STRETCHING THE ENVELOPE OF TRIBAL SOVEREIGN IMMUNITY?

An Investigation of the Relationships Between Online Payday Lenders and Native American Tribes

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by
Kyra Taylor
with
Leslie Bailey
Victoria W. Ni

The Public Justice Foundation

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I. EXECUTIVE SUMMARY

Online payday lenders—particularly after they are investigated by state authorities or find themselves defending lawsuits brought by borrowers—are increasingly seeking relationships with Native American tribes in an effort to benefit from the tribes' special status as sovereign nations under the law, and thereby avoid liability for violating consumer protection laws. It is well-documented that some payday lenders began seeking arrangements with tribes roughly 15 years ago for the purpose of enabling the lenders to continue making short-term loans with sky-high interest rates via the internet while escaping the reach of consumer protection laws. Since then, an increasing number of lenders have formed affiliations with tribes, ranging from relationships that appear to exist only on paper, to business enterprises with varying degrees of tribal initiative and involvement.

In the course of bringing strategic litigation against payday lenders on behalf of consumers who have been cheated in violation of consumer protection law, Public Justice's Anti-Payday Lending Initiative was first forced to contend with a "tribal immunity" defense raised by a payday lender in 2012 in response to a lawsuit. Now, with the generous grant support from Silicon Valley Community Foundation, we set out to shine a light on the still murky and mysterious world of "tribal" payday lending as it relates to California. Since 2009, SVCF has made combating predatory payday lending one of its highest institutional priorities. The result is a first-of-its-kind investigative report on the connections, claimed and actual, between payday lenders and tribes. While the report would not have been possible without SVCF's support, its content, conclusions and work product belong solely to the Public Justice Foundation.

In addition to conducting a broad survey of all publicly available evidence concerning the relationship between certain Native American tribes and online payday lenders, this report identifies some recent developments in California and elsewhere that suggest the legal landscape may be shifting towards increased accountability and transparency. Finally, to give readers an understanding of the range of different types of arrangements between Native American tribes and the payday lenders claiming affiliations with them, the report concludes with five case studies.

A. Purpose

Despite the increasing prevalence of lenders claiming to be affiliated with tribes, there is no publicly available national database that documents or tracks these relationships. To help fill this void, we set out to analyze every available source of information that could shed light on the relationships—both claimed and actual—between payday lenders and tribes. At the request of SVCF, we focused our research primarily on lenders and tribes with some connection to California.

Building on raw data compiled for a landmark 2014 Al Jazeera America ("AJAM")¹ investigative report, our researchers followed every lead, identifying and analyzing trends along the way, to present a comprehensive picture of the industry that would allow examination from several different angles. Where it was possible to draw conclusions from the data, we have done so; but for the most part, we simply present the information and let it speak for itself. Indeed, although we reviewed numerous sources discussing connections between tribe and lender—including court records, investigative reporting, tribal documents, tribal member statements, and lending websites—the picture that emerges is incomplete and full of fascinating contradictions. It is our hope that this report will be a helpful starting point for lawmakers, policymakers, consumer advocates, journalists, researchers, and state, federal, and tribal officials interested in finding solutions to the economic injustices that result from predatory lending.

Because the landscape of tribal payday lending is rapidly evolving, with websites appearing and disappearing on an ongoing basis, it is not possible to say with certainty that this report includes every tribally affiliated lender that makes loans to California consumers. In addition, it is inevitable that some of the information in this report—which was based on research conducted from March through December 2016—will soon be outdated. Nonetheless, the report provides a valuable snapshot of the available information about online payday lenders that claim affiliation with a tribe and that have some connection to California.

B. Key Findings

1. The tribes investigated ranged in membership size. We focused our research on 27 tribes—23 tribes with some sort of California connection and 4 tribes without a documented California connection that came up repeatedly in our research—and the 100 lending websites claiming an affiliation with these tribes. The tribes ranged in size from just 24 members to over 30,000 members.

2. While the lenders' websites tended to tout tribal affiliation, most of the tribes' websites did not mention any affiliation with a payday lender. Twenty of the tribes investigated operated a tribal website, but just four tribal websites explicitly mentioned the tribe's affiliation with a payday lender. Meanwhile, several lending websites explicitly identified a tribe as an owner of a lending business. Of the 16 tribal websites that did not mention an affiliation with a payday lender, six identified other tribal business ventures in which the tribe was actively engaged. None of the tribal

¹ AJAM was an award-winning cable and satellite news channel and website operated by the Al Jazeera News Network. *See* AL JAZEERA AMERICA, *Awards & Accomplishments*, http://america.aljazeera.com/tools/awards.html (last visited Aug. 21, 2017). The network announced that it would cease operations in April 2016. *Al Jazeera America to close down*, AL JAZEERA, Jan. 13, 2016, http://america.aljazeera.com/articles/2016/1/13/al-jazeera-america-to-close-down.html. It shuttered its web operations in February 2016. *Al Jazeera America*, WIKIPEDIA.COM, https://en.wikipedia.org/wiki/Al_Jazeera_America (last visited Aug. 21, 2017).

websites listed any tribal lending commission, commissioner, or payday employee within any tribal department or directory.

3. There were many other inconsistencies between what tribes and lenders said publicly about their business arrangement. Lenders, both on their own websites and in the documents they submitted to courts in an effort to show tribal ownership, portrayed the tribe as the primary business operator. They typically claimed that the lending business was formed and is owned, controlled, and operated by the tribe, for the tribe's benefit, relying on formal-looking tribal corporate documents and declarations signed by tribal officials. These tribal documents and declarations presented the tribe as an autonomous entity that runs, regulates, and benefits from the business. Yet, these exhibits typically provided few details about the relationship between the payday lender and tribe, such as financial arrangements or oversight, and instead focused on the tribe's need for money and the tribal council's alleged intent that the lender share in the tribe's sovereign immunity. Also, many of the tribal council members who signed declarations for payday lenders in litigation were members of the Native American Financial Services Association (NAFSA), a lobbying group supporting tribal payday lending. In one instance, two companies that had claimed to be wholly owned by a tribe admitted that one of their corporate officers—also a tribal leader—had submitted false tribal declarations in state court that overstated the tribe's involvement in the lending business.

In contrast to the lending sites, and as mentioned above, the websites run by the tribes that purportedly own each business almost never had any information about the lending business each tribe supposedly owned—even though several tribal sites featured other kinds of tribal businesses. We were unable to find any evidence of ongoing tribal council or committee involvement in running the lending business, lists of tribal employees of the business in tribal directories, or references to the revenue or losses incurred by the tribe for any of the lenders we researched.

Meanwhile, statements made by tribal leaders and other tribal members outside the context of court proceedings were typically much less positive about the tribe's involvement in the lending business. While some tribal council members did confirm their tribe's involvement in lending, others—even within the same tribe—denied that their tribe had anything but minimal involvement. Some even expressed surprise at the notion that the tribe "owned" a payday lending business.

4. The active lending websites citing California tribes all used similar language and images when referencing their relationship to a California tribe. All of the lending websites we reviewed contained similar characteristics. Facial similarities included a Native American-themed name, bright colors, and stock images of smiling people. Many emphasized how payday loans could be used in a financial emergency. Many sites featured the logo of one of the two lobbying groups that seek to advance "tribal" payday lending: either the Online Lenders Alliance (OLA) or NAFSA, which has spent tens of thousands of dollars lobbying the federal government over the last four years.

- 5. Many of the "tribal" lending websites did not disclose loan terms (at least not prior to the submission of a loan application), and if terms were disclosed, they tended to be terms shielding the lender from liability. While not all lenders' sites disclosed the contract terms that would govern a loan (prior to submitting an application), the loan terms we found on the sites appeared to be designed to exculpate the lender from liability: clauses requiring all disputes to be resolved by arbitration or in tribal court; tribal choice-of-law terms; class-action bans; and shortened statutes of limitations (limiting the time within which a dispute can be brought). Several sites explicitly claimed that no state and/or federal laws or consumer protections would apply to the loan.
- **6.** Few tribes appeared to actively regulate the lenders they purportedly owned, and even where regulations did exist, lenders did not appear to follow them. To the extent we found any evidence of tribal regulation of lending, the regulations were not beneficial to consumers—all either permitted an exorbitant interest cap, or had no cap at all. And the lending businesses ostensibly owned by the tribes did not follow the lending limits or other regulations prescribed in the tribal documents establishing consumer finance regulatory bodies.

C. Implications and Need for More Oversight

The information we obtained from all these sources, taken together, strongly suggests that in most (if not all) cases, while lenders are presenting an image to the outside world—and especially to courts—of tribal control, financial prosperity, and selfdetermination, in reality tribal involvement exists only on paper, with tribes receiving only a token percentage of the profits from the lending enterprise while non-Native individuals and corporations enjoy the lion's share of the financial benefits from the business. While there is no conclusive evidence illuminating the exact nature of the relationship between each tribe and payday lender, our research tends to support the theory that, for the most part, the tribes that supposedly "own" payday lending businesses are not fully operating or controlling those businesses. Indeed, we saw no evidence that any tribe was fully operating the payday lender it supposedly owns. Perhaps the most important conclusion we can draw from this research is that more information is needed about this largely hidden industry. The payday lenders that have sought tribal affiliation as a means of evading liability—as opposed to lending businesses legitimately formed, operated, and regulated by tribes—have thrived on their ability to hide the details of these relationships from regulators, courts, consumers, and lawmakers. This has made it incredibly difficult for consumers who are cheated to hold them accountable and for states to enforce their laws against this segment of the industry.

However, several recent developments suggest the tide is turning in favor of greater accountability and transparency within the industry. While lenders had largely succeeded in blocking consumer protection litigation by hiding behind tribal immunity over the last several years, both the Federal Trade Commission and the Consumer Financial Protection Bureau have recently overcome immunity arguments in federal

district courts; and the California Supreme Court recently held that two payday businesses claiming to be tribally owned and controlled had failed to show they were truly "arms of the tribe," paving the way for enforcement of the state's payday lending law against purported tribal lenders that operate online. Meanwhile, after a different type of tribal model was repeatedly rejected by numerous courts, another family of lending companies sued their own lawyers, making public the flimsiness of the tribal connection by arguing that the attorney had erroneously promised them that the tribal affiliation she structured would allow them to continue violating state consumer protection laws with impunity.

We also found that, for the most part, California's statutory and regulatory enforcement regime applicable to payday lending has not been enforced against the lenders we profiled in this report. However, recent decisions both by the California governmental agency charged with enforcement and by state courts strongly suggest that the enforcement gap is closing. All these developments, together with the extensive information compiled in this report, can provide a road map for determining what must happen to ensure that California consumers are adequately protected—through litigation, regulation, legislation, or education—from unfair, illegal and abusive payday loans made by companies claiming tribal affiliation.

II. BACKGROUND

A. The "Tribal Payday" Model

As sovereign nations, Native American tribes have special legal status. The inherent sovereignty of Indian tribes, which predates the sovereignty of federal and state governments of the United States, is enshrined in our Constitution and has been repeatedly recognized and affirmed by both statutory and judge-made law.² The U.S. Supreme Court first recognized the unique nature of Indian tribal sovereignty as early as 1831, classifying tribes as "domestic dependent nations."³

Tribes generally have immunity from state-law claims in any court unless they waive their immunity or consent to jurisdiction.⁴ While Congress can limit tribal immunity through legislation, the power to "intrude into tribal affairs does not extend to the states." ⁵ As a result, only the federal government and federal law—and not state

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² See Nathalie Martin & Joshua Schwartz, *The Alliance Between Payday Lenders and Tribes: Are Both Tribal Sovereignty and Consumer Protection At Risk?*, 69 WASH. & LEE L. REV. 751, 767-68 (2012).

³ Cherokee Nation v. Georgia, 30 U.S. 1, 8 (1831).

⁴ Heather Petrovich, *Circumventing State Consumer Protection Laws: Tribal Immunity And Internet Payday Lending*, 91 N.C. L. REV. 326, 334-38 (2012) (describing sovereign immunity and its application to tribal commercial practices).

⁵ *Id*.

agencies and state law—can regulate how tribes and their commercial enterprises function. Tribal immunity is understood to serve several important policies, including "protection of the tribe's monies, . . . preservation of tribal cultural autonomy, preservation of tribal self-determination, and promotion of commercial dealings between Indians and non-Indians."

Tribal immunity extends not only to a tribe itself, but also to any tribal government or business enterprise that qualifies as an "arm of the tribe." It is unsurprising, then, that non-tribal businesses, and particularly online payday loan companies, have increasingly sought to affiliate themselves with Indian tribes in an effort to take advantage of the tribes' immunity from state lending laws and gain an advantage over state-licensed competitors. In some cases, "a non-tribal payday lender makes an arrangement with a tribe under which the tribe receives a percentage of the profits, or simply a monthly fee, so that otherwise forbidden practices of the lender are presumably shielded by tribal immunity." As the Wall Street Journal reported, "[a]ll it takes to make a deal is a willing tribe and an eager payday lender," after which the lender "incorporates on tribal land, agreeing to pay the chief a salary of a few thousand dollars a month[.]" 10

Given such arrangements—in which the payday business is far-removed from tribal self-governance— courts, policymakers, and even some tribal leaders have begun to question whether applying tribal immunity to shield payday lenders from legal accountability truly serves the doctrine's intended policies. And some scholars caution that the proliferation of these arrangements between tribes and payday lenders may not be in the tribes' long-term interests.

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⁶ *Id.* Although "tribal" payday lenders have contested whether federal entities like the Consumer Financial Protection Bureau have the ability to regulate them, courts are generally not receptive to this argument. *See, e.g., CFPB v. Great Plains Lending,* 2017 WL 242560 (9th Cir. Jan. 20, 2017) (rejecting lenders' argument that "because the Act [the Dodd-Frank Wall Street Reform and Consumer Protection Act] treats states and tribes as co-regulators, Congress did not vest authority in the [CFPB] to regulate tribal entities in the absence of cooperation with tribal regulators" and holding that federal agencies do have authority over "tribal" payday entities); *F.T.C. v. AMG Servs., Inc.*, No. 2:12-CV-00536-GMN, 2014 WL 910302, at *6 (D. Nev. Mar. 7, 2014) (holding that "the FTC Act is a federal statute of general applicability that under controlling Ninth Circuit precedent grants the FTC authority to regulate arms of Indian tribes, their employees, and their contractors" and rejecting payday lenders' argument that the FTC Act did not apply to them because of their claimed tribal affiliation).

⁷ Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort, 629 F.3d 1173, 1188 (10th Cir. 2010).

⁸ People v. Miami Nation Enters., 386 P.3d 357, 367-75 (Cal. 2016) ("People v. MNE"); Breakthrough, 629 F.3d at 1182.

⁹ Martin & Schwartz, *supra* note 2, at 777.

¹⁰ Jessica Silver-Greenberg, *Payday Lenders Join with Indian Tribes*, WALL St. J., Feb. 10, 2011, www.wsj.com/articles/SB10001424052748703716904576134304155106320.

Professor Alex Skibine of the University of Utah, an expert on federal Indian law, argues that tribal sovereign immunity could well be lost if payday lenders continue to "stretch the envelope" of the protections such immunity affords. As Professor Skibine explains:

Another type of case that will eventually stretch the envelope of tribal sovereign immunity are those [that] involve payday lenders partially owned by Indian tribes. . . . In such cases, tribal sovereign immunity is being used to avoid complying with state usury laws even though what is involved here are loans issued over the internet and mostly involving non-Indian customers not living on Indian reservations. In addition, a majority of the lending outfits seem to be corporations that are only partially owned by the tribe[.] I believe that the issues and problems raised by these tribal payday lending activities will only increase in the future. . . . Tribes have sovereign rights and have survived as sovereign nations primarily because of the willpower and tenacity of their people but tribal immunity from state laws remain[s] a very precarious right. If tribal immunity is perceived as being abused in order to victimize non-Indians otherwise protected under state law, such immunity will be severely tested and will be in danger of being lost. 11

Likewise, Professors Nathalie Martin & Joshua Schwartz warn that the "[u]se of [tribal] sovereign immunity to evade consumer protection laws may . . . hav[e] the potential to undermine the congressional rationale for a robust sovereign immunity doctrine presumed by the Supreme Court." They explain:

Use of tribal sovereign immunity to engage in unregulated payday lending in contravention of state law might engender a backlash The use of tribal sovereign immunity to escape state regulation as the value in a business partnership might attract the attention of Congress or the Supreme Court. Once the issue is taken up, congressional intervention or binding federal precedent might not be narrowly tailored, and tribal sovereign immunity could be hampered beyond payday lending. ¹³

Tribes are only the latest entities payday lenders have sought to associate with in order to escape the reach of state laws. Previously, they entered into pacts with national banks—known as "rent-a-bank" or "rent-a-charter" arrangements—in an attempt to use the preemptive power of federal laws to shield themselves from liability under state

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¹¹ Alex Tallchief Skibine, *The Indian Gaming Regulatory Act at 25: Successes, Shortcomings, and Dilemmas*, 60 Fed. Law. 35, 40 (April 2013).

¹² Martin & Schwartz, *supra* note 2, at 787.

¹³ *Id.* at 787-88.

payday lending laws.¹⁴ From 2001 to 2006, various federal regulators took action to prevent banks from associating with payday lenders, effectively stopping payday lenders from violating state usury laws through their association with a federal bank.¹⁵ As increased regulation made the rent-a-bank model untenable, payday lenders have looked for alternate legal loopholes to avoid state consumer protection laws. Affiliation with tribes offered an attractive benefit: the chance to continue lending unhampered by state law under the shelter of tribal sovereign immunity.¹⁶ For this scheme to work, however, the tribal affiliation would need to be documented in a way that would persuade a court reviewing the evidence to conclude that the tribe in fact owns, operates, controls, and benefits from the lending business—and thus that extending immunity to the lending business would truly further the policies of tribal sovereignty.¹⁷

While it is well-documented that some tribes are approached by existing payday lenders seeking this kind of paper affiliation, ¹⁸ there is little publicly available information about the actual agreements reached between these lenders and the tribes. Even to the extent relevant corporate formation documents are publicly available, they

¹⁴ The National Banking Act and the Federal Deposit Insurance Act provide national banks and state-chartered banks, respectively, with the ability to export the interest rates from their home states and apply them to borrowers in other states. *See* 12 U.S.C. § 85 (NBA); 12 U.S.C. § 1831d(a) (FDIA). These federal provisions preempt some conflicting state law provisions. *See, e.g., Barnett Bank of Marion County., N.A. v. Nelson,* 517 U.S. 25, 33 (1996). By masquerading as agents for state-chartered or national banks, payday lenders attempted to avail themselves of an ability to export higher interest rates around the country, thereby avoiding state usury laws and other payday lending regulations. *See Rent-a-Charter Model Is a Risk for Marketplace Lenders*, AMERICAN BANKER, May 18, 2015, https://www.americanbanker.com/video/rent-a-charter-model-is-a-risk-for-marketplace-lenders (video describing how payday lenders would offer loans from a traditional bank and benefit from the bank's charter); Ronald J. Mann, *Just Until Payday*, 54 UCLA L. Rev. 855, 873 (April 2007).

¹⁵ Mann, *supra* note 14, at 873-74 (describing the evolution of federal regulation structure over the payday industry).

¹⁶ See Creola Johnson, America's First Consumer Financial Watchdog is on a Leash: Can the CFPB Use Its Authority to Declare Payday-Loan Practices Unfair, Abusive, and Deceptive?, 61 CATH. U. L. REV. 381, 399-401 (2012); Jeremy Roebuck, With Mafia-busting Law, Feds Indict Payday Lending Pioneer, PHILADELPHIA INQUIRER, April 7, 2016, www.philly.com/philly/news/20160408 With Mafia-busting law feds indict payday lending pioneer.html (describing how Charles Hallinan benefitted from the rent-a-bank scheme, and, once that was no longer legal, moved to associating with Native American tribes).

¹⁷ See Ben Walsh, Outlawed by the States, Payday Lenders Take Refuge on Reservations, HUFFINGTON POST, June 29, 2015, www.huffingtonpost.com/2015/06/29/online-payday-lenders-reservations n 7625006.html; Gabriel Hopkins, A Payday Lender's Race To The Bottom, Public Justice (Dec. 16, 2015), www.publicjustice.net/a-payday-lenders-race-to-the-bottom/.

¹⁸ See Silver-Greenberg, supra note 10 ("Modoc officials have been approached by other payday-loan companies in the past six months."); Nicholas Nehamas, *The Tribe That Said No*, AL JAZEERA AMERICA, June 19, 2014, projects.aljazeera.com/2014/payday-nation/sioux-tribe-payday.html (describing how Raycen Raines, a tribal member, pitched a lender-tribe online lending agreement to the tribe which the tribe ultimately turned down).

often are too vague and general to provide information about who is the true lender or true operator of a lending business. Determining ownership is made all the more difficult by the fact that some of the organizational documents purporting to create tribal lending businesses are of questionable veracity. Sometimes the deal is brokered by a "matchmaker" that acts as an intermediary to facilitate connections between lenders and tribes. In some iterations of the tribal payday model, it appears that there is a tribal council vote or other tribal governmental action in favor of "creating" a payday lending business or entering into an arrangement with an existing lender, but often the relevant documents do not provide insight into the actual relationship between lender and tribe.

Proponents of tribal payday lending have argued that tribes benefit from these arrangements because they create opportunities for financial gain²² and tribal member employment.²³ They suggest that a tribe involved with online short-term lending is

¹⁹ These issues are discussed in more detail in Sections IV.H.1 and IV.H.2.

²⁰ See Julia Harte & Joanna Zuckerman Bernstein, *Payday Nation*, AL JAZEERA AMERICA, June 17, 2014, projects.aljazeera.com/2014/payday-nation/ (view interactive: tribal payday 101 for model on how setup begins through a "tribal matchmaker"); Joanna Bernstein & Julia Harte, *The Sovereign Matchmaker*, AL JAZEERA AMERICA, June 19, 2014, http://projects.aljazeera.com/2014/payday-nation/matchmaker-payday.html; Alan Parker, *Courts Continue To Debate Validity of Indian-Owned Payday Lenders*, CONSULTANTS 4 TRIBES BLOG (Aug. 1, 2013), https://www.consultants4tribes.com/courts-continue-to-debate-validity-of-indian-owned-payday-lenders/ ("My firm brokers business relationships between federally recognized tribes and PDLs [pay day lenders]... At the current time, we have linked six(s) PDLs with three (3) federally recognized tribes."). These matchmakers are described in more detail in Section I.C.

²¹ Section IV.H.1.a discusses tribal corporation formation documents purporting to create payday lending businesses. Section IV.H.2.b discusses tribal ordinances, resolutions, and codes that purportedly create tribal regulatory agencies overseeing financial services.

²² See, e.g., Statement of Sherry Treppa, U.S. House of Representatives Committee on Financial Services (Feb. 10, 2016), at financialservices.house.gov/uploadedfiles/hhrg-114-ba15-wstate-streppa-20160211.pdf.

²³ See The Truth About Tribal Lending, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/truth-tribal-lending/ (last visited Nov. 11, 2016) ("E-commerce allows tribes to alleviate the economic burden of geographic isolation. The tribal profits derived from the TLEs [tribal lending entities] go to fund essential governmental services and programs that tribes provide for their memberships and augment ever-dwindling federal grant program funding. These TLE revenues, which account for a significant portion of a tribal government's operating budget, go toward providing vital social programs like health care services, housing assistance, home utilities subsidies, education for children, elder care and more. The businesses also create jobs within Indian country, reducing the unemployment rate and providing meaningful opportunity to tribal members within their own communities."); Nehamas, supra note 18 (describing how tribes are often attracted to the constant funding stream); Chico Harlan, Indian Tribes Gambling on High-Interest Loans to Raise Revenue, WASH. POST, Mar. 1, 2105, www.washingtonpost.com/business/economy/indian-tribes-gambling-on-high-interestloans-to-raiserevenue/2015/03/01/8551642d-e51b-4d3a-89c6-4de0d3bdf385 story.html ("[T]he Lac Vieux Desert Band of Lake Superior Chippewa Indians . . . depends on the lending revenues, which account for 42 percent of the annual budget, tribal officials say, and have filled a shortfall that otherwise would have brought many of the tribe's health-care and education services to a halt.").

advancing tribal sovereignty by "increas[ing] [the tribe's] independence and control over the tribe's future and self-determination goals."²⁴ For example, Sherry Treppa, a tribal council leader of the Habematolel Pomo of Upper Lake (Habematolel Tribe), argued that tribes' purported regulation of their own online lending businesses has been an opportunity "to enter into cooperative agreements or compacts with states as a means to coordinate the exercise of authority in this area and promote a collaborative government-to-government regulatory environment."²⁵

There's no question that many of the tribes that enter into arrangements with payday lenders are impoverished and seeking a means of providing a better quality of life for their members. Some tribes have been motivated to enter into the online lending business after increased tribal unemployment, economic hardship, failure of a series of business ventures, or receiving encouragement from other tribes at a Native American conference. For example, the Lac Du Flambeau Indian Tribe of Lake Superior Chippewa Indians (Lac Du Flambeau) was motivated to partner with a lender after defaulting on a \$50 million bond three years earlier. Sometimes the lending arrangements do help. For example, members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians (Lac Vieux Desert Band) reported that their tribe's

²⁴ *Issues*, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/organization-2/issues/ (last visited Nov. 16, 2016).

²⁵ Statement of Sherry Treppa, *supra* note 22.

²⁶ Harlan, *supra* note 23 ("It was 2011...the tribe [Lac Vieux Desert Band of Lake Superior Chippewa Indians] was in the midst of a financial collapse — "a panic," Williams, the chief, said —because Michigan's economy was foundering and foot traffic was down at its small casino, its only major source of revenue...The tribe's plan to lure a cigarette manufacturer had fallen through. An Internet bingo site had lasted two months. The tribe had lost more than \$6 million —nearly an entire year's budget—in a bad investment with a Mexican casino czar, and unemployment stood at 50 percent. Throughout the first half of 2011, the tribe debated whether to enter the lending business—something they'd heard about from other tribes at a Native American conference."); Film, An Unlikely Solution at 14:44 (full film available online) at www.anunlikelysolution.com (Sandra Knight, Vice Chairperson of the Mechoopda Indian Tribe of Chico Rancheria, states when discussing the need for purported tribal payday involvement, "We have a tribal membership of about 500 and most of our membership is children...we just are desperate for services for them, quality services, that are specialized in um, substance abuse, that can help us with gang affiliation. We just don't have the resources to address those issues for our members. And having the funds to do that would really help us provide those services for the members."); Internet Lending Business, INWEWIN NEWSLETTER (Lac Du Flambeau) July 2013 at 8, https://www.ldftribe.com/files/news/July-2013-Final_162.pdf ("The Tribe has partnered with one of the largest and most experienced lending companies – and the company has successfully helped other tribes enter into the internet lending business.").

²⁷ Cary Spivak, *Lac du Flambeau Chippewa enter payday loan business with eye to online gambling*, MILWAUKEE-WISCONSIN J. SENTINEL, Dec. 29, 2013, <u>archive.jsonline.com/business/lac-du-flambeau-chippewa-enter-payday-loan-business-with-eye-to-online-gambling-b99164952z1-237906421.html; *Internet Lending Business*, INWEWIN NEWSLETTER, *supra* note 26.</u>

involvement with lender CastlePayday.com created customer service employment positions for the tribe and contributed significantly to tribal revenue.²⁸

There is little evidence, however, that tribes are consistently getting rich from these arrangements. For example, an investigation by iWatch News revealed that Scott Tucker—a Kansas businessman who owned and operated payday lending businesses that were supposedly wholly owned by tribes, and who was recently indicted on several criminal counts—amassed a fortune from the payday loan business, using his money to purchase Lear jets and opulent properties and finance his private race car company, while members of the tribe that appeared, on paper, to "own" the lending companies struggled with continued poverty.²⁹ Perceived benefit to the tribe, therefore, may often outweigh actual benefit.

B. Public Justice's Anti-Payday Lending Initiative

Founded in 1982, Public Justice is a public interest law firm that pursues high-impact lawsuits to combat social and economic injustice, protect the Earth's sustainability, and challenge predatory corporate conduct and government abuses. The Public Justice Foundation is a not-for-profit, 501(c)(3) charitable membership organization that supports Public Justice's cutting-edge litigation and educates the public about the critical issues it addresses. Our membership includes leading trial lawyers, appellate lawyers, consumer advocates, environmental attorneys, employment lawyers, civil rights attorneys, class-action specialists, law professors, law students, public interest advocates, and other people who care about justice.

Through our Anti-Payday Lending Project, Public Justice brings strategic litigation against payday lenders on behalf of consumers who have been cheated in violation of consumer protection laws; fights the enforcement of forced (pre-dispute) arbitration clauses and class-action bans used by lenders to avoid being held accountable; and works to educate lawmakers, regulators, the press, and the public about the importance of access to the civil justice system, and particularly class actions, to protect consumers from abuses by the payday lending industry. We have also obtained some of the largest settlements ever recorded against payday lenders, recovering and distributing over \$20 million to consumers in Florida and more than \$45 million for consumers in North Carolina who had been charged illegally high interest rates for short-term loans.

For the last several years, Public Justice has focused on a new defense raised by some payday lenders in response to lawsuits alleging they have violated consumer protection laws: "tribal immunity" defenses. This issue, which is the focus of this report, is described in detail below.

²⁸ Harlan, *supra* note 23.

²⁹ See David Heath, *Payday Lending Bankrolls Auto Racer's Fortune*, CENTER FOR PUBLIC INTEGRITY (Sept. 26, 2011), www.publicintegrity.org/2011/09/26/6605/payday-lending-bankrolls-auto-racersfortune.

C. Acknowledgements

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Public Justice Staff Attorney Leslie Bailey provided substantive direction throughout the research and writing process and edited the final report. Public Justice's Deputy Director Victoria Ni managed and oversaw staffing for this project.

Public Justice Bridge Fellow Kyra Taylor (J.D. 2016, U.C. Berkeley School of Law) was the report's primary researcher and author. Kyra researched every payday lending and tribal website discussed in the report; compiled and analyzed all available information about each tribe and lender; and pored over press articles, law review articles, tribal websites, and court records to find clues about the relationships between lenders, tribes, and other participants. Finally, Kyra pulled together all the data researched by others, compiled it into charts, and drafted the narrative analysis. We are extremely grateful to Kyra for her hard work and passion about this topic. Kyra's Bridge Fellowship was courtesy of U.C. Berkeley Law School and Hassan A. Zavareei of Tycko & Zavareei LLP.

