

Exhibit A

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO
606 Quincy Street
Arlington, VA 22204

Plaintiff,

v.

NATIONAL CONGRESS OF AMERICAN
INDIANS
Embassy of Tribal Nations
1516 P Street NW
Washington, DC 20005

JOHN DOES 1-10 (*being the fictitious names of
persons who are not presently known to Plaintiff*),
ABC CORPORATION, DEF CORPORATION,
GHI CORPORATION (*being fictitious entities
who are not presently known to Plaintiff.*)

Defendants.

Civ. No. **2022 CA 002830 B**

COMPLAINT AND JURY DEMAND

Plaintiff Dante Desiderio for his Complaint against Defendant National Congress of American Indians (“Defendant” or “NCAI”), avers upon personal knowledge as to his own acts and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff under the D.C. Human Rights Act and the D.C. Wage Payment and Collection Law arising out of Plaintiff’s employment as the Chief Executive Officer of the NCAI.

2. Plaintiff’s claims arise out of NCAI’s actions in investigating a complaint of

sexual harassment made against the former General Counsel of NCAI on April 11, 2022. As CEO, Plaintiff hired a reputable law firm as outside counsel to conduct a thorough investigation of the claims. The law firm completed its preliminary investigation on May 23, 2022.

3. NCAI's Executive Committee was not pleased with the preliminary investigation, so it usurped Plaintiff's authority as CEO and hired a second law firm to conduct another investigation.

4. The Executive Committee's hiring of the second law firm, Quarles Brady, was also a complete waste, as there was no need for a second investigation. In addition, this second "investigation" exposed NCAI to additional liability because two separate investigations could lead to different outcomes.

5. Plaintiff opposed the actions of the Executive Committee in hiring a second law firm to conduct a purportedly "impartial" investigation when the firm had demonstrated its bias against the accused.

6. The Executive Committee ignored Plaintiff's opposition to the Executive Committee's second, sham investigation. NCAI through its Executive Committee also retaliated against Plaintiff for his opposition to its mishandling of the sexual harassment complaints by stripping him of his responsibilities and authority, making it impossible for him to fulfill his obligations as CEO.

7. At this same time, Plaintiff's decision to hire two non-Native Americans as employees also came under scrutiny, forcing Plaintiff to intervene and oppose the Executive Committee's race-based criticism of its employees.

8. Plaintiff opposed the termination of the two non-Native American employees. Plaintiff also advised the Executive Committee that NCAI was violating the law by failing to pay

Plaintiff his contractually agreed, annual five percent raise. As a result of Plaintiff's opposition to the unlawful practices of the NCAI through its Executive Committee, NCAI retaliated against Plaintiff by placing him on administrative leave and forced Plaintiff to miss the mid-year NCAI conference in Anchorage, Alaska, instructing Plaintiff to return to Washington, D.C. immediately.

9. The damage to Plaintiff's reputation both personally and professionally by the actions of NCAI is significant.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this claim pursuant to D.C. Code § 11-921(a)(6).

11. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code § 13-422 and D.C. Code § 13-423(a)(1)-(4).

12. The acts alleged in this Complaint primarily occurred in the District of Columbia and therefore venue is proper in this District.

PARTIES AND RELEVANT PERSONS

13. Plaintiff Dante Desiderio is an adult resident of the Commonwealth of Virginia. Plaintiff was hired by NCAI as its Executive Director / Chief Executive Officer on April 12, 2021. Plaintiff is employed by NCAI pursuant to an Employment Agreement, which carried a term of employment from May 11, 2021 to May 11, 2024. Plaintiff left a "respected, economically meaningful, and secure position with the Native American Finance Officers Association (NAFOA) in accepting the Executive Director position with NCAI."

14. Under the Employment Agreement, Plaintiff is entitled to 12 months of severance if he is terminated without cause. As CEO, Plaintiff is authorized to "carry out the normal financial, administrative, personal management functions (including, but not limited to, recruitment, screening, hiring onboarding, ongoing supervision, and discipline; legal matters; and

other business of NCAI and/or to protect the interests of NCAI.”

15. NCAI is a 501(c)(4) nonprofit organization headquartered in Washington, D.C. with its principal place of business at 1516 P Street NW, Washington, DC 20005. NCAI provides services to American Indian and Alaska Native People(s) throughout the United States to, *inter alia*: protect their tradition and culture; secure benefits and services for them; secure their rights under treaties and agreements; promote their common welfare; and to educate the public regarding Indian and Native governments, people and rights. NCAI owns the National Congress of the American Indians Fund—a 501(c)(3) trust governed by the laws of the District of Columbia.

FACTS COMMON TO ALL COUNTS

16. Upon taking over as CEO of NCAI, Plaintiff hired Max Muller as general counsel of NCAI and Pamela Fagan as director of operations. Muller and Fagan had previously worked with Plaintiff at the NAFOA, which focuses on growing and building tribal economies. Plaintiff valued Muller and Fagan’s work at the NAFOA and thought their respective education and experience would serve as major assets to NCAI.

17. On March 30, 2022, after interviewing with Muller, Fagan and Plaintiff, Jane Doe¹ was hired by NCAI. A little more than a week after she began working at NCAI, and during her first visit to the NCAI’s DC office, Doe complained to Plaintiff that Muller said something along the lines of “he [Muller] is looking forward to having a good professional relationship with her [Doe] and to being friends with benefits, if she was interested.” Doe stressed to Plaintiff that it was important to her that nothing happened to Muller. Doe also told Plaintiff that she was comfortable working with Muller.

¹ Plaintiff is using a pseudonym to refer to this individual as Jane Doe.

18. Nonetheless, Plaintiff told Doe that she should copy Plaintiff or Fagan on any correspondence between Doe and Muller. Plaintiff also told Doe that she did not have to include Muller in Zoom meetings or calls if Doe felt uncomfortable.

19. Plaintiff discussed Doe's complaint with Muller, who was very upset by the allegation and denied making any such statement to Doe. Muller told Plaintiff that he told Doe that he [Muller] was looking forward to having a good professional relationship and that he hoped that they [Muller and Sanders] could be friends as well.

20. In mid-April, Muller advised Plaintiff that Doe was texting Muller, but Muller was trying to politely not engage. Muller shared the messages with Plaintiff. By this time, Doe had reiterated her desire to Plaintiff that nothing happen to Muller and that she [Doe] just wanted to go back to the time before she told Plaintiff anything. Plaintiff told Doe that it was not possible to ignore her complaint.

21. Plaintiff decided to hire an outside law firm to conduct an investigation into Doe's complaint. Plaintiff hired O'Hagan Meyer, a reputable law firm with experience in workplace investigations. O'Hagan Meyer had done work for NCAI in the past and Plaintiff was happy with their work.

22. On or about May 19, 2022, Doe complained of sexual harassment stemming from Muller's comment directly to the Officers on the Executive Committee. The next day there was a regularly scheduled Committee meeting. At the meeting Plaintiff was informed that Doe had complained directly to the Executive Committee. Plaintiff informed the Executive Committee that he had been investigating the complaint, and he had hired O'Hagan Meyer to conduct an investigation.

23. The Executive Committee seemed rattled by Doe's complaint and repeatedly

questioned Plaintiff about his hiring of O'Hagan Meyer to conduct the investigation.

24. On May 23, 2022, O'Hagan Meyer completed its preliminary investigation into Doe's complaint and issued its preliminary report regarding Doe's complaint. The report was directed to NCAI President, Fawn Sharp, but she refused to review it. Plaintiff followed up and asked the Executive Committee to consider meeting directly with the lawyers from O'Hagan Meyer so that the Executive Committee would have a complete picture of the complaint, the investigation, and O'Hagan Meyer's findings. Sharp responded that she was not familiar with the law firm and was not "comfortable" with them. One Officer, the Secretary, Governor Lewis, responded to Plaintiff that he would like to meet with and hear from O'Hagan Meyer, but Sharp would not allow it.

25. Dissatisfied with the result of the preliminary investigation, NCAI's Executive Committee usurped Plaintiff's authority as CEO and hired a new law firm (Quarles & Brady) selected by the Executive Committee. Apparently, the Executive Committee led by NCAI President, Fawn Sharp, had pre-determined that the only result of the "investigation" could be the termination of the General Counsel, Muller.

26. Over the next few days, Plaintiff had discussions with NCAI's insurance company and its broker about the Doe's complaint. The insurance company was unhappy with the Executive Committee's handling of the matter, as it was clear that the Executive Committee was exposing itself to greater liability by (1) handling the investigation directly and (2) trying to put its thumb on the scale in favor of the complaining party. As NCAI was in a renewal period, the insurance company and the broker advised that neither would be doing business with NCAI moving forward.

27. On May 25, 2022, Plaintiff sent a memorandum to Sharp and Officers

complaining about the Executive Committee usurping Plaintiff's authority over personnel matters and workplace complaints. Plaintiff also complained about the law firm that was selected by the Executive Committee, as it was clear that the new law firm was biased against Muller and looking for a way to terminate his employment.

28. On May 27, 2022, Plaintiff sent another memorandum to the Executive Committee, advising that the original investigation into the accusations against Muller by O'Hagan were still underway. Plaintiff also advised that the Committee's actions – hiring a second law firm increased NCAI's legal exposure as two investigations by two different firms could result in two different outcomes, which would provide a basis for lawsuits against NCAI by both the accused (Muller) and the accuser (Doe). The dual investigations were also wasting NCAI's resources.

29. In the second memo, Plaintiff also repeated his concerns that the second firm hired by the Executive Committee, Quarles & Brady, was not conducting an impartial investigation, as the firm made comments during a call that Muller was in the wrong. The comments were overheard when the lawyers failed to mute their telephone during a call. Plaintiff advised the Committee that the comments should disqualify Quarles & Brady from conducting an investigation, as the investigation would not be independent or impartial.

30. Plaintiff further advised the Committee that NCAI should proceed with the original investigation by O'Hagan and, inter alia, terminate Quarles & Brady as the firm was incapable of conducting a fair, impartial investigation.

31. When Plaintiff complained that the Executive Committee did not have authority to oversee the investigation, as that authority clearly resided with Plaintiff, Plaintiff was told that he was somehow a "key witness" to the investigation because Plaintiff had received the

complaint of sexual harassment.

32. The Executive Committee ignored Plaintiff's opposition to the Executive Committee's second investigation, though it was clear that the investigation would not be fair to Muller. NCAI, through its Executive Committee, also retaliated against Plaintiff for his opposition to its mishandling of the sexual harassment complaints by stripping him of his responsibilities and authority in overseeing the investigation and handling personnel matters, making it impossible for him to fulfill his obligations as CEO.

33. During this time, Plaintiff came under criticism by the Executive Committee for his decision to hire Muller and Fagan in the first place, as neither are Native American. The Executive Committee stated to Plaintiff that "we need natives in these positions" and instructed Plaintiff "you need to get rid of them [Muller and Fagan]." Plaintiff protested against firing Muller and Fagan because they were non-Native American and explained their value to the organization. Plaintiff advised the Executive Committee that he would not discriminate against any potential employees or current employees because they were not Native American. But the Executive Committee continued to pressure Plaintiff, using this as an opportunity to get rid of two non-Native employees. In the case of Fagan, she was an employee who had nothing to do with the complaint by Doe. The Executive Committee was using Doe's complaint and its own biased investigation as pretext to discriminate against Muller and Fagan.

34. In fact, Plaintiff was told by NCAI President, Fawn Sharp, and a majority of the Officers to fire Muller and Fagan and replace them with Native Americans. Plaintiff opposed their terminations and refused to do so himself.

35. On May 31, 2022, Plaintiff received a directive from Sharp to fire O'Hagan Meyer.

36. On June 3, 2022, Sharp emailed Plaintiff and instructed him to notify Muller and Fagan that their contracts were “suspended” and would not be renewed. Plaintiff refused to do so and merely forwarded Sharp’s email to Muller and Fagan.

37. Plaintiff’s opposition to and refusal to discriminate against employees on the basis of their race was protected activity under the D.C. Human Rights Act.

38. NCAI’s Executive Committee almost immediately retaliated against Plaintiff for his refusal to violate the law.

39. At no time, was Plaintiff advised that Quarles & Brady was also investigating Plaintiff’s handling of the complaint. In fact, when Plaintiff was interviewed by Quarles & Brady as part of its “investigation,” Plaintiff was not provided with any Upjohn warnings at the outset of the interview. Accordingly, Plaintiff believed that Quarles & Brady was representing Plaintiff, as the CEO of NCAI, as well as NCAI.

40. Unbeknownst to Plaintiff, Quarles & Brady was also investigating Plaintiff.

41. Plaintiff first learned that he was the subject of Quarles & Brady’s investigation when Plaintiff’s lawyer wrote to the NCAI on June 8, 2022. In that letter, Plaintiff’s counsel advised NCAI of the Executive Committee’s misconduct which had created significant liability for NCAI; Plaintiff’s complaints and the retaliation he received as a result of those complaints; and his claim for non-payment of earned wages.

42. In response to Plaintiff’s counsel’s letter, Plaintiff was informed for the first time that the Executive Committee was forced to take over the investigation into the sexual harassment complaint against Max Muller because Plaintiff was also the subject of the investigation. This contradicts what Plaintiff was told by Quarles & Brady at the outset of its investigation.

43. The NCAI's 2022 Mid-Year Conference & Marketplace was the first in-person meeting since the Pandemic. It was held on June 10, 2022 in Anchorage, Alaska. As the CEO of NCAI, this was a major event for Plaintiff. He traveled to Anchorage from Washington, D.C. for the conference. After touching down in Alaska, Plaintiff received an email from Fawn Sharp, placing Plaintiff on paid-administrative leave, until the second investigation was completed.

44. Plaintiff was also directed to immediately return to Washington D.C. and to not participate or attend the conference. This retaliatory action humiliated and embarrassed Plaintiff and was done less than two days after the NCAI had received a letter from Plaintiff's lawyer.

45. Presumably, the results of the second, sham investigation will result in the preferred outcome sought by Fawn Sharp and NCAI's Executive Committee – the termination of Plaintiff for cause. This is all a ruse designed to circumvent Plaintiff's authority over personnel issues so NCAI could fire the two non-Native American employees (Muller and Fagan) hired by Plaintiff.

46. Indeed, following the retaliation against Plaintiff by forcing him to forgo his attendance at the Conference and return to Washington, D.C., the suspension of Plaintiff was leaked to Indianz.com, who wrote a story on June 10, 2022 with unnamed sources complaining about Plaintiff hiring “two non-Natives from NAFOA” with the unnamed source referred to as an “advocate” quoted as saying “How many amazing Native attorneys to we have in Indian Country and we can't get one to work at NCAI?” *See* <https://www.indianz.com/News/2022/06/10/national%E2%80%90congress%E2%80%90of%E2%80%90american%E2%80%90indians%E2%80%90heads%E2%80%90into%E2%80%90> (last accessed June 21, 2022).

COUNT I
RETALIATION UNDER D.C. HUMAN RIGHTS ACT

47. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

48. The D.C. Human Rights Act prohibits an employer from retaliating against an employee “for opposing an employment practice that is prohibited by the Act.”

49. Plaintiff engaged in protected activity by sending two memoranda to Defendant’s Executive Committee and the Officers of the organization advising that the law firm hired by the Executive Committee was not conducting a fair, and impartial investigation into Doe’s complaint. These memoranda were based on Plaintiff’s reasonable, good-faith belief that the NCAI’s Executive Committee was violating the D.C. Human Rights Act by having a biased law firm conduct a purportedly “impartial” investigation into claims of sexual harassment that was discriminating against Muller because of his sex.

50. Plaintiff also engaged in protected activity by intervening on behalf of Muller and Fagan in the face of the Executive Committee’s race-based criticism of his hiring of two-Non-Native American employees, and by opposing the Executive Committee’s race-based termination of two-Non-Native American employees. Plaintiff’s opposition to the Executive Committee’s criticism and subsequent termination of two employees on the basis of race was based upon Plaintiff’s reasonable, good-faith belief that such conduct violated the D.C. Human Rights Act.

51. Plaintiff also engaged in protected activity, through his lawyer, by writing to the law firm hired by NCAI’s Executive Committee on June 8, 2022 reiterating Plaintiff’s complaint about the handling of the Executive Committee’s investigation, as well as NCAI’s failure to pay Plaintiff his earned wages.

52. As a direct and proximate result of Plaintiff’s opposition to the discriminatory

practices of NCAI, Plaintiff was subjected to antagonism, harassment, placed on administrative leave, and was denied the benefits and responsibility that his position as CEO had previously garnered.

53. As a direct and proximate result of Plaintiff's opposition to the discriminatory practices of NCAI, Plaintiff was forced to forgo his attendance at the NCAI's mid-year Conference and return to D.C. from Anchorage, Alaska. This retaliatory action has resulted in public humiliation, damage to Plaintiff's reputation, embarrassment, mental distress, loss of life's pleasures, and has damaged him in his trade and profession, which will result in loss of future earnings, and earning capacity.

54. WHEREFORE, Plaintiff prays for relief and demands entry of judgment in his favor and against NCAI as follows:

- (a) Permanently enjoining NCAI from discriminating or retaliating against Plaintiff or other current or former employees of NCAI;
- (b) Awarding damages to compensate Plaintiff for any and all economic losses suffered by Plaintiff, including lost future wages and lost future earning capacity;
- (c) Awarding compensatory damages to compensate for the mental anguish, humiliation, damage to reputation, loss of life's pleasures, lost earnings, and emotional distress that Plaintiff suffered as a result of NCAI's actions;
- (d) Awarding punitive damages in an amount sufficient to punish NCAI for its willful, deliberate, malicious and outrageous conduct and to deter NCAI, its Executive Committee members, and other employers from engaging in such misconduct in the future;
- (e) Awarding the costs, expenses, pre and post judgment interest, and

attorneys' fees;

(f) Such further equitable and legal relief as the Court deems appropriate under the circumstances.

COUNT II
FAILURE TO PAY WAGES IN VIOLATION OF D.C. WAGE PAYMENT AND
COLLECTION LAW

55. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

56. Plaintiff was entitled to a five (5%) annual salary increase on May 18, 2022 if he met certain criteria and milestones. Plaintiff satisfied each of the criteria and requested the Executive Committee pay him his annual salary with the five percent (5%) annual increase he earned. The Executive Committee ignored his request, refused to conduct an annual performance evaluation, and instead stated that it was going to have Quarles Brady create new criteria (in breach of the contract) to evaluate Plaintiff's performance. As of May 18, 2022, Plaintiff earned the 5% salary increase and NCAI has refused to pay these earned wages.

57. Under D.C. Code § 32-1302, NCAI was required to pay Plaintiff "at least once per month; provided, however, that an interval of not more than 10 working days may elapse between the end of the pay period covered and the regular payday designated by the employer." And NCAI was required to Plaintiff all earned "on designated paydays."

58. Defendant violated D.C. Code § 32-1302 by failing to pay Plaintiff all of his earned wages, including wages for his contractually agreed upon annual raise of five percent.

59. Defendant further violated D.C. Code § 32-1302 by failing to pay Plaintiff his earned wages (1) at least once per month;(2) within 10 working days of the covered pay period; and (3) on designated paydays.

60. Under D.C. Code § 32-1308, Plaintiff is entitled to costs (i) the payment of any back wages unlawfully withheld; (ii) liquidated damages equal to treble the amount of unpaid wages; (iii) statutory penalties; and (iv) such legal or equitable relief as may be appropriate, including reinstatement of employment, compensatory damages, and other injunctive relief.

