



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing Legal Challenge of U.S. Department of Labor's Final Agency Action on ERISA Reporting Penalties)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation ("Constitution") provides, at Article IV, Section 1(a) that the Tribal Council ("Council") shall exercise the power "To represent the tribe and act in all matters that concern the welfare of the Tribe"; and
- WHEREAS,** The Constitution further provides, at Article IV, Section 1(a) that the Council shall exercise the power "To employ legal counsel..."; and
- WHEREAS,** The White Mountain Apache Tribe (the "Tribe"), as a federally recognized Indian tribal government enjoys a government-to-government relationship with the federal government of the United States; and
- WHEREAS,** The Council has retained the authority, powers, and duties to establish and maintain programs to promote the health, welfare, and retirement security of its members and employees; and
- WHEREAS,** The Department of Labor (the "DOL") has assessed penalties against the Tribe under the Employee Retirement Income Security Act of 1974 ("ERISA") for the filing of annual Forms 5500 without audited financial statements for the White Mountain Apache Tribe Enterprise 401(k) Plan (the "Enterprise Plan"); and
- WHEREAS,** The Tribe challenged these DOL penalty assessments through the administrative appeal process, in two separate cases known as "WMAT I" and "WMAT II;" and
- WHEREAS,** On May 28, 2019, the DOL issued a final agency action in WMAT I, affirming its position that the Tribe is required to comply with the annual Form 5500 filing and audit requirements with regard to the Enterprise Plan and upholding the penalty assessment against the Tribe; and
- WHEREAS,** The DOL's final agency action in WMAT I orders the Tribe to pay the penalty assessment within thirty days of service of the final agency action; and
- WHEREAS,** The Tribe continues to dispute the legality of the penalty assessment; and
- WHEREAS,** The Council wishes to continue to challenge the assessment of these penalties on the Tribe by the DOL.

NOW THEREFORE, BE IT RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that Yoder & Langford, P.C. ("Y&L") hereby is authorized and directed to seek an extension from DOL of its

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enforcement actions under WMAT I, and to engage in discussions with DOL under Rule 408, Federal Rules of Evidence, and such analogous administrative rules consistent therewith.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that Y&L hereby is authorized to file a federal court action in the United States District Court for the District of Columbia, and to associate with local counsel (currently anticipated to be Dorsey & Whitney LLP or Hobbs, Straus, Dean and Walker, LLP) and other counsel employed by or under contract with the Tribe, to challenge the DOL's final agency action in WMAT I if enforcement of such action cannot be delayed or if negotiation of a global settlement is not reached.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that the Tribe's General Counsel is authorized to negotiate an amendment, if necessary, to the Y&L retention agreement to allow for subcontract arrangements for local counsel, or separate agreements with the local counsel firm.

BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that any Rule 408 agreements or compromise shall be expressly contingent upon final approval by the Tribal Council.


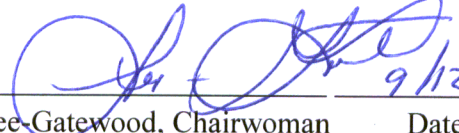
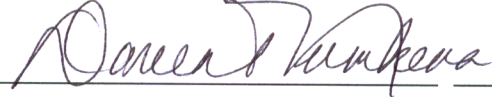
BE IT FURTHER RESOLVED, by the Tribal Council of the White Mountain Apache Tribe, that:
(1) The actions herein are taken by the Tribal Council as a government body not individually; and (2) All actions taken in furtherance of these resolutions are taken by Tribal Council members in their official capacities as such.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **JUNE 10, 2019** duly adopted by a vote of **SIX** for, **ZERO** against, and **ZERO** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

  9/12/19  9-12-19
Gwendena Lee-Gatewood, Chairwoman Date Doreen T. Numkena, Tribal Secretary Date