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III. RESOURCES AND METHODOLOGY

The research compiled in this report was conducted from March through December 2016. To obtain data for this report, researchers reviewed lawsuits filed in federal and state court; websites of payday lenders purporting to be affiliated with Native American tribes; state and federal databases of companies and consumer complaints; tribal law and governing documents; tribal newsletters and websites; national and local newspapers; tribal newspapers and periodicals; law review articles; and reports published by lobbyist groups and nonprofits.

Several factors made research for this report challenging. First, there is, to our knowledge, no existing database listing all payday lenders that claim to be affiliated with tribes. Second, there are very few resources collecting any information about the relationships between tribes and payday lenders or documenting lenders' use of tribal immunity as a defense in litigation. Therefore, we compiled the data in this report from a variety of sources and cross-referenced them against each other.

For example, researchers reviewed consumer complaint data collected by investigative journalists³⁰ and then, using the tribes' websites and lending websites provided from the investigative journalists' dataset, we cross-checked to confirm that the lending websites still existed and that they still claimed affiliation with the same tribe the journalists had identified in 2014. We also researched all tribes located in California to identify any additional lending websites claiming an affiliation with California tribes that were not identified in the dataset. To determine how the lender used its claimed tribal affiliation, we reviewed court records and analyzed the contractual language appearing on lending websites.³¹ To gain insight into how payday lenders are viewed by tribes, we reviewed tribal governing documents, tribal websites, tribal councils' blogs, newspapers targeting a Native American audience, court documents in litigation involving either the tribe or the lending business claiming an affiliation with the tribe, and national newspapers' investigation into the tribe and payday lender relationships.

A third factor that made this research challenging is that the websites offering payday loans to consumers³² are constantly changing, and appear to be designed to make it difficult to determine the identity of the actual lender and whether the lender solicits customers through multiple websites.³³ Further complicating research, these websites also shift *form* over time; as is explained in Sections IV.B.2.c and IV.D, websites that allowed borrowers to borrow from a single lending company two years ago may now be either inactive or functioning as "lead generating" websites that connect prospective borrowers to numerous lenders. For these reasons, researchers were not always able to determine with certainty whether any given lending website was the sole website of a singular lender or instead was merely one façade of many for a common lender using other sites. As researchers, we began investigating complaints connected to California, and we discovered that many of the complaints from 2013-14 referenced lending websites that no longer served as direct lenders—or were no longer in existence at all.³⁴

³⁰ This data is explained in Section IV.B.

³¹ Researchers reviewed the language on the face of the website itself without going through the process of applying for a payday loan.

³² Researchers did not find any payday lenders operating brick-and-mortar storefronts that claim ownership by or affiliation with a California tribe. Moreover, all consumer complaints against payday lenders claiming tribal ownership were related to online businesses, not physical storefronts.

³³ See, e.g., Consumer Alert, FSST Financial Services, LLC – Unlicensed Tribal Loan Company, Washington Department of Financial Institutions (Jan. 26, 2017), http://www.dfi.wa.gov/consumer/alerts/fsst-financial-services-llc-unlicensed-tribal-loan-company (listing three d/b/a's for centralized company FSST Financial Services); Consumer Alert, The Wakpamni Lake Corporation – Unlicensed Payday Loans, Washington Department of Financial Institutions (Jan. 11, 2016), http://www.dfi.wa.gov/consumer/alerts/wakpamni-lake-corporation-unlicensed-payday-loans">http://www.dfi.wa.gov/consumer/alerts/wakpamni-lake-corporation-unlicensed-payday-loans (listing 2 d/b/as for centralized company The Wakpamni Lake Community Corporation).

³⁴ See Section IV.B.2.c.

Furthermore, as research into the lending websites progressed, we discovered that some tribes that had previously been referenced on lending websites were now referenced on none, whereas other tribes once referenced by a particular lender were now (at least nominally) associated with new, different lenders. Information presented on the lending websites changed even over the course of the research period. In addition, researchers noted significant gaps in the information provided by the payday websites, availability of tribal law, existence of websites or publications published by the tribes, and availability of a history of litigation for the payday lender or tribe. Additionally, some of the sources reviewed contained falsehoods or openly contradicted other sources.

Notwithstanding the limitations of our research, we were able to reach some tentative conclusions. First, while there is no conclusive evidence illuminating the exact nature of the relationship between each tribe and payday lender, the evidence we did review tends to support the theory that, for the most part, the tribes that formally "own" payday lending businesses are not fully operating or controlling those businesses.

Second, we found a disparity between statements about payday lending by tribes and those by lenders. Specifically, it is common to see numerous statements about tribal ownership on the payday lending website, but no information about payday lending on the tribe's website. This finding is discussed in Sections IV.F.1 and G.1. On a related point, claims about tribal involvement made by payday lenders when tribal members have publicly claimed that a payday lending business is a legitimate tribal enterprise, we found that those tribal members are often involved with lobbying groups advancing the payday industry. Their statements are uncorroborated and, at times contradicted, by other tribal members.

Third, on the litigation front, it is worth noting that, while there has been significant litigation against certain lenders—particularly those claiming affiliation with the Otoe-Missouria Tribe of Indians (Otoe-Missouria Tribe), the Chippewa Cree Tribe of Rocky Boy's Reservation (Chippewa Cree), the Miami Nation of Oklahoma, the Santee Sioux Nation of Nebraska (Santee Sioux), and the Western Sky and CashCall universe of companies—there appear to be a fair number of payday lenders claiming affiliation with different tribes that have not yet been subject to private lawsuits or state enforcement actions. Where the payday lender or tribe attempted to dismiss the suit with the tribal immunity defense, the declarations and tribal documents provided to the court offered few details about the relationship between the payday lender and tribe. In addition, where the payday lender provided declarations of tribal council members and tribe members, those declarations were similar in content, tone, and order of content. Many of the tribal council members who offered declarations were members of the pro-tribal payday lending lobbyist group the Native American Financial Services Association (NAFSA). 35

³⁵ NAFSA advances tribes' involvement in payday lending. *See* NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, www.mynafsa.org/ (last visited Jan. 11) (now redirects to https://nativefinance.org (last visited March 30, 2017). NAFSA is discussed in detail in Section I.A.1.

Throughout this report, authors have inserted charts of data collected to illustrate information. These charts are intended to offer the reader a snapshot of the information described. Unless otherwise indicated, charts reflect researchers' own research and analysis.

IV. DATA AND FINDINGS

Drawing conclusions, with certainty, from the sources reviewed was challenging, considering that much of the publicly available information about "tribal" payday lending was contradictory or quickly changing. Many payday lending websites that were in existence as little as two years ago no longer function as direct lending websites. Likewise, new tribal affiliations have emerged and others have disappeared since 2014. Contributing to the lack of continuity of information regarding which lending businesses are actually in existence, there is no centralized government or nonprofit source that tracks these companies.

While lending websites frequently state that the lending business is "wholly owned" by a Native American tribe, it often appears that the tribe does not truly control or operate the business. More commonly, the tribe seems to have some kind of arrangement with the lender that facilitates a flow of revenue in exchange for the tribe's participation. Lenders did not appear to target a particular type of tribe to partner with; the tribes with which lenders claim to be affiliated are located across the country and vary widely in their membership size.

Tribal documents³⁶ we obtained from court records and other publicly available sources provided scant details about the financial arrangements between tribes and lenders or even which entity controlled or managed the lending operation. Other than corporate formation documents³⁷—which tend to give the impression of tribal creation and control—researchers were rarely able to find additional tribal or corporate documents establishing the tribe's active involvement in the management of the lending operation.

In the event of litigation, payday lenders typically submitted purported tribal documents and affidavits signed by one or two tribal council members to substantiate their claim of tribal ownership. However, there are almost no detailed operational agreements describing the business relationships between the tribe and the business partners necessary to operate an online payday lending business—such as financial

³⁷ Corporate formation documents include articles of incorporation and operating agreements that mark the legal formation of a corporation.

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³⁶ These tribal documents, which are purportedly issued by tribal councils, include resolutions, tribal code, ordinances, tribal statutes, and licenses purportedly issued by the tribe that purportedly create payday companies, commemorate a partnership with a payday company, or create tribal regulatory agencies that regulate payday lenders.

backers providing the capital for the loans, information technology (IT) companies providing technological support for the lending, managerial companies supporting staffing and training for call centers, or Automated Clearing House ("ACH") financial operators facilitating the deferred depositing—publicly available or submitted in litigation. We did not find uncontradicted evidence—such as continued tribal council or committee votes on the lending website or business, lists of tribal employees of the business in tribal directories, or references to the revenue or losses the tribal business was incurring for the tribe itself—for any of the tribes we researched.

Statements by tribal leaders in documents submitted to courts by lenders asserting a tribal immunity defense often conflicted with statements by other tribal members about the tribe's involvement in the lending business. For example, certain tribal council members, in affidavits, tribal press, and interviews, claimed extensive tribal involvement in payday lending. But other tribal members, in the same or different press reports, denied that their tribe had anything but minimal control or benefit from the lending business with which that tribe was supposedly affiliated. Sometimes a single tribal council member would offer statements to multiple sources regarding the benefits of the payday company, uncorroborated by other members of the tribe.

A. No State or Federal Databases Listing "Tribal" Payday Lenders

Research began by looking at any existing lists of online payday lenders or lending websites that claimed an affiliation with a Native American tribe. Neither the Federal Trade Commission (FTC) nor the Consumer Financial Protection Bureau (CFPB) nor any state agency we could identify has published such a list. While some government agencies do publish databases of consumer complaints, ³⁸ they do not record whether the lending businesses identified claimed a tribal affiliation. For example, the CFPB publishes a publicly available database of consumer complaints which can be filtered by consumer location, type of product complained about, company providing the product, and date. ³⁹ The database includes all complaints filed from three years ago to the present. However, the data does not identify which lending entities claim tribal affiliation unless the tribe is mentioned within the consumer's complaint. Likewise, both the Washington State Department of Financial Institutions ("DFI")⁴⁰ and California Department of

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³⁸ See e.g. Consumer Alert, Alert Fort Belknap Indian Community—Unlicensed Payday Loans, Washington State Department of Financial Institutions (Nov. 2, 2015), http://www.dfi.wa.gov/consumer/alerts/fort-belknap-indian-community-unlicensed-payday-loans; Consumer Alerts 2013, California Department of Business Oversight (2013), http://www.dbo.ca.gov/Consumers/alerts/2013.asp.

³⁹ The CFPB's Consumer Complaint database is available at https://data.consumerfinance.gov/d/s6ew-h6mp/data.

⁴⁰ Washington's DFI Consumer Alerts listings are useful in that the DFI frequently publishes consumer alerts of "unlicensed loan companies" after receiving consumer complaints. These alerts are routinely updated and include the name and contact information of the tribe that allegedly owns the payday company in the text of the alert. While these alerts do not exist in a database, the consumer alerts are

Business Oversight ("DBO") publish alerts regarding online payday lenders that break state law, but they do not publish a database compiling all such alerts.

B. Al Jazeera America Investigative Series: Payday Nation

Because no centralized government databases of online payday lending businesses claiming affiliation with tribes exist, researchers sought to identify other sources that could provide a database of lenders that claim affiliation with a tribe. The most comprehensive list of "tribal" lenders our researchers found was that compiled for AJAM's landmark investigative series, *Payday Nation*, which addressed the proliferation of internet lending entities claiming a relationship with Native American tribes as of 2014. We used this data as a starting point to investigate the relationships between payday lenders and tribes.

1. Raw Data

For the *Payday Nation* series, AJAM reporters used a Freedom of Information Act (FOIA) request to obtain information from the FTC about consumer complaints filed against payday lending companies from February 2013 to February 2014. Through subsequent reporting, they identified the tribe with which each lender claimed affiliation. They then compiled the combined data—the lending entity complained about (by website), consumer location, purportedly associated tribe, and tribe's location—into an Excel spreadsheet. AJAM reporters identified 3,249 complaints against 64 lending websites purporting to be affiliated with 23 Native American tribes.

Figure 1: Summary Raw Data from Al Jazeera's <i>Payday Nation</i>				
Date of Complaints	Feb. 2013-			
	Feb. 2014			
# Complaints	3,249			
# Tribes	23			
# Lending websites	64			

searchable on DFI's website. *See* Consumer Alerts, WASHINGTON STATE DFI, http://www.dfi.wa.gov/news/alerts.

⁴¹ Julia Harte & Joanna Zuckerman Bernstein, *Payday Nation Complaints*, AL JAZEERA AMERICA, June 17, 2014, http://projects.aljazeera.com/2014/payday-nation/complaints.html (showing their analysis of the data); Harte & Bernstein, *Data for Payday Nation Project*, https://github.com/ajam/2014 payday-nation-data (explaining how they compiled data received from the FTC and combined it with their own reporting connecting each lending entity with its affiliated tribe).

⁴² The AJAM database treats each lending website as its own unique business entity. When the AJAM data references "lending businesses," this refers to the name of the website.

⁴³ See Harte & Bernstein, Data for Payday Nation Project, supra note 41.

2. Data Specific to California

Public Justice researchers narrowed the list by 1) selecting lending websites (LWs) mentioned in California consumer complaints, and 2) selecting lending websites associated with California tribes.⁴⁴

a. Summary of Lending Website Data

There were a total of 45 lending websites that had either claimed association with a California tribe or received a California consumer complaint.

Figure 2: Al Jazeera's Lending Website Data Specific to California			
# of Sites	Site's connection to California		
34	Complaints from California consumers		
18 Claimed affiliation with California tribe			
7	Both complaints from California consumers and purported		
	connection to California tribe		

b. California Tribes Referenced by Lending Sites

AJAM data identified eight California tribes referenced by lending websites:

- 1) Big Lagoon Rancheria of Yurok and Tolowa Indians (Big Lagoon Rancheria)
- 2) Big Valley Rancheria Band of Pomo Indians (Big Valley Tribe)
- 3) Guidiville Rancheria of Pomo Indians (Guidiville)
- 4) Habematolel Pomo of Upper Lake (Habematolel Tribe)
- 5) Iipay Nation of Santa Ysabel/Santa Ysabel Band of Mission (Diegueno) Indians of the Kumeyaay People (Iipay Tribe)
- 6) La Posta Band of Diegueño Mission Indians of the La Posta Indian Reservation/La Posta Band of Mission Indians (La Posta Band)
- 7) Picayune Rancheria of the Chukchansi Indians (Picayune Rancheria)
- 8) Resighini Rancheria of Yurok Indians (Resighini Rancheria)

⁴⁴ Researchers identified California tribes by referencing the list of tribes federally and state recognized tribes compiled by the National Conference of State Legislatures. *Federal and State Recognized Tribes*, NATIONAL CONFERENCE OF STATE LEGISLATURES (October 2016), http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#ca. California does not register or recognize tribes as a state. Instead, California uses the list of federally recognized Indian tribes. *California Tribal Court-State Court Forum*, CALIFORNIA COURT (last visited April 27, 2017), http://www.courts.ca.gov/documents/TribalFAQs.pdf.

In addition, California consumers filed complaints about lending websites that claimed affiliation with 13 non-California tribes.

c. Updating the Al Jazeera Dataset

Researchers reviewed each lending website listed in the narrowed data from AJAM reporting to determine: 1) whether the website was still active; 2) whether the lending website revealed any information about the lending business⁴⁵ operating the website; and 3) whether the purportedly affiliated tribe identified in the data was still listed on the website. Researchers then recorded any information the website provided about the purported relationship between the lending business and the tribe.

While researching the websites listed in the AJAM data, researchers discovered that only some of the websites listed were still functioning as active direct lending websites. Some of the websites were wholly undetectable (suggesting that the lending website was no longer active), ⁴⁶ and some websites that had previously been direct lenders—according to complaints filed with the FTC and vetted by AJAM reporters—had become websites that did not offer consumers loans directly. Instead, these websites connected borrowers to a network of active lending websites through a common application submitted through their website ("lead generating websites"). ⁴⁷

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⁴⁵ Researchers checked each lending website for information about four potential components of a payday lending business: 1) the website where they attract borrowers, 2) the lending business itself, which hires employees and enters into contracts, 3) the tribe that is purportedly affiliated with (is or claimed to own) the payday company, and 4) outside businesses entities that provide capital, software, or management services.

⁴⁶ Researchers were able to confirm the previous existence of now-inactive lending websites by checking sources such as state consumer protection and business regulation departments' notices, press coverage, and court cases. *See, e.g.*, Consumer Alert, *Tribal Lending Enterprises dba National-paydayloan.com - Tribal Payday Lender*, Washington State DFI (Oct. 22, 2014), http://www.dfi.wa.gov/consumer/alerts/tribal-lending-enterprises-dba-national-paydayloancom-tribal-payday-lender (alerting the public about lending entity Tribal Lending Enterprises, d/b/a National-Paydayloan.com, a lending website no longer in existence).

⁴⁷ Lead generating websites sites usually use a slightly modified version of the name of an inactive lending website to redirect consumer traffic that would have previously gone to now inactive lending website. For example, Castle Payday was once an active lending website that claimed to be affiliated with the Lac Vieux Desert Band of Lake Superior Chippewa Indians. *See* Harlan, *supra* note 23. The direct lending site Castle Payday loans ceased to exist as of this research, possibly in connection to negative press associated with the lending entity. As of November 21, 1016, www.castlepay-day.com was acting as a lead generator. *See FAQ*, CASTLEPAY-DAY.COM, http://www.castlepay-day.com/faq.php (last visited Nov. 21, 2016) ("[W]ww.castlepay-day.com is not a lender and we do not perform any type of credit check. We try to match your application to lenders in our network in order to find the right loan for you. Most of our lenders do not do traditional credit checks, however, they may query various consumer databases, such as CL Verify, TeleTrack or DataX in order to verify your identity and review your past payday loan history."). As of the most recent check, even the Castle Pay-day lead generating site is no longer active, and its URL redirects to the Big Picture Loans site. *See* BIG PICTURE LOANS, https://www.bigpictureloans.com/CastlePaydayRedirectLanding ("Castle Payday is now Big Picture

In total, we identified 27 lending websites that, according the AJAM data, either were affiliated with a California tribe or had received a California consumer complaint that were no longer active as direct lenders⁴⁸ during our research time period. Additionally, a number of tribes identified in 2014 were no longer listed on active lending websites. Specifically, AJAM identified consumer complaints against lending websites that claimed tribal affiliation in 2014 with two California tribes (the Resighini Rancheria and Picayune Rancheria of the Chukchansi Indians) and California complaints against three non-California tribes (the United Keetoowah Band of Cherokee Indians, Wakpamni Lake Community of the Oglala Sioux Tribe, and the Laguna Pueblo) but researchers could find no active lending websites referencing these tribes.

Figure 3: Updated Al Jazeera Data: California					
	# Total	# Active	# Inactive	# Lead Generating Websites	
Websites with complaints from California consumers	34	19	7	8	
Websites with purported affiliation with California tribe	18	6	8	4	

Based on this California-specific data, researchers concluded that, given the constant shifting of payday lending websites, it made sense to do additional research into new lending websites that claimed an affiliation with the tribes identified by AJAM.

C. Tribes with a California Connection Currently Mentioned By Lending Websites

Next, researchers did a comprehensive review of all of the tribes located in California to identify whether any additional California tribes were mentioned in payday lending websites. Researchers conducted Google searches with each California tribe's name and the search terms "payday loan," "installment loan," "loan," "payday," "internet lending," and "short-term loans." We identified two tribes—the Kashia Band of Pomo Indians of the Stewart's Point Rancheria (Kashia Band) and the Mechoopda Indian Tribe of Chico Rancheria (Mechoopda)—with which payday lending websites claim an affiliation that had not been included within the AJAM data. "Adding those tribes to the

Loans"). See Section I.B for a discussion of lead generating websites affiliated with payday lenders claiming a relationship to a tribe.

⁴⁸ This number includes lenders that are now lead generating websites and lenders that have largely disappeared from the internet.

⁴⁹ Presumably this is either because no consumers complained to the FTC about the lending websites that mentioned the new tribes' names, or because the sites mentioning those tribes were not in existence in 2013-14 when the AJAM data was collected.

eight California tribes identified in the AJAM dataset, the total was 10 California tribes that were or are mentioned on lending websites.⁵⁰

In total, combining the research into California tribes' connections with the payday industry with all of the tribes identified by the AJAM data, there were 23 tribes' names listed on active or inactive lending websites with a California connection.

After identifying tribes purportedly affiliated with a payday website, researchers investigated the tribes themselves. Researchers attempted to identify the geographic location of the tribe, the size of the tribe, whether tribal documents (if available) discussed loan entities, whether tribal publications discussed online lending, any statements by tribal council regarding online lending or a tribe's involvement in the lending, how many active or inactive lending websites had used a tribe's name.

1. Location of Tribes Mentioned by Researched Lending Websites

Figure 4 shows the locations of all the tribes referenced by lending websites with a California connection (either the affiliated tribe is located in California, or the lender received complaints from California consumers according to AJAM). The chart is arranged to indicate possible Indian Nation affiliations that may exist between the tribes. Nation affiliation was determined from the Native American tribe's name and research from tribal websites, where available.

Figure 4: Location of Tribes Purportedly Affiliated With Lending Websites With Connection to California				
Tribe	State			
Chippewa Nation				
1. Chippewa Cree Tribe of Rocky Boy's Reservation (Chippewa				
Cree)	MT			
2. Lac Du Flambeau Indian Community/Lac Du Flambeau Tribe of				
Lake Superior Chippewa Indians (Lac Du Flambeau)	WI			
3. Lac Vieux Desert Band of Lake Superior Chippewa Indians (Lac				
Vieux Desert Band)	MI			
4. Turtle Mountain Band of Chippewa Indians, members of the				
Pembina Band of Chippewa (Turtle Mountain Band)	ND			
Pomo Nation				
5. Big Valley Rancheria Band of Pomo Indians (Big Valley Tribe)	CA			
6. Guidiville Rancheria of Pomo Indians ⁵¹ (Guidiville)	CA			

⁵⁰ One tribe, the Middletown Rancheria of Pomo Indians of California, may have been mentioned by lending websites in the past, but either those sites either no longer exist or they no longer mention this tribe. However, the tribe's Vice-Chairwoman, Sally Peterson, was a signatory to the 2013 letter NAFSA submitted to the DOJ following a meeting to discuss tribal sovereignty and the financial fraud task force. *Letter to Department of Justice*, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION (Aug. 21, 2013), http://www.mynafsa.org/nafsa-letter-u-s-department-justice/; *Tribal Council*, MIDDLETOWN RANCHERIA,

http://www.middletownrancheria-nsn.gov/departments-entities/government. For a discussion of NAFSA, see Section I.A.1.

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Figure 4: Location of Tribes Purportedly Affiliated With Lending Websites With Connection to California			
Tribe	State		
7. Habematolel Pomo of Upper Lake (Habematolel Tribe)	CA		
8. Kashia Band of Pomo Indians of the Stewart's Point Rancheria			
(Kashia Band) †	CA		
Sioux Nation			
9. Cheyenne River Sioux Tribe	SD		
10. Santee Sioux Nation of Nebraska	NE		
11. Wakpamni Lake Community of the Oglala Sioux Tribe*			
(Wakpamni Tribe)	SD		
Other Nations			
12. Big Lagoon Rancheria of Yurok and Tolowa Indians (Big Lagoon			
Rancheria)	CA		
13. Fort Belknap Indian Community of the Gros Ventre and			
Assiniboine Tribes (Fort Belknap Tribe)	MT		
14. Iipay Nation of Santa Ysabel/Santa Ysabel Band of Mission			
(Diegueno) Indians of the Kumeyaay People (Iipay Tribe)	CA		
15. La Posta Band of Diegueño Mission Indians of the La Posta			
Indian Reservation/La Posta Band of Mission Indians of the			
Kumeyaay Tribe (La Posta Band)	CA		
16. Mechoopda Indian Tribe of Chico Rancheria (Mechoopda Tribe)			
†	CA		
17. Miami Tribe of Oklahoma (Miami Tribe)	OK		
18. Modoc Tribe of Oklahoma (Modoc Tribe)	OK		
19. Otoe-Missouria Tribe of Indians (Otoe-Missouria)	OK		
20. Picayune Rancheria of the Chukchansi Indians* (Picayune			
Rancheria)	CA		
21. Resighini Rancheria of Yurok Indians* (Resighini Rancheria)	CA		
22. Tunica-Biloxi Tribe of Louisiana (Tunica-Biloxi Tribe)	LA		
23. United Keetoowah Band of Cherokee Indians*			

^{*=} previously but not currently listed on an active lending website.

^{†=} not listed in AJAM data.

⁵¹ The Guidiville have members with Coastanoan, Patwin, Wappo, and Pomo ancestry. *Guidiville History*, Black Oak Development Corp., http://www.black-oak-development.com/guidiville-history/ (last visited 27 April, 2017) (Black Oak Development Corp. is "A Federal Corporation of the Guidiville Indian Rancheria).

2. Size of Tribes

The membership of the tribes purportedly affiliated with lending websites varies widely. Figure 5 below lists the size of tribes currently or previously mentioned by lending websites in ascending order.

Figure 5: Membership Size of Tribes Menti Lending Websites With Connection California	-
Tribe	# of Members
1. Big Lagoon Rancheria	24
2. Habematolel Tribe	258
3. Mechoopda Tribe	560
4. Kashia Band	680
5. Lac Vieux Desert Band	684
6. Tunica-Biloxi Tribe	1,200
7. Chippewa Cree	2,500
8. Santee Sioux Nation of Nebraska	2,662
9. Otoe-Missouria	3,000
10. Lac Du Flambeau	3,415
11. Miami Tribe	4,400
12. Fort Belknap Tribe	7,000
13. Cheyenne River Sioux Tribe	15,993
14. Turtle Mountain Band of Chippewa Indians	30,722
15. Big Valley Tribe	Unknown
16. Guidiville	Unknown
17. La Posta Band	Unknown
18. Iipay Nation	Unknown
19. Modoc Tribe	Unknown
20. Picayune Rancheria*	Unknown
21. Resighini Rancheria*	Unknown
22. Wakpamni Lake Community of the Oglala Sioux Tribe*	Unknown
23. United Keetowah Band of Cherokee Indians in Oklahoma*	Unknown

^{*=} not currently listed on an active lending website.

3. Frequency in Which Tribes Were Mentioned On Lending Websites

Some tribes were referenced on lending websites more often than others. Figure 6 ranks the 23 tribes with a California connection by how many lenders claim affiliation with the tribe.

Figure 6: Frequency in Which Tribes Were Referenced By Lending Websites				
	Tribe Listed On Lending Website	# Active Sites	# Inactive Sites ⁵²	
1.	Fort Belknap Tribe	8	2	
2.	Kashia Band	4		
3.	Otoe-Missouria Tribe	3		
4.	Big Valley Rancheria	3	1	
5.	Guidiville	2	5	
6.	Big Lagoon Rancheria	2	4	
7.	La Posta Band	2	2	
8.	Lac Du Flambeau Indian Community	2		
9.	Santee Sioux Nation of Nebraska	2		
10.	Habematolel Tribe	1	2	
11.	Modoc Tribe	1	1	
12.	Lac Vieux Desert Band	1	1	
13.	Iipay Nation	1		
14.	Mechoopda Tribe	1		
15.	Tunica-Biloxi	1		
16.	Turtle Mountain Band of Chippewa Indians	1		
17.	Miami Tribe		6	
18.	Wakpamni Lake Community of the Oglala Sioux Tribe		7	
19.	Cheyenne River Sioux Tribe		3	
20.	Chippewa Cree		4	
21.	Picayune Rancheria		1	
22.	United Keetowah Band of Cherokee Indians in Oklahoma		2	
23.	Resighini Rancheria		1	

D. Additional Tribal Affiliations Researched

As researchers sought information about the tribes and lending websites identified in the AJAM dataset, they recognized that lenders claiming affiliation with three tribes—Flandreau Santee Sioux Tribe, Lac Courte Oreilles, and MHA Nation—were frequently

⁵² This column includes both inactive websites and lead generating websites.

arising when conducting Google searches. Upon further investigation, researchers noticed that the Flandreau Santee Sioux Tribe had a proliferation of lenders claiming affiliation. Researchers also recognized that the Lac Courte Oreilles Tribe of the Lake Superior Band of Chippewa Indians (Lac Courte Oreilles), Mandan, Hidatsa, and Arikara Nation (MHA Nation), and Laguna Pueblo were implicated in litigation, media coverage of the purportedly affiliated payday entities, or NAFSA membership. Researchers recognized that these lenders, because of their online presence, could be impacting California consumers. However, they were unable to confirm that any complaints had been filed against these lenders by California consumers. Nevertheless, because of the frequency with which these entities appeared in the research, researchers looked into these tribal affiliations in addition to the lenders with a California connection. The geographic location, membership size, and the frequency in which those tribes are mentioned on active and inactive websites follow in the below Figure 7.

Figure 7: Summary of Websites Reviewed						
Tribe	Geographic Location	Size of Membership	Active Lending Websites Referencing Tribe	Inactive Lending Websites Referencing Tribe		
1. Flandreau Santee Sioux Tribe	SD	736	10	2		
2. Lac Courte Oreilles	WI	7,275	1	2		
3. Laguna Pueblo	NM	7,825	0	1		
4. MHA Nation	ND	14,000	3	1		

E. Composition of Lending Websites Researched

After compiling the list of tribes in Figure 4, researchers next sought to determine whether any additional lending websites not identified by AJAM also referenced any of the tribes on the list. Researchers also reviewed the lenders that were affiliated with the tribes listed in Figure 6. Researches identified 55 lenders not listed in the AJAM dataset and added them to the list of lending websites. In total, researchers reviewed 100 active and inactive lending websites.

The websites reviewed fell into three groups: 1) active lending websites that functioned as direct lenders and listed a tribe's name; 2) inactive lending websites that

had previously been in business and referenced a tribe's name; and 3) lead-generating sites that had once been a direct lender and listed a tribe.⁵³

Figure 8: Summary of Websites Reviewed		
Active	49	
Inactive	34	
Lead Generating Sites	14	

Figure 9, below, lists all lending websites (active, inactive, and lead generators) researched for this report.