61. Under D.C. Code § 32-1308, Plaintiff is entitled to costs of this action, including Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the judgment.

62. Under D.C. Code § 32-1308, Plaintiff is entitled to attorney's fees as computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. Undersigned counsel's current billable rate pursuant to the LSI-Laffey Matrix approved by *Salazar* is \$764 per hour.

63. Under D.C. Code § 32-1308, Plaintiff is entitled to attorney's fees as computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. Undersigned counsel's current billable rate pursuant to the LSI-Laffey Matrix approved by *Salazar* is \$764 per hour.

64. WHEREFORE, Plaintiff prays for relief in the form of a judgment against Defendant awarding:

- (a) compensatory damages;
- (b) liquidated damages in the amount of treble unpaid wages;
- (c) costs and attorney's fees;

- (d) punitive damages;
- (e) statutory penalties; and
- (f) all legal or equitable relief available, including without limitation, reinstatement of employment and front pay; and
- (g) any other relief the Court deems proper.

**COUNT III
RETALIATION IN VIOLATION OF
D.C. WAGE PAYMENT AND COLLECTION LAW, D.C. CODE § 32-1311**

65. Plaintiff realleges and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

66. Under D.C. Code § 32-1311, it is “unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has: (1) made or is believed to have made a complaint to his or her employer, ... (2) initiated or is about to initiate a proceeding under or related to this chapter; ... and (5) otherwise exercised rights protected under” the DC Wage Payment Collection Law.

67. On each June 8, 2022, Plaintiff, through his lawyer, complained to NCAI about Plaintiff’s unpaid, earned wages. The next day, NCAI retaliated against Plaintiff by placing him on administrative leave, forcing him to forego his planned attendance at NCAI’s mid-year Conference, and forcing him to return to D.C. from Anchorage, Alaska.

68. WHEREFORE, Plaintiff prays for relief in the form of a judgment against Defendants awarding:

- (a) compensatory damages;
- (b) a civil penalty of \$10,000 under D.C. Code § 32-1311;

- (c) liquidated damages in the amount of \$10,000;
- (d) costs and attorney's fees;
- (e) punitive damages;
- (f) statutory penalties; and
- (g) all legal or equitable relief available, including without limitation, reinstatement of employment and front pay; and
- (h) any other relief the Court deems proper.

JURY AND TRIAL DEMAND

Plaintiff hereby demands a trial by jury with respect to each claim in this Complaint.

Respectfully submitted,

/s/ Brendan J. Klaproth
Brendan J. Klaproth (D.C. Bar No. 999360)
Klaproth Law PLLC
2141 Wisconsin Ave. NW, Suite M3
Washington, DC 20007
Telephone: 202-618-2344
Email: bklaproth@klaprothlaw.com
Attorney for Plaintiff



Superior Court of the District of Columbia
CIVIL DIVISION
 Civil Actions Branch
 500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
 Telephone: (202) 879-1133 Website: www.dccourts.gov

Dante Desiderio

Plaintiff

vs.

Case Number **2022 CA 002830 B**

National Congress of American Indians

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Brendan J. Klaproth, Klaproth Law PLLC

Name of Plaintiff's Attorney

2141 Wisconsin Ave NW, Suite M3

Address

Washington, DC 20007

(202) 618-2344

Telephone

如需翻译, 请打电话 (202) 879-4828

Veillez appeler au (202) 879-4828 pour une traduction

Để có một bản dịch, hãy gọi (202) 879-4828

법석을 원하 시면, (202) 879-4828로 전화주세요. የአጥጋቢ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

Clerk of the Court

By



Deputy Clerk

Date

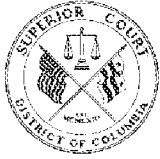
07/07/2022

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation

Vea al dorso la traducción al español



TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA
DIVISIÓN CIVIL

Sección de Acciones Civiles

500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001

Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

Dante Desiderio

Demandante

contra

Número de Caso: _____

National Congress of American Indians

Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

Brendan J. Klaproth, Klaproth Law PLLC

SECRETARIO DEL TRIBUNAL

Nombre del abogado del Demandante

2141 Wisconsin Ave NW, Suite M3

Por: _____

Dirección

Washington, DC 20007

Subsecretario

(202) 618-2344

Fecha _____

Teléfono

如需翻译, 请打电话 (202) 879-4828

Veuillez appeler au (202) 879-4828 pour une traduction

Đề có một bản dịch, hãy gọi (202) 879-4828

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የአማርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE Oponerse a esta acción, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedir ayuda al respecto.

Vea al dorso el original en inglés
 See reverse side for English original

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

DANTE DESIDERIO

Case Number: **2022 CA 002830 B**

vs

Date: **June 24, 2022**

NATIONAL CONGRESS OF AMERICAN INDIANS

☐ One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Brendan J. Klaproth		Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: Klaproth Law PLLC		
Telephone No.: (202) 618-2344	Six digit Unified Bar No.: DC Bar No. 999360	

TYPE OF CASE: ☐ Non-Jury ☒ 6 Person Jury ☐ 12 Person Jury
 Demand: \$ **5,000,000.00** Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: *(Check One Box Only)***A. CONTRACTS****COLLECTION CASES**

- | | | |
|--|---|---|
| <input type="checkbox"/> 01 Breach of Contract | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied |
| <input type="checkbox"/> 06 Negotiable Instrument | <input type="checkbox"/> 27 Insurance/Subrogation | <input type="checkbox"/> 26 Insurance/Subrogation |
| <input type="checkbox"/> 07 Personal Property | Over \$25,000 Pltf. Grants Consent | Over \$25,000 Consent Denied |
| <input checked="" type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation | <input type="checkbox"/> 34 Insurance/Subrogation |
| <input type="checkbox"/> 15 Special Education Fees | Under \$25,000 Pltf. Grants Consent | Under \$25,000 Consent Denied |
| | <input type="checkbox"/> 28 Motion to Confirm Arbitration | |
| | Award (Collection Cases Only) | |

B. PROPERTY TORTS

- | | | |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion | <input type="checkbox"/> 04 Property Damage | |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) | | |

C. PERSONAL TORTS

- | | | |
|---|--|--|
| <input type="checkbox"/> 01 Abuse of Process | <input type="checkbox"/> 10 Invasion of Privacy | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection | <input type="checkbox"/> 11 Libel and Slander | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) |
| <input type="checkbox"/> 03 Assault and Battery | <input type="checkbox"/> 12 Malicious Interference | <input type="checkbox"/> 19 Wrongful Eviction |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution | <input type="checkbox"/> 20 Friendly Suit |
| <input type="checkbox"/> 05 Deceit (Misrepresentation) | <input type="checkbox"/> 14 Malpractice Legal | <input type="checkbox"/> 21 Asbestos |
| <input type="checkbox"/> 06 False Accusation | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts |
| <input type="checkbox"/> 07 False Arrest | <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) | <input type="checkbox"/> 23 Tobacco |
| <input type="checkbox"/> 08 Fraud | | <input type="checkbox"/> 24 Lead Paint |

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |

/s/ Brendan J. Klaproth

Attorney's Signature

June 24, 2022

Date



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

DANTE DESIDERIO

Vs.

C.A. No. 2022 CA 002830 B

NATIONAL CONGRESS OF AMERICAN INDIANS

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-1, it is hereby ORDERED as follows:

(1) This case is assigned to the judge and calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of service on each defendant of copies of (a) the summons, (b) the complaint, and (c) this Initial Order and Addendum. The court will dismiss the claims against any defendant for whom such proof of service has not been filed by this deadline, unless the court extended the time for service under Rule 4(m).

(3) Within 21 days of service (unless otherwise provided in Rule 12), each defendant must respond to the complaint by filing an answer or other responsive pleading. The court may enter a default and a default judgment against any defendant who does not meet this deadline, unless the court extended the deadline under Rule 55(a).

(4) At the time stated below, all counsel and unrepresented parties shall participate in a remote hearing to establish a schedule and discuss the possibilities of settlement. Counsel shall discuss with their clients **before** the hearing whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this hearing.**

(5) If the date or time is inconvenient for any party or counsel, the Civil Actions Branch may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. To reschedule the hearing, a party or lawyer may call the Branch at (202) 879-1133. Any such request must be made at least seven business days before the scheduled date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Anita M. Josey-Herring

Case Assigned to: Judge JULIET J MCKENNA

Date: July 5, 2022

Initial Conference: **REMOTE HEARING - DO NOT COME TO COURTHOUSE**
SEE REMOTE HEARING INSTRUCTIONS ATTACHED TO INITIAL ORDER

9:30 am, Friday, September 23, 2022

Location: Courtroom 519

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

**ADDENDUM TO INITIAL ORDER AFFECTING
ALL MEDICAL MALPRACTICE CASES**

D.C. Code § 16-2821, which part of the Medical Malpractice Proceedings Act of 2006, provides, "[a]fter action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ('ISSC'), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC."

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. Unrepresented plaintiffs who elect not to eFile must either mail the form to the Multi-Door Dispute Resolution Office at, Suite 2900, 410 E Street, N.W., Washington, DC 20001, or deliver it in person if the Office is open for in-person visits.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following people are required by D.C. Code § 16-2824 to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is unrepresented may mail the form to the Civil Actions Branch at [address] or deliver it in person if the Branch is open for in-person visits. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Anita M. Josey-Herring

The following instructions are for participants who are scheduled to have cases heard before a Civil Judge in a **Remote Courtroom**

Option1: (AUDIO ONLY/Dial-in by Phone):

Toll 1 (844) 992-4762 or (202) 860-2110, enter the Meeting ID from the attachment followed by #, press again to enter session.

- *Please call in no sooner than 5 minutes before your scheduled hearing time. Once you have joined the session, please place your phone on mute until directed otherwise. If you should happen to get disconnected from the call, please call back in using the phone number and access number provided and the courtroom clerk will mute your call until the appropriate time.*

If you select **Option 2** or **Option 3** use the Audio Alternative

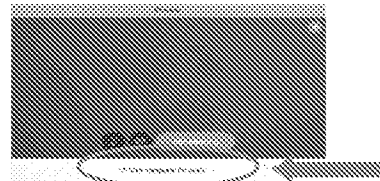
Option 2: (LAPTOP/ DESKTOP USERS 1):

Open Web Browser in Google Chrome and copy and paste following address from the next page:
<https://dccourts.webex.com/meet/XXXXXXXXXX>

Option 3: (LAPTOP/ DESKTOP USERS 2):

Open Web Browser in Google Chrome and copy and paste following address
<https://dccourts.webex.com> Select **Join**, enter the Meeting ID from the next page

AUDIO ALTERNATIVE: Instead of automatically using **USE COMPUTER FOR AUDIO**, select **CALL-IN** and follow the **CALL-IN** prompt window. Use a cell phone or desk phone. You will be heard clearer if you **do not** place your phone on **SPEAKER**. It is very important that you enter the **ACCESS ID #** so that your audio is matched with your video.



Option 4: (Ipad/SMART PHONE/TABLET):

- Go to App Store, Download WebEx App (Cisco WebEx Meetings)
- Sign into the App with your Name and Email Address
- Select Join Meeting
- Enter address from the next page: <https://dccourts.webex.com/meet/XXXXXXXXXX>
- Click join and make sure your microphone is muted and your video is unmuted (if you need to be seen). If you only need to speak and do not need to be seen, use the audio only option.
- When you are ready click "Join Meeting". If the host has not yet started the meeting, you will be placed in the lobby until the meeting begins.

For Technical Questions or issues Call: (202) 879-1928, Option #2

Superior Court of the District of Columbia
Public Access for Remote Court Hearings
(Effective August 24, 2020)

The current telephone numbers for all remote hearings are: 202-860-2110 (local) or 844-992-4726 (toll free). After dialing the number, enter the WebEx Meeting ID as shown below for the courtroom. Please click a WebEx Direct URL link below to join the hearing online.

Audio and video recording; taking pictures of remote hearings; and sharing the live or recorded remote hearing by rebroadcasting, live-streaming or otherwise are not allowed

Division	Courtroom	Types of Hearings Scheduled in Courtroom	Public Access via WebEx	
			WebEx Direct URL	WebEx Meeting ID
Auditor Master	206	Auditor Master Hearings	https://dccourts.webex.com/meet/ctbaudmaster	129 648 5606
Civil	100	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb100	129 846 4145
	205	Foreclosure Matters	https://dccourts.webex.com/meet/ctb205	129 814 7399
	212	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb212	129 440 9070
	214	Title 47 Tax Liens; and Foreclosure Hearings	https://dccourts.webex.com/meet/ctb214	129 942 2620
	219	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb219	129 315 2924
	221	Civil 1 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb221	129 493 5162
	318	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb318	129 801 7169
	320	Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb320	129 226 9879

400	Judge in Chambers Matters including Temporary Restraining Orders, Preliminary Injunctions and Name Changes	https://dccourts.webex.com/meet/ctb400	129 339 7379
415	Civil 2 Scheduling Conferences; Status, Motion and Evidentiary Hearings including Bench Trials	https://dccourts.webex.com/meet/ctb415	129 314 3475
516		https://dccourts.webex.com/meet/ctb516	129 776 4396
517		https://dccourts.webex.com/meet/ctb517	129 911 6415
518		https://dccourts.webex.com/meet/ctb518	129 685 3445
519		https://dccourts.webex.com/meet/ctb519	129 705 0412
JM-4		https://dccourts.webex.com/meet/ctbjm4	129 797 7557
A-47	Housing Conditions Matters	https://dccourts.webex.com/meet/ctba47	129 906 2065
B-52	Debt Collection and Landlord and Tenant Trials	https://dccourts.webex.com/meet/ctbb52	129 793 4102
B-53	Landlord and Tenant Matters including Lease Violation Hearings and Post Judgment Motions	https://dccourts.webex.com/meet/ctbb53	129 913 3728
B-109	Landlord and Tenant Matters	https://dccourts.webex.com/meet/ctbb109	129 127 9276
B-119	Small Claims Hearings and Trials	https://dccourts.webex.com/meet/ctbb119	129 230 4882

Exhibit B

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO

Plaintiff,

v.

NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.*

Defendants.

Case No.: 2022 CA 2830 B
Judge: Judge Juliet J. McKenna

Next Event: Initial Hearing
September 23, 2022

AMENDED COMPLAINT AND JURY DEMAND

Plaintiff Dante Desiderio for his Amended Complaint against Defendant National Congress of American Indians (“Defendant” or “NCAI”), avers upon personal knowledge as to his own acts and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is an action brought by Plaintiff under the D.C. Human Rights Act and the D.C. Wage Payment and Collection Law arising out of Plaintiff’s employment as the Chief Executive Officer of NCAI.

2. Plaintiff’s claims arise out of NCAI’s actions in investigating a complaint of sexual harassment made against the former General Counsel of NCAI on April 11, 2022. As CEO, Plaintiff hired a reputable law firm as outside counsel to assist in conducting a thorough investigation of the claims. The law firm issued its preliminary report on May 23, 2022.

3. NCAI’s Executive Committee refused to consider the preliminary results of the investigation from the reputable law firm, and it instead usurped Plaintiff’s authority as CEO and hired a second law firm to conduct another investigation.

4. The Executive Committee's hiring of the second law firm, Quarles Brady, was also a complete waste, as there was no need for a second investigation. In addition, this second "investigation" exposed NCAI to additional liability because two separate investigations could lead to different outcomes.

5. Plaintiff opposed the actions of the Executive Committee in hiring a second law firm to conduct a purportedly "impartial" investigation when the firm had demonstrated its bias against the accused.

6. The Executive Committee ignored Plaintiff's opposition to the Executive Committee's second, sham investigation. NCAI through its Executive Committee also retaliated against Plaintiff for his opposition to its mishandling of the sexual harassment complaints by stripping him of his responsibilities and authority, making it impossible for him to fulfill his obligations as CEO.

7. At this same time, Plaintiff's decision to hire two non-Native Americans also came under scrutiny, forcing Plaintiff to intervene and oppose the Executive Committee's race-based criticism of the two staff members.

8. Plaintiff opposed the termination of the two non-Native American staff members. Plaintiff also advised the Executive Committee that NCAI was violating the law by failing to pay Plaintiff his contractually agreed, annual five percent raise. As a result of Plaintiff's opposition to the unlawful practices of the NCAI through its Executive Committee, NCAI retaliated against Plaintiff by placing him on administrative leave and forced Plaintiff to miss the mid-year NCAI conference in Anchorage, Alaska, instructing Plaintiff to return to Washington, D.C. immediately.

9. The damage to Plaintiff's reputation both personally and professionally by the

actions of NCAI is significant.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this claim pursuant to D.C. Code § 11-921(a)(6).

11. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code § 13-422 and D.C. Code § 13-423(a)(1)-(4).

12. The acts alleged in this Complaint primarily occurred in the District of Columbia and therefore venue is proper in this District.

PARTIES AND RELEVANT PERSONS

13. Plaintiff Dante Desiderio is an adult resident of the Commonwealth of Virginia. Plaintiff was hired by NCAI as its Executive Director / Chief Executive Officer on April 12, 2021. Plaintiff is employed by NCAI pursuant to an Employment Agreement, which carried a term of employment from May 11, 2021 to May 11, 2024. Plaintiff, according to the employment agreement signed by NCAI, left a “respected, economically meaningful, and secure position with the Native American Finance Officers Association (NAFOA) in accepting the Executive Director position with NCAI.”

14. Under the Employment Agreement, Plaintiff is entitled to 12 months of severance if he is terminated without cause. As CEO, Plaintiff is authorized to “carry out the normal financial, administrative, personal management functions (including, but not limited to, recruitment, screening, hiring onboarding, ongoing supervision, and discipline; legal matters; and other business of NCAI and/or to protect the interests of NCAI.”

15. NCAI is a 501(c)(4) nonprofit organization headquartered in Washington, D.C. with its principal place of business at 1516 P Street NW, Washington, DC 20005. NCAI provides services to American Indian and Alaska Native People(s) throughout the United States to, *inter alia*: protect their tradition and culture; secure benefits and services for them; secure their rights

under treaties and agreements; promote their common welfare; and to educate the public regarding Indian and Native governments, people and rights. NCAI owns the National Congress of the American Indians Fund—a 501(c)(3) trust governed by the laws of the District of Columbia.

FACTS COMMON TO ALL COUNTS

16. Before joining NCAI, Plaintiff worked as the Executive Director of NAFOA. As a result of his success with the organization, NCAI recruited Plaintiff to guide NCAI through a tumultuous period for the organization. While still employed by NAFOA, and with the consent of NAFOA, Plaintiff was hired as a contractor by NCAI to accomplish four objectives for the organization. NCAI also knowingly contracted with Plaintiff knowing that his colleagues at NAFOA, Max Muller and Pamela Fagan, would assist in achieving these objectives. Plaintiff, with the assistance of Muller and Fagan, accomplished these objectives for NCAI and their work was praised by NCAI's Executive Committee.

17. Based on his performance, NCAI recruited Plaintiff for the CEO position with NCAI. Plaintiff signed a contract with NCAI for the CEO position, which was dated April 12, 2021. Plaintiff began working for NCAI as its CEO in May 2021.

