ike Council. This Court ordered that "New Band Council
25 elections and a new Tribal Chairperson election shall be conducted within approximately sixty
26 (60) days." *Final Order*, p. 37, ¶1. In addition, these "[n]ew elections shall be the regular elections
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1 **relating back** to the October 2024 election cycle with the terms of office lasting until the next
2 regularly scheduled elections in October 2027.” *Id.* at p. 38, ¶2.

3 The concept of relation back is deprived from the Federal Rules of Civil Procedure 15(c).
4 This rule allows parties to essentially backdate their amended pleadings to the date of the original
5 pleading. The Court is taking the concept of relation back and applying it to the 2024 Band Council
6 and Tribal Council elections. However, the court erred when ordering a provisional Tribal Council
7 to be appointed by the Band Councils, recognized by the BIA Director, pending the results of the
8 new elections. If the Court is going to relate back to the October 2024 election cycle, then this
9 Court must recognize the Garcia/Ike Council to conduct the election. This action is consistent with
10 the BIA Director Decision and AS-IA Decision, who both recognized the Garcia/Ike Council as
11 the government of Tribe “for purposes of conducting business with the federal government and for
12 preparing for the next election cycle . . . effective immediately.”

13 For the Court to order an entire new council to act as a provisional Tribal Council is highly
14 inappropriate. Nothing in the Te-Moak Tribal Constitution grants this Court the power to order a
15 new provisional Tribal Council. The Garcia/Ike Council was the last federally recognized Tribal
16 Council. The only way the Te-Moak Tribal Constitution allows for removal of the Tribal Council
17 is by (1) Removal by the Tribal Council, (2) Removal by a Band Council, (3) Recall of Band
18 Representative to the Tribal Council, and/or (4) Recall of Tribal Chairperson. TE-MOAK TRIBAL
19 CONSTITUTION, Art. IV, §§ 7-8. The Court is not vested with unilateral power to remove a Tribal
20 Council. Therefore, the Final Order should relate back to the Garcia/Ike Council.

1 **CONCLUSION**

2 For the reasons stated above, the Defendants respectfully request that this Court either (1)
3 Reconsider its Final Order; and/or (2) Vacate, rescind, quash, amend, or otherwise modify the
4 Final Order.
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6 DATED this 28th day of August, 2025.

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8 /s/ Paul Tsosie
Paul Tsosie, Tsosie Law PLLC

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10 /s/ Kari James
Kari James, Tsosie Law PLLC
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