	Figure 9: Lending Websites Claiming Tribal Affiliation			
	Lending Website ⁵⁴	Active Lender	Inactive Lender	Lead Generator
	Big Lagoon Rancheria (CA)			
1.	Blr-Tribal-Services-			
	Llc.Approvecashcashadvance.Info/		Yes	
2.	Clear-Loans.com/Faq.Aspx	Yes		
3.	Greengateservices.com/Termsandconditions.Aspx	Yes		
4.	Minutefundscom.com		Yes	
5.	Moneybyphone.com		Yes	
	Big Valley Tribe (CA)			
6.	Bigeyelendingloans.com			Yes
7.	Bigvalleyfinancial.com/	Yes		
8.	Greenarrowloans.com/	Yes		
9.	Tremontlendingloans.com/	Yes		
	Cheyenne River Sioux Tribe (SD)			
10.	Lakota Cash			Yes
11.	Payday Financial		Yes	
12.	Western Sky Financial		Yes	
	Chippewa Cree (MT)			
13.	Bear Paw Cash		Yes	
14.	Fastpaydayloanstore.com/		Yes	

⁵³ The lending websites identified in this section are those that referred to tribes as of the end of November 2016. Given the speed with which lending websites emerge and disappear, however, it is difficult to assess exactly how many sites use a tribe's name, and it is likely that the list of sites referring to specific tribes is no longer current.

Lead generating sites are discussed in Section I.B.

⁵⁴ Where the URL of the website is known, it is listed. For lenders with no URL listed, researchers were able to confirm the previous existence of the website using other evidence, such as lead-generating sites using the lending website's name.

	Figure 9: Lending Websites Claiming T	Active	Inactive	Lead
	Lending Website ⁵⁴	Lender	Lender	Generator
15.	Splashcashadvance-Com.com/			Yes
16.	ThinkFinance		Yes	
	Flandreau Santee Sioux Tribe (SD) ♦	·		
17.	Bottomdollarpayday.com	Yes		
18.	Paradise Cash Advance		Yes	
19.			Yes	
20.	Actionpayday.com	Yes		
21.		Yes		
22.	•	Yes		
23.	Ipltoday.com/	Yes		
24.	Mynextdaycash.com/	Yes		
25.		Yes		
26.	•	Yes		
27.		Yes		
28.	Theviploanshop1.com/	Yes		
	Fort Belknap Tribe (MT)	<u> </u>		
29.	1 Hour Cash Approval.com	Yes		
30.	**	Yes		
31.	ž			Yes
32.	•	Yes		
33.		Yes		
34.			Yes	
35.		Yes		
36.	1 5	Yes		
37.	Targetcashnow.com/Contact.Php	Yes		
38.	<u> </u>	Yes		
	Guidiville (CA)			
39.	Affordableloanservices.com/Terms/	Yes		
40.			Yes	
41.	·		Yes	
42.	Moneyloansquick.com		Yes	
43.			Yes	
44.			Yes	
45.		Yes		
	Habematolel Tribe (CA)	1 100		
46.			Yes	
47.	Mountainsummitfinancial.com/	Yes	100	
48.	Silvercloud.com	100	Yes	
	lipay Tribe (CA)		1 200	1

	Figure 9: Lending Websites Claiming Tribal Affiliation			
	Lending Website ⁵⁴	Active Lender	Inactive Lender	Lead Generator
49.	Arrowonelending.com	Yes		
	Kashia Band (CA)			
50.	Inboxloan.com	Yes		
51.	Inboxloan.com/Fast-Cash-Why-Inbox-Loan	Yes		
52.	Kashialending.com/	Yes		
53.		Yes		
	La Posta Band (CA)	<u> </u>		
54.	Gentlebreezeonline.com/	Yes		
	La Posta			Yes
56.	Harvestmoonloans.com/	Yes		
57.			Yes	
	Lac Courte Oreilles (WI) ♦			
58.	Bluetrustloans.com/	Yes		
59.	Cashtaxi.com		Yes	
60.	Oasisfundsllc		Yes	
	Lac Du Flambeau (WI)			
61.	Brightstarcash.com	Yes		
62.		Yes		
	Lac Vieux Desert Band (MI)			
63.	Bigpictureloans.com	Yes		
64.				Yes
	Laguna Pueblo (NM) ♦		-	
65.	Western Sky Loans			Yes
	MHA Nation (ND) ♦			
66.	Covermecash.com/	Yes		
67.	Maxlend.com/	Yes		
68.	Sovereignadvance.com/	Yes		
69.	Sovereign Advance		Yes	
	Mechoopda Tribe (CA)	•		
70.	Myflexcash.com	Yes		

Napalending.com mentions both the Kashia Band and the Wakpamni. The Kashia Band is mentioned at the bottom of the home page, which states "Napa Lending is a subsidiary of Kashia Services, a wholly owned business entity, of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a federally recognized Indian tribe." NAPALENDING.COM, http://www.napalending.com/ (last visited April 26, 2017). The FAQ page references the Wakpamni, stating "Napa Lending financial services are offered by WLCC Lending FDL d/b/a NapaLending.com. The entity is a subsidiary agency of Wakpamni Lake Community Corporation, an arm and entity organized under and governed by the laws of the Oglala Sioux Tribe of the Pine Ridge Reservation, a sovereign nation located within the United States of America, and is operating within the Tribe's Reservation." NAPALENDING.COM, http://www.napalending.com/faq/ (click "Who is Napa Lending").

	Figure 9: Lending Websites Claiming Tribal Affiliation			
	Lending Website ⁵⁴	Active Lender	Inactive Lender	Lead Generator
	Miami Tribe (OK)			•
71.	Ameriloanscash.com			Yes
72.	Miami Nation Enterprise		Yes	
73.	Red Cedar Services		Yes	
74.	Red Rock Tribal Lending		Yes	
75.	Unitedcashloans.Us			Yes
76.	Us Fast Cash		Yes	
	Modoc Tribe (OK)			
77.	500 Fast Cash	Yes		
78.	MTE Financial Services		Yes	
	Otoe-Missouria (OK)			
79.	Americanwebloan.com/	Yes		
80.	Clearcreeklending.com	Yes		
81.	Greatplainslending.com/	Yes		
	Picayune Rancheria (CA)			-
82.	Blue King		Yes	
	Resighini Rancheria (CA)			
83.	Blackbearadvance.com		Yes	
	Santee Sioux Nation of Nebraska (NE)			-
84.	Tribal Financial Advisors		Yes	
85.	One Click Cash	Yes		
86.	SFS	Yes		
	Tunica-Biloxi Tribe (LA)			-
87.	Mobiloans.com/	Yes		
	Turtle Mountain Band of Chippewa Indians (ND)			-
88.	Spotloan.com/	Yes		
	United Keetowah Band of Cherokee Indians In Okl	lahoma (OK)		
89.	American Loans		Yes	
90.	Bright Day Loans			Yes
	Wakpamni Lake Community of The Oglala Sioux	Tribe (SD)		
91.	Bayside Cash			Yes
92.	Boulevard Cash			Yes
93.	Cash Cloud		Yes	
94.	Fireside Cash			Yes
95.	Seaside Dollar		Yes	
96.	Seasidecash.com/			Yes
97.	FastMoneyStore.net		Yes	

^{♦ =} Lender without confirmed California connection.

The active lending websites citing California tribes all used similar language when referencing their relationship to a California tribe. The language used on each website is in Figure 10 below.

Figure 10: Tribe Affiliation Language o Tribes ⁵⁶	n Active Lending Websites Referencing California			
Big Lagoon Rancheria				
https://clear-loans.com/	Clear Loan Solutions, LLC ("CLSLLC") is wholly owned and operated by the Big Lagoon Rancheria, California, a federally recognized American Indian tribe and sovereign government.			
https://greengateservices.com/	Green Gate Services, LLC is a tribal lending entity wholly owned by the Big Lagoon Rancheria, a Federally Recognized Sovereign Nation located and operating within the Tribe's Reservation.			
Big Valley Tribe				
https://www.bigvalleyfinancial.com/	Big Valley Financial is a Tribal enterprise, wholly owned and operated by the Big Valley Band of Pomo Indians, a federally recognized American Indian tribe and sovereign government.			
https://www.tremontlendingloans.com/	Tremont Lending is owned and licensed by the Big Valley Band of the Pomo Indians, which is a Native American business operating within the exterior boundaries of its Reservation, a sovereign nation located within the United States of America.			
https://www.greenarrowloans.com/	Green Arrow Solutions is a Tribal enterprise, wholly owned and operated by the Big Valley Band of Pomo Indians, a federally recognized American Indian tribe and sovereign government.			
Guidiville				
https://www.pathlending.com	Path Lending is a licensed tribal lending corporation, wholly owned by the Guidiville Indian Rancheria, a sovereign nation located within the United States of America and operating within the Tribe's land.			
https://www.affordableloanservices.com/	Affordable Loan Services and Churchill Financial Management are wholly owned and operated by the Guidiville Band of Pomo Indians.			
Habematolel Tribe				
https://www.mountainsummitfinancial.com/	This is a website owned and operated by Mountain Summit Financial, Inc., a tribal lending entity wholly owned and operated by the Habematolel Pomo of Upper Lake, California, which is a sovereign nation located within the United States of America, and is operating within the tribe's reservation.			

⁵⁶ Two California tribes listed in Figure 4: Location of Tribes Purportedly Affiliated With Lending Websites With Connection to California—the Picayune Rancheria and the Resighini Rancheria—are not associated with active lending websites and are omitted from Figure 10.

Figure 10: Tribe Affiliation Languag Tribes ⁵⁶	ge on Active Lending Websites Referencing California
Iipay Tribe	
www.arrowonelending.com	Www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation.
Kashia Band	
http://kashialending.com/	The Kashia Lending Enterprise is a Tribal enterprise, wholly owned and operated by the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a federally recognized American Indian tribe and sovereign government.
http://www.napalending.com/	Napa Lending is a subsidiary of Kashia Services, a wholly owned business entity, of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a federally recognized Indian tribe.
inboxloan.com	Inbox Loan is a Native American owned business operated by Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a sovereign nation located in the United States.
La Posta Band	
http://www.gentlebreezeonline.com/	GentleBreezeOnline is a tribal lending entity wholly owned by the La Posta Band of Mission Indian's [sic], a sovereign nation located within the United States of America and a federally recognized American Indian Tribe, and is operating within the boundaries of the La Posta Reservation.
http://harvestmoonloans.com/	Language similar to GentleBreezeOnline.
Mechoopda Tribe	
https://www.myflexcash.com	MyFlexCash.com is owned and operated by Red Hawk Financial, a tribal lending entity wholly owned and operated by the Mechoopda Indian Tribe of Chico Rancheria, a federally recognized sovereign nation.

F. The Anatomy of a Lending Website

There are many articles documenting the experiences of borrowers who obtain a short-term loan online with triple-digit interest rates without realizing they had entered into a contract with a lender purportedly owned by a tribe.⁵⁷ Many tribal lending websites

⁵⁷ E.g. Zeke Faux, Behind 700% Loans, Profits Flow Through Red Rock to Wall Street, BLOOMBERG TECH., Nov. 24, 2014, http://www.bloomberg.com/news/articles/2014-11-24/payday-loan-fortune-backed-by-medley-found-behind-indian-casino ("Behind 700% Loans") ("The truck driver and aspiring country singer in Madison, North Carolina, got \$800 within minutes from a website he found on his phone. When he called to check his balance a few weeks later, he was told he had electronically signed a contract to payback \$3,920 to a company owned by an American Indian tribe. 'I didn't ever see a

use similar elements to lure consumers. Researchers took note of broad trends in characteristics of lending websites. Researchers also looked for trends across lending websites that claimed an affiliation with the same tribe, in an effort to identify whether common actors might be operating clusters and networks of lending websites. This section describes those findings and offers examples of the contractual language lending websites make available on their website.

1. General Trends of Lending Websites

All of the lending websites we reviewed contained similar characteristics. Facial similarities included a Native American-themed name, bright colors, and stock images of smiling people. Some websites offered examples where a payday loan could be used to offset a large, unexpected cost or financial emergency.⁵⁸

All the websites directed consumers toward an application where the consumers must submit their name, address, Social Security number, and banking information. The sites promised that, after borrowers completed a loan application on the website, if they were approved, the loan would be directly submitted into their bank account. With a few exceptions, the websites did not disclose the loan terms on the home page.

While all websites stated an affiliation with a tribe somewhere on the site, the lenders' claimed tribal affiliation was often not immediately discernible from the face of the website. For example, some lenders claimed to be wholly owned by a tribe in small text at the very bottom of the home page. Information about terms that would apply if a dispute arose—such as arbitration, choice of law, and choice of venue clauses—were found, if available at all, on a terms page or a frequently asked questions page. However, it was often unclear whether those terms applied to the use of the website, the loans themselves, or both. In addition, some lending websites stated that they would not lend in specific states. The restricted states varied from site to site, at times even if the websites claimed affiliation with the same tribe.

The initial application pages rarely directed borrowers toward a terms page or highlighted the nature of the relationship between the lender and the tribe. Many of the websites reviewed did not contain clear contact information; if a mailing address was available, it was typically a P.O. box located on the reservation of the tribe with purported ownership.

contract, not one time,' said Wrenn, 30. 'If I was that stupid, to sign for \$3,000 for an \$800 loan, I might as well bury myself alive.'").

27, 2017).

⁵⁸ *E.g.*, INBOX LOAN, http://www.inboxloan.com ("WHEN TO USE INBOX LOAN, MEDICAL EMERGENCY, Get emergency cash to pay hospital expenses and prescriptions. HOME REPAIRS, Broken heater or AC, leaky roof, burst pipe flooding your basement? Get them fixed before the problem gets bigger. CAR REPAIRS, Need to get to work but car broke down? Get cash into your bank account right away. LATE FEES, Missed payments add unnecessary late fees and expensive service disconnections. BOUNCED CHECKS, A bounced check carries costly return fees.") (last visited April

Many of the websites featured the logo of a lobbying group aimed at advocating for the expansion of "tribal payday lending"—either the OLA⁵⁹ or NAFSA. These organizations are discussed in more depth in Section V.A.

2. Contract Terms on Active Lending Websites

Figure 11, below, catalogs the contractual terms on active lending websites. The terms in the chart are quoted as they appear on each webpage. The chart describes where the terms are located, quotes the terms listed on the website and notes whether there is a choice of law (CoL), class-action ban (Class Ban), or pre-dispute arbitration clause (Arb). The chart also notes if there is a state restriction on where the lender claims it offers loans (State Restrictions) as well as any statute of limitations (SoL) listed on the lending website. The absence of contract terms on the pages of the site that researchers could view without applying for a loan does not mean that the lender does not use these terms. Presumably, additional terms are displayed during the loan application process.

-

⁵⁹ OLA, like NAFSA, is lobbyist group for online short-term lenders. ONLINE LENDERS ASSOCIATION, http://onlinelendersalliance.org/ (last visited Nov. 11, 2016). See Section V.A.2 for more detailed discussion regarding OLA.

Figure 11: Co	ontract Terms	Stated On Active Lending Websites					
URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
Big Lagoon Rai	ncheria				•		
www.clear- loans.com	Terms & Conditions Page	Clear Loan Solutions, LLC ("CLSLLC") is wholly owned and operated by the Big Lagoon Rancheria, California, a federally recognized American Indian tribe and sovereign government. Applicable tribal and federal law shall govern any agreement entered with Clear Loan Solutions, LLC. This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the Big Lagoon Rancheria, California, to the extent applicable, to the laws of the United States. You agree that you will notify CLSLLC in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give GGS a reasonable period of time to address it BEFORE bringing any legal action, either individually, as a class member or representative, or as a private attorney general, against CLSLLC. THIS AGREEMENT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR AND REPLACES THE RIGHT TO GO TO COURT AND HAVE A DISPUTE RESOLVED BY A JUDGE OR JURY. THIS AGREEMENT ALSO WAIVES YOUR ABILITY TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.	Y	Y	Y		
www.greengat eservices.com/	Additional Important Disclosures Page, Terms of Use Page	Green Gate Services, LLC ("GGSLLC") is wholly owned and operated by the Big Lagoon Rancheria a Federally Recognized American Indian tribe and sovereign government. Applicable tribal and federal law shall govern any agreement entered into with Green Gate Services, LLC. All Communication or transaction conducted via telephone, email, or www.greengateservices.com will be deemed to have occurred in Big Lagoon Rancheria regardless of your location. This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the Big Lagoon Rancheria, and to the extent applicable, to the laws of the United States. You agree that you will notify GGSLLC in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give GGS a reasonable period of time to address it BEFORE bringing any legal action, either individually, as a class member or representative, or as a private attorney general, against GGS. THIS AGREEMENT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH	Y	Y	Y		

Figure 11: Co	ontract Terms	Stated On Active Lending Websites					
URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR AND REPLACES THE RIGHT TO GO TO COURT AND HAVE A DISPUTE RESOLVED BY A JUDGE OR JURY. THIS AGREEMENT ALSO WAIVES YOUR ABILITY TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.					
Big Valley Ran		D: VII E: 11 M 11 4 D:	37	I	ı	T .1	ı
www.big valleyfinancial .com/	Home Page, Terms of Use Page	Big Valley Financial is a Tribal enterprise, wholly owned and operated by the Big Valley Band of Pomo Indians, a federally-recognized American Indian tribe and sovereign government. Any Agreement entered into as a result of this Application shall be governed by applicable Tribal and federal law. This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the Big Valley Band of Pomo Indians, a federally-recognized American Indian tribe and sovereign government, and, to the extent applicable, the laws of the United States. You agree that you will notify Big Valley Financial in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give Big Valley Financial a reasonable period of time to address it BEFORE bringing any legal action, either individually, as a class member or representative, or as a private attorney general, against Big Valley Financial.	Y			Loans are currently not available to residents of AR, AZ, CO, CT, DC, GA, IL, KS, MA, MD, ME, MN, MT, NC, NH, NJ, NY, OH, OR, PA, SC, VT, WA or WV.	
www.tremont lendingloans. com/	Home Page, FAQ Page	Tremont Lending is owned and licensed by the Big Valley Band of the Pomo Indians, which is a Native American business operating within the exterior boundaries of its Reservation, a sovereign nation located within the United States of America. Tremont Lending is subject to and follows all applicable Tribal and federal laws concerning consumer financial protection. Q. What is Tremont Lending? A. Tremont Lending specializes in helping people with short-term cash needs. Tremont Lending is owned and licensed by the Big Valley Band of Pomo Indians, a federally-recognized Indian Tribe, and is a Native American business operating within the exterior boundaries of its Reservation. If you do not accept these conditions, please do not apply. This installment loan may or may not be available in your particular state.					
www.green arrowloans.co m/	Home Page	Green Arrow Solutions is a Tribal enterprise, wholly owned and operated by the Big Valley Band of Pomo Indians, a federally-recognized American Indian tribe and sovereign government. Any Agreement entered into as a result of this Application shall be governed by applicable Tribal and federal law.	Y				

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
Flandreau Sar	tee Sioux Tribe •						
www.action payday.com	Home Page, Rates & Terms page	ActionPayday.com is owned and operated by FSST Financial Services, LLC, dba Action PDL Services, a tribal lending entity wholly owned by the Flandreau Santee Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for more details. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by ActionPayday.com, or to any acts or omission for which you may contend ActionPayday.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND ActionPayday.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using ActionPayday.com's service, you consent to these restrictions. In the event the arbitration provisions herein become	Y	Y	Y in SD	ActionPayday.com does not provide Action PDL Services to those who live in the following states: AR, CO, GA, IL, KS MA, MD, MO, NH, OR, NY, PA, WA and WV.	1 yr

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms URL **Terms State Restrictions Located On** Home Page, FastEFunds.com is owned and operated by FSST Financial Services, LLC, dba Fast FastEFunds.com www.faste 1 yr EFNDS, a tribal lending entity wholly owned by the Flandreau Santee Sioux Tribe, a funds.com/ Rates does not provide &Terms Page federally recognized Indian tribe that operates and makes loans within the Tribe's payday loan reservation. All loans are subject exclusively to the laws and jurisdiction of the services to those Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for more who live in the following states: details. Any controversy or claim arising out of or relating to the use of the web site, to the AR, CO, GA, IL, goods or services provided by FastEFunds.com, or to any acts or omission for which KS, MA, MD, MO, you may contend FastEFunds.com is liable, including but not limited to any NH, NY, PA, WA and WV. controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND FastEFunds.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using FastEFunds.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and FastEFunds.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred.

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
www.rushmor efinancial.net/	Home Page, Rates & Terms Page	Www.RushmoreFinancial.net is owned and operated by FSST Financial Services, LLC, dba Rushmore Financial, a tribal lending entity wholly owned by the Flandreau Santee Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for more details. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by www.RushmoreFinancial.net, or to any acts or omission for which you may contend www.RushmoreFinancial.net is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND www.RushmoreFinancial.net WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using www.RushmoreFinancial.net's service, you consent to these restrictions. In the ev	Y	Y	Y	Rushmore Financial does not provide short term loan services to those who live in the following states: AZ, CT, Washington, DC, OH, VT, VA, AR, CO, GA, MA, MD, NH, NY, PA, WV, KS, MO, NC or NJ.	1 yr

Figure 11: (ontract Terms	Stated On Active Lending Websites					
URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
www.ipltoday.com/ ⁶⁰	Home Page, Rates & Terms page	IPLToday.com is owned and operated by FSST Financial Services, LLC, dba Integrity PDL Services, a tribal lending entity wholly owned by the Flandreau Santee Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for more details. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by IPLToday.com, or to any acts or omission for which you may contend IPLToday.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND IPLToday.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using IPLToday.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or	Y	Y	Y	IPLToday.com does not provide payday loan services to those who live in the following states: AR, CA, CO, GA, IL, KS, MA, MD, MO, NH, NY, PA, WA and WV.	1 yr

⁶⁰ Although this website stated that it would not lend to borrowers in California, the website is included because other websites alleging a connection to the Flandreau Santee Sioux Tribe did not contain the same restriction. Additionally, researchers could not confirm whether websites actually did deny loan applications from borrowers in California (as this would have required completing a loan agreement).

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms URL **Terms State Restrictions Located On** South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. Home Page, www.NorthPlainsFinancial.com is owned and operated by FSST Financial Services, Y Y North Plains www.north 1 yr plainsfinancial LLC, dba North Plains Financial, a tribal lending entity wholly owned by the Rates Financial does not &Terms page Flandreau Santee Sioux Tribe, a federally recognized Indian tribe that operates and .com provide short term makes loans within the Tribe's reservation. All loans are subject exclusively to the loan services to laws and jurisdiction of the Flandreau Santee Sioux Tribe. Carefully review the those who live in Terms and Conditions for more details. the following Any controversy or claim arising out of or relating to the use of the web site, to the states: AZ, CT, goods or services provided by www.NorthPlainsFinancial.com, or to any acts or Washington, DC, omission for which you may contend www.NorthPlainsFinancial.com is liable, OH, VT, VA, AR, including but not limited to any controversy or claim as to arbitrability ("Dispute"), CO, GA, MA, MD, will be settled finally and exclusively by binding arbitration in accordance with the NH, NY, PA, WV, commercial arbitration rules of the American Arbitration Association in effect at that KS, MO, NC or NJ. time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND www.NorthPlainsFinancial.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using www.NorthPlainsFinancial.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and www.NorthPlainsFinancial.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms URL **Terms State Restrictions Located On** Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. Home Page, www.everestcashadvance1.com is owned and operated by FSST Financial Services, Y Y **Everest Cash** www.everest 1 yr LLC, dba Everest Cash Advance, a tribal lending entity wholly owned by the cashadvance1. Rates & Advance does not Flandreau Santee Sioux Tribe, a federally recognized Indian tribe that operates and com/ Terms Page provide short term makes loans within the Tribe's reservation. All loans are subject exclusively to the loan services to laws and jurisdiction of the Flandreau Santee Sioux Tribe. Carefully review the those who live in Terms and Conditions for more details. the following Any controversy or claim arising out of or relating to the use of the web site, to the states: AR, CA, goods or services provided by www.everestcashadvance1.com, or to any acts or CO, GA, IL, KS, omission for which you may contend www.everestcashadvance1.com is liable, MA, MD, MI, MO, including but not limited to any controversy or claim as to arbitrability ("Dispute"), NH, NY, OR, PA, will be settled finally and exclusively by binding arbitration in accordance with the WA and WV. commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND www.everestcashadvance1.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using www.everestcashadvance1.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and www.everestcashadvance1.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Class Ban Terms URL **Terms State Restrictions Located On** Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. RedLeafLending.com is owned and operated by FSST Financial Services, LLC, dba Y www.redleaf Home Page, Y **FSST Financial** 1 yr Red Leaf Ventures, a tribal lending entity wholly owned by the Flandreau Santee lending.com Rates & Services, LLC, dba Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within Terms Page Red Leaf Ventures the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction does not provide of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for payday loan more details. services to those The Operator of this website is a lender and will use any information provided in the who live in the secure application only in an attempt to fulfill a loan request. If following states: RedLeafLending.com does not approve the loan application, the Applicant's AR, CO, GA, IL, information may be forwarded to other lenders in an attempt to connect the KS, MA, MD, MO, Applicant with a lender who is able to fulfill the request. NH, NY, PA, WA The Terms & Conditions and Privacy Policy displayed on this website apply to and WV. customers who receive their loan directly from FSST Financial Services, LLC, dba Red Leaf Ventures P.O. Box 283 Flandreau, South Dakota 57028 Fund Transfer times may vary depending on each individual's financial institution. In some cases, faxing may be required. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by RedLeafLending.com, or to any acts or omission for which you may contend RedLeafLending.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms **URL Terms State Restrictions Located On** RedLeafLending.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using RedLeafLending.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and RedLeafLending.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. MyNextDayCash.com is owned and operated by FSST Financial Services, LLC, dba Y Y FSST Financial Home Page, Y 1 yr www.mynextd MB Marketing, a tribal lending entity wholly owned by the Flandreau Santee Sioux avcash.com/ Rates & Services, LLC, dba Tribe, a federally recognized Indian tribe that operates and makes loans within the Terms MB Marketing Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of does not provide the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for payday loan more details. services to those The Operator of this website is a lender and will use any information provided in the who live in the secure application only in an attempt to fulfill a loan request. If does not approve the following states: loan application, the Applicant's information may be forwarded to other lenders in an AR, CO, GA, KS, attempt to connect the Applicant with a lender who is able to fulfill the request. MA, MD, MO, The Terms & Conditions and Privacy Policy displayed on this website apply to NH, NY, PA, WA customers who receive their loan directly from FSST Financial Services, LLC, dba and WV. MB Marketing P.O. Box 283, Flandreau, South Dakota 57028. Fund Transfer times may vary depending on each individual's financial institution. In some cases, faxing may be required. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by MyNextDayCash.com, or to any acts or omission for which you may contend MyNextDayCash.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms URL **Terms State Restrictions Located On** award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND MyNextDayCash.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS. YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using MyNextDayCash.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and MyNextDayCash.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. Y Home Page, The VipLoan Shop 1.com is owned and operated by FSST Financial Services, LLC, Y Y **FSST Financial** www.thevip dba VIP PDL Services, a tribal lending entity wholly owned by the Flandreau Santee loanshop1. Rates & Services, LLC, Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within com/ Terms page dba VIP PDL the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction Services does not of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for provide payday more details. loan services to The Operator of this website is a lender and will use any information provided in the those who live in secure application only in an attempt to fulfill a loan request. If the following The Vip Loan Shop 1.com does not approve the loan application, the Applicant's states: AR, CA, information may be forwarded to other lenders in an attempt to connect the CO, GA, IL, KS, Applicant with a lender who is able to fulfill the request. MA, MD, MI, The Terms & Conditions and Privacy Policy displayed on this website apply to customers who receive their loan directly from FSST Financial Services, LLC, dba MO, NH, NY, VIP PDL Services P.O. Box 283 Flandreau, South Dakota 57028 Fund Transfer OR, PA, WA and times may vary depending on each individual's financial institution. In some cases, WV. faxing may be required.