NCAI's Discrimination of Muller and Fagan

18. Upon taking over as CEO of NCAI, and after requesting RFPs for both positions, Plaintiff hired Max Muller as general counsel of NCAI and Pamela Fagan as director of operations. Muller and Fagan had previously worked with Plaintiff at NAFOA, which focuses on growing and building tribal economies. Plaintiff valued Muller and Fagan's work at NAFOA and thought their respective education and experience would serve as major assets to NCAI as the general counsel and director of operations.

19. Muller and Fagan were initially hired as contractors as they transitioned from their roles with NAFOA. As General Counsel, Muller was responsible for providing NCAI with general advice on strategy for the organization and specific advice on contracting, human resources, and operation. Fagan was responsible for handling the financial and human resources matters for NCAI.

20. Both Fagan and Muller excelled in their positions and their work was praised by the Executive Committee.

21. In the summer of 2021, both Muller and Fagan requested that they be employed by NCAI as full-time employees. Indeed, the General Counsel position had previously been filled by a full-time W-2 employee. Likewise, the Chief of Staff position (which became re-titled as Director of Operations after restructuring that occurred when Plaintiff became the CEO), had also been a full-time W-2 employee. Plaintiff agreed that Muller and Fagan should be employed as W-2 employees. The Executive Committee made it clear in formal officer calls, a retreat, and in individual conversations with officers that hiring non-Natives for these positions would not be acceptable. The Executive Committee made it clear they would refuse to classify Muller and Fagan as W-2 employees because they wanted the positions to be filled by Natives. The Executive Committee believed that if it classified Muller and Fagan as independent contractors, rather than employees, it would be easier to fire them when convenient and fill the positions with Natives.

22. Nevertheless, despite the fact that NCAI refused to classify Muller and Fagan as employees, they treated them as employees and staff members. A screen shot of NCAI's website referred to Muller and Fagan as staff members:

NCAI Staff

Staff Directory
 Embassy of Tribal Nations
 1515 P Street NW
 Washington, DC 20005
 202-485-7797
 Press
 NCAIPress@ncai.org

NAME	TITLE
Glenn Desiderio	Chief Executive Officer
Shelley Agnew	Office Manager
Yasmin Khan	Director of Communications
Paul Becks	Solution Architect
Brooklyn Brown	Media Manager Fellow, Multimedia & Graphic Design
Kristin Brunetta	Controller
Quinn Buchanan	Policy Specialist, Environmental Sustainability & Natural Resources
Courtney Davis	Grant Manager
Imani Daniel-Catho	Administrative Assistant
Colby Darn	Director, Policy and Legal
Kenneth Escalant	Creative Director
Patricia Fagan	Director of Operations
Terence Fields	Fellow
Andy Gay	Director, Conferences and Events
Suzanne Gould	Archival Specialist
Shannon Hale	Media Relations Associate
Ashley Hamilton	Research Associate, Partnership for Tribal Governance
Warren Hope	Director of Finance
Maghan Kearney	Grant Administrative Personnel
Kelcie Kennedy	Policy Manager, National Security & Community Safety
Colby Klar	Research Associate, Partnership for Tribal Governance
Rachel Milton	Micro-Grants Project Manager
Sandra Mitrovich	Civic Engagement Associate
Mahmoud Moussa	Systems Administrator
Max Muter	General Counsel
Doug Poulson	IT Specialist
Kelly Pursell	Partnership Development Manager
Miranda Ramey	Communications Associate
Sadie Red Eagle	Policy Lead, Environmental Sustainability & Natural Resources
Yvette Roudsbeck	Director, Policy Research Center
Catherine Saunders	Human Resources Manager
Tyler Scribner	Policy Lead, Federal Revenue & Appropriations
Ryan Sefton	Fellow and Research Specialist, Legal & Governance
Olivia Shupe	Media Manager Fellow, Tribal & Cultural Resources

23. The misclassification of Muller and Fagan became problematic. Plaintiff complained to Shannon Holsey, the Treasurer of the Executive Committee, about the misclassification of Muller and Fagan. Holsey replied that she did not want to see Muller and Fagan in those roles despite the fact that the Executive Committee repeatedly praised their work.

24. Subsequently, Muller complained to Desiderio about a conversation with he had with Holsey at an operations retreat in January 2022. Muller complained that Holsey stated that Muller and Fagan were doing amazing work for the organization but that it “was too bad he was not Native.” In other words, despite the quality of Muller’s and Fagan’s work for the

organization, Holsey indicated they did not have a future with NCAI because they were not Native.

25. Muller and Fagan continued to complain to Desiderio about their classification as contractors. On one occasion, Fagan even prepared a description of her position in order for NCAI to properly classify her as W-2 employee.

26. Eventually, the Executive Committee found its opening to fire Muller and Fagan so they could be replaced with Natives when it received a sexual harassment complaint.

NCAI's Mishandling of the Sexual Harassment Complaint

27. On March 30, 2022, after interviewing with Muller, Fagan and Plaintiff, Jane Doe¹ was hired by NCAI as a remote employee based in Iowa. A little more than a week after she began working at NCAI, and during her first visit to the NCAI's DC office, Doe complained to Plaintiff (note, the complaint was disputed by the accused, Muller), that Muller said something along the lines of "he [Muller] is looking forward to having a good professional relationship with her [Doe] and to being friends with benefits, if she was interested." Doe stressed to Plaintiff that it was important to her that nothing happened to Muller. Doe also told Plaintiff that she was comfortable working with Muller.

28. Nonetheless, Plaintiff told Doe that she should copy Plaintiff or Fagan on any correspondence between Doe and Muller. Plaintiff also told Doe that she did not have to include Muller in Zoom meetings or calls if Doe felt uncomfortable.

29. Plaintiff discussed Doe's complaint with Muller, who was very upset by the allegation and denied making any such statement to Doe. Muller told Plaintiff that he told Doe that he [Muller] was looking forward to having a good professional relationship and that he

¹ Plaintiff is using a pseudonym to refer to this individual as Jane Doe.

hoped that they [Muller and Doe] could be friends as well.

30. In mid-April, Muller advised Plaintiff that Doe was texting Muller directly, but Muller was trying to politely not engage. Muller shared the messages with Plaintiff. By this time, Doe had reiterated her desire to Plaintiff that nothing happen to Muller and that she [Doe] just wanted to go back to the time before she told Plaintiff anything. Plaintiff told Doe that it was not possible to ignore her complaint.

31. Plaintiff decided to hire an outside law firm to assist with an investigation into Doe's complaint. Plaintiff hired O'Hagan Meyer, a reputable law firm with experience in workplace investigations. O'Hagan Meyer had done work for NCAI in the past and Plaintiff was happy with their work.

32. On or about May 19, 2022, Doe complained of sexual harassment stemming from Muller's comment directly to the Officers on the Executive Committee. The next day there was a regularly scheduled Committee meeting. At the meeting Plaintiff was informed that Doe had complained directly to the Executive Committee. Plaintiff informed the Executive Committee that he had been investigating the complaint, and he had hired O'Hagan Meyer to assist with an investigation.

33. The Executive Committee seemed rattled by Doe's complaint and repeatedly questioned Plaintiff about his hiring of O'Hagan Meyer to assist with the investigation.

34. On May 23, 2022, O'Hagan Meyer issued its preliminary findings for the investigation into Doe's complaint. The report was directed to NCAI President, Fawn Sharp, but she refused to review it. Plaintiff followed up and asked the Executive Committee to consider meeting directly with the lawyers from O'Hagan Meyer so that the Executive Committee would have a complete picture of the complaint, the investigation, and O'Hagan Meyer's findings.

Sharp responded that she was not familiar with the law firm and was not “comfortable” with them. One Officer, the Secretary, Governor Lewis, responded to Plaintiff that he would like to meet with and hear from O’Hagan Meyer, but Sharp would not allow it.

The Executive Committee’s Discriminatory Firing of Muller and Fagan, and Retaliation Against Plaintiff

35. Even though Plaintiff followed NCAI’s internal guidance and legal advice he received, the Executive Committee refused to follow Plaintiff’s recommendations with respect to the investigation and refused to engage with O’Hagan Meyer. Dissatisfied with the preliminary results of the investigation, NCAI’s Executive Committee usurped Plaintiff’s authority as CEO and hired a new law firm (Quarles & Brady) selected by the Executive Committee. Apparently, the Executive Committee led by NCAI President, Fawn Sharp, had pre-determined that the only result of the “investigation” could be the termination of the General Counsel, Muller.

36. Over the next few days, Plaintiff had discussions with NCAI’s insurance company and its broker about the Doe’s complaint. The insurance company was unhappy with the Executive Committee’s handling of the matter, as it was clear that the Executive Committee was exposing itself to greater liability by (1) handling the investigation directly and (2) trying to put its thumb on the scale in favor of the complaining party. As NCAI was in a renewal period, the insurance company and the broker advised that neither would be doing business with NCAI moving forward.

37. On May 25, 2022, Plaintiff sent a memorandum to Sharp and Officers complaining about the Executive Committee usurping Plaintiff’s authority over personnel matters and workplace complaints. Plaintiff also complained about the law firm that was selected by the Executive Committee, as it was clear that the new law firm was biased against Muller and looking for a way to terminate his employment.

38. On May 27, 2022, Plaintiff sent another memorandum to the Executive Committee, advising that the original investigation into the accusations against Muller by O'Hagan were still underway. Plaintiff also advised that the Committee's actions – hiring a second law firm increased NCAI's legal exposure as two investigations by two different firms could result in two different outcomes, which would provide a basis for lawsuits against NCAI by both the accused (Muller) and the accuser (Doe). The dual investigations were also wasting NCAI's resources.

39. In the second memo, Plaintiff also repeated his concerns that the second firm hired by the Executive Committee, Quarles & Brady, was not conducting an impartial investigation, as the firm made comments during a call that Muller was in the wrong even though the firm had just been retained to investigate the complaint. The comments were overheard when the lawyers failed to mute their telephone during a call. Plaintiff advised the Committee that the comments should disqualify Quarles & Brady from conducting an investigation, as the investigation would not be independent or impartial.

40. Plaintiff further advised the Committee that NCAI should proceed with the original investigation by O'Hagan and, inter alia, terminate Quarles & Brady as the firm was incapable of conducting a fair, impartial investigation.

41. When Plaintiff complained that the Executive Committee did not have authority to oversee the investigation, as that authority clearly resided with Plaintiff, Plaintiff was told that he was somehow a "key witness" to the investigation because Plaintiff had received the complaint of sexual harassment.

42. The Executive Committee ignored Plaintiff's opposition to the Executive Committee's second investigation, though it was clear that the investigation would not be fair to

Muller. NCAI, through its Executive Committee, also retaliated against Plaintiff for his opposition to its mishandling of the sexual harassment complaints by stripping him of his responsibilities and authority in overseeing the investigation and handling personnel matters, making it impossible for him to fulfill his obligations as CEO.

43. During this time, Plaintiff came under criticism by the Executive Committee for his decision to hire Muller and Fagan in the first place, as neither are Native American. The Executive Committee stated to Plaintiff that “we need natives in these positions” and instructed Plaintiff “you need to get rid of them [Muller and Fagan].” Holsey stated, “They need to go.” Sharp agreed. Plaintiff protested against firing Muller and Fagan because they were non-Native American and explained their value to the organization. Plaintiff advised the Executive Committee that he would not discriminate against any potential employees, current employees, or contractors because they were not Native American. But the Executive Committee continued to pressure Plaintiff, using this as an opportunity to get rid of two non-Natives. In the case of Fagan, she had nothing to do with the complaint by Doe. The Executive Committee was using Doe’s complaint and its own biased investigation as pretext to discriminate against Muller and Fagan.

44. In fact, Plaintiff was told by NCAI President, Fawn Sharp, and a majority of the Officers to fire Muller and Fagan and replace them with Native Americans. Plaintiff opposed their terminations and refused to do so himself.

45. On May 31, 2022, Plaintiff received a directive from Sharp to fire O’Hagan Meyer.

46. On June 3, 2022, Sharp emailed Plaintiff and instructed him to notify Muller and Fagan that their contracts were “suspended” and would not be renewed. Plaintiff refused to do so

and merely forwarded Sharp's email to Muller and Fagan.

47. Plaintiff's opposition to and refusal to discriminate against Muller and Fagan on the basis of their race was protected activity under the D.C. Human Rights Act and NCAI's whistleblower policy.

48. NCAI's Executive Committee almost immediately retaliated against Plaintiff for his refusal to violate the law.

49. At no time, was Plaintiff advised that Quarles & Brady was also investigating Plaintiff's handling of the complaint. In fact, when Plaintiff was interviewed by Quarles & Brady as part of its "investigation," Plaintiff was not provided with any Upjohn warnings at the outset of the interview. Accordingly, Plaintiff believed that Quarles & Brady was representing Plaintiff, as the CEO of NCAI, as well as NCAI.

50. Unbeknownst to Plaintiff, Quarles & Brady was also investigating Plaintiff.

51. Plaintiff first learned that he was the subject of Quarles & Brady's investigation when Plaintiff's lawyer wrote to the NCAI on June 8, 2022. In that letter, Plaintiff's counsel advised NCAI of the Executive Committee's misconduct which had created significant liability for NCAI; Plaintiff's complaints and the retaliation he received as a result of those complaints; and his claim for non-payment of earned wages.

52. In response to Plaintiff's counsel's letter, Plaintiff was informed for the first time that the Executive Committee was forced to take over the investigation into the sexual harassment complaint against Max Muller because Plaintiff was also the subject of the investigation. This contradicts what Plaintiff was told by Quarles & Brady at the outset of its investigation.

53. The NCAI's 2022 Mid-Year Conference & Marketplace was the first in-person

meeting since the Pandemic. It was held on June 10, 2022 in Anchorage, Alaska. As the CEO of NCAI, this was a major event for Plaintiff. He traveled to Anchorage from Washington, D.C. for the conference. After touching down in Alaska, Plaintiff received an email from Fawn Sharp, placing Plaintiff on paid-administrative leave, until the second investigation was completed.

54. Plaintiff was also directed to immediately return to Washington D.C. and to not participate or attend the conference. This retaliatory action humiliated and embarrassed Plaintiff and was done less than two days after the NCAI had received a letter from Plaintiff's lawyer.

55. Presumably, the results of the second, sham investigation will result in the preferred outcome sought by Fawn Sharp and NCAI's Executive Committee – the termination of Plaintiff for cause. This is all a ruse designed to circumvent Plaintiff's authority over personnel issues so NCAI could fire the two non-Native American staff members (Muller and Fagan) hired by Plaintiff.

56. Indeed, following the retaliation against Plaintiff by forcing him to forgo his attendance at the Conference and return to Washington, D.C., the suspension of Plaintiff was leaked to Indianz.com, who wrote a story on June 10, 2022 with unnamed sources complaining about Plaintiff hiring "two non-Natives from NAFOA" with the unnamed source referred to as an "advocate" quoted as saying "How many amazing Native attorneys to we have in Indian Country and we can't get one to work at NCAI?" *See* <https://www.indianz.com/News/2022/06/10/national%E2%80%90congress%E2%80%90of%E2%80%90american%E2%80%90indians%E2%80%90heads%E2%80%90into%E2%80%90> (last accessed June 21, 2022). This website has an average of 9 million views per month.

COUNT I RETALIATION UNDER D.C. HUMAN RIGHTS ACT

57. Plaintiff realleges and incorporates by reference the allegations contained in the

preceding paragraphs of this Complaint as if fully set forth herein.

58. The D.C. Human Rights Act prohibits an employer from retaliating against an employee “for opposing an employment practice that is prohibited by the Act.”

59. Plaintiff engaged in protected activity by sending two memoranda to Defendant’s Executive Committee and the Officers of the organization advising that the law firm hired by the Executive Committee was not conducting a fair, and impartial investigation into Doe’s complaint. These memoranda were based on Plaintiff’s reasonable, good-faith belief that the NCAI’s Executive Committee was violating the D.C. Human Rights Act by having a biased law firm conduct a purportedly “impartial” investigation into claims of sexual harassment that was discriminating against Muller because of his sex.

60. Plaintiff also engaged in protected activity by intervening on behalf of Muller and Fagan in the face of the Executive Committee’s race-based criticism of his hiring of two-Non-Native American staff members, and by opposing the Executive Committee’s race-based termination of two-Non-Native American staff members. Plaintiff’s opposition to the Executive Committee’s criticism and subsequent termination of two staff members on the basis of race was based upon Plaintiff’s reasonable, good-faith belief that such conduct violated the D.C. Human Rights Act and Federal employment laws.

61. Plaintiff also engaged in protected activity, through his lawyer, by writing to the law firm hired by NCAI’s Executive Committee on June 8, 2022 reiterating Plaintiff’s complaint about the handling of the Executive Committee’s investigation, as well as NCAI’s failure to pay Plaintiff his earned wages.

62. As a direct and proximate result of Plaintiff’s opposition to the discriminatory practices of NCAI, Plaintiff was subjected to antagonism, harassment, placed on administrative

leave, and was denied the benefits and responsibility that his position as CEO had previously garnered.

63. As a direct and proximate result of Plaintiff's opposition to the discriminatory practices of NCAI, Plaintiff was forced to forgo his attendance at the NCAI's mid-year Conference and return to D.C. from Anchorage, Alaska. This retaliatory action has resulted in public humiliation, damage to Plaintiff's reputation, embarrassment, mental distress, loss of life's pleasures, and has damaged him in his trade and profession, which will result in loss of future earnings, and earning capacity.

64. WHEREFORE, Plaintiff prays for relief and demands entry of judgment in his favor and against NCAI as follows:

(a) Permanently enjoining NCAI from discriminating or retaliating against Plaintiff, other current or former employees of NCAI, or other current or former contractors of NCAI;

(b) Awarding damages to compensate Plaintiff for any and all economic losses suffered by Plaintiff, including lost future wages and lost future earning capacity;

(c) Awarding compensatory damages to compensate for the mental anguish, humiliation, damage to reputation, loss of life's pleasures, lost earnings, and emotional distress that Plaintiff suffered as a result of NCAI's actions;

(d) Awarding punitive damages in an amount sufficient to punish NCAI for its willful, deliberate, malicious and outrageous conduct and to deter NCAI, its Executive Committee members, and other employers from engaging in such misconduct in the future;

(e) Awarding the costs, expenses, pre and post judgment interest, and

attorneys' fees;

(f) Such further equitable and legal relief as the Court deems appropriate under the circumstances.

COUNT II
FAILURE TO PAY WAGES IN VIOLATION OF D.C. WAGE PAYMENT AND
COLLECTION LAW

65. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

66. Plaintiff was entitled to a five (5%) annual salary increase on May 18, 2022 if he met certain criteria and milestones. Plaintiff satisfied each of the criteria and requested the Executive Committee pay him his annual salary with the five percent (5%) annual increase he earned. The Executive Committee ignored his request, refused to conduct an annual performance evaluation, and instead stated that it was going to have Quarles Brady create new criteria (in breach of the contract) to evaluate Plaintiff's performance. As of May 18, 2022, Plaintiff earned the 5% salary increase and NCAI has refused to pay these earned wages.

67. In addition, as part of its policies and practices, as of January of 2022, all employees (which included Plaintiff as the CEO) who did not opt out of the new PTO plan were eligible to receive up to 80 hours of leave to be paid out in July 2022. Under the policy, Plaintiff was entitled to receive 72 hours of paid leave, which amounted to \$9,519.23.. On July 6, 2022, Plaintiff requested that he be paid this earned, paid leave he was entitled to. NCAI ignored that request.

