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**IN THE COURT OF INDIAN OFFENSES
FOR THE WESTERN REGION
ELKO, NEVADA**

ALICE TYBO, et al.,

Plaintiffs,

v.

STEVEN MCDADE, et al.,

Appellants,

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

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,

**NOTICE OF APPEAL AND REQUEST
FOR IMMEDIATE STAY**

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

Judge Albert Ghezzi

1 RONNIE WOODS, HARLEY REYNOLDS,
2 DALLAS SMALES, BRANDON
3 REYNOLDS, TYLER REYNOLDS, AMBER
4 PEAZEY, RAQUEL YEPEZ, AURORA
5 ABOITE, CHARLOTTE HEALEY, JOSE
6 SALAZAR, WENDELL HAYES, and JOHN
7 DOES 1-10 (all as separate individuals) ; and
8 ROE ENTITIES 1-10.

9 Counterclaim Defendants,

10 HOUSING AUTHORITY OF THE TE-
11 MOAK TRIBE OF WESTERN SHOSHONE
12 INDIANS OF NEVADA

13 Intervenor Plaintiff.

14 And All Related Matters.

15 COMES NOW, Defendants/Counterclaimants, hereinafter Appellants, the duly elected
16 and federally recognized Te-Moak Tribe of Western Shoshone Indians of Nevada (“Te-Moak
17 Tribe”) Tribal Council (“Tribal Council,” also known as the “Garcia Council” or “Ike Council”)
18 and its four duly elected and recognized constituent bands – Battle Mountain Band, Elko Band,
19 South Fork Band and Wells Band (“Bands”), by and through legal counsel, Paul Tsosie and Kari
20 James from Tsosie Law PLLC, hereby submits the following:

- 21
22 1. A Notice of Appeal for Case No. CIV-24-WR11 (Consolidated with CIV-24-WR12).

23 This Notice of Appeal is submitted pursuant to Te-Moak Shoshone Tribal Ordinance
24 §§1-3-21-25, and/or 25 C.F.R. §11.801.
25

- 26 2. A Demand for Immediate Stay of the trial court’s order pursuant to the Te-Moak
27 Tribal Code §1-3-27 which provides that “[i]n any case where an appeal is perfected
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1 in accordance with this section the....judgment of the trial court *shall be stayed*
2 pending the appeal.” (emphasis added).

3 NOTICE OF APPEAL ISSUES

4 The Appellants seek relief from all orders issued from the “*Order Granting Plaintiff’s*
5 *Request for Declaratory and Injunctive Relief*”, dated August 14, 2025, on the grounds that (1) the
6 order violates the Appellants’ right to due process, (2) advancement and consolidation of trial on
7 the merits was inappropriate, (3) the trial court judge abused his discretion, and (4) the trial court
8 never informed the parties of the applicable standard of proof for declaratory judgment. (Pursuant
9 to Te-Moak tribal law, the Plaintiffs will be referred to as the Respondents. Te-Moak Shoshone
10 Tribal Ordinance §1-3-25.)

11 The fundamental requisite of procedural due process includes the right to notice and the
12 opportunity to be heard before a neutral and fair decision maker. *See Mullane v. Cent. Hanover*
13 *Bank & Trust Co.*, 339 U.S. 306 (1950). The Court’s order to advance and consolidate the trial on
14 the merits of the preliminary injunction is unconstitutional. The Court provided no notice to the
15 Appellants of the application of Rule 65(a). The Court entered final judgment of this case without
16 the parties having engaged in discovery at all. In addition, Appellant, Zelda Johnny was never
17 served in this case, and judgment was entered against her as a member of the Election Board.

18 The Order violates the Appellants’/Counterclaimants’ right to due process to be heard
19 before a neutral and fair decision maker. On May 12, 2025, the Court held a status hearing to
20 address the Plaintiff’s motion for preliminary injunction and proposed discovery case plan. During
21 the hearing, the Court expressed bias towards conducting new elections as settlement. The Court
22 ordered the parties to engage in settlement discussions on holding new elections prior to the
23 evidentiary hearing and the final judgment. In fact, the Judge mentioned at least 4-5 times that he
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1 may order a new election. In other words, he was not acting as a fair and impartial magistrate as
2 he had his mind made up.

3 The parties were hauled into court for an evidentiary hearing which evolved into a trial on
4 the merits. Prior to the hearing, the Appellants/Counterclaimants were not given notice as to the
5 issues to be addressed at the evidentiary hearing. The trial court *sua sponte* argued for the
6 Respondents and incorporated the amended complaint to the original motion for preliminary
7 injunction and held that the hearing would focus on (1) whether the Garcia/Ike Council held an
8 “illegal” election, and (2) whether the Respondents have suffered irreparable harm.
9