Figure 11: Contract Terms Stated On Active Lending Websites CoL Arb Class Ban Terms **URL Terms State Restrictions Located On** Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by TheVIPLoanShop1.com, or to any acts or omission for which you may contend TheVIPLoanShop1.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND The VIPLoan Shop 1.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using TheVIPLoanShop1.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and TheVIPLoanShop1.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. Home Page, BottomDollarPayday.com is owned and operated by FSST Financial Services, LLC, Y FSST Financial www.bottom Y 1 yr dollarpayday. dba BD PDL Services, a tribal lending entity wholly owned by the Flandreau Santee Rates & Services, LLC, dba Terms Page Sioux Tribe, a federally recognized Indian tribe that operates and makes loans within **VIP PDL Services** com the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction does not provide of the Flandreau Santee Sioux Tribe. Carefully review the Terms and Conditions for payday loan more details. services to those

Figure 11: Contract Terms Stated On Active Lending Websites CoL Class Ban Terms URL **Terms State Restrictions Located On** Any controversy or claim arising out of or relating to the use of the web site, to the who live in the goods or services provided by BottomDollarPayday.com, or to any acts or omission following states: for which you may contend BottomDollarPayday.com is liable, including but not AR, CA, CO, GA, limited to any controversy or claim as to arbitrability ("Dispute"), will be settled IL, KS, MA, MD, finally and exclusively by binding arbitration in accordance with the commercial MI, MO, NH, NY, arbitration rules of the American Arbitration Association in effect at that time. The OR, PA, WA and arbitration will be conducted in South Dakota and judgment on the arbitration award WV. may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND BottomDollarPayday.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using BottomDollarPayday.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and BottomDollarPayday.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. Fort Belknap Tribe Home Page, Clearwater Lending, LLC d/b/a/ CashFairy.com is a Tribal enterprise and economic www.cashfair Y CashFairy.com is arm, wholly owned and operated by the Ft. Belknap Indian Community ("Tribe"), a Terms of Use not a lender in all v.com/ federally-recognized sovereign American Indian Tribe, and created by the Tribal Page states (CashFairy Council for the benefit of the Tribe. Any Agreement entered into through this does not offering Application shall be governed by applicable Tribal and federal law. online installment

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Class Ban Terms URL Terms **State Restrictions Located On** The Tribe is a federally-recognized American Indian Tribe and enjoys governmental loans in AR, MT, sovereign immunity. Because the Tribe and CashFairy are entitled to sovereign NY, NC, VA, WV immunity, you will be limited in what claims, if any, you may be able to assert or US territories). against the Tribe and CashFairy. It is the express intention of the Tribe and CashFairy reserves CashFairy operating as an economic arm of the Tribe, to fully preserve, and not the right to add or subtract from this waive either in whole or in part, exclusive jurisdiction, sovereign governmental immunity, and any and other rights, titles, privileges, and immunities, to which they list at any time. are entitled. To protect and preserve the rights of the parties, no person may assume a waiver of sovereign immunity. No waiver is made except by express written declaration of the Tribe's Tribal Council specifically authorizing a waiver for the matter in question. No such waiver has been made with respect to these Terms of Use. Green Trust Cash, LLC is a Native American owned business operating within the Green Trust Cash Home Page www.green interior boundaries of the Fort Belknap reservation, a sovereign nation located within trustcash.com does not lend to the United States of America. Green Trust Cash, LLC an instrumentality and a residents of AR. limited liability company abides by the principles of federal financial consumer MT, NY, VA, WV, lending laws and regulations as established by the Fort Belknap Indian Tribe of Puerto Rico, Montana. American Samoa, Armed Forces in the Americas/ Europe/Canada/ Middle East/ Africa/Pacific/ Canal Zone. Mariana Islands, Guam, Marshall Islands, Micronesia, Outside US Palau. Philippine Islands, Trust Territory of Pacific Islands, Virgin Islands

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms URL **Terms State Restrictions** Located On Greenline Loans is a Native American owned business operating within the interior Home Page Greenline Loans www.green boundaries of the Ft. Belknap reservation, a sovereign nation located in the United does not lend to lineloans.com/ States. Greenline Loans, is an instrumentality and limited liability company which residents of AR. CO, GA, NH, NY, abides by all applicable federal laws and regulations as established by the Fort Belknap Indian Tribe of Montana. MD, MN, MT, Puerto Rico, UT. WA, and WV. Availability of installment loans are subject to change at any time at the sole discretion of Greenline Loans. www.northern Home Page Northern Plains Funding, LLC is a Native American owned business operating Credit products plainsfunding. within the interior boundaries of the Ft. Belknap reservation, a sovereign nation obtained through located in the United States. Northern Plains Funding, LLC is an instrumentality and this website are not com limited liability company which abides by all applicable federal laws and regulations available to as established by the Fort Belknap Indian Tribe of Montana. residents of all states and state availability may change from time to time without notice. Currently, residents of AK, AR, GA, HI, MD, MA, MT, NH, NJ, NY, UT, VT, VA, WV and WI are not eligible to receive a loan through this website. Riverbend Finance, LLC d/b/a Riverbend Cash is a Native American owned business Y RiverbendCash.co Home Page, www.riverben dcash.com Terms of Use organized under the laws of the Fort Belknap Indian Community, a federally m does not lend to Page recognized Indian tribe and sovereign nation located within the interior boundaries of residents of AK,

Figure 11: Contract Terms Stated On Active Lending Websites CoL Class Ban Terms URL Terms **State Restrictions Located On** the Fort Belknap Reservation of Montana in the United States of America. Riverbend AZ, AR, CO, CT, DC, GA, IL, ME, Finance, LLC d/b/a Riverbend Cash is an instrumentality and limited liability company, which abides by all applicable federal laws and regulations as established MD, MA, MN, by the Fort Belknap Indian Tribe of Montana. MT, NH, NJ, NY, These Terms of Use shall be governed in all respects by the laws of the Fort Belknap NC, OR, PA, VT, Indian Community and applicable federal law. VA, WV. Your obligations under these Terms of Use are binding on your successors, legal Availability of representatives and assigns. You may not assign or transfer (by operation of law or installment loans otherwise) your right to use the Site/Services or any aspect hereunder, in whole or in are subject to part, without our prior written consent. change at any time at the sole discretion of RiverbendCash.co Target Finance, LLC is a Native American owned business operating within the Target Finance, Home Page www.target interior boundaries of the Ft. Belknap reservation, a sovereign nation located in the LLC does not lend cashnow.com/ United States. to residents of AR, Target Finance, LLC is an instrumentality and limited liability company which MT, NV, NY, VA, abides by the principles of federal laws and regulations as incorporated by the Fort and WV. Belknap Indian Tribe of Montana. Availability of Target Finance, LLC. does business as Target Cash Now. installment loans are subject to change at any time at the sole discretion of Target Finance, LLC. These Terms of Use shall be governed in all respects by the laws of The Fort Home Page, West River Cash www.west rivercash.com/ FAQ Page Belknap Indian Tribe of Montana. does not lend to What does it mean to do business with a Native American owned company, such as residents of WV. West River Cash? NY, MT, MD, or West River Cash is a Native American owned business operating within the AR. Availability of boundaries of the Fort Belknap reservation. This means all lending practices are installment loans governed by tribal law. This provides consumers with a means to receive cash they are subject to might otherwise not receive, while providing a vital means of employment to change at any time members of our tribe. at the sole

ome Page erms Page aked to	Path Lending is a licensed tribal lending corporation, wholly owned by the Guidiville Indian Rancheria, a sovereign nation located within the United States of America and operating within the Tribe's land. Churchill Financial Management Corp dba Affordable Loan Services is owned by	CoL	Class Ban	Arb	State Restrictions discretion of West River Cash.	SoL
erms Page	Indian Rancheria, a sovereign nation located within the United States of America and operating within the Tribe's land.					
erms Page	Indian Rancheria, a sovereign nation located within the United States of America and operating within the Tribe's land.				River Casii.	
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nked to						
nked to	Churchill Financial Management Corn dhe Affordable Lean Services is expend by					
ome Page. nk for erms tached to oplication oesn't work.	the Guidiville Band of Pomo Indians. We are licensed lenders under Guidiville Indian Rancheria Tribal Lending Ordinance (#10-1) and hold license number #2013-00Q. This license allows lending to consumers in all states. All lending transactions and servicing offered through this site will be deemed to have taken place on the reservation of the Habematolel Pomo of Upper Lake, California, regardless of where you may be situated or access this site. https://www.mountainsummitfinancial.com is a website owned and operated by				Churchill does not however lend to consumers in the following states: GA, WV, NC, MD, NY, DC, NJ, PA, OH, VT, CT, AZ, AR, ME, MT, CO, NH, MA, OR	
	Mountain Summit Financial, Inc., a tribal lending entity wholly owned and operated by the Habematolel Pomo of Upper Lake, California, which is a sovereign nation located within the United States of America, and is operating within the tribe's reservation.					
		3.7	T 7	T 7	A O T 1	1
ome Page, oan Terms age	www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The	Y	Y	Y	ArrowOneLending does not provide short term loan services to those who live in the following states: AZ, CT, Washington, DC, ME, MT, OH, OR,	1 yr.
on		Icated within the United States of America, and is operating within the tribe's reservation. Ysabel Terms Www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an	Ilocated within the United States of America, and is operating within the tribe's reservation. Ysabel Terms Www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The	Ilocated within the United States of America, and is operating within the tribe's reservation. Ysabel Terms Www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The	Ilocated within the United States of America, and is operating within the tribe's reservation. Ysabel Terms www.ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The	located within the United States of America, and is operating within the tribe's reservation. Ysabel Ne Page, ArrowOneLending.com is owned and operated by Sierra Financial, LLC, dba ArrowOneLending, a tribal lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the Iipay Nation. Carefully review the Terms and Conditions for more details. The Operator of this website is a lender and will use any information provided in the secure application only in an attempt to fulfill a loan request. If does not approve the loan application, the Applicant's information may be forwarded to other lenders in an attempt to connect the Applicant with a lender who is able to fulfill the request. The

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Class Ban Terms URL **Terms State Restrictions Located On** who receive their loan directly from Sierra Financial, LLC, dba ArrowOneLending GA, MA, MD, NH, P.O. Box 647, Santa Ysabel, CA 92070. NY, PA, WV, KS, MO, NC or NJ Sierra Financial, LLC, dba ArrowOneLending is a lending entity wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe that operates and makes loans within the Tribe's reservation. All loans are subject exclusively to the laws and jurisdiction of the lipay Nation. By accessing the www.ArrowOneLending.com web site and using the services on this site, you agree to be bound by the terms and conditions ("Terms") below. Please read these Terms carefully. If you do not agree to these Terms, do not access or use this web site. The www.ArrowOneLending.com web site is operated by Sierra Financial, LLC, dba Arrow One. All references below to www.ArrowOneLending.com include Sierra Financial, LLC, dba Arrow One. Sierra Financial, LLC, dba ArrowOneLending is a direct lender and will evaluate all loan requests submitted from any of its lead forms. If Sierra Financial, LLC, dba ArrowOneLending is able facilitate the loan, the consumer will be directed to www.ArrowOneLending.com e-Signature documents. If www.ArrowOneLending.com is unable to facilitate the consumer's loan request they will be directed to www.ArrowOneLending.com Loan Matching Service. Any controversy or claim arising out of or relating to the use of the web site, to the goods or services provided by www.ArrowOneLending.com, or to any acts or omission for which you may contend www.ArrowOneLending.com is liable, including but not limited to any controversy or claim as to arbitrability ("Dispute"), will be settled finally and exclusively by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association in effect at that time. The arbitration will be conducted in South Dakota and judgment on the arbitration award may be entered into the Federal Court of South Dakota. No arbitrator shall have the power to award damages in connected with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential, punitive or exemplary damages, and each party irrevocably waives any claim thereto. The agreement to arbitrate shall not be construed as an agreement to the joinder or consolidation of an arbitration under this agreement with

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban **Terms URL Terms State Restrictions Located On** an arbitration of disputes or claims of any non-party, regardless of the nature of the issues of disputes involved. THESE TERMS PROVIDE THAT ALL DISPUTES BETWEEN YOU AND www.ArrowOneLending.com WILL BE RESOLVED BY BINDING ARBITRATION. THUS, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN OR BRING CLASS ACTIONS. YOUR RIGHTS WILL BE DETERMINED BY NEUTRAL ARBITRATORS AND NOT A JUDGE OR JURY. By using www.ArrowOneLending.com's service, you consent to these restrictions. In the event the arbitration provisions herein become inapplicable or unenforceable, or in any instance of any lawsuit between you and www.ArrowOneLending.com, you agree that jurisdiction over and venue of any suit shall be exclusively in the Federal Court of South Dakota. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the services must be filed within one (1) year after such claim or cause of action arose or be forever barred. These Terms constitute the entire agreement between you and www.ArrowOneLending.com. These Terms shall be governed by the laws of the lipay Nation without regard to its conflict of law provisions. If any part of these Terms is determined unenforceable pursuant to applicable law, then the invalid and unenforceable provision will be deemed superseded by a valid and enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms shall remain in effect. Any failure by www.ArrowOneLending.com to exercise or enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. www.ArrowOneLending.com may amend these Terms at any time by posting the amended terms on its web site. All amended terms are automatically effective immediately, upon posting. Arrow One Lending does not charge any application or origination fees. Missed payments due to non-sufficient funds, incorrect account info, etc., will be subject to a fee of \$25. Any payments returned as "unauthorized" will incur a \$100 fee. There are no fees for early payment.

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
Kashia Band				n			
www.kashiale nding.com	Home Page, Terms of Use Page	The Kashia Lending Enterprise is a Tribal enterprise, wholly owned and operated by the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a federally-recognized American Indian tribe and sovereign government. Any Agreement entered into as a result of your Application for a consumer loan shall be governed by applicable Tribal and federal law. This web site's contents do not signify a solicitation or offer for check advances in all states. Areas of operation may change with or without notice. Services mentioned on this site may or may not be available in your particular area. Each aspect of, communication with and/or transaction on this site will be deemed to have occurred in the offices of the Kashia Lending Enterprise regardless of the location where you are accessing or viewing this site. All content, existing and/or submitted to and/or in association with this site will be considered the Kashia Lending Enterprise's copyrighted property. All communications with the company are deemed confidential. Any unauthorized reproduction, distribution, or disclosure is prohibited without the company's express written consent. This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the Kashia Band of Pomo Indians and, to the extent applicable, the laws of the United States. You agree that you will notify The Kashia Lending Enterprise in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give The Kashia Lending Enterprise a reasonable period of time to address it BEFORE pursuing any formal dispute resolution proceedings including legal action against the Kashia Lending Enterprise.	Y				
www.napa lending.com/ apply	Home Page, FAQ page	Napa Lending is a subsidiary of Kashia Services, a wholly owned business entity, of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, a federally recognized Indian tribe. What legal rights do I have? You have the right to file disputes to the Tribal Council. That said, we advise customers to contact us first at clientservices@NapaLending.com – we have a professional Dispute Resolution process. We believe 99.9% of disputes can be resolved amicably even before going to Tribal Council. By agreeing to loan terms, you do however give up the right to take legal action against Napa Lending in a state court. You are also effectively waiving your right to trial by a jury.	Y *				

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Class Ban Terms URL **Terms State Restrictions Located On** The dispute resolution mechanism is a fair process put in place to help customers contest any part of the loan agreement. Our trained dispute resolution team will work with you to first find an amicable resolution or settlement. We value our customers and want your experience with Napa Lending to be outstanding. Our goal is to have you only think of us when the need arises. Who is Napa Lending? Napa Lending financial services are offered by WLCC Lending FDL d/b/a NapaLending.com. The entity is a subsidiary agency of Wakpamni Lake Community Corporation, an arm and entity organized under and governed by the laws of the Oglala Sioux Tribe of the Pine Ridge Reservation, a sovereign nation located within the United States of America, and is operating within the Tribe's Reservation. What is Sovereign Immunity? Napa Lending is owned by the Tribe, which is a federally-recognized American Indian Tribe receiving governmental sovereign immunity. Because Napa Lending and the Tribe are entitled to sovereign immunity, you will be limited as to what claims, if any, you may be able to assert against the Tribe and Napa Lending. To encourage resolution of consumer complaints, any complaint may be submitted by you or on your behalf to the Tribe for review as described in other sections of this FAO. Home Page, Inbox Loan is a Native American owned business operated by Kashia Band of Pomo Y Currently, residents www.inbox Terms and Indians of the Stewarts Point Rancheria, a sovereign nation located in the United of AK, AR, GA, loan.com Conditions States. Inbox Loan abides by all applicable federal laws and regulations as HI, MD, MA, MT, Page established by the Kashia Band of Pomo Indians of the Stewarts Point Rancheria. NH, NJ, NY, UT, These Terms of Use shall be governed in all respects by the laws of Kashia Band of VT, VA, WV and Pomo Indians of the Stewarts Point Rancheria. WI are not eligible Your obligations under these Terms of Use are binding on your successors, legal to receive a loan representatives and assigns. You may not assign or transfer (by operation of law or through this otherwise) your right to use the Site/Services or any aspect hereunder, in whole or in website. part, without our prior written consent. La Posta Band HavestMoonLoans is a tribal lending entity wholly owned by the La Posta Band of www.harvest Mission Indian's, a sovereign nation located within the United States of America and moonloans. Home Page a federally recognized American Indian Tribe, and is operating within the boundaries com/ of the La Posta Reservation. Applicable Tribal and federal law shall govern any agreement entered into as a result of your loan application. HavestMoonLoans.com's

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
www. gentlebreeze online.com/	Home Page	contents do not signify a solicitation or offer for loans in all areas. Areas of operation may change with or without notice. Services mentioned on this website may or may not be available in your particular area. Each communication or transaction conducted via HarvestMoonLoans.com will be deemed to have occurred in HavestMoonLoans La Posta Band of Mission Indians offices, regardless of the location where this website was accessed or viewed. All communications with HarvestMoonLoans are deemed confidential. The La Posta Tribal Financial Services Regulatory Authority ("TFSRA") is the public body solely responsible for regulation of HarvestMoonLoans. Please feel free to contact the TFRSR with any comments, questions or complaints at: tfsra@lapostatfsra.org GentleBreezeOnline is a tribal lending entity wholly owned by the La Posta Band of Mission Indian's, a sovereign nation located within the United States of America and a federally recognized American Indian Tribe, and is operating within the boundaries of the la Posta Reservation. Applicable Tribal and federal law shall govern any agreement entered into as a result of your loan application. GentleBreezeOnline.com's contents do not signify a solicitation or offer for loans in all areas. Areas of operation may change with or without notice. Services mentioned on this website may or may not be available in your particular area. Each communication or transaction conducted via GentleBreezeOnline.com will be	Y	1			
		deemed to have occurred in GentleBreezeOnline La Posta Band of Mission Indians offices, regardless of the location where this website was accessed or viewed. All communications with GentleBreezeOnline are deemed confidential. The La Posta Tribal Financial Services Regulatory Authority ("TFSRA") is the public body solely responsible for regulation of GentleBreezeOnline. Please feel free to contact the TFRSR with any comments, questions or complaints at: tfsra@lapostatfsra.org .					
Lac Courte Ore www.bluetrust	Home Page	Hummingbird Funds, LLC ⁶¹ is a sovereign enterprise, an economic development arm	Y				
loans.com/	Home Lage	and instrumentality of, and wholly-owned and controlled by, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians (the "Tribe"), a federally-recognized sovereign American Indian Tribe. This means that the Hummingbird Funds' installment loan products are provided by a sovereign government and the proceeds of our business fund governmental services for Tribe citizens. This also means that	1				

⁶¹ This is the text listed at the bottom of the Blue Trust Loans webpage.

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		Hummingbird Funds is not subject to suit or service of process. Rather, Hummingbird Funds is regulated by the Tribe. If you do business with Hummingbird Funds, your potential forums for dispute resolution will be limited to those available under Tribal law and your loan agreement. As more specifically set forth in Hummingbird Funds' contracts, these forums include informal, but affordable and efficient Tribal dispute resolution, or individual arbitration before a neutral arbitrator. Otherwise, Hummingbird Funds is not subject to suit or service of process. Neither Hummingbird Funds nor the Tribe has waived its sovereign immunity in connection with any claims relative to use of this mobile site. If you are not comfortable doing business with a sovereign instrumentality that cannot be sued in court, you should discontinue use of this website.					
Lac Du Flambe	au		•	ı			
www. brightstarcash. com	Home Page, FAQ Page	Niizh, LLC does business as Bright Star Cash. Niizh, LLC is a Native American owned business created by and for the Lac Du Flambeau Indian Community, a Sovereign American Indian tribe. Our business is operated on the Lac du Flambeau Reservation located in Wisconsin. Niizh, LLC is an instrumentality and limited liability company which abides by all applicable federal laws and regulations established by the Lac du Flambeau Indian Tribe. What is the meaning of doing business with a tribal company such as Niizh, LLC dba Bright Star Cash? Your loan agreement will be governed by applicable federal law and tribal law, not state law. Due to sovereign immunity, neither LDF Business Development nor Niizh, LLC may be sued in court or in an arbitration, either individually or as part of a broader action.	Y				
Lac Vieux Dese	ert Band			ı			
www. bigpicture loans.com	Home Page, FAQ Page	Big Picture Loans, LLC is a duly licensed Financial Services Licensee of the Lac Vieux Desert Tribal Financial Services Regulatory Authority, an independent regulatory body of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. Q: Do either the laws of my state of residence or where I am applying for a loan govern my loan agreement? A: No. All communications and/or transactions conducted via bigpictureloans.com will be deemed to have occurred on Tribal land. Your loan agreement will be governed by and construed in accordance with the laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, and to the extent applicable, the laws of the United States. The laws of your state of residence or the state where you are	Y				

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		located when entering into a transaction with Big Picture Loans will not apply to any agreement you enter into with us. Indian Tribes are sovereign and are not obligated to adhere to state law absent congressional authorization. The Lac Vieux Desert Band of Lake Superior Chippewa Indians is a federally recognized American Indian Tribe with governmental headquarters in Watersmeet, MI. Big Picture Loans is an economic arm of the Tribe, created by the Lac Vieux Desert Band of Lake Superior Chippewa Indians' Tribal Council, which operates under Tribal law for the Tribe's benefit. As such, Big Picture Loans is an entity with Tribal sovereign immunity from lawsuits. The Tribe, through its economic-development arm doing business as Big Picture Loans is dedicated to serving its customers efficiently and effectively. For any customer disputes that may arise, the Tribe has established the Tribal Dispute Resolution Procedure. For more information on the Tribal Dispute Resolution Procedure, please refer to your loan documents or contact Big Picture Loans.					
MHA Nation ◆		Contact Big Ficture Loans.					
www. covermecash. com/	Home Page, Terms & Conditions Page	CoverMeCash, LLC is a tribal lending entity wholly owned by the Mandan, Hidatsa, and Arikara Nation—The Three Affiliated Tribes of the Fort Berthold Reservation, a sovereign nation located within the United States of America, and is operating within the Tribe's Reservation. AGREEMENT TO ARBITRATE ALL DISPUTES: By signing below and to induce us, Cover Me Cash to process your application for a Short Term Loan, you and we agree that any and all claims, disputes or controversies that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers and employees, that arise out of your application for one or more Short Term Loans, the Short Term Loan Agreements that govern your repayment obligations, the Short Term Loan for which you are applying or any other Short Term Loan we previously made or later make to you, this Agreement To Arbitrate All Disputes, collection of the Short Term Loan or Short Term Loans, or alleging fraud or misrepresentation, whether under the common law or pursuant to federal or state statute or regulation, or otherwise, including disputes as to the matters subject to arbitration, shall be resolved by binding individual (and not class) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed. This Agreement To Arbitrate All Disputes shall apply no matter by whom or against whom the claim is filed. Rules and forms of the NAF may be obtained and all claims shall be filed at any NAF office, on the World Wide		Y	Y		

Figure 11: Contract Terms Stated On Active Lending Websites CoL Class Ban Terms URL **Terms State Restrictions Located On** Web at www.arb-forum.com, or at "National Arbitration Forum, P.O. Box 50191, Minneapolis, Minnesota 55405-0191." If you are unable to pay the costs of arbitration, your arbitration fees may be waived by the NAF. The cost of a participatory hearing, if one is held at your or our request, will be paid for solely by us if the amount of the claim is \$15,000 or less. Unless otherwise ordered by the arbitrator, you and we agree to equally share the costs of a participatory hearing if the claim is for more than \$15,000 or less than \$75,000. Any participatory hearing will take place at a location near your residence. This arbitration agreement is made pursuant to a transaction involving interstate commerce. It shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Judgment upon the award may be entered by any party in any court having jurisdiction. This Agreement To Arbitrate All Disputes is an independent agreement and shall survive the closing, funding, repayment and/or default of the Short Term Loan for which you are applying. NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND HAVE A JUDGE OR JURY DECIDE THE DISPUTES BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION. AGREEMENT NOT TO BRING, JOIN OR PARTICIPATE IN CLASS ACTIONS: To the extent permitted by law, by signing below you agree that you will not bring, join or participate in any class action as to any claim, dispute or controversy you may have against us or our agents, servicers, directors, officers and employees. You agree to the entry of injunctive relief to stop such a lawsuit or to remove you as a participant in the suit. You agree to pay the costs we incur, including our court costs and attorney's fees, in seeking such relief. This agreement is not a waiver of any of your rights and remedies to pursue a claim individually and not as a class action in binding arbitration as provided above. This agreement not to bring, join or participate in class action suits is an independent agreement and shall survive the closing, funding, repayment and/or default of the Short Term Loan for which you are applying. Sovereign Advance is a Small Loan lender owned by the Mandan, Hidatsa, and Home Page www. sovereign Arikara Nation—The Three Affiliated Tribes of the Fort Berthold Reservation, a sovereign nation located within the United States of America, and operating within advance.com/ the Tribe's Reservation. MaxLend, is a sovereign enterprise, an economic development arm and Home Page, www.max instrumentality of, and wholly-owned and controlled by, the Mandan, Hidatsa, and lend.com/ FAQ Page

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms **URL Terms State Restrictions Located On** Arikara Nation, a federally-recognized sovereign American Indian Tribe (the "Tribe"). This means that MaxLend's loan products are provided by a sovereign government and the proceeds of our business fund governmental services for Tribe citizens. This also means that MaxLend is not subject to suit or service of process. Rather, MaxLend is regulated by the Tribe. If you do business with MaxLend, your potential forums for dispute resolution will be limited to those available under Tribal law and your loan agreement. As more specifically set forth in MaxLend's contracts, these forums include an informal but affordable and efficient Tribal dispute resolution, or individual arbitration before a neutral arbitrator. Otherwise, MaxLend is not subject to suit or service of process. Neither MaxLend nor the Tribe has waived its sovereign immunity in connection with any claims relative to use of this website. If you are not comfortable doing business with sovereign instrumentality that cannot be sued in court, you should discontinue use of this website. MaxLend is a sovereign enterprise, an economic development arm and instrumentality of, and wholly-owned and controlled by, the Mandan, Hidatsa, and Arikara Nation, a federally-recognized sovereign American Indian Tribe (the "Tribe"). What does it mean to do business with a sovereign enterprise? This means that MaxLend's loan products are provided by a sovereign government and the proceeds of our business fund governmental services for Tribe citizens. This also means that MaxLend is not subject to suit or service of process. Rather, MaxLend is regulated by the Tribe. If you do business with MaxLend, your potential forums for dispute resolution will be limited to those available under Tribal law and your loan agreement. As more specifically set forth in MaxLend's contracts, these forums include an informal but affordable and efficient Tribal dispute resolution, or individual arbitration before a neutral arbitrator. Otherwise, MaxLend is not subject to suit or service of process. Neither MaxLend nor the Tribe has waived its sovereign immunity in connection with any claims relative to use of this website or for any forums other than those specifically set forth in MaxLend's contracts. If you are not comfortable doing business with a sovereign instrumentality that cannot be sued in court, you should discontinue use of this website and you should not borrow money from MaxLend Funds. It is our belief and goal that doing business with our sovereign enterprise should be a positive experience. We pride ourselves on excellent customer service. Also, the Tribe has developed customer-friendly, efficient procedures for affordable resolution of any MaxLend customer dispute. We also offer the option of individual arbitration

URL	Terms Located On	Terms	C_0L	Class Ban	Arb	State Restrictions	SoL
		before a neutral arbitrator if neither customer service nor the Tribe's dispute resolution protocol solve the problem. The Tribe works hard to ensure fairness and ease of use for positive MaxLend customer experiences. Our goal is to always make it right for the customer.					
Mechoopda Tri							
www. myflexcash. com	Home Page	MyFlexCash.com is owned and operated by Red Hawk Financial, a tribal lending entity wholly owned and operated by the Mechoopda Indian Tribe of Chico Rancheria, a federally recognized sovereign nation. Our business is operated on tribal land located in California.					
Otoe-Missouria	Tribe		<u> </u>		ı		
www. american webloan.com/	Home Page, FAQ Page	Is this a "payday" loan? No, "payday" loans generally need to be paid back in full on your next pay date. Our loans are installment loans, with a portion of your regular payment going toward the principal balance every time. Even better, you may pay your loan in full at any time; interest only accrues while you have a principal balance outstanding. There is no prepayment penalty with our installment loans! The Otoe-Missouria Consumer Finance Services Regulatory Commission is the administrative agency solely responsible for regulation of American Web Loan. American Web Loan is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation.				Loans are not available in AR, CT, GA, NY or WA	
www.clear creeklending. com	Home Page	The Otoe-Missouria Consumer Finance Services Regulatory Commission is the public body solely responsible for regulation of Clear Creek Lending. Clear Creek Lending is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation.					
www. greatplainslen ding.com/	Home Page, FAQ Page, Terms of Use Page	Great Plains Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. The Otoe-Missouria Consumer Finance Services Regulatory Commission (www.omfsrc.com) is the public body solely responsible for regulation of Great Plains Lending. Great Plains loans are governed by the law of the Otoe-Missouria Tribe, not the law of your resident state. The law of your resident state may have interest rate limits and other consumer protection provisions that are more favorable. If you wish to have your resident state law apply, you should consider taking a loan	Y				

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		from a lender licensed within your state. Great Plains Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. Great Plains Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. The Otoe-Missouria Consumer Finance Services Regulatory Commission (www.omfsrc.com) is the public body solely responsible for regulation of Great Plains Lending. Great Plains loans are governed by the law of the Otoe-Missouria Tribe, not the law of your resident state. The law of your resident state may have interest rate limits and other consumer protection provisions that are more favorable. If you wish to have your resident state law apply, you should consider taking a loan from a lender licensed within your state. This Agreement and all other aspects of your use of the Site shall be governed by and construed in accordance with the laws of the Otoe-Missouria Tribe of Indians and, to the extent applicable, the laws of the United States. You agree that you will notify Great Plains in writing of any claim or dispute concerning or relating to the Site and the information or services provided through it, and give Great Plains a reasonable period of time to address it BEFORE bringing any legal action, either individually, as a class member or representative, or as a private attorney general, against Great Plains. Great Plains. Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. The Otoe-Missouria Consumer Finance Services Regulatory Commission (www.omfsrc.com) is the public body solely responsible for regulation of		1			
	Vation of Nebrask	ia					
www.oneclick cash.com/	Home Page, FAQ Page	SFS, Inc. dba OneClickCash® is a sovereign tribal lending entity wholly owned by and a governmental instrumentality of the Santee Sioux Nation of Nebraska, a	Y		Y		

Figure 11: Contract Terms Stated On Active Lending Websites SoL CoL Arb Class Ban Terms **URL Terms State Restrictions Located On** Sovereign Nation recognized by the United States government under the Indian Reorganization Act of 1934...Your loan agreement will be governed by and construed in accordance with the laws of the Santee Sioux Nation of Nebraska and all applicable federal laws. Federally recognized Indian Tribes are sovereign and possess sovereign immunity and are not subject to state law absent congressional authorization. Our loan applications and loan agreements state that the laws of your state of residence and/or the state where you apply for a short term loan will not apply to any agreement you enter into with us. What does it mean to enter into a contract with an online lender wholly-owned by a sovereign, federally recognized Indian tribe? One of the things it means is that as a sovereign just like the United States and each of its states, SFS, Inc., doing business as OneClickCash®, is immune from lawsuits unless we agree to waive our tribal sovereign immunity. This means that unless we agree to waive our tribal sovereign immunity, you cannot sue us for any disputes related to your loan. In the unlikely event that we are unable to resolve a complaint you may have to your satisfaction, however, we are committed to resolving all disputes in a fair, effective, and costefficient manner. Accordingly, if you complete the loan application process, we will agree to a limited waiver of our tribal sovereign immunity solely for the purpose of consenting to individual arbitration for the resolution of any disputes between us and/or any third-parties related to your loan that we cannot resolve to your satisfaction. What is arbitration? Arbitration is a faster, simpler, and less expensive alternative to filing a lawsuit. For more information about our agreement to individually arbitrate disputes, please see the section in the loan agreement under the statement: "PLEASE READ THE FOLLOWING CAREFULLY AS IT IMPACTS YOUR LEGAL RIGHTS." A sample of limited waiver of sovereign immunity and arbitration provision can also be found here. Our loan agreements provide that the Federal Arbitration Act will apply and that arbitration will occur before the American Arbitration Association or JAMS. The Federal Arbitration Act can be found here. To learn more about the American Arbitration Association click here and to learn more about JAMS click here. You can also learn more about arbitration by visiting some useful websites. This site and this site generally describe arbitration. The Uniform Arbitration Act, adopted by many states, can be accessed here and the Arbitration Ordinance of the Santee Sioux Nation of Nebraska can be found here.