68. Under D.C. Code § 32-1302, NCAI was required to pay Plaintiff "at least once per month; provided, however, that an interval of not more than 10 working days may elapse between the end of the pay period covered and the regular payday designated by the employer."

And NCAI was required to Plaintiff all earned “on designated paydays.”

69. Defendant violated D.C. Code § 32-1302 by failing to pay Plaintiff all of his earned wages, including wages for his contractually agreed upon annual raise of five percent and his two weeks of earned PTO.

70. Defendant further violated D.C. Code § 32-1302 by failing to pay Plaintiff his earned wages (1) at least once per month;(2) within 10 working days of the covered pay period; and (3) on designated paydays.

71. Under D.C. Code § 32-1308, Plaintiff is entitled to costs (i) the payment of any back wages unlawfully withheld; (ii) liquidated damages equal to treble the amount of unpaid wages; (iii) statutory penalties; and (iv) such legal or equitable relief as may be appropriate, including reinstatement of employment, compensatory damages, and other injunctive relief.

72. Under D.C. Code § 32-1308, Plaintiff is entitled to costs of this action, including Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the judgment.

73. Under D.C. Code § 32-1308, Plaintiff is entitled to attorney’s fees as computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney’s services. Undersigned counsel’s current billable rate pursuant to the LSI-Laffey Matrix approved by *Salazar* is \$764 per hour.

74. Under D.C. Code § 32-1308, Plaintiff is entitled to attorney’s fees as computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney’s services.

Undersigned counsel's current billable rate pursuant to the LSI-Laffey Matrix approved by *Salazar* is \$764 per hour.

75. WHEREFORE, Plaintiff prays for relief in the form of a judgment against Defendant awarding:

- (a) compensatory damages;
- (b) liquidated damages in the amount of treble unpaid wages;
- (c) costs and attorney's fees;
- (d) punitive damages;
- (e) statutory penalties; and
- (f) all legal or equitable relief available, including without limitation, reinstatement of employment and front pay; and
- (g) any other relief the Court deems proper.

**COUNT III
RETALIATION IN VIOLATION OF
D.C. WAGE PAYMENT AND COLLECTION LAW, D.C. CODE § 32-1311**

76. Plaintiff realleges and incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

77. Under D.C. Code § 32-1311, it is "unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has: (1) made or is believed to have made a complaint to his or her employer, ... (2) initiated or is about to initiate a proceeding under or related to this chapter; ... and (5) otherwise exercised rights protected under" the DC Wage Payment Collection Law.

78. On each June 8, 2022, Plaintiff, through his lawyer, complained to NCAI about

Plaintiff's unpaid, earned wages. The next day, NCAI retaliated against Plaintiff by placing him on administrative leave, forcing him to forego his planned attendance at NCAI's mid-year Conference, and forcing him to return to D.C. from Anchorage, Alaska.

79. WHEREFORE, Plaintiff prays for relief in the form of a judgment against Defendants awarding:

- (a) compensatory damages;
- (b) a civil penalty of \$10,000 under D.C. Code § 32-1311;
- (c) liquidated damages in the amount of \$10,000;
- (d) costs and attorney's fees;
- (e) punitive damages;
- (f) statutory penalties; and
- (g) all legal or equitable relief available, including without limitation, reinstatement of employment and front pay; and
- (h) any other relief the Court deems proper.

JURY AND TRIAL DEMAND

Plaintiff hereby demands a trial by jury with respect to each claim in this Amended Complaint.

Respectfully submitted,

/s/ Brendan J. Klaproth

Brendan J. Klaproth (D.C. Bar No. 999360)

Klaproth Law PLLC

2300 Wisconsin Ave. NW, Suite 100A

Washington, DC 20007

Telephone: 202-618-2344

Email: bklaproth@klaprothlaw.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2022, I caused to be served a true and correct copy of the foregoing through the Court's electronic filing system on counsel of record for all parties who have appeared. I further certify that the Amended Complaint will be served in conformance with Rule 4, as well as emailed to counsel for Defendant.

Dated: August 1, 2022

Brendan J. Klaproth

Exhibit C

AFFIDAVIT OF PROCESS SERVER

In The Superior Court of the District of Columbia
Civil Division

2022 AUG 18 PM 4:30

FILED
CIVIL ACTIONS BRANCH

AUG 18 2022

Superior Court
of the District of Columbia
Washington, D.C.

Dante Desiderio

Plaintiff(s),

VS.

National Congress of American Indians, et al

Defendant(s).

Attorney: Brendan Klaproth

Klaproth Law PLLC
2300 Wisconsin Ave., Suite 100A
Washington DC 20007



282930

Case Number: 2022 CA 002830 B

Legal documents received by Same Day Process Service, Inc. on 08/11/2022 at 2:37 PM to be served upon **National Congress of American Indians at 1516 P Street, NW, Washington, DC 20005**

I, **Stuart Macpherson**, swear and affirm that on **August 12, 2022** at **2:04 PM**, I did the following:

Served **National Congress of American Indians** by delivering a conformed copy of the **Letter dated August 11, 2022; Summons; Complaint and Jury Demand; Amended Complaint and Jury Demand; Citation (Spanish Version); Initial Order and Addendum; Civil Remote Hearing; Information Sheet to Nketia Agyeaman as Office Manager & Authorized Agent of National Congress of American Indians at 1516 P Street, NW, Washington, DC 20005.**

Description of Person Accepting Service:

Sex: Female Age: 50 Height: 5ft0in-5ft4in Weight: 131-160 lbs Skin Color: African-American Hair Color: Bald

Supplemental Data Appropriate to this Service:

I declare under penalty of perjury that the foregoing information contained in this affidavit is true and correct and that I am a professional process server over the age of 18 and have no interest in the above legal matter.

District of Columbia

Signed and sworn to (or affirmed) before me
on 8/12/22 by Stuart Macpherson
Date Name(s) of individual(s) making Statement

Signature of Notarial Officer

Title of Office

My commission expires: 3/14/2026

Stuart Macpherson
Process Server
Same Day Process Service, Inc.
1413 K St., NW, 7th Floor
Washington DC 20005
(202)-398-4200
info@samedayprocess.com

Internal Job
ID:282930

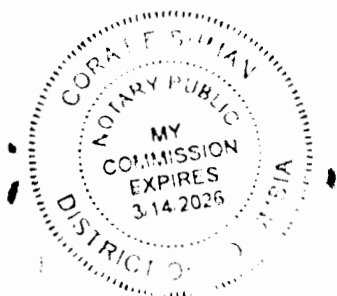


Exhibit D

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO,

Plaintiff,

v.

**NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.***

Defendants.

Case No. 2022 CA 2830 B

Judge Juliet J. McKenna

**Next Event: Initial Hearing
Sept. 23, 2022**

CORPORATE DISCLOSURE

Defendant National Congress of American Indians hereby submits the following disclosure statement pursuant to this Court's Local Rule 7.1.

National Congress of American Indians is a 501(c)(4) nonprofit organization. It has no parent corporation and has no stock to issue.

Date: September 2, 2022

Respectfully submitted,

/s/ Jillian Ambrose

Sadina Montani (DC Bar# 988999)

SMontani@crowell.com

Jillian Wilson Ambrose (DC Bar# 1025103)

JAmbrose@crowell.com

CROWELL & MORING LLP

1001 Pennsylvania Ave., NW

Washington, DC 20004

Tel: (202) 624-2500

Counsel for National Congress of American Indians

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2022, a true copy of the above document was served via CaseFileXpress on Plaintiff's counsel as indicated below.

Brendan J. Klaproth
Klaproth Law PLLC
2300 Wisconsin Ave NW
Suite 100A
Washington, DC 20007
(T) 202-618-2344
(F) 202-618-4636
www.klaprothlaw.com
Counsel for Plaintiff

/s/ Jillian Ambrose
Jillian S. W. Ambrose

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO,

Plaintiff,

v.

**NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.***

Defendants.

**Case No. 2022 CA 2830 B
Judge Juliet J. McKenna**

**Next Event: Initial Hearing
Sept. 23, 2022**

DEFENDANTS' CONSENT MOTION TO EXCEED PAGE LIMIT

Defendant National Congress of American Indians (“NCAI”), through counsel, moves this Court for leave to file a brief exceeding 15 pages in support of its Opposed Motion to Dismiss Or, Alternatively, To Compel Arbitration, which is filed concurrently with this Motion. Pursuant to Part IV of Judge Juliet McKenna’s Supplement to General Order, motions may not exceed 15 pages, unless permitted by the Court. NCAI therefore moves this Court for leave to file a brief exceeding the page limit. NCAI moves to dismiss each of the three counts in Plaintiff’s Complaint, pursuant to Super Ct. Civ. R. 12(b)(1) and 12(b)(6), and, in the alternative, moves to compel arbitration as to each of those counts; addressing each argument as to each claim thoroughly requires a Memorandum of approximately 20 pages. As required by Super. Ct. Civ. R. 12-I, NCAI states that it requested Plaintiff’s consent to the relief sought; Plaintiff indicated his consent.

September 2, 2022

Respectfully submitted,

/s/ Jillian Ambrose
Sadina Montani (DC Bar# 988999)
smontani@crowell.com
Jillian Wilson Ambrose (DC Bar# 1025103)
jambrose@crowell.com
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004
Tel: (202) 624-2500
*Counsel for National Congress of American
Indians*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2022, a true copy of the above document was served via CaseFileXpress on Plaintiff's counsel:

Brendan J. Klaproth
Klaproth Law PLLC
2300 Wisconsin Ave NW
Suite 100A
Washington, DC 20007
(T) 202-618-2344
(F) 202-618-4636
Counsel for Plaintiff

/s/ Jillian Ambrose
Jillian Ambrose

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO,

Plaintiff,

V.

**NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.***

Defendants.

Case No. 2022 CA 2830 B
Judge Juliet J. McKenna

**Next Event: Initial Hearing
Sept. 23, 2022**

**[PROPOSED] ORDER GRANTING DEFENDANT’S CONSENT MOTION FOR
FOR LEAVE TO FILE A BRIEF EXCEEDING THE PAGE LIMIT**

Upon consideration of the Motion by Defendant for leave to file a brief of approximately 20 pages in support of its Opposed Motion to Dismiss Or, Alternatively, To Compel Arbitration, filed pursuant to Part IV of Judge Juliet McKenna's Supplement to General Order, and Plaintiff's consent thereto, the Motion is **GRANTED**.

Dated:

Associate Judge

Copies via CaseFileXpress to:

Brendan Klaproth
Counsel for Plaintiff

Sadina Montani
Jillian Wilson Ambrose
Counsel for Defendant

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO,

Plaintiff,

v.

**NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.***

Defendants.

**Case No. 2022 CA 2830 B
Judge Juliet J. McKenna**

**Next Event: Initial Hearing
Sept. 23, 2022**

**DEFENDANTS’ OPPOSED MOTION TO DISMISS OR,
ALTERNATIVELY, TO COMPEL ARBITRATION
AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

Defendants National Congress of American Indians, *at al.* (“NCAI”), through counsel, submit this Motion to Dismiss or, in the alternative, to Compel Arbitration. Pursuant to Super. Ct. R. Civ. 12-I, Defendant NCAI sought Plaintiff’s consent to the relief requested by this Motion; Plaintiff does not consent.

INTRODUCTION

The Court should dismiss this action because Plaintiff Dante Desiderio (“Mr. Desiderio” or “Plaintiff”) fails to state a claim under Super. Ct. R. Civ. 12(b)(6).¹ Additionally, specifically

¹ Throughout this Motion and Memorandum in Support, NCAI references the Superior Court Rules of Civil Procedure. However, in anticipation of its filing of a Notice of Removal in the United States Federal District Court for the District of Columbia, NCAI notes that Federal Rules of Civil Procedure analogous to those relied upon here – namely Fed. R. Civ. P. 12(b)(1) and 12(b)(6) – are identical in language and intent to the corresponding Superior Court Rules.

as to his claim of earned paid time off (“PTO”),² Mr. Desiderio’s claim is moot and should be dismissed pursuant to Super. Ct. R. Civ. 12(b)(1).

In the alternative, the Court should compel arbitration of his claims pursuant to the terms of the Employment Agreement (the “Agreement”) entered into between Mr. Desiderio and NCAI and attached hereto as Exhibit 1.³

FACTUAL BACKGROUND

A. The Parties

NCAI is a 501(c)(4) nonprofit organization that provides services to American Indian and Alaska Native People(s) in the United States and works to protect their tradition and culture, secure benefits and services for them, secure their rights under treaties and agreements, promote their common welfare, and to educate the public regarding Indian and Native governments, people and rights. Complaint ¶ 15. NCAI also owns the National Congress of the American Indians Fund, a 501(c)(3) nonprofit organization that houses its educational efforts. Complainant ¶15.

NCAI is led by its Executive Committee. Its President, 1st Vice President, Recording Secretary, and Treasurer are elected by the entire membership. The twelve Regional Vice Presidents are elected by their respective regions.

² Although the Complaint does not so state, NCAI assumes for purposes of this brief that “PTO” as used at paragraphs 67 and 69 of the Complaint, refers to “paid time off.”

³ In examining the sufficiency of the complaint, the court may consider the complaint itself and any documents it incorporates by reference. *Abdelrhman v. Ackerman*, 76 A.3d 883, 887 (D.C. 2013).

Mr. Desiderio was hired as NCAI's Executive Director on April 12, 2021. Complaint ¶ 12. He is a party to an employment agreement he negotiated with NCAI, which contemplated a term of employment from May 11, 2021 to May 11, 2024. *Id.* The Agreement provides that he reports to the President of NCAI's Executive Committee, that he "shall perform services as directed by the Executive Committee," and that he "shall direct and coordinate the various activities of the NCAI Congress and Fund organizations through the authority delegated by the Executive Committee." Exh. 1, Declaration of Larry Wright, Jr.; Exh. 2, Desiderio Agreement at pg. 2.

B. The Arbitration Provision

Mr. Desiderio's Agreement with NCAI includes a provision entitled "Resolution of Disputes" (the "Arbitration Provision"). Page 6 of the Agreement, under the heading "RESOLUTION OF DISPUTES," includes the language, "In the event of any Dispute [...] between Desiderio and NCAI, including all Disputes regarding Desiderio's rights under this Agreement or termination of this Agreement, or any extension or renewal thereof, and if the Dispute is not resolved informally by the Parties, Desiderio shall submit the Dispute to binding arbitration..."

The Arbitration Provision defines "Dispute" – as referenced above – as follows:

As used herein, "Dispute" means any and all demands, claims, or causes of action, whether related to or arising out of this Agreement, any applicable federal or state statute, regulation or executive order, or the common law, including demands, claims or causes of action for:

- *Breach of contract, wrongful termination, breach of the implied covenant of good faith and fair dealing, violation of public policy, retaliatory discharge, malfeasance, misfeasance, breach of trust, equitable or promissory estoppel,*

misrepresentation, defamation, invasion of privacy, tortuous [sic] interference with contract or contractual expectancy, etc.;

- *Employment discrimination, including claims based on Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, any applicable state law against discrimination, and all other applicable federal, state and local antidiscrimination laws, regulations and executive orders; and*
- *Damages for pain and suffering, emotional distress, liquidated damages, punitive damages, taxable costs, interest and reasonable attorneys' fees.*

Mr. Desiderio does not contend – and cannot contend – that the Agreement is not valid and enforceable.

C. The Complaint

On June 24, 2022, Mr. Desiderio filed a Complaint in this Court. On August 1, 2022, he filed an Amended Complaint, which he then served on NCAI on August 12, 2022 (the “Complaint”). The Complaint alleges three causes of action: (1) retaliation under the DCHRA, (2) “failure to pay wages in violation of DC [sic] wage payment and collection law,” and (3) “retaliation in violation of DC [sic] wage payment and collection law.” Complaint ¶¶ 57 – 79. While Mr. Desiderio has styled the latter two claims as violations of D.C. “wage payment and collection law,” they are, in fact, breach of contract claims – as discussed at *Argument* § C.2, *infra* – and therefore subject to the arbitration provision of the Agreement.

STANDARDS OF REVIEW

A. Motion to Dismiss Pursuant to Rule 12(b)(1)

This Court may dismiss a claim where it determines that it does not have subject matter jurisdiction because the claim is moot. Super. Ct. R. Civ. allows parties to move to dismiss a claim where the Court lacks subject matter jurisdiction. Super. Ct. R. Civ.12 (b)(1). Where the

defendant challenges the court's subject matter jurisdiction, the court may consider facts outside of the pleadings without converting the motion into one for summary judgment. *FOP v. District of Columbia*, 2011 D.C. Super. LEXIS 11, *4-5, citing *Pardue v. Ctr. City Consortium Schs. of the Archdiocese of Wash., Inc.*, 875 A.2d 669, 674-75 (D.C. 2005). Moreover, unlike motions to dismiss based upon on other grounds, the facts are not construed in favor of the plaintiff. The plaintiff bears the burden of proving jurisdictional facts. *Id.* Where the lack of jurisdiction allegedly arises from matters outside the Complaint, it is a factual attack and the court is free to weigh the evidence without any presumptions regarding the complaint's truthfulness. *Id.*, citing *Bible Way Church v. Beards*, 680 A.2d 419, 426 n.4 (D.C. 1996). Moreover, a court, in deciding a Rule 12 (b)(1) motion, may review any evidence submitted by the parties, including affidavits, without converting the motion into a Rule 56 motion for summary judgment. *Id.*

When arguing that the Court does not have subject matter jurisdiction specifically due to mootness, two prerequisites that must be satisfied before a claim can be deemed moot: (1) it must be plain that interim relief or events have completely and irrevocably eradicated the effects of the alleged violation, and (2) it must be concluded with assurance that there is no reasonable expectation will recur. *FOP v. District of Columbia*, 2011 D.C. Super. LEXIS 11, *4-5 (internal quotes and citations omitted).

B. Motion to Dismiss Pursuant to Rule 12(b)(6)

A complaint should be dismissed under D.C. Super. Ct. R. Civ. 12(b)(6) if it does not satisfy the requirement of Rule 8(a) that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." To determine whether a complaint survives a motion to dismiss, a court must determine (1) whether the complaint includes well-pled factual

allegations, and (2) whether such allegations plausibly entitle the plaintiff to relief. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (U.S. 2009)). Although a court “must accept as true all of the allegations contained in a complaint,” “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” do not suffice. *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128-29 (D.C. 2015) (quoting *Iqbal*, 556 U.S. at 678). *Medrano v. Int’l Golden Foods*, 2021 D.C. Super. LEXIS 58, *4-5.

C. Motion to Compel Arbitration

A motion to compel arbitration invokes the well-established preference for arbitration when the parties have expressed a willingness to arbitrate. Federal and District of Columbia statutes “are in agreement on the issue of favoring arbitration when the parties have entered into a contract containing an arbitration clause.” *Weatherly Cellaphonics Partners v. Hueber*, 726 F. Supp. 319, 322 n.5 (D.D.C. 1989); *see Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983) (“as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration”); *Carter v. Cathedral Ave. Coop., Inc.*, 566 A.2d 716, 717 (D.C. 1989) (District of Columbia decisions “have recognized this same principle” (collecting cases)). The preference for arbitration is essentially a generalized inference of the parties’ intent; courts will presume that an arbitration clause agreed upon by the parties was intended to foreclose judicial involvement in their disputes. *Friend v. Friend*, 609 A.2d 1137, 1139 (D.C. 1992).