10 The Court’s order to advance and consolidate the trial on the merits of the preliminary
11 injunction was inappropriate. If the court orders a consolidation of a trial on the merits with a
12 hearing on a motion for a preliminary injunction, then “the parties should normally receive clear
13 and unambiguous notice to that effect either before the hearing commences or at a time which will
14 still afford the parties a full opportunity to present their respective cases.” *Pughsley v. 3750 Lake*
15 *Shore Drive Cooperative Bldg.*, 463 F.2d 1055, 1057 (7th Cir. 1972). The Court gave no formal
16 notice that the trial court intended to consolidate the motion for a preliminary injunction with a
17 motion to dismiss on the merits prior to the hearing. The Court announced its decision when the
18 Appellants had concluded their case-in-chief. The Court did not provide clear and unambiguous
19 notice of the advancement of trial until the written order issued on July 23, 2025, after the hearings
20 on the preliminary injunction had already concluded.
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24 The trial court judge abused his discretion. The Court seriously deviated from the Federal
25 Rules of Civil Procedure. During the hearing on May 12, 2025, the court ordered the Appellants
26 to respond to the proposed discovery case plan within four (4) days. The judge granted the
27 Plaintiff’s request for leave to file their amended complaint to ignore their illegal elections and
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1 focus solely on the Garcia/Ike Council's election. The Court denied any testimony regarding the
2 Holley Faction's illegal elections, and no evidence was allowed to be entered regarding the Holley
3 Faction's illegal elections. However, the Court adopted findings of the Holley Faction's illegal
4 elections in the final judgment.
5

6 Finally, the trial court never informed the parties of the applicable standard of proof for
7 declaratory judgment. The court made no prior orders informing the parties of what case law would
8 apply for election challenges. The court made no prior orders of what the evidential standard of
9 proof for would be applied in the injunction nor the declaratory relief. As a result, the
10 Appellants/Counterclaimants were unable to adequately prepare our defense without proper notice.
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12 **AUTOMATIC STAY**

13 This case was heard by the Court of Indian Offenses for the Western Region, Elko Nevada
14 ("the Court"). The Court rendered an erroneous final decision on August 14, 2025, entitled "*Order*
15 *Granting Plaintiffs' Request for Declaratory and Injunctive Relief.*" Appellants
16 (Defendant/Counterclaimants) are now appealing this case. Pursuant to the applicable laws, and
17 based upon this Notice of Appeal, this Court should automatically stay these proceedings.
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19 Pursuant to 25 C.F.R. §11.108, the Te-Moak tribal appellate procedures apply.
20 Specifically, the Te-Moak Tribe passed Te-Moak Shoshone Tribal Ordinance §1-3-21 through
21 25, which governs appeals. First of all, the appeal must be taken within 30 days. §1-3-23. Secondly,
22 a filing fee of \$5.00 shall be paid to the Court Clerk. Id. Lastly, a bond is required "in an amount
23 sufficient to guarantee the satisfaction or performance of the judgment appealed from, together
24 with costs, interest damages, as the Court of appeals may award." §1-3-26. If these three steps are
25 taken, the appeal is perfected. "In any case where an appeal is perfected in accordance with this
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1 section the financial order, commitment, or judgement of the trial court *shall be stayed* pending
2 the appeal.” (emphasis added) §1-3-27.

3 In this case, the trial court issued the final order on August 14, 2025. This appeal is
4 submitted today, August 15, 2025. Only one day has lapsed since the final order. Appellants have
5 submitted this appeal timely.
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7 Secondly, the Appellants have a requirement of filing the \$5.00 Notice of Appeal fee.
8 However, Tsosie Law PLLC Legal Assistant Megen Gale has followed up with the Court of Indian
9 Offenses Court Clerk Jonelle Clytus who indicated that the filing fee of \$5.00 is waived as the
10 Bureau of Indian Affairs system will not accept such a small payment. Therefore, the \$5.00 filing
11 fee requirement is satisfied.
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13 Lastly, the Appellants respectfully request that the Court waive any bond requirements.
14 Te-Moak tribal law indicates a bond is required “in an amount sufficient to guarantee the
15 satisfaction or performance of the judgment appealed from, together with costs, interest damages,
16 as the Court of appeals may award.” §1-3-26. This case is not about money, costs, or interest
17 damages. Instead, this is a case regarding an election dispute. No bond is needed to guarantee the
18 satisfaction or performance of the judgment appealed from. Therefore, the Court should use its
19 discretion and waive any bond requirement. Furthermore, the Court should grant a waiver of the
20 bond requirement to be consistent with this Court’s waiver of the Respondents’ bond requirement
21 in their application for declaratory and injunctive relief in this case.
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24 Based upon the above arguments, this appeal is perfected and the execution of the August
25 14, 2025 judgment entitled “*Order Granting Plaintiffs’ Request for Declaratory and Injunctive*
26 *Relief*” should be immediately stayed.
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1 **CONCLUSION**

2 Based upon the foregoing arguments, the Appellants respectfully request that the Court of
3 Indian Offenses issue an automatic and immediate stay of all the proceedings pending the outcome
4 of this appeal.
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6
7 DATED this 15th day of August, 2025.
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9 /s/ Paul Tsosie
10 Paul Tsosie, Tsosie Law PLLC

11 /s/ Kari James
12 Kari James, Tsosie Law PLLC
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