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		If you do not understand the impact of entering into a contract with an online lender					
		wholly-owned by a sovereign, federally recognized Indian tribe that agrees to a					
		limited waiver of its tribal sovereign immunity solely for the purposes of individual					
		arbitration for the resolution of any dispute, you should not apply for a loan from SFS, Inc. doing business as OneClickCash®.					
Tunica-Biloxi	Tribe	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1					
www.	Home Page,	MobiLoans, LLC, a tribal lending entity wholly owned by the Tunica-Biloxi Tribe of	Y		Y		
mobiloans.co	Terms &	Louisiana ("Tribe"), a federally recognized Indian tribe, operates within the Tribe's					
<u>m/</u>	Conditions	reservation. Certain limitations apply. See Terms and Conditions for complete					
	Page	details. All trademarks, service marks, and registered marks are the properties of					
		their respective owners. Maximum line amount of initial line is \$1000.00. Refer to					
		the Terms & Conditions for additional details. Applications processed and approved					
		before 4 p.m. CT are typically funded the next business day. In some cases, we may					
		not be able to verify your application information and may ask you to provide certain					
		documents. Mobiloans is an expensive form of short term credit and should not be					
		used as a long term solution.					
		There is a Cash Advance Fee of \$3.00 for each \$20.00 of cash advanced up to					
		\$500.00 and a Cash Advance Fee of \$2.00 for each \$20.00 of cash advanced on any					
		loan amount in excess of \$500.00. Fixed Finance Charges vary depending on the					
		outstanding principal balance from \$10.00 - \$135.00 per billing cycle. Additional					
		fees may apply for checks returned due to insufficient funds.					
		We adhere to the principles of the federal Fair Debt Collection Practices Act (FDCPA). Because we may report your payment history to one or more credit					
		bureaus, late or non-payment of your loan may negatively impact your credit rating.					
		If you fail to repay your loan in accordance with its terms, we may place your loan					
		with or sell your loan to a third-party collection agency or other company that					
		acquires and/or collects delinquent consumer debt.					
		This Mobiloans Line of Credit Account Terms and Conditions (these "Terms and					
		Conditions" or this "Agreement") govern your Mobiloans Credit Account. In this					
		Agreement, "you" and "your" refer to those persons who have applied for and been					
		approved for Mobiloans Credit. "We", "us" and "our" refer to MobiLoans, LLC, a					
		tribal lending entity wholly owned by the Tunica-Biloxi Tribe of Louisiana, a					
		sovereign nation located within the United States of America that is operating within					
		the Tunica-Biloxi Reservation. "Tribe" or "Tribal" refers to the Tunica-Biloxi Tribe					
		of Louisiana. Each advance made by us hereunder is being made from the Tunica-					

URL	Terms Located On	Terms	CoL	Class Ban	Arb	State Restrictions	SoL
		Biloxi Reservation. These Terms and Conditions contain an arbitration provision. Unless you act promptly to reject the arbitration provision, it will have a substantial effect on your rights in the event of a dispute. See https://www.mobiloans.com/terms-and-conditions for arbitration agreement and waiver of jury trial					
Turtle Mountain	n Band						
https://www.spotloan.com/	Home Page	Spotloan is a brand owned by BlueChip Financial, a tribally-owned entity organized under and governed by the laws of the Turtle Mountain Band of Chippewa Indians of North Dakota, a federally recognized Indian Tribe. BlueChip is located on and operates within the Tribe's reservation. All loans are subject to credit approval.				Spotloans are currently available to residents of all states except AR, CO, CT, DC, MA, MN, NH, NY, NC, ND, PA, VT and WV.	

^{♦ =} Lender without confirmed California connection.

3. Trends Among Lending Websites Claiming Association with the Same Tribe

Lending websites shared many similarities in how their websites were composed, particularly with respect to the information they disclosed about their claimed tribal affiliation. While they universally included contractual language that appeared designed to immunize the business from liability under state usury laws, the sites varied widely in the contractual language they included. The lending websites claiming affiliation with the Flandreau Santee Sioux Tribe utilized the most explicit and detailed language, while other lending websites simply stated that they were "wholly owned" by a tribe.

The level of similarity among lending websites claiming affiliation with the Flandreau Santee Sioux Tribe was significant. For example, all lenders claiming affiliation with the Flandreau Santee Sioux Tribe included a provision stating that tribal law governs any loan disputes, an arbitration clause, a provision that selected a South Dakota venue for legal disputes, and a one-year statute of limitations to bring claims. Few other lending websites were as thorough in explicitly stating arbitration terms, venue, choice of law, and a statute of limitations as those claiming affiliation with the Flandreau Santee Sioux. The visual design of the lending websites claiming affiliation with the Flandreau Santee Sioux was also similar. They had an "instant messenger" style bot that popped up if the consumer has lulled too long on the website without submitting an application. This bot offered instructions on how to apply for a payday loan and highlighted how consumers could receive a loan without a credit check. ⁶² In addition to text, the pop-up messenger featured a picture of a smiling woman's face that looked like a call center worker.

Other websites that were all associated with the same tribe contained different language. For example, while both Cash Fairy and GreenTrustCash.com claimed affiliation with the Fort Belknap Indian Community, Cash Fairy's site had a much longer disclosure than GreenTrustCash.com, and the sites had different language about the impact that tribal affiliation would have on legal disputes.

Some other websites, in addition to stating that the lender was "wholly owned" by a tribe, also indicated that loans would be regulated by a tribe-run regulatory commission. See, for example, the language on greatplainslending.com, which claims affiliation with the Otoe-Missouria Tribe:

Great Plains Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. The Otoe-Missouria Consumer Finance Services Regulatory Commission

⁶² See ACTION PAYDAY, https://www.actionpayday.com/ (last visited Dec. 2016).

(www.omfsrc.com) is the public body solely responsible for regulation of Great Plains Lending. Great Plains loans are governed by the law of the Otoe-Missouria Tribe, not the law of your resident state. The law of your resident state may have interest rate limits and other consumer protection provisions that are more favorable. If you wish to have your resident state law apply, you should consider taking a loan from a lender licensed within your state. ⁶³

Researchers were unable to locate any mention of the regulatory commission mentioned by Great Plains in any materials published by the Otoe-Missouria Tribe.⁶⁴ The only references we found were on an independent website, www.omfsrc.com, and in court documents.⁶⁵

4. Trademark Data For Active Lending Websites

Researchers searched the U.S. Patent and Trademark Office's Trademark Electronic Search System (TESS) database to determine if trademark records existed for any of active or inactive lending websites listed in Figure 9.66 Of all active or inactive lending websites, only 17 had a trademark available on TESS. They are listed in Figure 12 below. Only two trademark owners' addresses clearly matched the address of the tribe: The address of the owner of the Spotloan trademark matched the address of the Turtle Mountain Band, and the address of the owner of the Mobiloans trademark matched the address of the Tunica-Biloxi Tribe. Figure 12 lists the tribe that purportedly owns the lending website and the address of the tribe, as well as the name and address of the registrant of the trademark.

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⁶³ GREAT PLAINS LENDING, <u>www.greatplainslending.com/</u>. The lending website www.bigpictureloans.com, which claims affiliation with the Lac Vieux Desert Band of Lake Superior Chippewa Indians, similarly states that it is a "duly licensed Financial Services Licensee of the Lac Vieux Desert Tribal Financial Services Regulatory Authority, an independent regulatory body of the Lac Vieux Desert Band of Lake Superior Chippewa Indians." BIG PICTURE LOANS, https://www.bigpictureloans.com/.

⁶⁴ See Otoe-Missouria Tribe, http://www.omtribe.org/index.php?home.

⁶⁵Otoe-Missouria Resolution #210565 Adopting The Consumer Finance Services Regulatory Commission Ordinance (FY2010) & Consumer Finance Services Regulatory Commission, *Finn v. Great Plains Lending, LLC,* 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015). *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

⁶⁶ For an explanation of the databases available on the U.S. Patent and Trademark Office's website, see *Search Trademark Database*, U.S. PATENT & TRADEMARK OFFICE, https://www.uspto.gov/trademarks-application-process/search-trademark-database. Researchers used the Word and/or Design Mark Search (Structured) within the TESS database and the Basic Word Mark Search. *Trademark Tools & Links*, U.S. PATENT AND TRADEMARK OFFICE, https://www.uspto.gov/trademark (click hyperlinked button entitled "TESS" to search the TESS database.).

Figure 12: Trademark Registration Data for Lending Websites									
	Lending Website	Owner/Registrant Listed in Trademark Database	Location of Registrant						
For	Fort Belknap, 656 Agency Main St, Harlem, MT 59526								
1.	Cash Fairy	Five for Fighting, LLC	8B Trolley Square, Wilmington, DE 19806						
2.	Green Trust Cash	Total Management, Inc.	2106 Jenny Lind Road, Fort Smith, AR 72901						
3.	Island Finance	"Island Finance LLC A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE LAWS OF THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION OF MONTANA, A FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES"	1830 N. University Drive, #342 Plantation, FL 33322						
Hat	Habematolel Tribe, 375 E. Hwy 20, Suite I, Upper Lake, CA 95485								
4.	Mountain Summit Financial	"Mountain Summit Financial, Inc., a wholly owned instrumentality and economic development arm of the Habematolel Pomo of Upper Lake, a Federally recognized Indian Tribe"	35 East Highway 20, Suite F Upper Lake, CA 95485						
Lac	Lac Du Flambeau, P.O. Box 67, Lac du Flambeau, WI 54538								
5.	Bright Star Cash*	Access Financial, LLC LIMITED LIABILITY COMPANY	5781 W. Sunrise Boulevard Plantation, FL 33313						
Lac	Lac Vieux Desert Band, N4698 US 45, Watersmeet, MI 49969								
6.	Castle Payday*	"Red Rock Tribal Lending, LLC, a tribal enterprise organized under the laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, a federally recognized Indian tribe FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES"	P.O. Box 704 Watersmeet, MI 49969						

Fig	Figure 12: Trademark Registration Data for Lending Websites						
	Lending Website	Owner/Registrant Listed in Trademark Database	Location of Registrant				
	Miami Tribe, 3410 P. Street, Miami, OK 74354; Mailing Address: P.O. Box 1326, Miami, OK 74355						
7.	United Cash Loans*	"(REGISTRANT) CLK Management, LLC LIMITED LIABILITY COMPANY KANSAS P.O. Box 40394 Overland Park, KANSAS 66204 (LAST LISTED OWNER) MNE SERVICES, INC. A CORPORATION ORGANIZED UNDER THE LAWS OF THE MIAMI NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE; UNITED STATES OKLAHOMA 3531 P STREET NW P.O. BOX 111 MIAMI, OKLAHOMA 74355"	See Registrant Column.				
8.	Ameriloans*	"(REGISTRANT) CLK Management, LLC LIMITED LIABILITY COMPANY KANSAS P.O. Box 40394 Overland Park, KANSAS 66204 (LAST LISTED OWNER) MNE SERVICES, INC. A CORPORATION ORGANIZED UNDER THE LAWS OF THE MIAMI NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE; UNITED STATES OKLAHOMA 3531 P STREET NW P.O. BOX 111 MIAMI OKLAHOMA 74355"	See Registrant Column.				
Mo		ht Tribes Trail, Miami, OK 74354					
9.	MTE Financial Services* text for Fast Cash Preferred registered, with MTE Financial Services as the registrant	"MTE Financial Services political and economic subdivision of the Modoc Tribe of Oklahoma, a federally recognized Indian tribe UNITED STATES"	515 G SE Miami, OK 74354				
10.	Red Cedar Services* text for 500 Fast Cash Registered	"(REGISTRANT) CLK MANAGEMENT, LLC LIMITED LIABILITY COMPANY KANSAS P.O. Box 40394 Overland Park KANSAS 66204 (LAST LISTED OWNER) RED CEDAR SERVICES, INC. A CORPORATION ORGANIZED UNDER THE LAWS OF THE MODOC NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE; UNITED STATES OKLAHOMA 515 G SE MIAMI OKLAHOMA 74354"	See Registrant Column				

Fig	Figure 12: Trademark Registration Data for Lending Websites							
	Lending Website	ending Website Owner/Registrant Listed in Trademark Database						
Oto	Otoe-Missouria Tribe, 8151 Hwy 177, Red Rock, OK 74651							
11.	American Web Loan ⁶⁷	American Web Loan Holdings, LLC LIMITED LIABILITY COMPANY	2550 E Desert Inn Rd #911, Las Vegas, NV 89121; 311 East Warm Springs Road, Las Vegas, NV 89119					
12.	Clear Creek Lending	"American Web Loan, Inc. DBA Clear Creek Lending, a tribal corporation organized under the laws of the Otoe- Missouria Tribe of Indians federally- recognized Indian tribe UNITED STATES"	522 N. 14th Street, #130 Ponca City, OK 74601					
13.	Great Plains Lending	"Great Plains Lending, LLC, a limited liability company organized under the laws of the Otoe-Missouria Tribe of Indians FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES"	1050 E. 2nd St., Box 500 Edmond, OK 73034					
San	tee Sioux Nation, 10	8 Spirit Lake Ave., W. Niobrara, NE 68760						
		"CLK MANAGEMENT, LLC LIMITED LIABILITY COMPANY, SFS, INC. A CORPORATION DULY ORGANIZED	KANSAS P.O. Box 40394, Overland Park, KS 66204					
14.	One Click Cash	UNDER THE LAWS OF THE SIOUX NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE UNITED STATES"	52946 HIGHWAY 12 SUITE 3 NIOBRARA, NE 68760					
Tur	nica Biloxi Tribe, 150	Melacon Road, Marksville, LA 71351						
15.	Mobiloans	"MobiLoans, LLC A TRIBAL ENTERPRISE ORGANIZED UNDER THE LAWS OF THE TUNICA-BILOXI TRIBE OF LOUISIANA, A FEDERALLY RECOGNIZED INDIAN TRIBE"	151 Melacon Road Marksville, LA 71351					
Tur	tle Mountain Band, I	P.O. Box 900, 4180 Hwy 281, Belcourt, ND 583	16					
16.	Spotloans	"Bluechip Financial, a wholly owned entity of the Turtle Mountain Band of Chippewa Indians federally recognized Native American tribe UNITED STATES"	4180 Highway 281 Belcourt, ND 58316					

⁶⁷ American Web Loan had two trademark listings with the same registrant but two different addresses. Those are listed in the Location of Registrant column.

Fig	Figure 12: Trademark Registration Data for Lending Websites					
	Lending Website Owner/Registrant Listed in Trademark Database Location of Registrant					
Uni	ted Keetoowah Band	of Cherokee, PO Box 746, Tahlequah, OK 744	65			
17.	Bright Day Loans* "American Loans LLC a tribal enterprise of the United Keetoowah Band of Cherokee Indians in Oklahoma, a federally recognized Indian tribe. UNITED STATES" P.O. Box 117 Park Hill, OK 74451					

^{*=} site became inactive during research period

Researchers conducted internet searches to gain more information about Five For Fighting, LLC, Total Management, Inc., Mountain Summit Financial, Inc., and Access Financial, LLC, registrants for lenders that claimed affiliation with a tribe but did not share either the same address of the tribe or did not appear facially related to the tribe or lender. Researchers were only able to find information about Total Management, Inc., and Mountain Summit Financial, Inc.

Researchers found that Total Management, Inc., is operated by Ben Gatzke. ⁶⁸ Ben Gatzke, who is not a tribal member, was the "technology founder of PayDay One/Think Cash." Gatzke also donated to OLA ⁷⁰ in 2014. ⁷¹

Mountain Summit Financial, Inc., was an online payday lender that claimed to be affiliated with the Habematolel Tribe but has become inactive.⁷²

G. Data Used to Determine the Scope of Relationships Between Tribes and Lenders

Understanding the relationships between tribes and payday lenders requires examination and comparison of multiple sources, many of which are vague or present

⁷¹ Online Lenders Alliance Donors for the 2014 Cycle, CENTER FOR RESPONSIVE POLITICS, http://www.opensecrets.org/pacs/pacgave2.php?cmte=C00427781&cycle=2014 (information is collected from the Federal Election Commission. Ben Gatzke donated \$1000 in 2014.).

⁶⁸ Ben Gatzke LinkedIn Profile, LINKEDIN, https://www.linkedin.com/in/bengatzke (last visited Feb. 11, 2017); Winter 2017 Class Notes, BAYLOR MAGAZINE, https://www.baylor.edu/alumni/magazine/1502/index.php?id=939906 (last visited March 30, 2017).

⁶⁹ Ben Gatzke Biography, SCRUM ALLIANCE, https://www.scrumalliance.org/community/profile/bgatzke (last visited Feb. 11, 2017).

⁷⁰ This organization is further discussed in Section I.A.2.

⁷² The lending website did not show up in an internet search, but the Washington State DFI issued a warning on January 14, 2016 to notify consumers that they were issuing illegal payday loans. Consumer Alert, *Mountain Summit Financial, Inc. Not Licensed In Washington*, Washington State DFI (Jan. 14, 2016), http://www.dfi.wa.gov/consumer/alerts/mountain-summit-financial-inc-unlicensed-loans.

incomplete information, and some of which may be untrustworthy. First, each tribe, as a sovereign nation, has its own system of law. But while each tribe must submit evidence of a governing document to the Secretary of the Interior when the tribe requests recognition by the federal government or elects to form or amend its constitution or bylaws, tribes are *not* required to publicly publish their system of tribal law, nor to submit their most updated codes of law or tribal court opinions to the Secretary of the Interior. 73 As a result, available information about tribal governance varies from tribe to tribe. Second, there is a general lack of information about the actual relationships between tribes and payday lending businesses. Documents submitted in litigation in an attempt to persuade a court that a payday lending business is an arm of the tribe—and thus entitled to tribal immunity from lawsuits under state law—are often ambiguous about the details of the functioning of the lending business, the operations of lending websites, and the existence and benefits the tribe may receive from the lending business. 74 Lastly, there is evidence that some documents submitted to courts to prove the relationship between tribe and payday lender may be untrustworthy. The Miami Tribe, for example, recently admitted to the Department of Justice that at least one tribal representative submitted false declarations to state courts as a part of the tribe's arrangement with Scott Tucker to extend tribal immunity to Tucker's payday enterprises.⁷⁵

To gather as much information as possible, researchers cross-referenced a variety of sources where tribal officials and tribal members commented on or described their tribe's relationships with payday lenders. Researchers investigated tribal documents, tribal law, tribal websites, tribal newsletters, local newspapers, and national publications for details about the agreements between tribes and payday lenders. Additionally, researchers reviewed court documents submitted in litigation between tribes and borrowers, state and federal prosecution of payday lenders claiming tribal affiliation, and in contractual disputes between payday lenders.

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⁷³ See 25 U.S.C.A. § 5123; Frequently Asked Questions, US Dept. of the Interior Indian Affairs, http://www.bia.gov/FAQs/ (last visited Jan 22, 2016) (describing how Native American tribes are recognized by the federal government in a number of ways and explaining how different tribes have different governance systems). Additionally, tribes are not required to publish information about the various criminal or civil codes the tribal council enacts. See id.

⁷⁴ The California Supreme Court recently commented on the vagueness of documents submitted to the court to prove tribal ownership and operation of two payday businesses, Miami Nation Enterprises (MNE) and SFS, Inc. stating "Notwithstanding these formal arrangements [the fact that the companies were supposedly created pursuant to tribal law], significant evidence suggests that in fact neither SFS nor MNE Services, much less the Miami Tribe or Santee Sioux, maintains operational control over the underlying lending businesses." *People v. MNE*, 386 P.3d 357, 376 (Cal. 2016). The court continued to critique the lack of specificity of the evidence offered by the lending business regarding their cooperation with the tribes that supposedly owned them. *See id.* at *16-18.

⁷⁵ See Non-Prosecution Agreement with AMG Services, Inc. and MNE Services, Inc. (Feb. 9, 2016), https://www.justice.gov/usao-sdny/file/823666/download.

1. Availability of Official Tribal Publications Mentioning Payday Lending Involvement

Although lending websites routinely claim that the business is "wholly owned" by a tribe, few tribes publish information evincing that they own the business. Because there is no centralized database of tribal governing documents, researchers investigated the websites operated by tribes ("tribal websites"). These websites are run by the tribes themselves and offer information to the public and to tribal members. Researchers investigated the tribal websites of all tribes currently or previously mentioned by lending websites. An overview of the information gathered from these websites follows in Figure 13.

Twenty of the 27 tribes researched for this report operate a tribal website of some kind. Only four of the tribes currently or previously mentioned on lending websites explicitly state on their tribal website that they are affiliated with a payday lender. For context on the significance of a tribe disclosing or concealing its involvement in the payday industry on its website, the chart highlights which tribes provide information about other tribal businesses they engage in. While only four of the 27 tribes clearly and explicitly disclose their involvement with a payday lender on their website, 10 tribes provide information about their other tribal businesses on their tribal website. For additional context about the significance of disclosing or omitting any mention of tribal payday employees, the chart also shows which tribes provide information about tribal departments (inter-tribal agencies that run the various aspects of tribal affairs, including education, housing, and various tribal ventures) on the website. None of the tribes listed any tribal lending commission, commissioner, or payday-affiliated employee within any tribal department or tribal directory. Lastly, Figure 13 shows which tribal websites publish tribal law.

Fi	Figure 13: Summary of Information Available on Tribal Websites						
	Tribe	Tribal Website	Tribal Law	Tribal Departments	Direct Reference to Payday Business	Businesses Listed on Tribal Website	
1.	Big Lagoon Rancheria (CA)	None					

The ten websites discussing other tribal businesses also includes the tribal websites that explicitly mentioned the payday lender. See Figure 20: Statements About Payday Business in Tribal Newsletters or Tribal Websites for mention of hidden references to the tribe's purported involvement in the payday industry, such as mention on employment opportunity pages or mention in the tribal newsletter.

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Fig	Figure 13: Summary of Information Available on Tribal Websites						
	Tribe	Tribal Website	Tribal Law	Tribal Departments	Direct Reference to Payday Business	Businesses Listed on Tribal Website	
2.	Big Valley Rancheria (CA)	www.bvrancheria.com	No	Yes	No	Casino, Smoke Shop	
3.	Cheyenne River Sioux Tribe	None					
4.	Chippewa Cree	None					
5.	Flandreau Santee Sioux Tribe ◆	www.santeesioux.com	Yes	Yes	No	Casino, Pow-wow grounds, farming operation, industrial park ownership	
6.	Fort Belknap	www.ftbelknap.org	Yes	Yes 77	No	Smoke house, meat packing company	
7.	Guidiville (CA)	None (but see Businesses Listed on Tribal Website column)				Guidiville Indian Rancheria operates the Black Oak Development Corporation. The Corporation has its own website (http://www.black-oak-development.com/about/). However, this website offers no information about the tribe's involvement in payday lending.	
8.	Habematolel Tribe (CA)	www.upperlakepomo.com	No	Yes	No	Casino	
9.	Iipay Nation (CA)	www.iipaynation-nsn.com	No	Yes	No	Gaming commission, smoke shop	
10.	Kashia Band (CA)	www.stewartspoint.org/wp/	Yes	Yes	No	Businesses are not listed on website	
11.	Lac Courte Oreilles ♦	www.lco-nsn.gov The Wisconsin State Tribal Relations Initiative publishes a tribal profile of the tribe:	Yes	Yes	No	Wisconsin State Tribal Relations Initiative states that tribe is involved in the following economic endeavors: casinos (2), cranberry marsh, development corporation (engaged in trucking and infrastructure), commercial	

The Fort Belknap Directory listed on the website is from 2014 and lists all tribal programs and businesses with accompanying employees and their titles within the departments. No payday business nor regulatory agency is listed in the directory.

Fig	Figure 13: Summary of Information Available on Tribal Websites						
	Tribe	Tribal Website	Tribal Law	Tribal Departments	Direct Reference to Payday Business	Businesses Listed on Tribal Website	
		www.witribes.wi.gov/				grocery store, convenience store, gas station, smoke shop, family resort, radio station, hydro-electric plant, wood crafter, funeral services, fireworks station, transportation system, cafe, arts and crafts business. http://witribes.wi.gov/docview.asp?docid=5629&locid=57	
12.	La Posta Band (CA)	None					
13.	Lac Du Flambeau	www.ldftribe.com The Wisconsin State Tribal Relations Initiative publishes a tribal profile of the tribe: www.witribes.wi.gov/	Yes	Yes	No	Tribal website: Business Development Corporation, Museum and cultural center, Indian bowl, resort and casino, grocery store, electrical business, smoke shop Wisconsin State Tribal Relations Initiative report: casino and resort, campground, marina, gas station, smoke shop, museum, electrical business http://witribes.wi.gov/docview.asp?docid=19082&locid=57	
14.	Lac Vieux Desert Band	www.lvdtribal.com	No	No	Yes	Tribe lists "Tribally Owned and Operated Financial Service Businesses," including Big Picture Loans, Ascension Technologies, Tribal Economic Development Holdings, LLC, on its Economic Development page. Tribe also links its home page to the tribal casino.	
15.	Laguna Pueblo* (CA) ◆	None					
16.	MHA Nation ◆	www.mhanation.com	Yes	Yes	No	Businesses are not listed on website.	

Fig	Figure 13: Summary of Information Available on Tribal Websites					
	Tribe	Tribal Website	Tribal Law	Tribal Departments	Direct Reference to Payday Business	Businesses Listed on Tribal Website
17.	Mechoopda Indian Tribe of Chico Rancheria (CA)	www.mechoopda-nsn.gov	No	Yes	No	Has business development page, but does not describe the businesses the tribe is involved in. http://www.mechoopdansn.gov/tribal-government/mechoopdabusiness-development/
18.	Miami Tribe	www.miamination.com/abo ut Miami Nation Enterprises (MNE) linked to tribal website. www.mn-e.com	Yes	Yes	Yes- MNE	Gaming Commission, Economic Development, Miami Nation Enterprises
19.	Modoc Tribe	www.modoctribe.com	No	Yes	No	Businesses are not listed on website.
20.	Otoe- Missouria Tribe	www.omtribe.org	Yes * 78	Yes	Yes	Casinos, Otoe-Missouria Development Authority, Event Center, Propane Business, Cattle Company, Online Store–Wokun Wosa, convenience stores, "financial services companies" including American Web Loan and Great Plains Lending
21.	Picayune Rancheria of the Chukchansi Indians*(CA)	www.chukchansitribe.net	No	Yes	No	Businesses are not listed on website, but Casino event calendar is listed.
22.	Resighini Rancheria* (CA)	www.resighinirancheria.co m	No	No	No	Businesses are not listed on website.
23.	Santee Sioux Nation of Nebraska	None				
24.	Tunica Biloxi Tribe of Louisiana	www.tunica.org	No	Yes	Yes	Casino, Economic development, Mobiloans, Tunica-Biloxi Holdings, Inc.

⁷⁸ Although constitution and tribal resolution are posted on tribal website, minutes and resolutions for January 2011 to August 2012 are not posted. *Resolutions & Minutes*, OTOE-MISSOURIA TRIBE, http://www.omtribe.org/index.php?government-minutes-and-resolution (last visited Dec. 27, 2016).

Fig	Figure 13: Summary of Information Available on Tribal Websites					
	Tribe	Tribal Website	Tribal Law	Tribal Departments	Direct Reference to Payday Business	Businesses Listed on Tribal Website
25.	Turtle Mountain Band	www.tmbci.org	Yes	Yes	No	Businesses are not listed on website.
26.	United Keetowah Band of Cherokee Indians *	www.keetoowahcherokee.or	Part ial	Yes	No	Businesses are not listed on website.
27.	Wakpamni Lake Community of the Oglala Sioux Tribe*	Blog: www.wakpamnilakecommu nity.wordpress.com/wakpa mni-lake-community-press- statement/ 79	No	No	No	

^{*=} not currently listed on a lending website (CA)= delineates tribes located in California.

2. Litigation Involving Tribal Payday Lending

Researchers investigated documents submitted in the course of litigation as another source of information about the relationship between tribes and payday lenders. Researchers searched the PACER federal litigation database and Westlaw for cases where the parties to the case were either 1) the tribe mentioned by the lending website or 2) the lending website. For cases in federal court, researchers looked through the dockets of the cases for 1) declarations from tribal officials, 2) tribal documents, 3) tribal immunity arguments, and 4) court decisions where the court discussed sovereign immunity. Researchers focused on cases that did not involve the Scott Tucker payday lending enterprise or the Western Sky/CashCall universe of companies, since Public Justice, other private litigators, and government law enforcement have engaged in extensive litigation against these actors and there has been extensive press coverage of these entities. The Western Sky and CashCall lending universe is described in Section VI.B.1, and the Scott Tucker lending enterprise is described in Section VI.B.3.

⁷⁹ It is unclear whether this blog is actually written and published by the tribe or is published by an independent party.

The cases that researchers found took a number of forms: state enforcement actions against payday lenders; individual plaintiffs suing lenders for violating various state usury and consumer protection laws; class actions challenging the business practices of the payday lenders; and suits where the payday business or tribe sued other businesses or state agencies. Not all tribes and lenders were involved in litigation as of our research period. Researchers recorded cases where the claim or action stemmed from a payday loan that originated with a payday lender that claimed affiliation with a tribe and where either the tribe or the payday lender claiming affiliation with the tribe were a party. Where there were no other case records to be found, researchers recorded bankruptcy actions where the tribe or payday lender was a creditor. Figure 14 is a summary of litigation findings, organized by tribe. Figure 15 offers a more detailed description of the cases.