As codified in the District of Columbia Revised Uniform Arbitration Act (“RUAA”), D.C. Code §§ 16-4401 to 16-4432 (2012 Repl.), and the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (1996), District of Columbia and federal law broadly protect the right of a party to contract for the use of arbitration as an alternative dispute-resolution mechanism. The RUAA provides that “[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable,” D.C. Code § 16-4406, and permits judicial enforcement of agreement to arbitrate, *id.* § 4407. This Court’s case law has expressed a strong preference favoring arbitration when a contract contains an arbitration clause. *See, e.g., Carter v. Cathedral Ave. Coop., Inc.*, 566 A.2d 716, 717 (D.C. 1989) (describing a “presumption of arbitrability” when a contract contains a clause that covers the asserted dispute); *see also Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) (“as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration”). Thus, “[a] motion to compel arbitration invokes the well-established preference for arbitration when the parties have expressed a willingness to arbitrate.” *TRG Customer Sols., Inc. v. Smith*, 226 A.3d 751, 755 (D.C. 2020), citing *Friend v. Friend*, 609 A.2d 1137, 1139 (D.C. 1992).

The proper approach for the Court to employ in reviewing a defendant’s motion to compel arbitration “is to apply the same standard of review that governs Rule 56 motions.” *Brown v. Dorsey & Whitney, LLP*, 267 F. Supp. 2d 61 (D.C.C. 2003). “In as much as the district court’s order to arbitrate is in effect a summary disposition of the issue of whether or not there had been a meeting of the minds on the agreement to arbitrate,” consideration of the motion

according to the standard used by District Court’s resolving summary judgment motions pursuant to Fed. R. Civ. P. 56(c) “is appropriate.” *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.*, 636 F. 2d 51, 54 n.9 (3d Cir. 1980); *Nelson v. Insignia ESG, Inc.*, 215 F. Supp. 2d 143, 147 (D.D.C. 2002) (holding that “summary judgment [was] the proper procedural mechanism to use in evaluating whether the plaintiff must submit to arbitration” (citation omitted)).

ARGUMENT

A. Plaintiff’s Claim of Unpaid PTO is Moot and Should Be Dismissed

As a threshold matter, the portion of Mr. Desiderio’s purported ‘wage’ claim (Count II) related to the payment of PTO should be dismissed as moot. This portion of Mr. Desiderio’s Count II appears to rely on an unorthodox NCAI policy (instituted under Mr. Desiderio’s leadership) that allowed for twice annual, interim payments to employees *during the course of their employment* of a certain amount of accrued but unused PTO. But this claim is moot for two reasons – first, Mr. Desiderio *was* issued an interim payment for accrued but unused PTO consistent with the policy; and second, Mr. Desiderio was subsequently compensated for *all* accrued but unused PTO at the time his employment with NCAI ended, which occurred after the Complaint was filed.

Specifically, Mr. Desiderio alleges, in support of Count II, that he was not paid two weeks of “earned PTO” *while a current NCAI employee*. Complaint ¶ 69. Mr. Desiderio also alleges that he was “ignored” when he asked to be paid out for 72 hours of earned leave, “which amounted to \$9,519.23.” Complaint ¶ 67. Under NCAI’s policy as was in effect beginning in or about December 2021 and continuing through June and July 2022, each employee – including Mr. Desiderio – was eligible to “roll over” up to 80 hours of accrued but unused PTO as of each

May 31st and December 31st annually. Exh. 1, Wright Declaration, and Exh. A thereto (presentation re: New NCAI PTO Policy). Any accrued PTO beyond 80 hours was paid out to employees at their regular rate. *Id.* NCAI interprets Mr. Desiderio’s allegations in Paragraphs 67 and 69 of his Complaint as indicating that he was not paid out for the full amount of accrued but unused PTO owed to him – which is to say, any hours beyond 80 as of each May 31st and December 31st.

NCAI’s payroll records make clear that this is not the case – **Mr. Desiderio received the interim payment of accrued but unused PTO he alleges he did not receive.** Mr. Desiderio’s paystub dated May 27, 2022 reflects that he was paid \$8,746.16 for 66.15 hours of accrued “vacation” – in addition to his regular salary payment of \$10,576.92. Exh. 1, Wright Declaration and Exhs. B (Desiderio PTO Accounting) and C (Desiderio Paystubs) thereto. This is consistent with NCAI’s internal recordkeeping tracking Mr. Desiderio’s PTO leave, which show that Mr. Desiderio, as of May 21, 2022, had accrued 146.15 hours of PTO, and was therefore paid out for 66.15 hours as of May 27, 2022 – which was his accrual beyond 80 hours.⁴

Even Mr. Desiderio’s allegations regarding the amount of accrued but unused PTO he contends he was not paid *while still an employee of NCAI* are inconsistent. He alleges in paragraph 67 of his Complaint that he was owed and denied a payment of 72 hours of accrued but unused PTO. But in paragraph 69, he alleges that he was owed and denied a payment of “two weeks of earned PTO.” Regardless of his precise claims, because Mr. Desiderio was paid

⁴ Remarkably, NCAI’s internal recordkeeping tracking Mr. Desiderio’s PTO leave reflects that during his 15 months of employment with NCAI, he did not use any PTO whatsoever.

out for 66.15 hours on May 31, he was not entitled to any additional payment (six hours, 72 hours or 80 hours) in July 2022.⁵

In addition to the fact that Mr. Desiderio *did* receive an interim payment of accrued but unused PTO which he claims he did not, Mr. Desiderio was ultimately was paid for *all* accrued but unused PTO available to him at the time his employment with NCAI ended, in accordance with NCAI policy. His paystubs reflect those payments. *See* Exh. 1.C (Desiderio Paystubs). Even if Mr. Desiderio initially suffered some harm here – which he did not – it is plain that the effects of any violation have been completely and irrevocably eradicated – because Mr. Desiderio was paid out for all PTO owing to him upon his separation from NCAI. *FOP v. District of Columbia*, 2011 D.C. Super. LEXIS 11, *4-5. Further, there is no reasonable expectation that it will recur, because Mr. Desiderio is no longer employed by NCAI. *Id.* Mr. Desiderio’s claim as to his PTO is moot and must be dismissed pursuant to Rule 12 (b)(1).

B. Plaintiff Fails To State Any Claim For Which Relief Can Be Granted

Each of Plaintiff’s three claims should be dismissed with prejudice for failure to state a claim for which relief can be granted under Rule 12 (b)(6).

1. Plaintiff Fails to State a Claim for Retaliation under the DCHRA

Plaintiff alleges that he was subject to unlawful retaliation under the DCHRA after he sent two memoranda to NCAI’s Executive Committee and other NCAI Officers reporting that an

⁵ It is also not clear to NCAI on what Mr. Desiderio is basing his statement at Paragraph 69 of the Complaint that he was not paid for “two weeks of earned PTO,” and how that statement comports with the statements of Paragraph 67.

investigation being conducted into sexual harassment allegation was not being conducted in a fair and impartial manner; “interven[ed]” on behalf of two NCAI contractors; and “through his lawyer” wrote to a law firm hired by the Executive Committee to complain about the investigation. Complaint ¶ 61. None of these allegations satisfy the elements of a retaliation claim under the DCHRA, and so this claim should be dismissed.

The DCHRA prohibits an employer from retaliating against an employee “for opposing an employment practice that is prohibited by the Act.” *Ukwuani v. D.C.*, 241 A.3d 529, 546 (D.C. 2020). (citation omitted). To make out a *prima facie* case of retaliation, an employee must establish (1) that he engaged in a protected activity; (2) that his employer took an adverse action against him; and (3) that a causal relationship existed between that adverse action and the protected activity. *Id.*

Mr. Desiderio fails to state a claim for retaliation under the DCHRA because he does not allege that he engaged in legally recognized protected activity. Critically, by its terms, the DCHRA applies only to applicants and employees – but not to independent contractors. *Samuels v. Rayford*, No. CIV A 91-0365 (JHG), 1995 WL 376939, at *7 (D.D.C. Apr. 10, 1995) (finding that an independent contractor relationship is not included in the word “employment” for the purposes of the DCHRA).

First, Mr. Desiderio apparently alleges that he engaged in protected activity by “sending two memoranda to Defendant’s Executive Committee and the Officers of the organization advising that the law firm hired by the Executive Committee [to investigate allegations of sexual harassment] was not conducting a fair, [sic] and impartial investigation in [Jane] Doe’s complaint.” Complaint ¶ 59. Mr. Desiderio has not plead that he participated in protected

activity under the DCHRA because he does not allege that he complained about a violation of the law. The DCHRA does not (and cannot reasonably be interpreted to) dictate the methods or practices an employer must use to investigate complaints of harassment or discrimination.⁶ Mr. Desiderio does not allege that he complained that NCAI's investigation itself was discriminatory or harassing.⁷

Second, Mr. Desiderio apparently alleges that he engaged in protected activity by “intervening on behalf of [Max] Muller and [Pamela] Fagan in the face of the Executive Committee’s race-based criticism of his hiring of two Non-Native American staff members, and by opposing the Executive Committee’s race-based termination of two Non-Native American staff members.” Mr. Desiderio has not plead that he engaged in protected activity because, here again, he does not allege that he complained about a violation of the law. Both Mr. Muller and Ms. Fagan were, at all times relevant to this complaint, **independent contractors** brought on by Mr. Desiderio to perform services for NCAI. At no time were they employees. Complaint ¶ 19. Likewise, they were not applicants for employment; Mr. Desiderio does not allege that they applied for any position with NCAI, nor that he believed them to have applied for a position with NCAI. The DCHRA, by its terms, provides protection against discrimination for employees and applicants. D.C. Code § 2–1402.11. An independent contractor, as a non-employee, does not have access to relief under the DCHRA. *Samuels v. Rayford*, No. CIV A 91-0365 (JHG), 1995

⁶ NCAI vehemently disagrees with Mr. Desiderio’s suggestion that its investigation into Ms. Doe’s complaint was anything but fair and impartial.

⁷ Although outside the scope of this Motion, as a factual matter, NCAI denies that the law firm hired by Mr. Desiderio (without the input of the Executive Committee), O’Hagan Meyer, conducted an investigation into Doe’s complaint at all.

WL 376939, at *7 (D.D.C. Apr. 10, 1995) (requiring independent contractor plaintiff to prove that an “employer-employee relationship exists” to maintain claim under the DCHRA). And, where an individual did not apply for a position, s/he cannot claim discrimination in non-selection. *Thomas v. Gandhi*, 525 F. Supp. 2d 103, 108 (D.D.C. 2007).

Mr. Desiderio, as NCAI’s Chief Executive Officer, knew that neither Muller nor Fagan were employees nor applicants for employment, because he himself executed the contracts with the business entities that actually employ Muller and Fagan. Exhs. 3 and 4.⁸ It strains credulity for him to now assert that he believed he was complaining about a violation of applicable legal protection for NCAI’s employees, and the Court should not credit that bald assertion here. Further, Mr. Desiderio clearly understands the importance of the distinction; he took pains in filing his Amended Complaint to strike references to these individuals as “employees” and instead to reference them as “staff members.”

Finally, Mr. Desiderio apparently alleges that he engaged in protected activity when his lawyer “wr[ote] to the law firm hired by NCAI’s Executive Committee on June 8, 2022 reiterating Plaintiff’s complaint about the handling of the Executive Committee’s investigation.” Complaint ¶ 61. This is not protected activity under the DCHRA for the same reasons discussed above: a complaint about the supposed (non-discriminatory, non-retaliatory) shortcomings of an investigation into conduct of a third party does not constitute activity protected by the DCHRA.⁹

⁸ These contracts between Max Muller and NCAI, and Pamela Fagan and NCAI, respectively, are incorporated into the Complaint by reference, namely Plaintiff’s many references to the nature of the (contractual) relationship between these individuals and NCAI; *see, e.g.*, Complaint ¶¶ 19, 21, and 25.

⁹ NCAI is aware of no case law suggesting that submission of a grievance submitted to outside counsel for an organization, about that outside counsel’s handling of an ongoing investigation as directed by the organization, constitutes a cognizable “complaint” under the DCHRA. In fact, the ongoing investigation being conducted by outside counsel, at the direction of the organization’s Executive Committee, was an investigation into a harassment

2. Plaintiff Fails to State a Claim for Failure to Pay Wages

Plaintiff also alleges that NCAI violated the D.C. Wage Payment and Collection Law – by reframing a breach of contract claim as wage claim (presumably, to circumvent the arbitration requirement in the Agreement, which only carves out from mandatory arbitration statutory wage claims). Specifically, in support of Counts II and III, Mr. Desiderio relies upon two apparently unrelated allegations: that NCAI did not award him a 5% salary increase at his one-year anniversary, and that it did not pay him out for certain earned but unused PTO. Complaint ¶¶ 65 – 79. Neither assertions are sufficient to state a claim of a violation of D.C.’s Wage Payment and Collection Law. The Complaint also references an alleged failure by NCAI to “pay Plaintiff his earned wages (1) at least once per month; (2) within 10 working days of the covered pay period; and (3) on designated paydays.” Complaint ¶ 70.

First, Mr. Desiderio’s allegation that NCAI did not award him a 5% salary increase predicates itself on the assumption that he was “entitled” to this increase. Complaint ¶ 66. This is not the case. Mr. Desiderio’s Agreement contemplated that he would be

eligible for a five percent (5%) annual salary increase ***based on meeting the goals, metrics and milestones of the organization***, effective one year after the Employment Term begins and on the anniversary of the Employment Term every year thereafter.

See Exh. 2, Desiderio Employment Agreement, at pg. 9 (emphasis added). Mr. Desiderio was not “entitled” to an “automatic and mandatory” annual increase; rather, his ***eligibility*** for the increase was conditional on “qualitative and quantitative measures established by” NCAI and his characterization of any salary increase as “owed” to him is disingenuous at best. *Brady v.*

complaint lodged against a contractor who had been hired by Mr. Desiderio – and was initiated by the Executive Committee following Mr. Desiderio’s failure to adequately address that harassment complaint.

Liquidity Servs., Inc., No. 18-CV-1040 (RCL), 2018 WL 6267766, at *4 (D.D.C. Nov. 30, 2018). Mr. Desiderio has not presented well-pled factual allegations that plausibly allege that he was eligible for the increase, and he certainly has not presented well-pled factual allegations that allow the court to draw the reasonable inference assumption that he was “owed” such an increase even if “eligible” for it. He has not plead facts which have facial plausibility that allows the court to draw the reasonable inference that he was entitled to that increase.¹⁰ *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). Because his claim hangs on that assumption, it must fail.

Second, Mr. Desiderio alleges that NCAI did not pay him out for certain earned but unused PTO in accordance with organization policy. Complaint ¶ 69. In addition to failing as moot under Rule 12(b)(1), this claim fails because the Wage Payment Act “applies only when wages are not in dispute.” *Chan Chan v. Children’s Nat’l Med. Ctr.*, No. CV 18-2102 (CKK), 2019 WL 4471789, at *4 (D.D.C. Sept. 18, 2019) (quoting *Briscoe v. Costco Wholesale Corp.*, 61 F. Supp. 3d 78, 92 n.7 (D.D.C. 2014)). NCAI not only disputes that Mr. Desiderio was entitled to be paid out for earned but unused PTO under organization policy at the time he requested it (*see Argument* at § A, *supra*) but Mr. Desiderio’s own inconsistent allegations regarding the *amount* of accrued but unused PTO to which he contends he is entitled further supports that the amount of wages is in dispute (compare Complaint ¶¶ 67, 69). Mr. Desiderio has failed to plead facts which have facial plausibility that would allow the court to draw the

¹⁰ This Court applies its Rule 12(b)(6) consistent with interpretation of Fed. R. Civ. P. 12(b)(6), including application of the “plausibility” standard derived from *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, (2007); *see, e.g., Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011)

reasonable inference that he was entitled to an undisputed amount of PTO and thus this dispute is not properly subject to a claim under the Wage Payment Act, and this claim must be dismissed.

3. Plaintiff Fails to State a Claim for Retaliation under D.C. Wage Law

Finally, Mr. Desiderio claims that NCAI retaliated against him for complaining about earned but unpaid wages. Complaint ¶¶ 76 – 79. This claim must fail for two reasons: Mr. Desiderio has not plead a claim that he was subject to a violation of the D.C. Wage Payment Law for the reasons described above at *Argument* § B.2, and he has not alleged that he was subject to legally material adverse employment action.

First, he alleges that this complaint was lodged in a June 8, 2022, letter from his attorney, in which the attorney “complained to NCAI about Plaintiff’s unpaid, earned wages.” Complaint ¶ 78. As Mr. Desiderio makes clear throughout his Complaint, these “unpaid wages” constituted the 5% annual raise for which he would be “eligible” pursuant to his Employment Agreement. Complaint at ¶¶ 66.¹¹ As discussed above, Mr. Desiderio’s assertion that he was owed (or “due”) this annual increase does not withstand even the thinnest scrutiny as a potential wage claim. To make out a claim of retaliation, Mr. Desiderio must assert that he made a complaint that NCAI engaged in conduct that he “reasonably and in good faith” believed violated the D.C. Wage Payment Law. D.C. Code § 32–1311. But here – where not only a plain reading of the Agreement reflects the potential pay increase is not guaranteed, and particularly given that this “complaint” was made to NCAI presumably upon the advice of his lawyer, who transmitted the complaint – Mr. Desiderio cannot plausibly have had a good faith belief that his Employment

¹¹ Mr. Desiderio does not allege that on June 8, 2022, through counsel he complained about any alleged non-payment of accrued but unused PTO.

Agreement entitled him to specific wages. Accordingly, he does not have a plausible claim of retaliation, because his underlying “complaint” was not made in good faith.

Even if Mr. Desiderio has sufficiently pled that he engaged in legally protected activity – though counsel, by complaining that he did not receive the pay increase for which he was eligible pursuant to the Agreement – Mr. Desiderio fails to allege that he was subject to an adverse employment action. Reading the Complaint in the light most favorable to him, he asserts merely that he was placed on administrative leave. Complaint ¶¶ 8, 78. A legally significant adverse employment action is one that has “materially adverse consequences affecting the terms, conditions, or privileges of employment or future employment opportunities such that a reasonable trier of fact could find objectively tangible harm.” *D.C. Dep’t of Pub. Works v. D.C. Office of Human Rights*, 195 A.3d 483, 491 (D.C. 2018). But Mr. Desiderio has not pled that he suffered objectively tangible harm. To the contrary, he has pled only that he was “plac[ed] on administrative leave, [which] forc[ed] him to forego his planned attendance” at a conference. Complaint ¶ 78. This is not a legally significant adverse employment action. *See Hornsby v. Watt*, 217 F. Supp. 3d 58, 66 (D.D.C. 2016) (noting a near-universal consensus” that that placing an employee on paid administrative leave does not constitute an adverse action, and concluding that placing an employee on paid administrative leave does not, in and of itself, constitute a materially adverse action for purposes of a retaliation claim).

C. Plaintiff Should Be Compelled to Arbitrate Each of His Claims

Notwithstanding Mr. Desiderio’s apparent attempts to circumvent his obligation to resolve employment and contract-based disputes with NCAI in private arbitration (including by attempting to cast obvious breach of contract claims as ‘wage’ claims, which are exempted from

arbitration pursuant to the Agreement), any claims in the Complaint that survive the motion to dismiss are subject to arbitration.