Figure 14: Summary of Litigation	Figure 14: Summary of Litigation By Tribe					
Tribe ⁸¹	Litigation ⁸²					
1. Big Lagoon Rancheria	None					
2. Big Valley Tribe	None					
	Affiliated with CashCall/Western Sky cases which are largely excluded from this report.					
	Cheyenne River Sioux tribal law chosen in loan contracts in <i>CFPB v. CashCall, Inc.</i> , No.15-7522, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016) (Western Sky case where appeal is pending) and <i>Dillon v. BMO Harris Bank</i> , No. 1:13-cv-897, 2014 WL 911950 (M.D.N.C. March 10, 2014) (plaintiff sues originating depository financial institution (ODFI) defendants					
3. Cheyenne River Sioux Tribe	for their connection with payday loans).					
	Think Finance claimed that it partnered with tribe in <i>Pennsylvania v. Think Fin.</i> , <i>Inc.</i> , No. 14-cv-7139, 2016 WL 183289 (E.D. Pa. Jan. 14, 2016) (Pennsylvania Attorney General sues payday lenders under violations of Pennsylvania law). Plain Green, LLC claimed to be affiliated with the tribe in <i>CFPB v. Great Plains Lending, LLC</i> , No. CV 2:2014-2090 (C.D. Cal. May 27, 2014) (CFPB goes to court to enforce civil investigative demands against payday lenders).					
4. Chippewa Cree	Plaintiff sues ODFI defendants for their facilitation of loans, including loans received from payday lender claiming affiliation with tribe in <i>Graham v</i> .					

⁸⁰ The lack of litigation against a lender does not necessarily indicate that the lender is a good actor or is complying with consumer protection laws. Some lenders may have avoided litigation through exculpatory contract terms or by using layers of corporate shells to make it difficult for consumer advocates and regulators to identify the responsible party.

⁸¹ As previously noted, the Middletown Rancheria of Pomo Indians of California may also have been in contact with lending websites or lending entities in the past due to their tribal official being affiliated with NAFSA. *See* note 50, *supra*.

⁸² Bankruptcy actions are listed only where there were no records of other civil litigation involving the tribe or purportedly affiliated lender(s).

Figure 14: Summary of Litigation	on By Tribe
Tribe ⁸¹	Litigation ⁸²
	BMO Harris Bank, No. 3:13-cv-01460, 2014 WL 4090548 (D. Conn. filed Oct. 4, 2013).
	Plaintiff sues defendants for violating state usury laws, Consumer Financial Protection Act (CFPA), Federal Tort Claims Act (FTCA), racketeering laws, and RICO laws for their connection to loan plaintiff received that lender claims is affiliated with the tribe. <i>Gingras v. Rosette</i> , No. 5:15-cv-00101 (D. Vt. filed May 18, 2016).
	Plaintiff sues a debt collector for attempting to collect debt associated with plaintiff's loan from Plain Green, a lender claiming association with tribe in <i>Pearson v. United Debt Holdings</i> , No. 1:14-cv-10070 (N.D. Ill. filed Dec. 16, 2014).
	Plaintiff sues the ODFIs affiliated with the payday loans she received from Plain Green, LLC, which claims to be affiliated with the Chippewa Cree. <i>Gunson v. BMO Harris Bank</i> , No. 0:13-cv-62321 (S.D. Fla. filed Oct. 23, 2014).
	Tribe and payday lender claiming affiliation are plaintiffs in <i>Chippewa Cree Tribe of the Rocky Boy's Reservation v. Roberts</i> , No. 4:14-cv-00063 (D. Mont. filed Aug. 8, 2014).
	Bankruptcy cases listed; Bottom Dollar Payday Loan, ⁸³ Everest Cash Advance, ⁸⁴ and VIP Loan Shop ⁸⁵ listed as creditors.
	Plaintiff brings suit partly on the basis of a loan received from payday entity claiming affiliation with tribe in <i>Everette v. NDG Fin. Corp.</i> , No. 1:15-cv-01261-CCB (D. Md. filed April 30, 2015).
5. Flandreau Santee Sioux Tribe ◆	Plaintiff brings Telephone Consumer Protection Act (TCPA) suit against consumer debt buying company who purchased plaintiff's debt from payday lender that claims to be affiliated with tribe in <i>Abaya v. Total Account Recovery, LLC</i> , No. 2:15-cv-01269, 2016 WL 3407783 (E.D. Cal. June 20,
	2016).
	Plaintiff brings suit partly on the basis of a loan received from payday entity claiming affiliation with tribe in <i>Everette v. NDG Fin. Corp.</i> , No. 1:15-cv-01261-CCB (D. Md. filed April 30, 2015).
6. Fort Belknap Tribe	Plaintiff sues payday entity claiming affiliation with tribe. Plaintiff claims that consumer reports were wrongly released to payday entity in <i>Pettus v. Servicing Co., LLC</i> , No. 15-cv-00479 (E.D. Va. filed Aug. 14, 2015).

⁸³ Bankruptcy petitions *In re DeHetre*, No. 1:13-bk-12454 (D. Mass.), *In re Janssen*, No. 1:13-bk-48607 (N.D. Ill.).

⁸⁴ Bankruptcy petition *In re Palmer*, No. 0:10-bk-35290 (D. Md.).

⁸⁵ Bankruptcy petition *In re Rodriguez*, No. 8:13-bk-07609 (M.D. Fla.).

Figure 14: Summary of Litigat	tion By Tribe
Tribe ⁸¹	Litigation ⁸²
	Plaintiff sues the ODFIs affiliated with the payday loans she received from North Star Cash, LLC, which claims to be affiliated with the tribe. <i>Gunson v. BMO Harris</i> , No. 0:13-cv-62321 (S.D. Fla., filed Oct. 23, 2014).
	Payday lender claiming affiliation with tribe is plaintiff in <i>Island Fin. LLC v. Roces & Co. LLC</i> , No. 9:15-cv-02696-SB (D.S.C. filed July 7, 2015).
7. Guidiville	Tribe is a defendant in <i>Meyer v. Accredited Collection Agency, Inc.</i> , No. 1:13-cv-00444-LG-JCG (S.D. Miss. filed June 1, 2016).
8. Habematolel Tribe	Bankruptcy cases listed; Golden Valley Lending, Inc. listed as creditor. ⁸⁶ Plaintiff sues ODFIs for their connection to loan received from payday lender claiming affiliation with tribe in <i>Graham v. BMO Harris Bank</i> , No. 3:13-cv-01460, 2014 WL 4090548 (D. Conn. filed Oct. 4, 2013).
9. Iipay Nation of Santa Ysabel Tribe	None
10. Kashia Band	None
11. La Posta Band	None
12. Lac Courte Oreilles ◆	Plaintiff brings suit partly on the basis of a loan received from payday entity claiming affiliation with tribe in <i>Everette v. NDG Fin. Corp.</i> , No. 1:15-cv-01261-CCB (D. Md. filed April 30, 2015).
13. Lac Du Flambeau	Plaintiff sues ODFIs that originated payday loans she received, including a loan from Niizh, LLC d/b/a Bright Star Cash in <i>Gordon v. First Premier Bank</i> , No. 2:13-cv-06138 (D.N.J. filed Oct. 16, 2013).
	Tribe and payday entity claiming affiliation with tribe defendants in <i>Decker v. RS Fin. Servs.</i> , <i>LLC</i> , 5:14-cv-00242 (W.D. Okla. filed March 13, 2014). Tribe and payday lenders claiming affiliation with tribe are plaintiffs in <i>Otoe-Missouria v. N.Y. Dept. of Fin. Servs.</i> , No. 1:13-cv-05930 (S.D.N.Y. filed Aug. 21, 2013).
14. Lac Vieux Desert Band	Plaintiff sues debt collectors that are collecting on behalf of a title loan plaintiff received from Sovereign Lending Solutions, a lender affiliated with the tribe, in <i>Powell v. RS Fin. Servs. LLC</i> , No. 1:12-cv-00716 (W.D.N.Y. filed July 27, 2012). Plaintiff also sues Sovereign Lending Solutions

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⁸⁶ Bankruptcy petition *Umiten v. Toyota Motor Credit Corp. et al.*, 2:13-ap-01966 (D. NJ); *In re Collazo*, No. 3:15-bk-35024 (D. Or.). Two civil cases were filed against a Golden Valley Lending Group, Inc. but researchers were not able to confirm whether they were related to the Golden Valley Lending Payday entity because the cases both pertained to mortgages. *Hernandez v. IndyMac Mortgage Servs.*, No. 3:10-cv-00518 (S.D. Cal); *Burrows v. Orchid Island TRS, LLC*, No. 3:07-cv-01567-BEN-WVG (S.D. Cal.).

Figure 14: Summary of Litigate	tion By Tribe
Tribe ⁸¹	Litigation ⁸²
	manager in connection to a title loan in <i>Bynon v. Mansfield</i> , No. 15-00206 (E.D. Pa. filed Jan. 16, 2015). 87
15. Laguna Pueblo* ♦	None regarding them alone; only discussed in context of Western Sky
	None
16. MHA Nation ♦	
17. Mechoopda Tribe	None
	This tribe is affiliated with Scott Tucker but those cases are largely excluded for the purposes of this report.
	Payday entities claiming affiliation with tribe are defendants in <i>People v. MNE</i> , 386 P.3d 357 (Cal. 2016); <i>Cash Advance and Preferred Cash Loans v. State</i> , 242 P.3d 1099 (Colo. Nov. 30, 2010) (<i>en banc</i>).
	Plaintiff brings suit partly on the basis of a loan received from payday entity claiming affiliation with tribe in <i>Everette v. NDG Fin. Corp.</i> , No. 1:15-cv-01261-CCB (D. Md. filed April 30, 2015); <i>Dillion v. BMO Harris Bank</i> , No. 1:13-cv-00897 (M.D.N.C. filed Oct. 8, 2013); <i>Labajo v. First Int'l Bank & Trust</i> , No. 5:14-cv-00627 (C.D. Cal. filed March 31, 2014); <i>Achey v. BMO Harris Bank</i> , No. 1:13-cv-07675 (N.D. Ill. Filed Oct. 25, 2013).
	Plaintiff sues, alleging that information was wrongly given to payday lender claiming affiliation with tribe in <i>Aleksic v. Clarity Servs. Inc.</i> , No. 1:13-cv-07802 (N.D. Ill. filed Dec. 2, 2014).
18. Miami Tribe of Oklahoma	Tribe and payday entity alleging affiliation are defendants in <i>Rosas v. USFastCash</i> , No. 12-5066, 12-5067, 2012 WL 6045909 (N.D. Cal. Dec. 5, 2012); <i>Walp v. CLK Mgmt.</i> , No. 2:07-cv-03845-CMR (E.D. Pa. filed Sept. 17, 2007).
	This tribe is affiliated with Scott Tucker but those cases are largely excluded for the purposes of this report.
19. Modoc Tribe of Oklahoma	Payday entity claiming affiliation with this tribe is defendant in <i>Baillie v. Dollar Fin. Corp.</i> , No. RG07327031, 2011 WL 9683752 (May 27, 2011 Cal. Super. Ct.).
	Payday entities claiming affiliation with this tribe listed as defendants in CFPB v. Great Plains Lending, 846 F.3d 1049 (9th Cir. 2017); Great Plains Lending v. Connecticut Dept. of Banking, No. HHBCV15028096S, 2015 WL 9310700 (Conn. Super. Ct. Nov. 23, 2015); Finn v. Great Plains Lending, No. 2:15-04658 (E.D. Pa. filed Aug. 17, 2016); Finn v. Great Plains Lending, No. CIV-16-415-M (W.D. Okla. filed April 22, 2016).
20. Otoe-Missouria	Think Finance claimed to be affiliated with this tribe in <i>Pennsylvania v</i> .

⁸⁷ While this case and *Bynon v. Mansfield* involve a title loan, it was included because the Operating Agreement of Sovereign Lending Solution indicates it is a "tribal lender" without specifying whether they only conducted title loans.

Figure 14: Summary of Litigation	on By Tribe
Tribe ⁸¹	Litigation ⁸²
	Think Fin., Inc., No. 14-cv-7139, 2016 WL 183289 (E.D. Pa., Jan. 14, 2016).
	Plaintiff alleges that information was wrongly given to payday lender claiming affiliation with tribe in <i>Aleksic v. Clarity Servs. Inc.</i> , No. 1:13-cv-07802 (N.D. Ill. filed Dec. 2, 2014).
	Plaintiff sues on basis of loans received from payday lender affiliated with tribe in <i>Dillon v. BMO Harris Bank</i> , No. 1:13-cv-897, 2014 WL 911950 (M.D.N.C. March 10, 2014); <i>Graham v. BMO Harris Bank</i> , No. 3:13cv1460, 2014 WL 4090548, (D. Conn. filed Oct. 4, 2013).
	Tribe and payday lenders claiming affiliation with tribe are plaintiffs in <i>Otoe-Missouria v. N.Y. Dept. of Fin. Servs.</i> , No. 1:13-cv-05930 (S.D.N.Y. filed Aug. 21, 2013).
	Tribal Chairman, John Shotton, brings suit against Connecticut Department of Banking in <i>Shotton v. Pitkin</i> , No. 5:15-cv-00241, 2015 WL 5091984 (W.D. Okla. Aug. 28, 2015).
21. Picayune Rancheria of the Chukchansi Indians*	Investor in payday lender claiming to be affiliated with tribe is plaintiff in <i>Katzrin Fin. Group, LLC v. Arapex LLC</i> , No. 651129/2014, 2015 WL 6391092 (N.Y. Sup. Ct. Oct. 22, 2015).
22. Resighini Rancheria*	None
	Payday entities claiming affiliation with tribe defendants in <i>People v. Miami Nation Enters.</i> , 386 P.3d 357 (Cal. 2016), <i>Cash Advance and Preferred Cash Loans v. State</i> , 242 P.3d 1099 (Colo. Nov. 30, 2010) (<i>en banc</i>).
	Tribe and payday entity alleging affiliation are defendants in <i>Rosas v. USFastCash</i> , No. 12-5066, 12-5067, 2012 WL 6045909 (N.D. Cal. Dec. 5, 2012); <i>Walp v. CLK Mgmt.</i> , No. 2:07-cv-03845-CMR (E.D. Pa. filed Sept. 17, 2007).
23. Santee Sioux Nation of Nebraska	Plaintiff sues an ODFI on the basis of a loan he received from OneClickCash, a lending entity that claims affiliation with tribe. <i>Graham v. BMO Harris Bank</i> , No. 3:13-cv-01460 (D. Conn. Filed Oct. 4, 2013).
	Think Finance claimed to have partnered with tribe in <i>Pennsylvania v. Think Fin. Inc.</i> , 2016 WL 183289 (E.D. Pa., Jan. 14, 2016).
	Plaintiff brings suit partly on the basis of a loan received from payday entity claiming affiliation with tribe in <i>Everette v. NDG Fin. Corp.</i> , No. 1:15-cv-01261-CCB (D. Md. filed April 30, 2015).
24. Tunica-Biloxi Tribe	Payday entity claiming affiliation with tribe is defendant in <i>Harris v</i> . <i>Mobiloans LLC</i> , No. 5:16-cv-04580-NC (N.D. Cal. filed Aug. 11, 2016), <i>Santana v. Verizon Wireless</i> , No. 4:14-CV-00052-CVE-FHM (N.D. Okla. Filed Feb. 5, 2014).
25. Turtle Mountain Band of	Plaintiff sues on basis of loan received from payday entity claiming

Figure 14: Summary of Litigation By Tribe			
Tribe ⁸¹ Litigation ⁸²			
Chippewa Indians	affiliation with tribe in <i>Graham v. BMO Harris Bank</i> , 2014 WL 4090548, No. 3:13-cv-01460 (D. Conn. filed Oct. 4, 2013).		
26. United Keetoowah Band of	None.		
Cherokee Indians*			
27. Wakpamni Lake Community of None ⁸⁸			
the Oglala Sioux Tribe*			

^{*=} Not named on active lending website.

Figure 15 below provides more detailed information on these cases. The chart groups the cases by plaintiff type and offers a brief summary of the current procedural status of the case, the issue litigated, and any declarations or evidence researchers reviewed to reveal more about the relationship between tribe and lender. The cases summarized exclude litigation regarding CashCall, Western Sky, or companies affiliated with Scott Tucker. ⁸⁹

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https://wakpamnilakecommunity.files.wordpress.com/2014/06/wakpamni-lake-vs-catches-the-enemy4.pdf. (While researchers were not able to find a decision in this tribal court case online, Washington University Law School has indicated it would be launching a project to "create an online searchable database of the tribe's extensive body of laws and court decisions." *See Wash. U. Law, Center for Empirical Research in the Law to Launch Tribal Law Digitization Project*, WASH. U. LAW (Fall 2015), http://law.wustl.edu/m/content.aspx?id=10537.)

Jason Galanis—who was indicted for investment adviser fraud, securities fraud, wire fraud, and conspiracy to commit securities fraud and wire fraud—allegedly attempted to continue the securities fraud conspiracy by writing a letter to the Wakpamni Lake Community Corporation. *See United States v. Galanis*, 656 Fed. Appx. 560 (2nd Cir. 2016). The SEC alleged that defendants used the Wakpamni Lake Community Corporation to defraud investors. *SEC v. Archer*, No. 16cv3505, 2016 WL 4371303 (S.D.N.Y. Aug. 10, 2016) (U.S. Attorney requests a limited stay of discovery while they proceed in Jason Galanis' case). Galanis' charges are further described in an Indian Country Today piece. *See* David Rook, *Wakpamni Lakotas Blindsided by \$60M Wall Street Scam*, June 9, 2016, https://indiancountrymedianetwork.com/news/politics/wakpamni-lakotas-blindsided-by-60m-wall-street-scam/.

^{♦=} Lender without confirmed California connection.

While researchers were not able to find state or federal court cases related to payday lending where the Wakpamni Lake Community of the Oglala Sioux were a party, there does appear to be litigation involving the Wakpamni Lake Community Corporation, a business operated by tribal member Raycen Raines. The corporation is not affiliated with the tribal council, but claims to operate from the Wakpamni reservation. *See* Brandon Ecoffey, *The Many Faces of Raycen Raines*, NATIVE SUN NEWS, Aug. 19, 2014, http://www.indianz.com/News/2014/014790.asp; Nehamas, *supra* note 18. Following the publication of *Payday Nation*, The Wakpamni Lake Community Board and Raines apparently sought a restraining order against Arlene Catches the Enemy in tribal court for "publish[ing] false data in an Al-Jazeera article." Petition for Temporary Restraining Order, *Wakpamni Lake Cmty. Bd. v. Catches the Enemy*, No. 14-0289 (Oglala Sioux Tribal Ct. filed June 23, 2014),

⁸⁹ For discussion of CashCall, Western Sky, and the Scott Tucker payday entities, see Sections VI.B.1 and VI.B.3.

Fi	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰						
	Case	Parties	Issue Litigated	Procedural History			
G	GOVERNMENT ENFORCEMENT ⁹¹						
1.	Cash Advance v. State, 242 P.3d 1099 (Colo. Nov. 30, 2010) (en banc); State v. Cash Advance, 205 P.3d 389 (Colo. App. 2008); State v. Cash Advance, Trial Order, No. 05CV143, 2012 WL 3113527 (Colo. Dist. Ct. Feb. 18, 2012).	Plaintiff: -Attorney General of Colorado Defendants: -Cash Advance -Preferred Cash Loans	Attorney General of Colorado investigated Cash Advance and Preferred Cash Loans by issuing subpoenas to see if they are complying with state Deferred Deposit Loan Act. Lending companies did not respond to subpoenas, and state filed contempt citations. Two days before response was due, tribal corporations MNE (purportedly affiliated with the Miami Tribe of Oklahoma) and SFS (purportedly affiliated with the Santee Sioux Nation) filed motions to dismiss on sovereign immunity grounds. When the payday companies didn't appear in court to respond to the citations, the court put out an arrest	Trial court initially denied tribe's motion to dismiss for lack of subject matter jurisdiction on sovereign immunity grounds. Court of appeals reversed, holding that the trial court did not apply the correct factors in determining whether or not sovereign immunity applies. Court of appeals recommended an 11-factor test that was a hybrid of the tests put forth in previous cases. Court noted that the burden of proof is on the state to establish, by a preponderance of the evidence, that the payday entities are not arms of the tribe. With regard to the individuals' arrest warrants, court of appeals held that if the men are tribal officers, they are immune from liability for violations of state law. Colorado Supreme Court partially reversed, holding that the state bore the burden of proving the company and tribal officers working within the scope of their tribal authority were not entitled to tribal immunity; and that only discovery needed to determine whether tribal immunity applies was permissible. To determine whether an entity is an "arm of the tribe," the Supreme Court adopted a 3-factor test: 1) whether the entity was created pursuant to tribal law, 2) whether the tribe owns and operates the entity, and 3) whether extending immunity to the entity protects the tribe's sovereignty. Trial Court, on remand, grants payday companies' motion to dismiss and quash state subpoenas.			

⁹⁰ This list reflects cases stemming from payday loans issued by lenders claiming tribal affiliation. It may be incomplete given that records of state court cases that are not published on Westlaw were not available to researchers. In addition, we did not seek to capture all possible suits against third parties such as originating depository financial institutions (ODFIs), ACH financial institutions, and debt collectors; however, we included such cases when we found them.

⁹¹ In addition to the actions listed here, researchers found press articles regarding the Attorney General of Arkansas bringing suit against Joshua Mitchem for his involvement with two payday lenders, PDL Support LLC and Platinum B. Services. Gia Vang, *Lawsuit Filed Against Kansas City Payday Loan Companies*, FOX4KC.COM (Jan. 24, 2012), http://fox4kc.com/2012/01/24/lawsuit-filed-against-kansas-city-payday-loan-companies/. However, researchers were not able to find records of this lawsuit on PACER.gov, Westlaw, or the Arkansas Attorney General's website.

	Case	Parties	Issue Litigated	Procedural History
			warrant for two men who were the corporate officers of MNE and SFS.	
2.	CFPB v. CashCall, Inc., No. 2:15-cv-07522-JFW- RAO (C.D. Cal. filed Dec. 16, 2013); CFPB v. CashCall, Inc., No. CV15- 7522, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016) (denying CashCall's motion for summary judgment and granting CFPB partial summary judgment regarding defendants' liability under CFPA).	Plaintiff: -Consumer Financial Protection Bureau Defendants: -CashCall IncWS Funding, LLC -Delbert Services CorpJ. Paul Reddam	CFPB brought suit against CashCall and others for violating Unfair, Deceptive, Abusive Acts or Practices (UDAAP) Laws and Consumer Financial Protection Act (CFPA). WS Loans were issued in Western Sky's name and then assigned to and serviced/collected by CashCall or Delbert Services. Cheyenne River Sioux Tribe implicated because contract chooses their tribal law. This is the first case where the CFPB regulates a payday company claiming tribal ownership	District Court denied CashCall's motion for summary judgment and granted the CFPB's motion for partial summary judgment as to the liability of the defendants under the CFPA. The defendants filed for summary judgment on 6 grounds: 1) the CFPB exceeded its authority under the CFPA by basing its claims on state law, 2) the CFPB sought to establish a usury limit, which is prohibited by the CFPA, 3) the loan agreements are not void because the choice of law provisions apply Cheyenne River Sioux Tribal law, 4) the defendants' conduct did not violate the CFPA because it was not unfair, deceptive, or abusive, 5) the CFPB violated defendants' due process rights by penalizing them without fair notice of prohibited conduct, and 6) the CFPB's structure is unconstitutional. The District Court denied the defendants' motion because it held that CashCall was the ultimate party to the loan contract and the Cheyenne River Sioux had no relationship to the parties or transaction and there was no basis to apply tribal law. As a result, home state laws applied and the loans did violate the CFPA because they gave the impression that the loans were enforceable. Court also held that the CFPB had the authority to use the CFPA to pursue a violation of state law as a violation of federal law. Additionally, the court held there was sufficient notice of prohibited conduct. The court also rejected challenges to the constitutionality of the CFPB's structure, citing CFPB v. Morgan Drexen, Inc. 60 F. Supp. 3d 1082, 1086-92 (C.D. Cal. 2014). Case has been stayed pending appeal. Litigation still active.
3.	CFPB v. Great Plains Lending, No. CV 2:2014- 2090, Civil Minutes— General, Order Discharging	Plaintiff: -Consumer Financial Protection Bureau	CFPB went to court to enforce civil investigative demands (CIDs) against Great Plains Lending,	District Court ordered defendants to show cause as to why they should not fully comply with CIDs. After parties submitted papers and conducted a hearing, the petition to enforce the civil demands was granted for the CFPB. Court held that the CFPA
	Order to Show Cause and Granting Petition to Enforce Civil Investigation	Defendants: -Great Plains Lending, LLC -Mobiloans, LLC	Mobiloans, and Plain Green.	applied to tribes and that enforcement of the CIDs was not barred by sovereign immunity. Defendants appealed to 9th Circuit. 9th Circuit affirmed the district court's decision and held that the

Fi	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰					
	Case	Parties	Issue Litigated	Procedural History		
	Demands, Doc. 28 (C.D. Cal., May 27, 2014); <i>CFPB</i> v. <i>Great Plains Lending</i> , 846 F.3d 1049 (9th Cir. 2017).	-Plain Green LLC		CFPA applies to tribal businesses and the CFPB did not "plainly lack jurisdiction" to issue investigative demands to tribal businesses under the CFPA. Case still active.		
4.		Plaintiffs: -Great Plains Lending -Clear Creek Lending Defendant: -Connecticut Department of Banking	Connecticut Commissioner of Banking filed a cease and desist order against Great Plains Lending and Clear Creek Lending for breaking CT state usury laws. Great Plains Lending and Clear Creek Lending filed a motion to dismiss on sovereign immunity grounds due to their purported affiliation with Otoe-Missouria Tribe. Tribe appealed after Commissioner denied dismissal on sovereign immunity grounds.	Superior Court of Connecticut remanded case to the Connecticut Department of Banking, ordering the agency to make additional factual findings to determine whether tribal immunity applied to payday lenders. The court held that a state agency hearing poses a risk to sovereign immunity analogous to that posed by a court proceeding, but that the agency has the authority to determine whether the lender satisfies Connecticut's "arm of the tribe" test. Because agency did not make factual findings as to whether the payday entities were arms of the tribe, the court remanded the case to make that factual determination. Department of Banking denied the motion to dismiss on sovereign immunity grounds and held that John Shotton, Chairman of Otoe-Missouria, and the lenders could not avoid liability through tribal immunity. Department holds that entity requesting immunity bears burden of proving that it is entitled to immunity, and notes that nothing was submitted to show that Clear Creek Lending and Great Plains Lending are arms of the tribe. The Department of Banking held that the Otoe-Missouria LLC act and operating agreement weigh heavily against sovereign immunity because the tribe bears no liability for the payday operation. Relying on a Bloomberg Technology article and the fact that the interest on the loans exceeded the tribe's own criminal usury cap, the agency held that there is evidence that the tribe is not controlling the company and that the payday companies did not meet their burden of proving they were entitled to sovereign immunity. The agency also held that John		

⁹² Order available here: http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=10447426.

⁹³ Faux, Behind 700% Loans, supra note 57.

Parties	Issue Litigated	Procedural History
Plaintiff:	AG filed suit against	Shotton cannot use sovereign immunity to shield himself from state enforcement because he was being held accountable for actions beyond mere negligence and thus, not in the scope of employment. The Department of Banking largely relied upon Shotton's statements in <i>An Unlikely Solution</i> , a documentary about tribal payday lending. ⁹⁴ District court denied defendants' motion to dismiss in part and
-Pennsylvania Attorney General Defendants: - Think Finance, Inc TC Loan Service, LLC - Tailwind Marketing, LLC, - TC Decision Services - Financial U, LLC - Kenneth Rees - Elevate Credit (terminated) - William Weinstein (terminated) - Weinstein, Pinson and Riley, PS (terminated) - Cerastes, LLC (terminated) - National Credit Adjusters, LLC - Selling Source, LLC - Partnerweekly, LLC d/b/a MoneyMutual.com (terminated) - Payday One, LLC	Think Finance and affiliated parties charging that they violated PA and federal law by issuing usurious loans and engaging in illegal lending practices. AG alleged that Think Finance engaged in a "Rent a Tribe" scheme with three tribes: Chippewa Cree, Tunica-Biloxi, and Otoe-Missouria.	granted it in part. Defendants moved to dismiss because 1) plaintiff failed to join the tribes as indispensable parties to the action, 2) the AG lacked capacity to sue under Pennsylvania law, 3) failure to state a claim, 4) some claims were federally preempted because they pertain to Rees's previous rent-a-bank scheme, 5) plaintiff has insufficiently pled Corrupt Organization Act (COA) charges against Rees, 6) the Federal Credit Extension Uniformity Act claims should be dismissed because they were not debt collectors and interest rates were authorized by agreement (thus not proscribed by the FDCPA), 7) plaintiff was not entitled to injunctive relief under the Unfair Trade Practices and Consumer Protection Law, and 8) plaintiff has failed to sufficiently plead an Electronic Fund Transfer Act (EFTA) claim, personal information claim, unreasonable advantage claim, or common enterprise claim under the Dodd-Frank Act. The district court held that the tribes had contractual and sovereign interests in the case, but the case would only impact the named defendants and would not impact or impede the tribes' interests. As a result, the court did not hold that the tribes were essential parties. The court also held that the AG had authority to sue under Pennsylvania law and that none of the claims were federally preempted. Additionally, the court held that the claims were sufficiently pled, including the COA claims against Mr.
	Plaintiff: -Pennsylvania Attorney General Defendants: - Think Finance, Inc TC Loan Service, LLC - Tailwind Marketing, LLC, - TC Decision Services - Financial U, LLC - Kenneth Rees - Elevate Credit (terminated) - William Weinstein (terminated) - Weinstein, Pinson and Riley, PS (terminated) - Cerastes, LLC (terminated) - National Credit Adjusters, LLC - Selling Source, LLC - Partnerweekly, LLC d/b/a MoneyMutual.com (terminated)	Plaintiff: -Pennsylvania Attorney General Defendants: - Think Finance, Inc TC Loan Service, LLC - Tailwind Marketing, LLC, - TC Decision Services - Financial U, LLC - Kenneth Rees - Elevate Credit (terminated) - Weinstein, Pinson and Riley, PS (terminated) - Veerastes, LLC (terminated) - National Credit Adjusters, LLC - Selling Source, LLC - Partnerweekly, LLC d/b/a MoneyMutual.com (terminated) - Payday One, LLC

⁹⁴ Film available online, http://www.anunlikelysolution.com/.

	Case	Parties	Issue Litigated	Procedural History
				fulfilled the statutory definition of debt collector. The court held that plaintiff pled sufficient facts to uphold the Unfair Trade Practices and Consumer Protection Law claim and no exceptions applied. Court denied plaintiff's Dodd Frank EFTA and personal information claims because they pled insufficient facts, but upheld the unreasonable advantage and common enterprise claims.
				Litigation still active.
SII	NGLE-CONSUMER PLAINT	TIFFS		· •
6.	Arunachalam v. Payday One, LLC, No. 1:14-cv- 00495 (D. Del. filed April 18, 2014).	Plaintiff: -Dr. Lakshmi Arunachalam Defendants: -Payday One, LLC -Think Finance Inc.	Plaintiff alleged that defendants violated his patents to software products and internet services. Plaintiff filed pro se.	Parties stipulated to dismiss with prejudice, with each party bearing its own costs, expenses, and attorney's fees.
7.	Bynon v. Mansfield, No. 15-00206 (E.D. Pa. filed Jan 16, 2015).	Plaintiff: -Breanda Taylor Bynon Defendants: -Craig Mansfield -William McKibbin, III -Kevin Cronin -Mark Edward Weiner -Loan Servicing Solutions, LLC -Auto Loans, LLC -Car Loans, LLC -Management Solutions, LLC -Bryan Casey -Top Notch Recovery, IncJVI Recovery Services, IncVince Venezia Garnishee: -Wells Fargo Bank	Plaintiff Bynon sued Mansfield, the manager of Sovereign Lending Solutions (SLS) (claiming affiliation with Lac Vieux Desert Band), for issuing her a usurious title loan and then repossessing her vehicle after claiming nonpayment. Plaintiff filed claims for violation of FDCPA, Racketeer Influenced and Corrupt Organizations Act (RICO), and Pennsylvania law.	The district court dismissed Craig Mansfield for lack of subject matter jurisdiction (ECF No. 21). Craig Mansfield was the manager of Sovereign Lending Solutions (SLS), a payday company claiming affiliation with the Lac Vieux Desert Band Tribe. Court holds that Bynon's dispute was actually with payday company, SLS, not Mansfield. All of the items in the complaint pertained to Mansfield fulfilling his obligations under his employment. Court noted that the plaintiff could not sue Mansfield in an effort to circumvent the tribe and the tribe's sovereign immunity. As a result, Mansfield was dismissed from the suit. Plaintiff submitted motion for default judgment against William McKibbin, III, Mark Weiner, Kevin Cronin, Auto Loans, LLC, Car Loans, LLC, Loan Servicing Solutions, LLC, Management Solutions, LLC, Bryan Casey, JVI Recovery Services, Inc., Vince Venezia and Top Notch Recovery, which was unopposed. Court granted the motion for default judgment (ECF No. 55).

Fig	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation 90				
	Case	Parties	Issue Litigated	Procedural History	
8.	Feuer v. PDO of Illinois, No. 1:13-cv-01030 (N.D. Ill. filed Feb. 08, 2013).	Plaintiff: -Kurt Feuer Defendants: -PDO of Illinois, LLC d/b/a Payday One -Think Finance, Inc.	Plaintiff was an attorney and files pro se. Plaintiff alleged that defendants violated TCPA for repeatedly calling him even though he was on the federal do-not-call list.	Voluntarily dismissed through settlement.	
9.	Finn v. Great Plains Lending, No. 2:15-04658 (E.D. Pa. filed Aug. 17, 2016); Finn v. Great Plains Lending, LLC, No. 15- 4658, 2016 WL 705242 (E.D. Pa. Feb. 23, 2016) (dismissing Great Plains Lending for lack of personal jurisdiction).	Plaintiff: -Keith Finn Defendant: -Great Plains Lending, LLC	Plaintiff, Mr. Finn, sued Great Plains Lending for violation of TCPA. Plaintiff received a loan from Great Plains Lending.	Although Great Plains raised sovereign immunity as grounds for dismissal (ECF 7, Dec. 15, 2015), court ultimately dismissed case on February 23, 2016, for a lack of personal jurisdiction in Pennsylvania. Court noted that Great Plains is not incorporated in Pennsylvania nor is Pennsylvania its principal place of business—the only connection was a P.O. box that a third-party vendor operated for the payday company. Court holds that the P.O. box was not enough for general jurisdiction.	
10	Finn v. Great Plains Lending, No. 5:16-00415- M (W.D. Okla. filed April 22, 2016); Finn v. Great Plains Lending, No, 16- 415, 2016 WL 6537986 (W.D. Okla. Nov. 3, 2016) (dismissing case, finding tribal sovereign immunity applies).	Plaintiff: -Keith Finn Defendant: -Great Plains Lending, LLC	Plaintiff, Mr. Finn, sued Great Plains Lending for violation of TCPA. Plaintiff received a loan from Great Plains Lending.	The district court dismissed the case, holding that there was no jurisdiction due to tribal sovereign immunity. The court applied the <i>Breakthrough</i> arm-of-the-tribe factors. The district court held that, even though plaintiff had challenged the legitimacy of the tribal documents demonstrating the relationship between tribe and payday entity, the declaration and tribal documents were sufficient to satisfy the <i>Breakthrough</i> factors (it was a brief discussion, the opinion does not spell out each factor individually). Additionally, the court noted that plaintiff failed to offer evidence that "Great Plains [was] just a front for Think Finance," noting that plaintiff submitted evidence from case the Pennsylvania AG brought against Think Finance, but did not offer evidence about the relationship between Think Finance and Great Plains Lending.	

⁹⁵ See 629 F.3d at 1183.

Fig	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰				
	Case	Parties	Issue Litigated	Procedural History	
11.	Bank, No. 2:13-cv-06138 (D.N.J. filed Oct. 16, 2013).	Plaintiff: -Angel L. Gordon Defendants: -First Premier Bank -Bay Cities Bank -Missouri Bank & Trust -National Bank of California	Plaintiff sued ODFIs that originated payday loans she received, including a loan from Niizh, LLC d/b/a Bright Star Cash.	A week after filing complaint, plaintiff voluntarily dismissed the case.	
12.	Harris v. Mobiloans, LLC, No. 5:16-cv-04580-NC (N.D. Cal. filed Aug. 11, 2016).	Plaintiff: -Jonathan Harris Defendant: -Mobiloans	Plaintiff Mr. Harris sued Mobiloans for violating California debt collection law.	After parties failed to consent or decline hearing by a magistrate, plaintiff voluntarily dismissed Mobiloans from suit. Unclear why the dismissal occurred.	
13.	Meyer v. Accredited Collection Agency, Inc., No. 1:13-cv-00444-LG- JCG (S.D. Miss. filed June 1, 2016); Meyer v. Accredited Collection Agency, Inc., No. 1:13cv444, 2016 WL 379742 (S.D. Miss. Jan. 29, 2016) (dismissing Guidiville Rancheria from suit); Meyer v. Accredited Collection Agency, Inc., No. 1:13cv444, 2016 WL 3093968 (S.D. Miss. June 1, 2016) (entering default judgment against Winters and Accredited Collection Agency).	Plaintiff: -Casie Meyer Defendants: 96 -Accredited Collection Agency -Thomas Black -United Credit Specialist -Jeff Winters -Guidiville Indian Rancheria -UKIS -UKIS Financial -Michael Derry -United Credit Specialist Recovery -Joey Capo -Josephine Capo	Plaintiff Meyer sued defendants for violations of the Fair Debt Collection Practices Act (FDCPA). Defendants called plaintiff multiple times a day about her debt.	District court dismissed Guidiville Tribe from suit due to sovereign immunity. District court held there was no clear congressional abrogation for tribes under the FDCPA and the tribe did not issue an unequivocal waiver by entering into a limited waiver of sovereign immunity with Accredited Collection Agency and Jeff Winters. District court entered a default judgment against Jeff Winters which he was jointly liable for with the Accredited Collection Agency.	

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⁹⁶ Case also included Guidiville Indian Rancheria as cross-claimant and Accredited Collection Agency and Jeff Winters as cross-defendants.

Fig	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation 90					
	Case	Parties	Issue Litigated	Procedural History		
14.	Powell v. RS Fin. Servs., LLC, No. 1:12-cv-00716 (W.D.N.Y. filed July 27, 2012).	Plaintiff: -Sincere Powell Defendant: -RS Financial Services -RS Financial Management -Auto Portfolio Services -William McKibbin -PAR, Inc. d/b/a PAR North America - Buffalo Auto Recovery Service, LLC	Plaintiff alleged that Defendants violated the FDCPA and RICO Act for collecting debt from a title loan plaintiff received from Sovereign Lending Solutions, LLC, d/b/a Title Loan America.	Plaintiff voluntarily dismissed case before defendants responded to complaint.		
15.	Wireless, No. 4:14-CV-00052-CVE-FHM (N.D. Okla. filed Feb. 5, 2014).	Plaintiff: -Eddie Santana Defendants: -Verizon Wireless -IC Systems IncJPMorgan Chase Bank, NA -Diversified consultants, IncCity of George West -McCreary Velska, Bragg & Allen, PC -Mobiloan -One Click Cash -TransUnion -Equifax -Experian Information Solutions, IncAT&T Mobility, LLC	Plaintiff filed pro se, arguing that defendants, including One Click Cash and Mobiloans, engaged in unlawful debt collection practices.	Plaintiff dismissed Mobiloans from suit (unclear why—Mobiloans had not filed any motions) while One Click Cash did not appear and had default entry filed against it.		
	DERAL CLASS-ACTION SU		Districtiff Farmers 1 and 1 and 11	District and at the last of th		
16.	Everette v. NDG Fin. Corp., No. 1:15-cv-01261- CCB (D. Md. filed April	Named Plaintiff: -Alicia Everette	Plaintiff Everette initially sought to certify a class. Plaintiff alleged violations of Maryland consumer	District court entered a default entry against NDG Financial Corp. on August 6, 2015.		
	30, 2015); Everette v. Mitchem, 146 F. Supp.3d	Defendants: -Joshua Mitchem (terminated)	protection laws and the EFTA.	District court denied plaintiff's motion for discovery and granted Mobiloans and Riverbend Finance's motions to dismiss. Court		

Case	Parties	Issue Litigated	Procedural History
Mobiloans and Riverbend Finance's motions to dismiss); Everette v. Mitchem, No. CCB-15-1261, 2016 WL 470840 (D. Md. Feb. 8, 2016) (granting Mitchem, Shaffer, and Tucker's motions to dismiss).	-Jeremy Shaffer (terminated) -Scott Tucker (terminated) -NDG Financial Corporation -Mobiloans, LLC (terminated) -Riverbend Finance (terminated)	Plaintiff received loans from Action Payday and Bottom Dollar Payday, owned by FSST Financial Services LLC, which are purportedly owned by the Flandreau Santee Sioux Tribe. She alleged that the payday entities are actually owned and operated by Defendants Mitchem and Shaffer. She also received loans from Ameriloan and UnitedCashLoans, subsidiaries of MNE, purportedly owned by the Miami Tribe of Oklahoma. Plaintiff alleged that these payday entities are actually owned and operated by Scott Tucker. Plaintiff also received a loan through CashTaxi.com, a subsidiary of Oasis Funds, LLC, purportedly owned by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians. Plaintiff alleged that the payday entities are actually controlled by Jeremy Sabourin and Kimberley DeThomas, executives of NDG Financial.	holds that tribal members' declarations and tribal resolutions the created companies were sufficient to show that the tribes controlled the companies. "Because there is no evidence that tribes do not own and control Mobiloans and Riverbend, and permitting jurisdictional discovery would undermine the purpos of the sovereign immunity doctrine, the plaintiff's motion for jurisdictional discovery will be denied." Court applied 6 *Breakthrough** factors: 1) method of creation, 2) purpose 3) structure, ownership, and management, including tribal control, 4) tribe's intent to share tribal immunity, 5) financial relationsh and 6) whether tribal sovereign immunity is served by granting immunity to the entity. Court held that the tribal operating agreements, tribal council members' declarations, and payday charters were sufficient to satisfy the factors. Court granted Mobiloans and Riverbend Finance's motions to dismiss. District court granted Mitchem, Shaffer, and Tucker's motions for dismissal and denied plaintiff's motion for discovery. Court holds that the only justification for subject matter jurisdiction w federal question jurisdiction through plaintiff's EFTA claim, bu plaintiff's claims did not fall within the 1-year statute of limitations. As a result, federal question jurisdiction did not exist and court declined supplemental jurisdiction over state law claims. All claims were dismissed except for those pending against ND Financial Corp.

⁹⁷ 629 F.3d at 1183.

Fig	Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰				
	Case	Parties	Issue Litigated	Procedural History	
			She also received a loan from Mobiloans, purportedly owned by the Tunica-Biloxi Tribe of Louisiana.		
			Plaintiff also received a loan from Riverbend Cash, purportedly owned by the Fort Belknap Indian Community.		
17.	Abaya v. Total Account Recovery, LLC, No. 2:15- cv-01269 (E.D. Cal. filed June 12, 2015); Abaya v. Total Account Recovery, LLC, 2016 WL 3407783 (E.D. Cal. June 20, 2016) (Granting motion to compel arbitration).	Named plaintiff: -Joel Abaya Defendant: -Total Account Recovery, LLC	Plaintiff sued defendant, a consumer debt buying company, for calling him repeatedly in violation of the TCPA. Defendant purchased debt from FSST Financial Services after plaintiff entered into a loan agreement with FSST Financial Services, d/b/a Bottom Dollar Payday.	District court granted motion to compel arbitration, holding that mandatory arbitration was warranted because the plaintiff contested only the defendant's standing to enforce the contract and not the merits of the arbitration clause it self. Class has not been certified. Case is stayed pending arbitration.	
	Achey v. BMO Harris Bank, No. 1:13-cv-07675 (N.D. Ill. filed Oct. 25, 2013).	Named plaintiff: -Christina Achey Defendant: -BMO Harris Bank	Plaintiff sued defendant, an ODFI, for connection to loan she received from MNE Services company Ameriloan. Plaintiff alleged that defendant violated RICO laws and Pennsylvania consumer laws.	District Court granted defendant's motion to compel arbitration. District court held that the ODFI defendant, BMO Harris bank, was entitled to enforce the arbitration agreement under the doctrine of equitable estoppel.	
19.	Aleksic v. Clarity Servs., Inc., No. 1:13-cv-07802 (N.D. Ill. filed Dec. 2,	Named plaintiffs: -Zorana Aleksic -Steven Schaller	Plaintiffs alleged Fair Credit Reporting Act (FCRA) violations arising	District court denied class certification because the class definition was not sufficiently narrowed. Court also held that even if the class definition were narrow, the class wouldn't be	

Figure 15: Litigation History In	gure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰		
Case	Parties	Issue Litigated	Procedural History
2014); Aleksic v. Clarity Servs., Inc., No. 13C7802, 2014 WL 7793410 (N.D. III. Dec. 2, 2014) (denying class certification); Aleksic v. Clarity Servs., Inc., No. 13C7802, 2014 WL 1287376 (N.D. III. March 31, 2016) (Granting Clarity and Experian's motions to dismiss); Aleksic v. Experian Solutions, Inc., No. 13C7802, 2014 WL 2769122 (N.D. III. June 18, 2014) (denying Clarity's motion to dismiss, granting Experian's motion to dismiss); Aleksic v. Clarity Servs., Inc., No. 13C7802, 2015 WL 4139711 (N.D. III. July 8, 2015) (granting Clarity's motion for summary judgment).	Defendants: -Experian Information Solutions -Clarity Services	from defendants giving credit reports to Mambo Cash, Great Plains Lending, Red Rock Tribal Lending, LLC, CIAW T3 Leads Night, CashwebUSA, Lead Express, Vivus Servicing, ltd, Green Trust Cash, Star Group, LLC, RP Capital, LLC, Blue Novis, Inc. and Payday Max Ltd. without permission. Plaintiff received threatening calls demanding she repay loans she supposedly received from payday lenders. Attempted to certify class, but failed.	eligible for certification because individual issues predominated, including whether any report was issued with her permission, whether any entity was subject to tribal immunity and Clarity was aware of its sovereign immunity, and what the damages were for each class member. District court then granted defendants' motions to dismiss because, it held, FCRA does not require that credit reporters verify that internet lenders are licensed to do business in the state where the consumer is located. Additionally, the court noted that the credit reporters did not know that the internet lenders would violate their certification. Plaintiff amended the complaint, alleging that Clarity violated FCRA by agreeing to obtain credit information for internet lenders, even though Clarity knew lenders weren't licensed in consumers' state and were being investigated for improper lending practices in other states. Clarity challenged the amended complaint, alleging that the claim was too similar to the one dismissed. Court disagreed, denied Clarity's motion to dismiss and granted Experian's motion to dismiss because plaintiffs did not allege the same conduct of Experian. Clarity's motion for summary judgment was granted because Clarity reported to the lenders which requested the credit check that plaintiffs had been subject to identity fraud, and, as a result, no lender completed a loan in the plaintiffs' names. Calls purportedly collecting on the false debt came from a blocked number and the callers never identified themselves. Plaintiffs alleged some emotional distress, but court held that they failed to prove sufficient damages because they failed to show a causal relationship between the phone calls and Clarity's verification of their identity to the lenders. The court did not find that Clarity willfully misissued the plaintiffs' information and held nothing required Clarity to verify the lenders were licensed in Illinois. As a result, court granted defendant's motion for summary judgment.

	Case	Parties	Issue Litigated	Procedural History
20.	Baillie v. Dollar Fin. Corp., No. RG07327031, 2011 WL 9683752 (May 27, 2011 Cal. Super. Ct.) (holding tribal immunity is not a complete bar to discovery).	Named plaintiff: -Amy Lynn Baillie Defendants: -Dollar Financial Corp d/b/a Dfg Holdings -Dollar Financial Group, IncAccounts Receivable Management of Florida - MTE Financial Services, IncInstantcashloantill- payday.com -Processing Solutions, IncInstant Cash USA, -First East, IncFast Funding the Company, Inc.	Plaintiff received payday loan from instantcashtilpayday.com, sued MTE Financial Services, Instantcashloantillpayday.com, and others for offering usurious loans in violation of CA law, CA unfair competition laws, and debt collection violations. Certifies class action.	Defendant MTE filed motion to dismiss for lack of jurisdiction, arguing that affiliation with Modoc Tribe of Oklahoma entitled it to tribal immunity. Trial court held that tribal immunity did not shield MTE from jurisdictional discovery pertaining to tribal immunity.
21.	Decker v. RS Fin. Servs. LLC, No. 5:14-cv-00242 (W.D. Okla. Filed March 13, 2014).	- Rio Resources Named plaintiff: -Sarah Decker Defendants: -RS Financial Services, LLC -Sovereign Lending Solutions, LLC, d/b/a Title Loan America -William McKibbin -Andrew Schwartz -Lac Vieux Desert Band of Lake Superior Chippewa Indians	Plaintiff, who received a \$460 title loan from Title Loan America via the internet, filed class-action suit against defendants for issuing usurious title loans, unconscionability, fraud, deceit, and unjust enrichment. The final loan payment was \$3,000 which plaintiff could not pay. Sovereign Lending Solutions repossessed plaintiff's car when she could not pay the final payment of \$3,000.	Case dismissed due to settlement.

Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation 90 Case **Parties Issue Litigated Procedural History** Dillon v. BMO Harris Bank, Named plaintiff: Defendants moved to compel arbitration; plaintiff contested authenticity Plaintiff sued ODFIs for No. 1:13-cv-00897 (M.D.N.C. of contract. Court denied motion, finding that defendants did not offer -James Dillon RICO violations (18 filed Oct. 8, 2013); Dillon v. sufficient evidence to show that plaintiff agreed to arbitration U.S.C. § 1962), violations BMO Harris Bank, No. 1:13agreements or to show that the documents supposedly showing an Defendants: of North Carolina agreement to arbitrate were authentic. Court noted that the agreement cv-897, 2014 WL 911950 Consumer Finance Act. -BMO Harris Bank was signed by no one and the movants were not even parties to the (M.D.N.C. March 10, 2014) -Four Oaks Band and Trust North Carolina Aiding agreement. Court denied motion to reconsider motion to arbitrate, even (denying defendants' motions and Abetting Usury law, (terminated) though defendants offer new affidavits purportedly authenticating the to compel arbitration and -Generations Federal Credit and violations of North dismiss); Dillon v. BMO documents. Carolina Unfair Trade Union Harris Bank, No. 1:13-cv-897, -Bay Cities Bank Practices Act. Plaintiff 2014 WL 3107295 (M.D.N.C. District court then denied defendants' motion to dismiss for failing to July 7, 2014) (denying received loans from Great join lenders as indispensable parties on the grounds that (defendants defendants' motion to dismiss allege) 1) lenders were parties to the plaintiff's loan agreements, 2) Plains Lending, or to compel arbitration); because plaintiff challenges the lenders' business model, and 3) lender USFastCash, Vin Capital, Dillon v. BMO Harris Bank. White Hills Cash was a required party because the case impinges on LLC, White Hills Cash, "White Hills Cash's sovereign rights as an arm of a federally recognized 16 F. Supp. 3d 605 (M.D.N.C. and Western Sky (where Indian tribe." Court held that payday lenders were not indispensable 2014) (granting in part and CashCall collected and parties because plaintiff was not looking for injunctive relief. Court also denying in part defendants' serviced the loan). held that White Hills Cash did not need to be a party – despite the tribal motions to dismiss); *Dillon v*. BMO Harris Bank, 787 F.3d immunity argument – because 1) the court could afford complete relief 707 (4th Cir. 2015) (reversing without White Hills Cash as a party, 2) defendants did not explain how the litigation would impact contractual relationships with the lenders, and remanding denial of motion to arbitrate); Dillon v. and 3) should the plaintiff win, it would not prohibit lenders from BMO Harris Bank, No. 1:13lending money or collecting their loans. cv-897. 2015 WL 6619972 (M.D.N.C. Oct. 30, 2015) In the same opinion, district court denied BMO Harris Bank's request (granting plaintiff's motion, in for severance, holding that the claims arose from a common question of part, for discovery); Dillon v. law. Court denies BMO Harris Bank's motion to transfer as it did not BMO Harris Bank, No. 1:13meet its burden. Court denied defendants' motion to dismiss RICO cv-897, 2016 WL 6810921 claims, denied defendants' motion to dismiss North Carolina Unfair and Deceptive Trade Practices Act, granted defendants' motion to dismiss (M.D.N.C. March 4, 2016) North Carolina Aiding and Abetting Usury law, and granted BMO (denying compelled arbitration because choice of tribal law Harris, Four Oaks, and Generations' motion to dismiss North Carolina does not exist): Dillon v. BMO Consumer Finance Act claims pending against them. Harris Bank, 173 F. Supp. 3d 258 (M.D.N.C. 2016) (holding Defendants appealed the denial of their motion to dismiss. Fourth Muir declaration, Dillon Circuit reversed and remanded case for reasons unrelated to tribal deposition, Mr. Knowles immunity. testimony, purported loan agreements all insufficient to On remand, plaintiff filed motion to compel defendants to produce

Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation 90 **Issue Litigated Procedural History** Case **Parties** documents related to arbitration, including factual evidence of sovereign authenticate loan agreements); Dillon v. BMO Harris Bank, immunity and tribal arbitration. Defendants objected to discovery on the basis of privilege. Defendants also objected to the production of No. 1:13-cv-897, 2016 WL sovereign immunity materials. Court allowed discovery to determine 5679190 (M.D.N.C. Sept. 30, 2016) (ordering sanctions on whether colorable claim of tribal jurisdiction existed and overruled plaintiff's counsel for objection to sovereign immunity discovery on grounds that "tribal withholding evidence); Dillon sovereign immunity and tribal jurisdiction are interrelated concepts." v. BMO Harris Bank, No. 1:13-cv-897, 2017 WL In March, 2016, defendants filed renewed motion to compel arbitration; 564501 (M.D.N.C. Feb. 10, district court denied motion on grounds that the arbitration clause in the 2017) (issuing sanction contract selecting Chevenne River Sioux Tribal law could not be amounts); Dillon v. BMO enforced. Harris Bank, Order without On February 6, 2017, 4th Circuit denied motion for summary opinion denying summary disposition, No. 16-1351, ECF disposition. Case is stayed pending appeal. 60 (4th Cir. Feb. 6, 2017). Named plaintiff: District court granted defendants' motion to compel arbitration, Graham v. BMO Harris Class action against holding that loan agreements are legitimate. Court did not discuss -Christopher Graham actors involved in payday Bank, No. 3:13-cv-01460. -Ellen Russo lending affiliated with tribal affiliation. Sovereign immunity was not raised. (D. Conn. filed Oct. 4. 2013); Graham v. BMO tribes. Lawsuit does not Harris Bank, No. 3:13-cv-Defendants: initially name payday 01460, 2014 WL 4090548 lenders. Plaintiff received -BMO Harris Bank (D. Conn. July 16, 2014) a payday loan from -First International Bank and (compelling arbitration). Spotloan, Silver Cloud Trust -First Premier Bank Financial, Plain Green, -National Bank of California and National PDL d/b/a -Missouri Bank and Trust National Payday. Plaintiff -North America Banking Ellen Russo received a payday loan from AWL Company d/b/a American Webloan, Cash Cure, and One Click Cash. Plaintiffs sue ACH network operators (ODFIs, receiving depository financial institutions, receivers. and third-party service providers) that facilitate

	Case	Parties	Issue Litigated	Procedural History
			the loan after the payday lender has initiated it.	
24.	Gingras v. Rosette, No. 5:15-cv-00101 (D. Vt. filed May 18, 2016); Gingras v. Rosette, No. 5:15-cv-101, 2016 WL 2932163 (D. Vt. May 18, 2016).	Named plaintiffs: -Jessica Gingras -Angela Given Defendants: -Joel Rosette -Ted Whitford -Tim McInerney -Think Finance -TC Loan Service LLC -Kenneth E. Rees -TC Decision Sciences, LLC -Tailwind Marketing, LLC -Sequoia Capital Operations, LLC -Technology Crossover Ventures	Class-action suit against Think Finance, Kenneth Rees, etc. for violating state usury laws, CFPA, FTCA, racketeering laws, and state law pertaining to lender's access to consumers' bank accounts. Plaintiffs also brought RICO claim against defendants. Plaintiffs received loans from Plain Green, which they allege is affiliated with the Chippewa Cree Tribe.	District court held that sovereign immunity wasn't a complete bar to suit because, like <i>Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services</i> , 769 F.3d at 115, the relevant conduct occurred outside Indian lands. Court held that plaintiffs had sufficient Article III standing because they continued to owe money on unlawful loans. Court held that none of the Plain Green tribal defendants met the "minimum contacts test" in Vermont and personal jurisdiction wasn't warranted under the RICO statute. Kenneth Rees and Think Finance defendants had sufficient contacts with Vermont, however. The court held it did not have personal jurisdiction over Sequoia Capital Operations or Technology Crossover Ventures, but permitted discovery. Court denied motion to compel arbitration. Court dismissed CFPA and FTCA claims as they did not create a private cause of action. Court dismissed EFTA claims as the statute of limitations had tolled. Court dismissed RICO claims against all defendants except Think Finance and Kenneth Rees. Court permitted discovery as to Technology Crossover Ventures and Sequoia Capital Operations. Court upheld the RICO claims. Currently being appealed to Second Circuit. Litigation still active, but stayed pending appeal.
25.	Gunson v. BMO Harris Bank, No. 0:13-cv-62321 (S.D. Fla. filed Oct. 23, 2014); Gunson v. BMO	Named plaintiff: -Patricia Gunson Defendants:	Plaintiff sued ODFIs affiliated with the payday loans she received, including loans from	Defendant moved to compel arbitration pursuant to loan agreements (even though the ODFIs were not signatories to those agreements) and to stay discovery. District Court granted motion to compel arbitration, holding that equitable estoppel allowed
	Harris Bank, 43 F. Supp.3d 1396 (S.D. Fla. 2014) (holding that equitable	-BMO Harris Bank National Association -First Premier Bank	Plain Green, LLC, which claimed to be affiliated with the Chippewa Cree,	non-signatories to enforce arbitration provisions under Florida law. Court disregarded plaintiff's argument that defendants hadn't shown that equitable estoppel applies in Delaware or
	(norung mai equitable	I list I fellifet Dulik	with the chippewa cice,	nadii t showii that equitable estopper applies in Belaware of

	Case	nvolving Payday Businesses Cla Parties	Issue Litigated	Procedural History
	Gunson v. BMO Harris Bank, 300 F.R.D. 581 (S.D. Fla. 2014) (court grants defendants' protective order to keep some discovery materials confidential.)	-Mutual of Omaha Bank -c/o Miguel Cordano Bank of America.	affiliated with the Fort Belknap Tribe.	law provisions [were] not necessarily applicable to the question of arbitrability." 43 F. Supp.3d at 1400.
266	. Labajo v. First Int'l Bank & Trust, No. 5:14-cv-00627 (C.D. Cal. filed March 31, 2014); Labajo v. First Int'l Bank & Trust, No. EDCV14-00627, 2014 WL 4090527 (C.D. Cal. July 9, 2014) (granting motion to compel arbitration).	Named plaintiffs: -Christina Labajo -John Labajo Defendants: -First International Bank & Trust -Mutual of Omaha Bank	Plaintiffs sued ODFIs affiliated with payday loans they received, including loans they received from MNE Services, Inc. (companies affiliated with the Miami Tribe) and SFS, Inc. (companies affiliated with the Santee Sioux Nation). Plaintiff alleged that defendants violated federal UDAAP laws, FDCPA, Truth in Lending Act (TILA), and Regulation Z.	District court granted Defendants' motion to compel arbitration, holding that the ODFIs were third-party beneficiaries of the arbitration agreements and were agents of the payday lending companies.
27	Pearson v. United Debt Holdings, No. 1:14-cv- 10070 (N.D. Ill. filed Dec. 16, 2014); Pearson v. United Debt Holdings, 123 F. Supp. 3d 1070 (N.D. Ill 2015) (dismissing motion to compel and motion to dismiss for lack of jurisdiction). Pettus v. Servicing Co.	Named plaintiff: -Samuel Pearson Defendants: -United Debt Holdings, LLC -National Check Resolution, Inc. Named plaintiffs:	Plaintiff sued for violations of FDCPA after defendant attempted to collect the Plain Green loan which plaintiff alleged was illegal in his state of residence. Plaintiffs allege The	District court denied defendants' motion to compel arbitration or dismiss case on "tribal exhaustion" theory. District court held that defendants failed to provide sufficient evidence to authenticate supposed loan agreement that contained the arbitration provision. Court held that "tribal exhaustion" did not apply because defendants failed to make "colorable assertion of tribal court jurisdiction." Court held there was no colorable assertion because defendants never claimed to enter tribal land or dispute implicated self-governance of tribal land in any way. Case was dismissed due to settlement. Unclear—many documents sealed.