Both Federal and DC law strongly support enforcement of arbitration agreements included in employment contracts. *See Circuit City Stores v. Adams*, 532 U.S. 105, 123 (2001) (“The Court has been quite specific in holding that arbitration agreements can be enforced under the FAA without contravening the policies of congressional enactments giving employees specific protection against discrimination prohibited by federal law”); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (“It is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA.”); *Nur v. K.F.C. USA, Inc.*, 142 F. Supp. 2d 48, 50 (D.D.C. 2001) (“[f]ederal courts have recognized a strong policy favoring alternative means of dispute resolution”); FAA, 9 U.S.C. § 1 et seq. “As a result of this policy, any ‘ambiguities’ in the language of the [employment] agreement should be resolved in favor of arbitration.” *Brown v. Dorsey & Whitney, LLP*, 267 F. Supp. 2d 61, 69 (D.D.C. 2003); *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002).

This Court has two questions it must answer before it can order the Plaintiff to submit his claims to arbitration. These questions are as follows:

- (1) did the parties enter into a valid and enforceable arbitration agreement and, if they did,
- (2) does the arbitration agreement encompass the claims raised in the Complaint?

Nelson, 215 F. Supp. 2d at 149-50 (citing *Nur*, 142 F. Supp. 2d at 50-51); *Brown* 267 F. Supp. 2d at 70. In this case, based on undisputed facts and plain language of the Agreement, the answer to both of these questions is an unqualified yes.

1. The Parties' Agreement To Arbitrate Is Valid And Should Be Enforced

It is undisputed that the parties agreed to submit to arbitration any and all disputes relating to alleged breach of contract or employment discrimination. Exh. 2, Desiderio Employment Agreement, at pg. 6. It is a basic tenet of the law that “one who signs a contract which he had an opportunity to read and understand is bound by its provision.” *Brown*, 267 F. Supp. 2d at 75; *see also Nur*, 142 F. Supp. 2d at 51.

Mr. Desiderio clearly acknowledges that the Agreement is valid; he has based his “wage” claims on language contained within it. He cannot, then, disclaim its detailed arbitration provision; his signature on the Agreement and its facial validity and enforceability render it controlling here. *Emeronye v. CACI Int’l, Inc.*, 141 F. Supp. 2d 82, 86 (D.D.C. 2001); *Brown*, 267 F. Supp. 2d at 83. In this case, there can be no question as to whether Mr. Desiderio executed an explicit arbitration agreement with clear and understandable terms on April 12, 2021.

2. The Arbitration Agreement Between the Parties Encompasses the Claims In the Complaint

In his Complaint, Mr. Desiderio sets forth three distinct claims, which fall into two categories: employment discrimination, and breach of contract. Both categories of claims are governed by the Arbitration Agreement. As a result, this action should be dismissed and Mr. Desiderio should be compelled to submit his claims to binding arbitration.

Mr. Desiderio styles his first claim as one of “Retaliation under D.C. Human Rights Act.” Mr. Desiderio did not engage in protected activity under the DCHRA, and so he has failed to state a claim under that statute. *See* Argument § B.1 *supra*. However, if the Court finds that Mr.

Desiderio has stated a claim under the DCHRA, the Court must then compel the parties to arbitrate that claim. Mr. Desiderio’s Arbitration Agreement explicitly covers “claims based on Title VII of the Civil Rights Act **[and] any applicable state law against discrimination, and all other applicable federal, state and local antidiscrimination laws.**” Exh. 2 at pg. 6. (emphasis added). The DCHRA is unquestionably such a “state nondiscrimination” law.

Mr. Desiderio styles his second and third claims as violations of the D.C. Wage Payment and Collection Act. The D.C. Wage Payment and Collection Law defines “wages” to encompass “all monetary compensation after lawful deductions, owed by an employer, whether the amount owed is determined on a time, task, piece, commission, or other basis of calculation specifically including bonus and other remuneration **promised or owed pursuant to a contract for employment**, whether written or oral.” D.C. Code § 32-1301(3) (emphasis added). In so phrasing the definition of “wages” to include monetary compensation “promoted or owed pursuant to a contract for employment,” the assumes the existence or validity of an underlying contract. However, that assumption is a condition precedent – and thus a separate question – from whether wages are “owed.” *See, e.g., Bartolo v. Whole Foods Mkt. Grp.*, 412 F. Supp. 3d 35 (D.D.C. 2019), in which the court, analyzing a D.C. Wage Theft Prevention Act claim, held that, because a fired employee’s bonus was linked to the employer’s performance and that performance did not justify the payment of any bonus at all, the employee had not “earned” this sum for wage payment purposes.

Mr. Desiderio no doubt hopes that the Court will disregard his hand-waving as to the nature of his claims and categorize them as claims under an “applicable state wage and hour act” – because such claims are *not* subject to arbitration under the Agreement. However, as discussed

above, these claims are not based in allegations of violations of any “wage and hour act;” instead, they allege breaches of Mr. Desiderio’s contract with NCAI. Mr. Desiderio alleges, at core, that NCAI violated his employment contract when it failed to award him a 5% annual raise, and when it did not pay him (what he describes as) earned but unused PTO. Both of those allegations are based on the terms of his employment contract – not on any right he held under D.C. wage and hour laws.

CONCLUSION

Mr. Desiderio’s claims under the DCHRA or the D.C. Wage Payment and Collection Law should be dismissed with prejudice. His claim as to unpaid PTO is moot, and should be dismissed pursuant to Rule 12(b)(1); in the alternative, that claim, as well as his other claims, should be dismissed pursuant to Rule 12(b)(6) because he has failed to state a claim upon which relief can be granted.

In the alternative, the Court should find that Mr. Desiderio entered into a binding arbitration agreement that controls the claims he has raised in this action. Under well-settled case law, this arbitration clause is enforceable and prevents Plaintiff from raising his claims in any court. Therefore, this Court should dismiss Plaintiff’s claims with prejudice for lack of subject matter jurisdiction and compel arbitration.

Dated: September 2, 2022

/s/ Jillian Ambrose
Sadina Montani (DC Bar# 988999)
smontani@crowell.com
Jillian Wilson Ambrose (DC Bar# 1025103)
jambrose@crowell.com
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004
Tel: (202) 624-2500
*Counsel for National Congress of American
Indians*

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2022, a true copy of the above document was served via CaseFileXpress on Plaintiff's counsel as indicated below.

Brendan J. Klaproth
Klaproth Law PLLC
2300 Wisconsin Ave NW
Suite 100A
Washington, DC 20007
(T) 202-618-2344
(F) 202-618-4636
www.klaprothlaw.com
Counsel for Plaintiff

/s/ Jillian Ambrose
Jillian S. W. Ambrose

Exhibit 1

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DANTE DESIDERIO,

Plaintiff,

v.

**NATIONAL CONGRESS OF AMERICAN
INDIANS, *et al.***

Defendants.

**Case No. 2022 CA 2830 B
Judge Juliet J. McKenna**

DECLARATION OF LARRY WRIGHT, JR.

I, Larry Wright Jr., declare as follows:

1. I am competent to testify about the matters set forth in this declaration, which are based on my personal knowledge and/or belief.
2. I am the Director of Leadership Engagement for the National Congress of American Indians (“NCAI”). I currently serve as the Interim Chief Executive Officer of NCAI. I am a member of the Ponca Tribe of Nebraska.
3. NCAI is governed by its Executive Committee, who are elected by its entire membership. The Executive Committee consists of NCAI’s President, its 1st Vice President, its Recording Secretary, and its Treasurer. Twelve Regional Vice Presidents are elected by their respective leadership.
4. Dante Desiderio (“Mr. Desiderio”) formerly served as NCAI’s Chief Executive Officer. A true and correct copy of the Employment Agreement entered into between NCAI and Mr.

Desiderio is attached to NCAI's September 2, 2022 Opposed Motion To Dismiss Or, Alternatively, To Compel Arbitration (the "Motion"), as Exhibit 2.

5. At the time Mr. Desiderio's employment with NCAI began, pursuant to NCAI's employment policies then in place, Mr. Desiderio accrued paid time off ("PTO") at a rate of 4.62 hours per bi-weekly pay period.

6. In December of 2021, under Mr. Desiderio's leadership, NCAI introduced and implemented a new policy governing PTO. Under this new policy, NCAI employees were eligible to "roll over" up to 80 hours of accrued but unused PTO as of each May 31st and December 31st, annually. Any accrued but unused PTO *in excess* of 80 hours was to be paid out to employees each year at the end of May and at the end of December. A copy of the PowerPoint presented to NCAI employees regarding this new policy is attached here as Exhibit A. In addition to the changes outlined in the PowerPoint, the new policy increased annual accrual from 15 days per year to 20 days per year, for all employees.

7. Mr. Desiderio was subject to this new PTO policy, and an accounting of Mr. Desiderio's accrual of PTO is attached to here as Exhibit B.

8. As of December 18, 2021, Mr. Desiderio had accrued 73.83 hours of PTO.

9. Beginning in January 2022, Mr. Desiderio accrued leave at a rate of 6.15 hours per pay period, per the new accrual policy. As of May 21, 2022, he had accrued a total of 146.15 hours of PTO. Accordingly, on May 27, 2022, he was paid out for all accrued hours in excess of 80 – which amounted to 66.15 hours.


10. Mr. Desiderio's pay stubs are attached here as Exhibit C, and show that, on May 27, 2022, Mr. Desiderio was paid \$8,746.16 for 66.15 hours of "vacation."

11. Mr. Desiderio continued to accrue PTO at a rate of 6.15 hours per pay period. *See* Exh. B. As of the date of his separation from NCAI, he had accrued 116.92 hours of PTO. Accordingly, his last paycheck from NCAI, dated August 15, 2022, reflects that he was paid out for the entirety of his unused PTO balance: 116.92 hours, or \$15,458.17.

12. Following the issuance of his final paycheck dated August 15, 2022, Mr. Desiderio had been compensated for each and every hour of PTO that he had accrued but not used during his employment at NCAI in accordance with NCAI policy.

I declare under penalty of perjury that the foregoing is true and correct.

Done this 2nd day of September, 2022, in Washington, DC.

DocuSigned by:

5B5C854B02B74E3...

Larry Wright Jr.

Exhibit A

New NCAI PTO Policy



What's In It For Me?

New policy is a PTO (paid time off) policy which can be used for vacation, sick, personal, FMLA, etc.

You will accrue hours every month based on your years of service – all reset of accruals will be based on a calendar year.

On last payroll of the year, you will receive a payout of any hours over 80. January 1 you will have up to 80 hours accrual to begin the year.

You will continue to accrue each month your years of service allotment. (example: 6.15 hours per pay cycle.)

At mid-year – another payout of hours over 80 will be made in order to control the fiscal responsibility of the organization.



Example of payout:

Example of PTO Payouts on December 24th payroll and May 31st

- Assumptions:
 - Employee has a total of 95 hours in PTO bank at end of year.
 - Carryover limited to 80 hours.
 - 15 hour balance over 80 will be paid out on last payroll of the year (December 24).
 - Employee continues to accrue PTO monthly according to policy schedule.
 - By May 31st employee has taken 50 hours of the 80 hours of carryover.
 - The 30 hours carryover will be paid out effective May 31st, leaving the then current accrual intact for use during the rest of the year.
- Calculation example (employee's hourly rate based on annual salary of \$82,000):
 - December 31st: 15 hours @ \$39.42 = \$591.30 paid
 - May 31st: 30 hours @ \$39.42 = \$1,182.60 paid

If you have questions:
email me at pfagan@ncai.org



Exhibit B

Vacation History

Date Range: -

Date ^	Accrued	Granted	Adjustment	Used	Balance	
05/22/2021	4.62	4.62			4.62	▲
06/05/2021	4.62	4.62			9.23	
06/19/2021	4.62	4.62			13.85	
07/03/2021	4.62	4.62			18.46	
07/17/2021	4.62	4.62			23.08	
07/31/2021	4.62	4.62			27.69	
08/14/2021	4.62	4.62			32.31	▼

Total Records: 19

X Close

Vacation History

Date Range: -

Date ^	Accrued	Granted	Adjustment	Used	Balance	
08/28/2021	4.62	4.62			36.92	▲
09/11/2021	4.62	4.62			41.54	
09/25/2021	4.62	4.62			46.15	
10/09/2021	4.62	4.62			50.77	
10/23/2021	4.62	4.62			55.38	
11/06/2021	4.62	4.62			60.00	
11/20/2021	4.62	4.62			64.61	▼

Total Records: 19

X Close

12/04/2021	4.62	4.62			69.23	
12/18/2021	4.62	4.62			73.84	
01/01/2022					73.84	

Employee Paid Time Off History

Date Range: -

Date ^	Accrued	Granted	Adjustment	Used	Balance	
01/01/2022	6.15	6.15			6.15	▲
01/01/2022			78.46		84.61	
01/15/2022	6.15	6.15			90.77	
01/29/2022	6.15	6.15			96.92	
02/12/2022	6.15	6.15			103.08	
02/26/2022	6.15	6.15			109.23	
03/12/2022	6.15	6.15			115.38	▼

Total Records: 19

Close

Employee Paid Time Off History

Date Range: -

Date ^	Accrued	Granted	Adjustment	Used	Balance	
03/26/2022	6.15	6.15			121.54	▲
04/09/2022	6.15	6.15			127.69	
04/23/2022	6.15	6.15			133.85	
05/07/2022	6.15	6.15			140.00	
05/21/2022	6.15	6.15			146.15	
06/01/2022					80.00	
06/04/2022	6.15	6.15			86.15	▼

Total Records: 19

Employee Paid Time Off History

Date Range: 06/05/2022 -

Date ^	Accrued	Granted	Adjustment	Used	Balance	
06/18/2022	6.15	6.15			92.31	
07/02/2022	6.15	6.15			98.46	
07/16/2022	6.15	6.15			104.62	
07/30/2022	6.15	6.15			110.77	
08/13/2022	6.15	6.15			116.92	

Total Records: 5

Close

Exhibit C

NATIONAL CONGRESS OF AMERICAN INDIANS
1516 P Street Nw
Washington DC 20005

Y430-527P
ORG1:1 NCAI INC (FU
ND) 501C3
EE ID: 248 DD

Payrolls by Paychex, Inc.

DANTE DESIDERIO
606 SOUTH QUINCY STREET
ARLINGTON VA 22204

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION

Dante Desiderio
606 South Quincy Street
Arlington, VA 22204

Soc Sec #: xxx-xx-xxxx Employee ID: 248

Home Department: 1 NCAI INC (FUND) 501C3

Pay Period: 07/31/22 to 08/13/22

Check Date: 08/15/22 Check #: 6255

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 015	<u>16273.99</u>	<u>131667.35</u>
NET PAY	16273.99	131667.35

EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
		Salary		10576.92		179807.64
		Vacation	M116.92	15458.17	M183.07	24204.33
		Total Hours	116.92		183.07	
		Gross Earnings		26035.09		204011.97
		Total Hrs Worked				
OTHER		DESCRIPTION		THIS PERIOD (\$)		YTD (\$)
Do not increase Net Pay		SAFE HARBOR 4		781.05		6120.39
WITHHOLDINGS		DESCRIPTION	FILING STATUS	THIS PERIOD (\$)		YTD (\$)
		Social Security				9114.00
		Medicare		413.62		2994.28
		Fed Income Tax	H	7874.43		48913.18
		DC Income Tax	H 0 No Withholding			
		VA Income Tax	2 0	1473.05		11323.16
		TOTAL		<u>9761.10</u>		<u>72344.62</u>

NET PAY

THIS PERIOD (\$)
16273.99

YTD (\$)
131667.35

Payrolls by Paychex, Inc.

NATIONAL CONGRESS OF AMERICAN INDIANS
1516 P St NW
Washington DC 20005-1910

Y430-527P
ORG1:1 NCAI INC (FU
ND) 501C3
EE ID: 248 DD

Payrolls by Paychex, Inc.

DANTE DESIDERIO
606 SOUTH QUINCY STREET
ARLINGTON VA 22204

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION

Dante Desiderio
606 South Quincy Street
Arlington, VA 22204

Soc Sec #: xxx-xx-xxxx Employee ID: 248

Home Department: 1 NCAI INC (FUND) 501C3

Pay Period: 05/08/22 to 05/21/22

Check Date: 05/27/22 Check #: 6029

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 015	<u>11323.00</u>	<u>79422.86</u>
NET PAY	11323.00	79422.86

EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
		Salary		10576.92		116346.12
		Vacation	M66.15	<u>8746.16</u>	M66.15	<u>8746.16</u>
		Total Hours	66.15		66.15	
		Gross Earnings		19323.08		125092.28
		Total Hrs Worked				
OTHER		DESCRIPTION		THIS PERIOD (\$)		YTD (\$)
Do not increase Net Pay		SAFE HARBOR 4		579.69		3752.79
WITHHOLDINGS		DESCRIPTION	FILING STATUS	THIS PERIOD (\$)		YTD (\$)
		Social Security		1198.03		7755.72
		Medicare		280.19		1813.84
		Fed Income Tax	H	5434.75		29170.75
		DC Income Tax	H 0 No Withholding			
		VA Income Tax	2 0	1087.11		6929.11
		TOTAL		<u>8000.08</u>		<u>45669.42</u>

NET PAY

THIS PERIOD (\$)
11323.00

YTD (\$)
79422.86

Payrolls by Paychex, Inc.

Exhibit 2

Executive Director Employment Agreement

This Employment Agreement ("Agreement") between the National Congress of American Indians, a 501(c)(4) nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter "NCAI"), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Dante Desiderio, residing at 606 Quincy Street, Arlington, Virginia, an individual ("Desiderio"), is made as of April 12, 2021, with reference to the following facts:

RECITALS

1. NCAI is engaged in the provision of services to American Indian and Alaska Native People(s) throughout the United States to: (1) protect Indian and Native traditional, cultural and religious rights; (2) seek appropriate, equitable and beneficial services and programs for Indian and Native governments and people; (3) secure and preserve Indian and Native rights under treaties and agreements with the United States, as well as under federal statutes, case laws and administrative decisions and rulings; (4) promote the common welfare and enhance the quality of life of Indian and Native people; and (5) promote a better understanding among the general public regarding Indian and Native governments, people and rights; and
2. NCAI has been delegated constitutional and management powers by the NCAI Congress and the NCAI Fund, Inc. and maintains an administrative office in Washington, D.C.; and
3. The Parties desire to enter into this Agreement to create an employment relationship on the terms and conditions in this Agreement; and
4. Desiderio has direct, current and materially important knowledge of NCAI's financial and operational workings having been a successful management employee of the organization in past years, having consistently over the course of many years worked with NCAI in advocating for federal Indian policies with federal agencies, Congressional staff, members of Congress, and various relevant lobbyists and policy influencers; has national stature as a major federal Indian policy influencer; and, notably, has provided invaluable guidance on various financial and operational matters as a consultant to NCAI; and
5. Desiderio would be leaving a respected, economically meaningful, and secure career position with the Native American Finance Officers Association (NAFOA) in accepting the Executive Director position with NCAI; and
6. NCAI considers the continued viability of NAFOA subsequent to Desiderio leaving NAFOA's employ to be in the best interests of Indian Country generally, and important to NCAI's mission

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI _____

1

of engaging in activities vital to the economic, educational, and operational health of Tribes and individual Indians. NCAI expressly recognizes that past and ongoing mutual efforts by NAFOA and NCAI in various policy and other matters effecting Indian country have served to amplify and materially enhance and strengthen the fulfillment of their respective missions; and that the loss of each other's support would be meaningfully detrimental to their respective interests.

NOW, THEREFORE, in consideration of the mutual and individual promises, representations, and undertakings of the Parties set out in this Agreement, including its Recitals, the Parties agree as follows:

TERM

Notwithstanding any at-will policy set out in NCAI's employee handbook, memoranda, or similar documents, including but not limited to those sections of the NCAI employee handbook titled "At-Will Statement" and "Categories of Employment INTRODUCTORY PERIOD" which are hereby superseded by this Agreement, the term of this Agreement shall be from May 11, 2021 to May 11, 2024 ("Employment Term"), unless terminated earlier as provided in this Agreement. Employer has no obligation to extend or renew this Agreement for succeeding terms or to provide any reason why the Agreement was not extended or renewed; provided, however, the Parties agree their intent is to renew this Agreement for additional terms.

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any NCAI policy, the terms and conditions set forth in this Agreement shall prevail. Notwithstanding, Desiderio agrees to make a good faith effort to abide by all employee conduct requirements established by NCAI's employee handbook or other relevant NCAI policies.

GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR

Employer agrees to employ Desiderio and Desiderio agrees to be employed by Employer in the role of "Executive Director," as defined by Employer's governing documents, and shall hold and use the job title "Chief Executive Officer." In this capacity, Desiderio reports to the President of the NCAI Executive Committee, as defined at Article IV of NCAI's Constitution ("Executive Committee"). Desiderio shall perform services as directed by the Executive Committee according to appropriate program jurisdiction, and shall direct and coordinate the various activities of the NCAI Congress and Fund organizations through the authority delegated by the Executive Committee.

Consistent with the NCAI Constitution and Bylaws, Desiderio is the administrative operating head

of the organization and has the responsibilities and authority that are typically associated with Desiderio's position as Chief Executive Officer. Desiderio has responsibility for leading and managing all strategic and operational aspects of the organization and creating a vision for the long-term success for NCAI and the NCAI Fund. Desiderio has responsibility for ensuring that goals and objectives are established and met, regulatory requirements are complied with, resources are utilized efficiently and effectively, and the needs and priorities of the tribal governments are being met and advanced. These objectives are achieved through the work staff, strong tribal government relationships, tribal and non-tribal organizational partnerships. The location of the work will be primarily in Washington, D.C., with travel as necessary to accomplish the work. Desiderio shall also represent the NCAI Fund's business interests. In recognition and support of the annual performance criteria by which Desiderio will be evaluated, all other C-Suite level employees, by whatever title, will report to the Desiderio.

During the Employment Term, but excluding the Transition Period described below and any periods of vacation, sick leave, and other leaves, Desiderio agrees to devote full business time to the affairs of Employer and to use best efforts to perform Employee's responsibilities faithfully, diligently, effectively, and efficiently. Outside employment, full or part-time, must be disclosed prior to and during this term.

ANNUAL EVALUATION

Desiderio shall be reviewed annually by the Executive Committee or a Committee thereof. The annual evaluation will consider Desiderio's performance in the following categories:

- Organization and reporting performance and abilities;
- Fiscal and budgeting practices and performance;
- Financial control and oversight;
- Program control and oversight;
- Fundraising;
- Employee management; and
- Any other reasonable performance metrics the Executive Committee deems appropriate.

Six months after the beginning of the Employment Term, Desiderio shall be reviewed consistent with the evaluation criteria above. Nothing in this provision is intended to restrict the Executive Committee from providing on-going performance feedback, or conducting more regular formal evaluations.

AUTHORITY

Desiderio is authorized to act on behalf of NCAI as required to carry out the normal financial, administrative, personnel management functions (including, but not limited to, recruitment,

screening, hiring, onboarding, ongoing supervision, and discipline); legal matters; and other business of NCAI and/or to protect the interests of NCAI. Desiderio will follow NCAI's Bylaws and policies, including adherence to its Conflicts of Interest Policy.

TRANSITIONAL PERIOD

The Parties recognize that it is in their respective best interests that Desiderio be allowed to assist NAFOA in (i) concluding in an orderly manner any current matter in which his personal involvement is an integral part, and (ii) recruiting, interviewing, hiring, and onboarding a new NAFOA Executive Director; provided Desiderio places the interests of NCAI ahead of any other conflicting considerations.

If Desiderio receives any compensation from NAFOA for his assistance in its securing a new Executive Director or concluding the matters identified above, the receipt of any such compensation shall not be deemed to be a violation of any NCAI conflict of interest or similar policy.

Subsequent to his separation from NAFOA, Desiderio shall make clear to all parties that he is representing the policies, viewpoints, and efforts of NCAI and not NAFOA, except as may be required while concluding any current matter of which his personal involvement is an integral part.

COMPENSATION AND BENEFITS

The compensation and benefits payable under this Agreement are outlined in Attachment A, which is initialed by the parties and made a part of this Agreement. Termination of the employment relationship while the Agreement is in effect by NCAI shall result in the payment of the sums outlined in the Termination clause of this Agreement.

TERMINATION

If the Agreement is terminated by Desiderio, there shall be no termination compensation other than accrued compensation earned prior to the effective date of termination minus payments due and owing to NCAI, if any. Desiderio agrees that he will make a good faith effort to provide NCAI with at least three months' notice should he terminate this Agreement.

In the event that the Agreement is terminated by NCAI for cause reasonably defined as (i) grossly negligent, (ii) repeated failure to perform the essential requirements of the position, (iii) unethical, illegal, or fraudulent conduct, or (iv) conduct that constitutes unlawful discrimination or harassment, including sexual harassment as prescribed by NCAI's policies, ("For Cause") there shall be no severance pay or termination compensation other than the payment of compensation

remaining after deduction of amounts due and owing to NCAI, if any.

If the decision is made by NCAI to terminate the Agreement for reasons other than For Cause, and in exchange for executing a standard severance agreement including a release of claims, Desiderio shall be paid his full compensation for the twelve calendar month period following the date of termination, as well as the cost of acquiring health benefits for that same time period equivalent to those being provided as part of his compensation as set out in Attachment A. The amount of this severance is expressly stated to be reasonable given that Desiderio will have left a respected, economically meaningful, and secure career position with NAFOA in accepting the Executive Director position with NCAI, as well as the recognition that it would be very difficult, if not impossible as a practical matter, for Desiderio to secure an equivalent position in Indian country to those he would then have had with either NCAI or NAFOA. If Desiderio obtains subsequent employment within the twelve-month period, he will notify NCAI of that employment and provide documentation of his compensation, and he agrees to forfeit the remaining severance payments equal to the compensation he will receive from the subsequent employer. That is, NCAI will only be obligated to issue severance payments for the portion of the twelve-month severance period during which Desiderio has obtained subsequent employment equal to the difference between his salary with NCAI at the time of his separation and his salary received from subsequent employer.

DEATH / TOTAL DISABILITY

If Desiderio dies during the term of this Agreement, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses.

In the event Desiderio becomes permanently disabled and unable to perform the essential functions of his job as "essential functions" are defined under applicable federal/state laws, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses, and he may be replaced as required to carry on the functions of NCAI.

Desiderio's permanent disability means that Desiderio, by reason of his physical or mental disability, is incapable of performing the duties of his customary position with NCAI, and such disability has continued for a period of at least one hundred twenty (120) consecutive days in any 12-month period and is expected to be of a long duration or to result in death. Permanent disability shall be established by a majority of three physicians, one selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a physician), one by NCAI, and the third by the two physicians selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a

physician) and NCAI.

RESOLUTION OF DISPUTES

Arbitration. In the event of any Dispute (as defined below) between Desiderio and NCAI, including all Disputes regarding Desiderio's rights under this Agreement or termination of this Agreement, or any extension or renewal thereof, and if the Dispute is not resolved informally by the Parties, Desiderio shall submit the Dispute to binding arbitration, excluding Disputes regarding claims based on the Fair Labor Standards Act and/or any applicable state wage and hour act. Desiderio shall initiate the arbitration by notifying the President of NCAI in writing of the nature of the Dispute and Desiderio's request for arbitration within one hundred twenty (120) days from the last time the alleged violative action occurred.

The arbitration shall be governed by the Model Employment Arbitration Procedures of the American Arbitration Association (the "AAA"), which are incorporated herein by this reference, and by the provisions of Attachment B, which the Parties have initialed and is made part of this Agreement. In case of any conflict between the AAA Model Employment Arbitration Procedures and this Agreement, the terms of this Agreement shall prevail. Both parties agree to be bound by any final decision of the arbitrator rendered pursuant to this Agreement, subject to appeal rights as provided in any applicable federal or state law. This arbitration provision shall survive termination of this Agreement.

Any such arbitration must be initiated by Desiderio not more than one hundred twenty (120) days after termination of this Agreement or termination of any extension or renewal thereof, or the dispute will be considered forever waived and time barred.

Disputes. As used herein, "Dispute" means any and all demands, claims, or causes of action, whether related to or arising out of this Agreement, any applicable federal or state statute, regulation or executive order, or the common law, including demands, claims or causes of action for:

- Breach of contract, wrongful termination, breach of the implied covenant of good faith and fair dealing, violation of public policy, retaliatory discharge, malfeasance, misfeasance, breach of trust, equitable or promissory estoppel, misrepresentation, defamation, invasion of privacy, tortious interference with contract or contractual expectancy, etc.;
- Employment discrimination, including claims based on Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, any applicable state law against discrimination, and all other applicable federal, state and local antidiscrimination laws, regulations and executive orders; and
- Damages for pain and suffering, emotional distress, liquidated damages, punitive damages, taxable costs, interest and reasonable attorneys' fees.

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD



NCAI

6

GENERAL TERMS

Desiderio represents and warrants to NCAI that he is free to enter into this Agreement and that he has no commitment, arrangement or understanding to or with any party which restrains or conflicts with his performance of the covenants, services and duties provided for in this Agreement.

During Desiderio's employment hereunder, this Agreement may not be assigned by either party without the written consent of the other; provided, however, that NCAI may assign its rights and obligations under this Agreement to a successor by merger or affiliation if such successor carries on NCAI's work substantially in the form in which it is being conducted at the time of the merger or affiliation. Except as otherwise provided by applicable law, no interest of Desiderio or any beneficiary or representative of Desiderio may be directly or indirectly transferred, encumbered, seized by legal process, or in any other way subjected to the claims of a creditor. This Agreement shall be binding upon Desiderio, his heirs, personal representatives and permitted assigns; and on NCAI, its successors and assigns.

This Agreement and Attachments represent the entire agreement between the parties and supersede any prior oral or written agreements between the parties. Any modification of this Agreement must be in writing and signed by the Parties. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

When this Agreement requires that a party give notice to the other Party or other communication that materially impacts the rights of the Parties, including specifically notices of breach, default, termination, or arbitration, the notice must be provided to the following via any delivery method that can be confirmed (e.g., Federal Express or confirmed delivery email):

If to Employer, to:

Sadina Montani
Partner, Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
smontani@crowell.com

If to Employee, to:

Dante Desiderio
606 Quincy Street
Arlington, VA 22204
nahysson@gmail.com

This Agreement shall be interpreted under the laws of Washington, District of Columbia.

IN WITNESS THEREOF, the parties have executed this Agreement.

By:  Date: April 12, 2021
Dante Desiderio

By: _____ Date: April ____, 2021
Fawn Sharp President, NCAI

ATTACHMENT A
Compensation/Benefits/Leave

SALARY AND BENEFITS

Salary.

- Desiderio's annual salary will be \$275,000 during the Employment Term and will be paid according to Employer's customary payroll practices.
- Desiderio is eligible for a five percent (5%) annual salary increase based on meeting the goals, metrics and milestones of the organization, effective one year after the Employment Term begins and on the anniversary of the Employment Term every year thereafter.
- All payments of salary, bonuses, or other compensation will be reduced by applicable withholdings and deductions.
- The parties agree the Desiderio is exempt under the Fair Labor Standards Act and applicable state law pursuant to, among other things, the executive and/or administrative exemptions.

Bonus. In addition to his annual salary, Desiderio is not guaranteed a bonus, but Desiderio is eligible for an annual bonus at the Executive Committee's discretion based on Desiderio's performance towards meeting the goals, metrics and milestones of the organization.

Salary Adjustments. When appropriate, and at the sole discretion of the Executive Committee, a merit salary increase in addition to the guaranteed salary increase described above may be authorized based on Desiderio's performance. The Parties upon mutual agreement may at any time approve an addendum to this Contract that identifies defined annual salary adjustments upon the successful achievement of specifically identified performance-based criteria. To the extent that the Executive Committee authorizes cost of living adjustments for all staff members, Desiderio will be eligible to automatically receive a consistent cost of living adjustment.

Vacation. Desiderio is eligible to receive paid vacation leave consistent with the paid vacation leave available to other full-time Employer employees as provided for in the Employment Handbook.

Employment Benefits. During the Employment Term, Desiderio and Desiderio's family are eligible to receive all benefits to the extent generally available to other full-time Employer employees and their families. These benefits currently include medical, prescription, dental, disability, group life, accidental death, and retirement plans. In addition, Desiderio is entitled to paid sick leave or other leaves and benefits in accordance with Employer's policies and procedures. Employer reserves the right to modify, amend, or discontinue any of the benefits at any time. Desiderio reserves the right to voluntarily decline participation in any of the benefits at any time. Any such declination shall be in accordance with Employer policies and procedures.

EXPENSE REIMBURSEMENT

Business Expenses. Employer will reimburse Desiderio for reasonable and actual expenses incurred during the Employment Term as required in discharging Desiderio's responsibility, including lodging, travel, mileage, meals, and any approved costs incurred in connection with attendance at an approved conference or other program. Desiderio must maintain records of the expenses and timely submit the records to Employer with an explanation of the expense for which Desiderio seeks reimbursement in accordance with Employer's policies.

ATTACHMENT B
Additional Arbitration Terms

Neutral Arbitrator. The parties shall select a neutral and unbiased arbitrator according to the procedures established by the AAA for that purpose.

Expenses of Arbitration. Under the AAA Employment/Workplace Fee Schedule, the employee's fee is capped at \$300. NCAI (the employer) pays the arbitrator's compensation unless the employee or individual, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation and administrative fees are not subject to reallocation by the arbitrator except upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

Each party shall bear its own witness fees, costs and attorneys' fees unless the arbitrator otherwise orders one or the other party to bear such fees and costs.

Discovery. Both parties may make discovery prior to the arbitration hearing as provided for in the AAA, and as the arbitrator may determine is necessary for each party to adequately arbitrate the claims asserted in the arbitration, including access to essential documents and witnesses.

Attorneys. Either party may, but need not, be represented by an attorney of his or its choice at any time during the arbitration process.

Remedies. The arbitrator shall not be limited in awarding remedies provided by this Agreement or by any applicable federal, state or local statute, regulation, or executive order, or the common law, so long as the arbitrator finds facts and makes conclusions based on the evidence presented adequate for the award of such remedies.

Limitation of Arbitrator's Power. The arbitrator shall have no power to alter, amend or repeal any provision of this Agreement.

Written Decision and Award. Within thirty (30) days of the close of the arbitration hearing, or as otherwise agreed to by the parties, the arbitrator shall render a written decision and award. The decision and award shall be based on the facts presented by the parties, this Agreement and applicable law, and shall contain findings of fact and conclusions sufficient for judicial review to the extent required by applicable law.



Exhibit 3

CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) between the National Congress of American Indians, a nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter “NCAI”), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Max Muller & Associates, LLC, a Kansas limited liability company (“Consultant”), with its principal office at 16144 Linden Street, Overland Park, Kansas 66085, is made as of July 1, 2021.

WHEREAS, Consultant is a nationally known organization offering consulting and training services to the public related to legal and business matters; and

WHEREAS, Consultant employs Max Muller (“Muller”), a natural person, with expertise in legal, Tribal and business matters; and

WHEREAS, NCAI desires that Consultant specifically and directly assign Muller, as an employee of Consultant, to provide advice and assistance to NCAI under the terms and conditions of this Agreement; and

WHEREAS, the Consultant will specifically and directly assign Muller to provide consulting advice and assistance to NCAI under the terms and conditions of this Agreement; and

WHEREAS, the Parties expressly acknowledge their understanding and acceptance that (i) Muller is an attorney licensed to practice law in Missouri, (ii) that Muller is not an attorney licensed to practice law in any other state or US territory, (iii) that Muller does not maintain an office or other physical presence in the District of Columbia, (iv) that Muller has not and will not represent NCAI before any court within the District of Columbia; but as per the American Bar Association's (ABA) Model Rule 5.5, the ABA's (December 16, 2020) Formal Ethics Opinion 495, and District of Columbia Court of Appeals Rule 49, Muller may provide legal information to District of Columbia clients as allowed by the jurisdiction in which he is licensed; and

WHEREAS, the Parties expressly acknowledge that much of Muller's consulting advice will arise from his legal background and his knowledge as being a certified Tribal Human Resource Professional (THRP) and extensive business background in structuring and transitioning businesses.

NOW, THEREFORE, NCAI and the Consultant hereby agree as follows:

1. Consulting Services

- a. Subject to the terms and conditions of this Agreement, Consultant will provide the consulting services set out in Attachment A to this Agreement.
- b. Consultant hereby assigns Muller to provide consulting services and guidance to NCAI in accordance with the terms of this Agreement.

2. Compensation, Invoicing, Consulting Hours Carryover, Agreement Extensions, and Reimbursement

- A. Compensation. In exchange for a discounted hourly rate for the Services, NCAI agrees to engage Max Muller, through Max Muller & Associates, LLC (Consultant) at the rate of \$10,500.00 per month over a 12-month period effective July 1, 2021.
- B. Consultant will provide NCAI an invoice monthly for hours worked, which invoice shall detail the days and number of hours worked, and the matters worked on.
- C. Consultant is an independent contractor and will be responsible for all of its own expenses of every nature and type. However, NCAI will reimburse Consultant for reasonable preapproved travel and other expenses Consultant incurs in connection with performing the Services. Preapproval will be given or withheld by NCAI's Chief Executive Officer or his designee. To obtain reimbursement, Consultant will submit to NCAI's Chief Executive Officer or his designee, an invoice describing services rendered and expenses incurred.
- D. Invoices for Services and/or expense reimbursements may be submitted by email to an email provided to Consultant by NCAI.
- E. Invoices will be due and payable no later than the 15th business day of any month.

3. Independent Contractor Status

The parties expressly agree that this Agreement creates an independent contractor relationship, not an employment relationship. In its capacity as an independent contractor, Consultant agrees and represents, and NCAI agrees, as follows:

- (a) Neither Consultant nor Muller shall be deemed an NCAI employee.
- (b) Consultant and Muller have the right to perform services for others during the term of this Agreement subject to the confidentiality provisions of this Agreement.
- (c) Consultant has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed; provided, however, Consultant acknowledges and agrees neither it nor Muller has authority to obligate NCAI to any action or commitment, financial or otherwise, without first obtaining such authority on a case-by-case basis from NCAI 's Chief of Staff or his designee(s). NCAI shall not be considered to be a joint employer of Muller.

4. Business Licenses, Permits, and Certificates

Consultant represents and warrants that Consultant will comply with all applicable federal, state, local, and Tribal laws, regulations, codes, and/or ordinances in its performance of the Services to be performed under this Agreement.

5. State and Federal Taxes

NCAI will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's or Muller's (if any) payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions or payments on behalf of Consultant or Muller, and Consultant and/or Muller will not be entitled to these benefits in connection with work performed under this Agreement; or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all applicable taxes incurred while performing any services under this Agreement, including all applicable income taxes and, if Consultant is not or ceases to be a corporation, self-employment (Social Security) taxes.

6. Fringe Benefits

Consultant understands that neither it nor Muller are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan(s) of NCAI.

7. Workers' Compensation

NCAI shall not obtain workers' compensation insurance on behalf of Consultant or any of its employees.

8. Insurance

NCAI shall not provide insurance coverage of any kind for Consultant or its employees.

9. Confidential and Proprietary Information

Consultant acknowledges that it will be necessary for NCAI to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm NCAI. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of NCAI without NCAI 's prior written permission except to the extent necessary to perform Services on NCAI 's behalf.

(a) Proprietary or Confidential information

Proprietary or confidential information includes, but is not limited to:

- written, printed, graphic, or electronically recorded materials furnished by NCAI for Consultant to use;
- notes, memoranda, and other hard copy or electronic memorialization of in-person, telephonic, text messaging, email or other discussions reasonably understood to be for internal NCAI use;
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that NCAI makes reasonable efforts to maintain the secrecy of;
- legislative, business, marketing, and/or publishing plans or strategies;
- customer lists;
- NCAI operating procedures, trade secrets as defined by federal statute and case law, design formulas, know-how and processes, computer programs and inventories, discoveries, and improvements of any kind, sales projections, and pricing information; and

- information belonging to NCAI members, clients, customers and/or suppliers about whom Consultant gained knowledge as a result of Consultant's services to NCAI.

Upon termination of Consultant's services to NCAI, or at NCAI 's request, Consultant shall deliver to NCAI all materials in Consultant's possession relating to NCAI's and/or its clients and/or customers' data.

(b) Work Product

- 1) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress, and deliverables will be the sole property of NCAI; and Consultant hereby transfers and assigns to NCAI all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights, and other copyrights, patent rights, trade secret rights, and other proprietary rights therein, Consultant now has or may have in the future; and quitclaims to NCAI all right, title and interest to the Work Product it now has or may hereafter acquire in any manner. Consultant expressly represents that all work done for it by Muller is work made for hire by which Consultant acquires all ownership rights of any nature and type in such work product. Consultant retains no right to use the Work Product and agrees not to challenge the validity of NCAI 's ownership in the Work Product.
- 2) Consultant hereby assigns to NCAI all right, title, and interest in any and all photographic images and videos or audio recordings made by or for NCAI during Consultant's work for it, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.
- 3) NCAI is entitled to use Consultant's name and/or likeness in advertising and other materials. Consultant may divulge its relationship with NCAI.

(c) Exclusions from Confidential or Proprietary Information

Obligations set out in this Paragraph 9 shall not apply to any portion of NCAI Confidential or Proprietary Information which:

- 1) was at the time of disclosure to Consultant part of the public domain by publication or otherwise; or

- 2) became part of the public domain after disclosure to Consultant by publication or otherwise, except by breach of this Agreement; or
- 3) was already properly and lawfully in Consultant's possession at the time it was received from NCAI; or
- 4) was or is lawfully received by Consultant from a third party who was under no obligation of confidentiality with respect thereto; or
- 5) was or is independently developed by Consultant without reference to NCAI Confidential or Proprietary Information; or
- 6) is required to be disclosed by law, regulation or judicial or administrative process.

Consultant acknowledges that any breach or threatened breach of this Confidentiality clause will result in irreparable harm to NCAI for which damages would be an inadequate remedy. Therefore, NCAI shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of the Confidentiality clause of this Agreement.

10. General Terms

- (a) This Agreement may not be terminated by NCAI during the first 183 days of the Initial time Period except for malfeasance or gross misconduct on the part of Consultant or Muller; and thereafter only for just cause. Should NCAI terminate this Agreement, NCAI shall, within seven (7) calendar days of the notice of cancellation, pay over to Consultant any and all then outstanding payments and expense reimbursements due Consultant, which outstanding payments shall include a pro rata amount for any days within a calendar month for which Services have been provided.
- (b) If Consultant terminates this Agreement by providing no less than 30 days' written notice to NCAI, Consultant shall nevertheless wind up in an orderly fashion assignments for NCAI which Consultant began prior to the date of notice of termination hereunder.
- (c) No alteration or modification of this Agreement shall be valid unless made in writing and executed by Consultant and NCAI's President.
- (d) This Agreement shall be construed and interpreted pursuant to the laws of the District of Columbia applicable to contracts wholly entered into and performed in the District of Columbia.
- (f) Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), addressed as follows:

If to Consultant: 16144 Linden Street, Overland Park, Kansas 66085

If to NCAI: 1516 P St. NW, Washington, D.C. 20005

- (g) *Survival* - The duty of Consultant to be bound by its obligation of confidentiality under this Agreement shall survive the termination of this Agreement.
- (h) *Assignment* - This Agreement is not assignable by either party. Any attempt by either Party to assign any of the obligations of this Agreement is void. This Agreement can only be modified by a written agreement signed by both Parties.
- (i) *Partial Invalidity* - If any provision(s) of this Agreement are held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (j) *Complete Agreement; Counterparts* - This Agreement is the complete and exclusive agreement between NCAI and Consultant regarding the subject matter hereof, which supersedes all proposals or prior agreements, oral or written, and all other communications between NCAI and Consultant relating to the subject matter of this Agreement. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

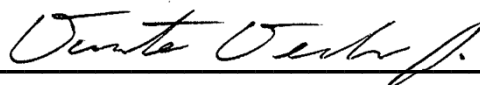
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

Max Muller & Associates, LLC

By: 

Max Muller, Principal

**National Congress of American Indians
National Congress of Americans Indians Fund**

By: 

Dante Desiderio
Chief Executive Officer

ATTACHMENT A - SCOPE OF WORK

SERVICES TO BE PERFORMED

Contracts:

- Craft, evaluate, negotiate and execute a wide variety of different contracts covering a range of transactions.
- Create and maintain relationships with suppliers and serve as the singular point of contact for matters concerning contracts.
- Maintain records for correspondence and documentation in relation to established contracts and those in progress.
- Communicate and present information to stakeholders about all contract-related matters.
- Monitor contracts and move forward with close-out, extension or renewal according to what's best for the organization.
- Solve any contract-related problems that may arise with other parties and internally within the organization itself.
- Assist and guide NCAI staff in negotiating, writing and executing agreements and contracts,
- Research the impacts of current and previous service provider agreements with a view to preventing future contract abuse and waste,

Human Resources:

- Review all current HR policies, and draft, revise or delete policies and procedures as needed, with the concurrence and approval of the Chief Executive Officer or his/her designee.
- Act as the organization's equal employment opportunity officer.
- Handle, as necessary and appropriate, personnel disciplinary matters, including investigations of misfeasance and/or malfeasance.
- Assist appropriate staff members in identifying, reviewing, and negotiating employee benefit programs.

General Legal Matters:

- Draft or assist with drafting documents of any nature and type, as needed or properly requested.
- Offer counsel on a variety of legal, human resource and general business issues.
- Consulting with advisors on general liability, benefits, stop loss, and other forms of insurance coverage.
- Advise executives within the organization, as requested.
- Work directly with various departments within the organization, as needed or requested.
- Advise on legal risks and legal liabilities associated with different deals.
- Anticipate unique legal issues that could impact the organization.
- Provide guidance to NCAI staff on the legal impacts of various past and future decisions.
- Handle potential litigation and complaints; working with outside counsel or experts as necessary and appropriate.

- Provide such other services as requested or directed by the Chief Executive Officer or his/her designee.

Exhibit 4

CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") between the National Congress of American Indians, a nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter "NCAI"), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Audit Business Services, Inc., a Missouri corporation, ("Consultant"), with its principal office at 6766 SW Holstein Road, Polo, MO 64671, is made as of July 1, 2021.

WHEREAS, Consultant is a nationally known organization offering financial, human resources and general business consulting and training services to the public; and

WHEREAS, Consultant employs Pamela Fagan ("Fagan"), a natural person, with significant expertise in financial, legal, Tribal and general business matters; and

WHEREAS, NCAI desires that Consultant specifically and directly assign Fagan, as an employee of Consultant, to provide advice and assistance to NCAI under the terms and conditions of this Agreement; and

WHEREAS, the Consultant will specifically and directly assign Fagan to provide consulting advice and assistance to NCAI under the terms and conditions of this Agreement; and

NOW, THEREFORE, NCAI and the Consultant hereby agree as follows:

1. **NOW, THEREFORE**, NCAI and the Consultant hereby agree as follows:

1. **Consulting Services**

- a. Subject to the terms and conditions of this Agreement, Consultant will provide the consulting services set out in Attachment A to this Agreement.
- b. Consultant hereby assigns Fagan to provide consulting services and guidance to NCAI in accordance with the terms of this Agreement.

2. **Compensation, Invoicing, Consulting Hours Carryover, Agreement Extensions, and Reimbursement**

- A. Compensation. In exchange for a discounted hourly rate for the Services, NCAI agrees to engage Pamela Fagan, through Audit Business Services, Inc. (Consultant) at the rate of \$11,000.00 per month over a 12-month period effective July 1, 2021.

- B. Consultant will provide NCAI an invoice monthly for hours worked, which invoice shall detail the days and number of hours worked, and the matters worked on.
- C. Consultant is an independent contractor and will be responsible for all of its own expenses of every nature and type. However, NCAI will reimburse Consultant for reasonable preapproved travel and other expenses Consultant incurs in connection with performing the Services. Preapproval will be given or withheld by NCAI's Chief Executive Officer or his designee. To obtain reimbursement, Consultant will submit to NCAI's Chief Executive Officer or his designee, an invoice describing services rendered and expenses incurred.
- D. Invoices for Services and/or expense reimbursements may be submitted by email to an email provided to Consultant by NCAI.
- E. Invoices will be due and payable no later than the 15th business day of any month or if on a weekend, the next available business day following the 15th.

3. Independent Contractor Status

The parties expressly agree that this Agreement creates an independent contractor relationship, not an employment relationship. In its capacity as an independent contractor, Consultant agrees and represents, and NCAI agrees, as follows:

- (a) Neither Consultant nor Fagan shall be deemed an NCAI employee.
- (b) Consultant and Fagan have the right to perform services for others during the term of this Agreement subject to the confidentiality provisions of this Agreement.
- (c) Consultant has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed; provided, however, Consultant acknowledges and agrees neither it nor Fagan has authority to obligate NCAI to any action or commitment, financial or otherwise, without first obtaining such authority on a case-by-case basis from NCAI's Chief of Staff or his designee(s). NCAI shall not be considered to be a joint employer of Fagan.

4. Business Licenses, Permits, and Certificates

Consultant represents and warrants that Consultant will comply with all applicable federal, state, local, and Tribal laws, regulations, codes, and/or ordinances in its performance of the Services to be performed under this Agreement.

5. State and Federal Taxes

NCAI will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's or Fagan's (if any) payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions or payments on behalf of Consultant or Fagan, and Consultant and/or Fagan will not be entitled to these benefits in connection with work performed under this Agreement; or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all applicable taxes incurred while performing any services under this Agreement, including all applicable income taxes and, if Consultant is not or ceases to be a corporation, self-employment (Social Security) taxes.

6. Fringe Benefits

Consultant understands that neither it nor Fagan are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan(s) of NCAI.

7. Workers' Compensation

NCAI shall not obtain workers' compensation insurance on behalf of Consultant or any of its employees.

8. Insurance

NCAI shall not provide insurance coverage of any kind for Consultant or its employees.

9. Confidential and Proprietary Information

Consultant acknowledges that it will be necessary for NCAI to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm NCAI. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of NCAI without NCAI 's prior written permission except to the extent necessary to perform Services on NCAI 's behalf.

(a) Proprietary or Confidential information

Proprietary or confidential information includes, but is not limited to:

- written, printed, graphic, or electronically recorded materials furnished by NCAI for Consultant to use;
- notes, memoranda, and other hard copy or electronic memorialization of in-person, telephonic, text messaging, email or other discussions reasonably understood to be for internal NCAI use;
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that NCAI makes reasonable efforts to maintain the secrecy of;
- legislative, business, marketing, and/or publishing plans or strategies;
- customer lists;
- NCAI operating procedures, trade secrets as defined by federal statute and case law, design formulas, know-how and processes, computer programs and inventories, discoveries, and improvements of any kind, sales projections, and pricing information; and
- information belonging to NCAI members, clients, customers and/or suppliers about whom Consultant gained knowledge as a result of Consultant's services to NCAI.

Upon termination of Consultant's services to NCAI, or at NCAI 's request, Consultant shall deliver to NCAI all materials in Consultant's possession relating to NCAI's and/or its clients and/or customers' data.

(b) Work Product

- 1) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress, and deliverables will be the sole property of NCAI; and Consultant hereby transfers and assigns to NCAI all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights, and other copyrights, patent rights, trade secret rights, and other proprietary rights therein, Consultant now has or may have in the future; and quitclaims to NCAI all right, title and interest to the Work Product it now has or may hereafter acquire in any manner. Consultant expressly represents that all work done for it by Fagan is work made for hire by which Consultant

acquires all ownership rights of any nature and type in such work product. Consultant retains no right to use the Work Product and agrees not to challenge the validity of NCAI's ownership in the Work Product.

- 2) Consultant hereby assigns to NCAI all right, title, and interest in any and all photographic images and videos or audio recordings made by or for NCAI during Consultant's work for it, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.
- 3) NCAI is entitled to use Consultant's name and/or likeness in advertising and other materials. Consultant may divulge its relationship with NCAI.

(c) Exclusions from Confidential or Proprietary Information

Obligations set out in this Paragraph 9 shall not apply to any portion of NCAI Confidential or Proprietary Information which:

- 1) was at the time of disclosure to Consultant part of the public domain by publication or otherwise; or
- 2) became part of the public domain after disclosure to Consultant by publication or otherwise, except by breach of this Agreement; or
- 3) was already properly and lawfully in Consultant's possession at the time it was received from NCAI; or
- 4) was or is lawfully received by Consultant from a third party who was under no obligation of confidentiality with respect thereto; or
- 5) was or is independently developed by Consultant without reference to NCAI Confidential or Proprietary Information; or
- 6) is required to be disclosed by law, regulation or judicial or administrative process.

Consultant acknowledges that any breach or threatened breach of this Confidentiality clause will result in irreparable harm to NCAI for which damages would be an inadequate remedy. Therefore, NCAI shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of the Confidentiality clause of this Agreement.

10. General Terms

- (a) This Agreement may be terminated by either party providing that the terminating party provide no less than 30 days' written notice.

- (b) If Consultant terminates this Agreement by providing no less than 30 days' written notice to NCAI, Consultant shall nevertheless wind up in an orderly fashion assignments for NCAI which Consultant began prior to the date of notice of termination hereunder.
- (c) No alteration or modification of this Agreement shall be valid unless made in writing and executed by Consultant and NCAI's President.
- (d) This Agreement shall be construed and interpreted pursuant to the laws of the District of Columbia applicable to contracts wholly entered into and performed in the District of Columbia.
- (f) Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), addressed as follows:

If to Consultant: 6766 SW Holstein Road, Polo, MO 64671

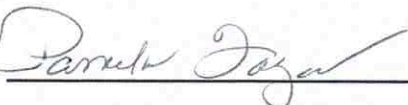
If to NCAI: 1516 P St. NW, Washington, D.C. 20005

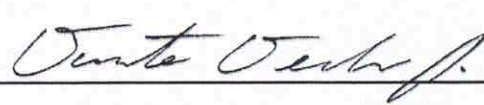
- (g) *Survival* - The duty of Consultant to be bound by its obligation of confidentiality under this Agreement shall survive the termination of this Agreement.
- (h) *Assignment* - This Agreement is not assignable by either party. Any attempt by either Party to assign any of the obligations of this Agreement is void. This Agreement can only be modified by a written agreement signed by both Parties.
- (i) *Partial Invalidity* - If any provision(s) of this Agreement are held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (j) *Complete Agreement; Counterparts* - This Agreement is the complete and exclusive agreement between NCAI and Consultant regarding the subject matter hereof, which supersedes all proposals or prior agreements, oral or written, and all other communications between NCAI and Consultant relating to the subject matter of this Agreement. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

AUDIT BUSINESS SERVICES, INC.

**National Congress of American Indians
National Congress of Americans Indians Fund**

By: 

By: 

Pamela Fagan, President

Dante Desiderio, Chief Executive Officer

APPENDIX A – SCOPE OF WORK

The scope of services is intended to not only ensure proper operations of NCAI but also work with leadership in providing an efficient and supportive work environment. The work is anticipated to include, but not be limited to the following:

1. Operations Services

- Conduct an assessment of each of the Operations Department team's needs and provide solutions to help streamline processes, grow efficiency, and support team members in their service to Indian Country. Use integration of systems to build a cohesive team environment.
 - Teams include; administration, finance, grants management, and human resources.
Note: Information technology and Finance are part of the Operations Department however will be undergoing separate assessments in conjunction with the Operations Department.
 - Assessment could include solutions to looking at new or restructuring of positions to support the organization of this size.
 - Provide recommendations on trainings, software, or other best practices for the Department.
- Recommend an optimal organizational model for the Operations team.
- Develop strategies to shift Operations into a stronger and cohesive team environment.
- Review the organizational structure and distribution of NCAI policy and procedures.
- Rewrite NCAI policy and procedures as needed for newly formed systems as a result of assessment.

2. Human Resources (HR) Services

- Develop and implement HR strategies that will support the following:
 - HR Reporting
 - Personnel Management
 - Compensation Management
 - Performance Evaluations
- Research an effective HRIS/Payroll (HCM – Human Capital Management) system to implement to support the growing organization.
- Incorporate tools for HR staff to create and evaluate trainings that will allow the organization to stay compliant with federal and state laws, while also supporting the professional development of the NCAI staff.
- Review and rewrite where necessary all current job descriptions and identify performance measures based on industry standards.

- Work to develop an organizational chart that will create a cohesive team environment in all aspects of NCAI operations.
- Assess and review current employee handbook for recommended updates to policies.

3. Finance Services

- Develop timelines and processes for regular financial reporting to include P&L, cash flow statements, balance sheets, Form 990 preparation and review.
- Work with grants management team and outside consultant to create a cohesive reporting and review program to account for all grant direct and indirect costs for compliance.
- Introduce resources for thorough audit procedures to measure compliance of grant requirements.
- Work with outside auditors to ensure all areas of compliance are in place to secure a positive annual certified audit report.
- Update and rewrite accounting policies and procedures for internal control purposes that align with newest procedures developed under re-organization of NCAI structure.
- Develop strategy to develop stronger compliance guidelines for grants management and other developmental departments (e.g. membership, sponsorship, etc.)
- Audit and review current billing codes and help establish codes more aligned with function and effort.
- Assess and determine needs analysis for accounting software. Work with IT consulting to determine the best integration of all systems (ERP, CRM, HCM) to accomplish organizational goals.
- Develop strategy and recommendation for upgrade or change in accounting financial system to align with organizational goals.
- Develop strategy to further the team's effort to move to use of cloud technology for financial documentation.
- Evaluate processes to identify areas where automation may assist with time management and accuracy.