	Case	Parties	Issue Litigated	Procedural History
	LLC, No. 15-cv-00479 (D. Va. filed Aug. 14, 2015).	-Angela Pettus - Lawrence Mwethuku - Michelle Campbell Defendants: -The Servicing Company, LLC -Barbara Dolan Movant: -Island Finances -Michelle Fox	Servicing Company, Island Finances, Michelle Fox and others violated FCRA and Federal Equal Credit Opportunity Act (ECOA). The Servicing Company allegedly sold and resold millions of consumer reports without consumers' permission.	
29.	. Walp v. CLK Mgmt., No. 2:07-cv-03845-CMR (E.D. Pa. filed Sept. 17, 2007).	Named plaintiffs: -Matthew Walp -Mary T Walp Defendant: -CLK Management -Internet Cash Advance Marketing -Miami Tribe of Oklahoma -Miami Nation Enterprises -MTE Financial Services, IncTFS CorpSFS IncSilver State Business Administrators, IncSantee Sioux Tribe of Nebraska -CB Service CorpExecutive Global Management, Inc.	Plaintiffs alleged MNE, MTE Financial Services, TFS Corp., SFS, Silver State Business Administrators Santee Sioux Tribe of Nebraska, Miami Tribe of Oklahoma and others of violating Truth in Lending Act, Pennsylvania usury and UDAAP laws, and civil conspiracy.	Settlement occurred before motions began. Settlement was vacated but sealed.
SU	JITS BROUGHT BY PAYDA			
30.	. Chippewa Cree Tribe of the Rocky Boy's Reservation v. Roberts, No. 4:14-cv-00063 (D. Mont. filed Aug. 8, 2014); Chippewa Cree Tribe of the Rocky Boy's	Plaintiffs: - Chippewa Cree Tribe -Plain Green, LLC -First American Capital Resources	Tribe and payday lenders purportedly affiliated with tribe alleged defendants fraudulently took money from tribe as part of a fraudulent	Plaintiffs requested jury trial (ECF No. 78). Minute entry showed that the court ordered parties to complete production of documents and interrogatories by December 2015. Court granted plaintiff's motion to compel defendants' response to written discovery requests (ECF No. 129). Think Finance moved to quash subpoenas related to case in 3:15-mc-00141-N-BH

Fi	re 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation ⁹⁰			
	Case	Parties	Issue Litigated	Procedural History
	Reservation v. Roberts, No. 3:15-mc-00141-N-BH (N.D. Tex. Filed Dec. 30, 2015) (Think Finance's motion to quash subpoena, related to Chippewa Cree case above).	Defendants: -Zachary Roberts -Richard Lee Broome -Gordon Jones -Martin Marraza -Destel, LLC -Fresh Start Marketing, LLC -Encore Services, LLC Movant in 3:15-mc-00141-N-BH: -Think Finance	agreement to advance payday business. Neal Rosette Sr. and Billi Anne Morsette allegedly took bribes to help defendants steal money from tribe. ⁹⁸	proceeding and then withdrew order due to settlement agreement. Case dismissed due to settlement on January 19, 2016.
31	Island Fin. LLC v. Roces & Co. LLC, No. 9:15-cv-02696-SB (D.S.C. filed July 7, 2015).	Plaintiff: -Island Finance, LLC, d/b/a White Hills Cash Defendants: -Roces & Co. & Company d/b/a Merchant Services Center	Island Finance, payday lender associated with Fort Belknap Tribe, sued ACH processor Roces & Co. for contract violation after ACH operator withheld money outside of what was permissible in the contract.	Settlement.
32	. Katzrin Fin. Group, LLC v. Arapex LLC, No. 651129/2014, 2015 WL 6391092, (N.Y. Sup. Ct. Oct. 22, 2015).	Plaintiff: -Katzrin Finance Group, LLC Defendants: -Arcapex LLC -Blackthorn Advisory Group, LLC -Light Sword, LLC -Vincent Ney -Jon Geidel -Katten Muchin Rosenman, LLP	Investor Katzrin Finance group sued Vincent Ney for fraudulently representing payday lender, Blue King—purportedly owned by the Chukchansi Indian Tribe and managed by Ney's companies Arcapex, Blackthorn, and Light Sword—for failing to disclose the financial	Supreme Court of New York granted defendants' motion to dismiss for failure to state a claim because the plaintiff's argument did not sufficiently show the elements of fraud.

⁹⁸ Neal Rosette Sr. and Billi Anne Morsette pled guilty to federal offenses for accepting bribes following this civil case. Press Release, *Plain Green Officials Sent to Prison*, Department of Justice (March 8, 2016), https://www.justice.gov/usao-mt/pr/plain-green-officials-sent-prison.

	Case	Parties	Issue Litigated	Procedural History
333.		Plaintiffs: -Otoe-Missouria Tribe -Great Plains Lending, LLC -American Web Loan, IncOtoe-Missouria Consumer Finance Services Regulatory Commission -Lac Vieux Desert Band of Lake Superior Chippewa Indians -Red Rock Tribal Lending, LLC -Lac Vieux Desert Tribal Financial Services Regulatory Authority Defendants: -NY State Dept. of Financial Services (NYSDFS)	arrangements between the payday company and tribal members and the payday company and the servicing companies. Plaintiff Otoe-Missouria Tribe and Lac Vieux Desert Band asked court for an injunction against state of New York Department of Financial Services (NYDFS) for banning payday loans and issuing them cease and desist letters, allegedly in violation of the Indian Commerce Clause. Plaintiffs also argued that NYDFS infringed upon their tribal sovereignty by sending letters to ACH operators and banks to stop processing payday loans in New York.	District court denied plaintiffs' request for an injunction against NYSDFS to prevent it from enforcing state usury laws against tribes and purported tribal lenders. The court held that the tribes and payday lenders have standing to sue in federal court on the theory that the state may have infringed on the tribes' sovereignty. Court found, however, that plaintiffs have failed to show that the state is regulating conduct that occurs on tribal lands and instead found that the state is only looking to regulate conduct that occurs in New York with New York consumers. Court rejected plaintiffs' argument that NYSDFS has engaged in a targeted attack against them, holding that the state could use state usury statutes to protect New York consumers who receive loans in New York, especially when enforcement is universal and not differentiated for tribes. Second Circuit affirmed denial of preliminary injunction against NYSDFS on sovereign immunity grounds, holding that where a tribe's conduct goes beyond the reservation boundaries, it must follow state laws — as long as the law is non-discriminatory and
		-Benjamin M. Lawsky, Superintendent of NYSDFS		otherwise universally applicable to everyone in the state. While state enforcement was inapplicable to on-reservation activities, court found that here, plaintiffs did not provide sufficient evidence to show that the loans should be treated as an on-reservation activity. Additionally, they did not sufficiently show that the "cease and desist" letters caused them meaningful harm. Court holds that DFS's letters to ACH operators and banks were well outside tribal conduct and tribal land; thus outside the scope of sovereign immunity.

⁹⁹ All of the tribal council declarations in this case were from board members of NAFSA, described in Section I.A.1.

	Case	Parties	Issue Litigated	Procedural History
				Plaintiffs voluntarily dismissed case following Second Circuit decision.
34.	Shotton v. Pitkin, No. 5:15-cv-00241, 2015 WL 5091984 (W.D. Okla. Aug. 28, 2015).	Plaintiff: -John Shotton Defendants: -Howard F. Pitkin, former Commissioner of CT Dept. of Banking -Bruce Adams, acting Commissioner of CT Dept. of Banking.	John Shotton, Chairman of Otoe-Missouria Tribe, sued Connecticut officials for infringing on tribe's sovereign immunity by filing cease and desist orders to stop them from lending in Connecticut.	Case was dismissed pursuant to state's motion to for lack of personal jurisdiction. Agency was only enforcing actions taken within the state of Connecticut, not Oklahoma. As a result, agency cannot be sued in Oklahoma.

3. Alternative Sources of Information Relating To Tribes' Relationship To Payday Lenders

In addition to litigation documents and tribal governing materials, researchers also reviewed local and national newspapers, newspapers targeted toward a tribal audience, and newsletters published by the tribes themselves to analyze additional statements tribal members and tribal council officials made about their tribe's involvement in the payday lending industry. Of the 27 tribes currently or previously mentioned on lending websites, we found tribal officials representing approximately 10 tribes who made statements about their tribe's purported affiliation with payday lenders, either in tribal publications or through local or national media.

H. Analysis of Tribal Sources, Media Articles, and Litigation Documents Discussing the Involvement of Tribes in Payday Businesses

Based on the tribal documents, litigation filings, press statements, and other resources identified in Section IV.G. above, researchers were able to identify broad trends. First, researchers noted that only a handful of tribal council officials submitted declarations to court in litigation, and that many of those same tribal council officials are board members in the lobbyist group NAFSA. Second, many of the tribal documents submitted to court were both vague and substantively similar in what information was disclosed. Third, while many of the tribal documents submitted to courts by lenders created the appearance that tribes closely owned the payday businesses, other tribal statements cast doubt on the actual nature of the relationship between lender and tribe portrayed in litigation documents. Only one tribe, the Habematolel, provided its membership with some information regarding what was happening with the purportedly affiliated payday companies. Fourth, media coverage indicated that in general, tribes were only superficially involved in the operations of the payday businesses, if at all, and often general tribal members would openly contradict the assertions of the tribal council members providing declarations payday companies submitted to court.

1. Tribal Ordinances, Resolutions, and Codes

Researchers combed through the dockets of the cases discussed in Section IV.G.2 to determine whether the payday company or purportedly affiliated tribe submitted declarations or tribal documents as evidence. Researchers found tribal declarations and documents across all four types of cases; state enforcement actions, individual plaintiff's cases, class actions, and cases between the payday business or tribe and other entities. The tribal documents submitted to the court in those cases are listed in Figure 16 below,

¹⁰⁰ For a more detailed discussion of NAFSA, see Section I.A.1.

organized by tribe. Figure 16 also discloses where tribal documents are available on tribal websites or lenders' websites.

Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe¹⁰¹

	Agencies, By Tribe ¹⁰¹						
	Tribe	Document re: Lending Business or Regulatory Agency	Source(s)				
1.	Chippewa Cree	A Resolution, No. 39-15, to Authorize and Approve the Amendments to The Articles of Organization for Plain Green, LLC, to Strengthen the Business Management and Operations to Continue to Fulfill the Tribe's Economic Self-Sufficiency and Self-Determination Goals (April 13, 2015)	Gingras v. Rosette, No. 5:15-cv-00101-gwc, Doc. 13-6 (D. Vt. July 14, 2015).				
		Term Sheet for Think Finance- Chippewa Cree Transaction Articles of Organization of Plain Green, LLC	Gingras v. Rosette, supra, Doc. 23-2 (Aug. 13, 2015). Pennsylvania v. Think Fin., Inc., No. 2:14-cv-07139-JCJ, Doc. 67-4 (E.D. Pa. Aug. 28, 2015).				
		Chippewa Cree Tribal Codes, Tribal Lending and Regulatory Code ◆	Pennsylvania v. Think Fin., Inc., supra, Doc. 67-4 (Aug. 28, 2015).				
2.	Guidiville (CA)	Guidiville Indian Rancheria Tribal Lending Regulatory Ordinance 10-1, Tribal Lending Regulations ◆	Path Lending, https://www.pathlending.com/Portals/0/R egulation_PDFs/Guidiville%20Bank%20 of%20Pomo%20Indians%20Ordinance% 2010-1.pdf				
			https://pathlending.com/sites/default/files/content/faq/Guidiville%20Bank%20of%2 0Pomo%20Indians%20Tribal%20Lendin g%20Regulatory%20Authority%20%28T LRA%29%20Regulations.pdf				
		Business License # 2013-037 for Coho Financial (DBA www.Pathlending.com)	https://pathlending.com/sites/default/files/content/faq/Guidiville%20Band%20of%2 <u>OPomo%20Indians%20Lending%20Licen</u> se%202017.pdf				
3.	Habematolel Tribe (CA)	Tribal Consumer Financial Services Regulatory Ordinance (Dec. 29, 2015) •	ArrowShade website, http://arrowshade.com/wp- content/uploads/2016/06/TribalOrdinance .pdf				

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 $^{^{101}}$ A description of each case's litigation is listed in Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation.

Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe¹⁰¹

	Tribe	Document re: Lending Business or Regulatory Agency	Source(s)
4.	Kashia Band (CA)	Lending Commission Ordinance, Ordinance #12 (Aug. 10, 2013) ♦	Tribal Website: http://stewartspoint.org/wp/wp- content/uploads/2012/07/Ordinance-12- Lending-Commission-Ordinance.pdf
		Lending Business Ordinance, #13 (Aug. 10, 2013, amended May 14, 2016)	Tribal Website: http://stewartspoint.org/wp/wp- content/uploads/2012/07/Ordinance-13- Kashia-Lending-Enterprise92116.pdf
5.	Lac Du Flambeau Tribe	Tribal Consumer Financial Services Regulatory Ordinance ◆	Tribal Website: https://www.ldftribe.com/uploads/files/Co urt-Ordinances/CHAP94-Tribal- Consumer-Financial-Services-Reulatory- Ordinance.pdf
6.	Lac Vieux Desert Band	Regulation 1.1, Consumer Complaint Procedure (July 12, 2013) ◆ Regulation 1.5, Required Consumer Disclosures (Oct. 31, 2014) ◆ Regulation 1.4, Licensing (Oct. 31, 2014) ◆ Regulation 1.3, Hearing Procedure (Oct. 31, 2014) ◆ Regulation 1.2, Short-Term, Small- Dollar Examination Procedures (Aug. 8, 2013) ◆	Tribal Website: http://lvdtribal.com/pdf/TFSRA- Regulations.pdf
		Tribal Consumer Financial Services Regulatory Code ◆	Tribal Website: http://lvdtribal.com/pdf/2015%2011%200 3%20Tribal%20Consumer%20Financial %20Services%20Regulatory%20Code.pd f Decker v. RS Fin. Servs. LLC, No. 5:14- cv-00242-HE, Doc. 19-6 (W.D. Okla. April 14, 2014).
		Resolution No. T2014-68, Approval and Adoption of the Business Entity Ordinance (Aug. 26, 2014) Resolution T2014-066, Approving the Creation of the Wholly Owned and Operated Tribal Lending Entity-Big Picture Loans, LLC	Bynon v. Mansfield, No. 2:15-cv-00206-GJP, Doc. 6-7 (E.D. Pa. Feb. 17, 2015). Tribal Website: http://lvdtribal.com/pdf/BPL%20Organizing%20Documents.pdf

Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe¹⁰¹

Tribe	Document re: Lending Business or	Source(s)
	Regulatory Agency	
	Resolution #2011-031, Approving the	Bynon v. Mansfield, supra, Doc. 6-8 (Feb
	Creation of the Lac Vieux Desert	17, 2015), Doc. 19-6 (April 16, 2014);
	Band of Lake Superior Indians Tribal	Decker v. RS Fin. Servs. LLC, supra, Doc
	Lending Enterprise – A Limited	15-5 (April 14, 2014).
	Liability Company (July 8, 2011)	
	Resolution #2012-001, Correcting	Bynon v. Mansfield, supra, Doc. 6-8 (Feb.
	Name of LLC Created Via Resolution	17, 2015); Decker v. RS Fin. Servs. LLC.
	2011-031 From Tribal Lending	supra, Doc. 15-5 (April 14, 2014).
	Solutions, LLC, to Sovereign Lending	
	Solutions, LLC Retroactively To July	
	8, 2011 (Jan. 10, 2012)	
	Articles of Organization of the	Bynon v. Mansfield, supra, Doc. 6-8 (Feb.
	Sovereign Lending Solutions, LLC	17, 2015); Decker v. RS Fin. Servs. LLC
	(July 8, 2011)	<i>supra</i> , Doc. 15-5 (April 14, 2014).
	Operating Agreement of Sovereign	Decker v. RS Fin. Servs. LLC, supra, Do
	Lending Solutions, LLC (July 8, 2011	19-5 (April 14, 2014).
	Resolution No. T2014-069,	Bynon v. Mansfield, supra, Doc. 6-10
	Approving the Dissolution of	(Feb. 17, 2015).
	Sovereign Lending Solutions, LLC	(100, 17, 2010).
	(Sept. 15, 2014)	
	Articles of Dissolution, Limited	Bynon v. Mansfield, supra, Doc. 6-10
	Liability Corporation	(Feb. 17, 2015).
	Resolution No. 2010-18, Adopting the	Decker v. RS Fin. Servs. LLC, supra, Do
	Limited Liability Code of the Lac	19-4 (April 16, 2014).
	Vieux Desert Band of Lake Superior	15 . (1.15111 10, 201 1).
	Chippewa Indians (July 8, 2011)	
	Resolution No. 2011-043, Approval	Decker v. RS Fin. Servs. LLC, supra, Do
	and Adoption of the Amendments to	19-6 (April 14, 2014).
	Tribal Lending Regulatory Code,	12 0 (ripin 11, 2017).
	AKA Consumer Financial Services	
	Code (Sept. 27, 2011) ♦	
		Docker v PS Fin Samus II C supra
	Resolution No. 2011-053, Approval	Decker v. RS Fin. Servs. LLC, supra, Doc. 19-6 (April 14, 2014).
	and Adoption of the Amendments to	Doc. 19-6 (April 14, 2014).
	Tribal lending Regulatory Code, AKA	
	Consumer Financial Services Code	
	(Nov. 18, 2011) ♦	
	Resolution No. 2012-055, Approval	Decker v. RS Fin. Servs. LLC, supra, Do
	and Adoption of the Amendments to	19-6 (April 14, 2014).
	Tribal lending Regulatory Code, AKA	
	Consumer Financial Services Code	
	(Sept. 6, 2012) ♦	

Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe¹⁰¹

	Tribe	Document re: Lending Business or Regulatory Agency	Source(s)
		Resolution No. 2012-073, Approval and Adoption of the Amendments to Tribal lending Regulatory Code, AKA Consumer Financial Services Code (Nov. 9, 2012) ◆	Decker v. RS Fin. Servs. LLC, supra, Doc. 19-6 (April 14, 2014).
		Resolution No. 2013-037, Approval and Adoption of the Amendments to Tribal lending Regulatory Code, AKA Consumer Financial Services Code (July 16, 2013) •	Decker v. RS Fin. Servs. LLC, supra, Doc. 19-6 (April 14, 2014).
		Resolution T2015-09, Authorizing and Approving First Amended Articles of Organization and First Amended Operating Agreement of Big Picture Loans, LLC To Reflect Tribal Economic Development Holdings, LLC, As Member (Feb. 4, 2015)	Tribal Website: http://lvdtribal.com/pdf/BPL%20Organizi ng%20Documents.pdf
		First Amended Articles of Organization of Big Picture Loans, LLC (Feb. 5, 2015)	Tribal Website: http://lvdtribal.com/pdf/BPL%20Organizing%20Documents.pdf
7.	MHA Nation [♦]	Resolution of the Governing Body of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, Resolution No. 12-038-VJB (April 20, 2012)	Tribal Website: http://www.mhanation.com/main2/elected officials/elected officials resolutions/res olutions 2012/April%2020,%202012%20 Meeting.pdf
8.	Otoe-Missouria	A Resolution Creating Great Plains Lending, LLC, #54293 (May 4, 2011)	Finn v. Great Plains Lending, No. 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015); Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016); Pennsylvania v. Think Fin., Inc., supra, Doc. 67-3 (Aug. 28, 2015).
		Operating Agreement of Great Plains Lending, LLC	Finn v. Great Plains Lending, No. 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015); Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016).

Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe¹⁰¹

	Tribe	Document re: Lending Business or	Source(s)
	Tribe	Regulatory Agency A Resolution Adopting The Consumer Finance Services Regulatory Commission Ordinance OMTC # 210565 (Feb. 10, 2010) ◆ Title ##. Interests, Loans, and Debt Chapter ##. Consumer Finance Services Regulatory Commission ¹⁰² ◆	Finn v. Great Plains Lending, No. 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015); Pennsylvania v. Think Finance, Inc., supra, Doc. 67-3 (Aug. 28, 2015). Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016).
		License: 001 for Great Plains Lending by the Otoe-Missouria Consumer Finance Services Regulatory Commission (March 2, 2011)	Finn v. Great Plains Lending, No. 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015; Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016).
9.	Tunica-Biloxi	Charter of Mobiloans, LLC	Everette v. NDG Fin. Corp., No. 1:15-cv-01261-CCB, Doc. 21-3 (D. Md. July 6, 2015); Pennsylvania v. Think Fin., Inc., supra, Doc. 67-2 (Aug. 28, 2015).
		Second Amended and Restated Limited Liability Company Operating Agreement of Mobiloans, LLC	Pennsylvania v. Think Fin., Inc., supra, Doc. 67-2 (Aug. 28, 2015).
10.	Turtle Mountain Band	Public Notice, A Comment Period Is Being Provided For Possible Amendments to the Tribal Code, Section 43, the Credit Transaction Code, Section 43.0405 ◆ Note: Unclear whether ever enacted into tribal law.	Tribal website: http://www.tmbci.org/data/upfiles/files/co mment period.credit transaction code.titl e 43.may 13, 2016.pdf

♦ = Lender without confirmed California connection.

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¹⁰² This is the same set of regulations as the aforementioned resolution adopting the Consumer Finance Services Regulatory Commission, but there is no resolution attached to the regulations. The ## signs are provided exactly as they appear in the title of the tribal documents.

¹⁰³ Code referenced in notice was not listed on Tribal Codes page published on tribal website. *Tribal Codes*, TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, http://tmbci.org/government/?page_id=197 (last visited Nov. 15, 2016). Additionally, the Minutes & Resolutions page of the website is blank. *Minutes & Resolutions* TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, http://tmbci.org/minutes/ (Nov. 15, 2016).

a. Tribal Documents Purportedly Creating Payday Businesses or Approving of Tribe's Affiliation with a Payday Lender

Researchers found that six tribes had tribal documents stating that the tribe was affiliated with a payday business. The Kashia Band, MHA Nation, and Lac Vieux Desert Band¹⁰⁴ published governing documents on their tribal website describing the possible formation of payday lenders.¹⁰⁵ Lenders claiming association with the Tunica-Biloxi Tribe, ¹⁰⁶ Lac Vieux Desert Band, ¹⁰⁷ Otoe-Missouria Tribe¹⁰⁸ and the Chippewa Cree¹⁰⁹ submitted tribal documents indicating tribal involvement in a payday entity to the court during litigation. Generally, the purported agreements and accompanying documentation were brief and vague. None of the agreements described the profit distribution of the company or how the company should establish subcontracts with the software and technology companies needed to issue loans over the internet.¹¹⁰ Additionally, some of

¹⁰⁴ Full names of tribes are listed in Figure 4: Location of Tribes Purportedly Affiliated With Lending Websites, *supra*.

¹⁰⁵ Kashia Band, Lending Business Ordinance #13; MHA Nation Resolution No. 12-038-VJB; Lac Vieux Desert Band Reg. 1.1-5; Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code; Lac Vieux Desert Band Resolution No. T2014-066. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

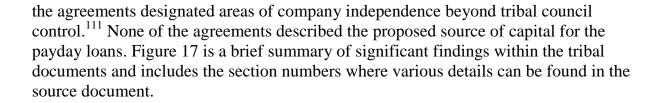
¹⁰⁶ Everette v. NDG Fin. Corp., Doc. 21-3; Pennsylvania v. Think Fin., Inc., Doc. 67-2. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹⁰⁷ Bynon v. Mansfield, Doc. 6-8, 19-6; Decker v. RS Fin. Servs. LLC, Doc. 15-5. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹⁰⁸ Finn v. Great Plains Lending, Doc. 7-1; Pennsylvania v. Think Finance, Inc., Doc. 67-3. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹⁰⁹ *Gingras v. Rosette*, Doc. 13-6, 23-2; *Pennsylvania v. Think Finance, Inc.*, Doc. 67-4. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

Internet lending requires the expertise of additional partners, including ODFIs (see note 90, *supra*), ACH financial institutions, sufficient capital to issue loans, customer service call centers, website advertising, algorithms and code to determine whether a borrower is qualified for credit (underwriting companies), and others. *See* Kevin F. Meade, *Liability for Banks for Payday Lending: Risks to Consider*, AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, CORPORATE COUNCIL (March 18, 2014), http://apps.americanbar.org/litigation/committees/corporate/articles/winter2014-0314-liability-banks-payday-lending-risks-consider.html (describing ODFI and ACH process); Leena Rao, *Former Google CIO Raises \$73 Million To Reform Payday Loans With Data Driven Startup ZestCash*, TECHCRUNCH.COM (Jan. 19, 2012), https://techcrunch.com/2012/01/19/former-google-cio-raises-73-million-to-reform-payday-loans-with-data-driven-startup-zestcash/ (discussing need for loan underwriting). Tribal documents do indicate these arrangements were agreed upon between tribe and lender. *See* Kimberly Cobarruba, *Treasurer's Update*, HPUL Newsletter (Habematolel Newsletter) 13:1



Jan.-June 2014 at 8 http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf (discussing how much money the tribe has gotten monthly from the payday lender).

¹¹¹ See Articles of Organization of Plain Green, LLC § 7.6 ("the Company will appoint and hire a Chief Executive Office[r] ("CEO") to manage the Company on a daily basis without interference by either the Members or Managing Members of the Company and/or Chippewa Cree Tribal Members"); Operating Agreement of Sovereign Lending Solutions, LLC §1.9 (the manager shall conduct the business of the Company...subject only to those restrictions set forth in the Resolution or this Agreement, shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things manager deems appropriate to accomplish the purpose of the company."). See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

Figure 17: Summary	Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses ¹¹²								
Documents	Date	Length	Explicit Mention of Immunity	# of Board Members	Composition of Board Members		Discussion of Capital Invested or Tribal Liability	Control Provisions	Company Independence Provisions
Chippewa Cree									
Resolution 39-15, Authorizing and Approving the Amendment to the Articles of Organization for Plain Green, LLC	4/13/15	3 pages	No	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Term Sheet For Think Finance-Chippewa Cree Transaction	unknow	4 pages				** Think Finance's responsibilities to tribe: - train and utilize not less than 10 members of the Tribe as customer service representatives on tribal reservation Think Finance will pay all legal fees for tribe related to lending.	amount of the loans and company will "advance to the tribe as a prepayment on revenue, \$50,000 each month for the first six months or until such time that	** Tribal responsibilities (document does not disclose tribal control provisions): - Adopt a finance code "that is acceptable to all parties and provide for the licensing of an arm of the tribe to engage in consumer lending" - obtain a computer server and develop a call center - tribe will implement underwriting criteria (with APR ranging from 60% to 360%) - tribe will develop loan documentation process - Establish Plain Green LLC - Set up bank accounts and ACH processing for Plain Green - Get SSL for URL - Obtaining 2 separate originating and servicing addresses for Plain Green, LLC and GPL Servicing Ltd.	- Think Finance (TF) will provide software

Sources for the documents are found in Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

ı	Figure 17: Summar	v of Tribal Documents Pu	rnorting to Create Pay	yday Lending Businesses ¹¹²
ı	riguit 17. Summai	y of Tribai Documents I u	porung to create ray	yuay Lichumg Dusinicsses

Documents	Date	Length	Explicit Mention of Immunity	# of Board Members	Composition of Board Members		Discussion of Capital Invested or Tribal Liability	Exclusive Tribal Control Provisions	Company Independence Provisions
							100% of the losses."		
Articles of Organization of Plain Green, LLC	4/14/15	7 pages	4.1-2: Yes	Introduction: 5	"Managing members," 3 must be enrolled members of the Tribe. The Tribal Business Committee appoints one member. Members must meet prerequisites listed. 7.1; Tribal Business Committee selects	Section 9: "The Members and/or Managing Members may recommend amendments to the Articles of Organization from time to time as necessary and appropriate. No amendments to the Articles of Organization shall become operative until official approval is provided by the Managing Members and ratification by Members of the Company, the elected officials on the Chippewa Cree Tribal Business Committee"	Not mentioned.	Not mentioned apart from Tribal Business Committee selecting and appointing 5 managing members. See 6.3: -lender will prepare annual report and audited financial statement for Tribal Business Committee.	3.2: -to issue loans and "provide for tribal economic development" -"to engage, participate and provide any type of financial services and other lawful businesses, enterprises or ventures under tribal laws." -"to form subsidiary corporations and to enter into business associations, and other business arrangements." - to engage in business or and off of tribal land"to enter into and make contracts of every kind and nature with any person, tribal governmen agency, firm, association corporation, municipality nation, and/or Tribe" -to purchase and dispose of property - to incur debts and raise funds to purchase or otherwise obtain trademarks, trade names, patent inventions and processes for lending business.

¹¹³ The document submitted to court in *Pennsylvania v. Think Fin., Inc.*, Doc. 67-4 (Aug. 28, 2015) was dated "4-14-15" and signed, whereas the document submitted to court in *Gingras v. Rosette*, Doc.13-6 (Aug. 14, 2015) was neither dated nor signed. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹² Discussion of Explicit Company # of Board Composition of Board Capital Invested Exclusive Tribal Mention of Independence **Documents** Date Length Members **Board Members Responsibilities** or Tribal **Control Provisions** Immunity Provisions Liability 7.6: 'The Company will appoint and hire a Chief Executive Office ("CEO") to manage the Company on a daily basis without interference by either the Members or Managing Members of the Company and/or Chippewa Cree Tribal Members." Kashia Band 8/10/13 10 pages II.B, V: III.B-D: III.H: III.D: No clear independence Lending Business III.A: Not mentioned Ordinance #13 Yes 3 Appointed by develop bylaws, "The General council provisions, but "powers" tribal council, no subject to Tribal hereby delegates to the of company are listed in Amende tribal membership Council approval Tribal Council the II.C: d: 5/14/16 -lender will operate one required, must establishing offices authority to oversee the satisfy open and maintain operation of the Board of or more lending qualifications company bank account Directors, to increase the businesses listed. staffing number of positions on -manage business execute contracts for the Board to be filled by accounts and revenue Tribal members under the Company (subject to -borrow money, acquire tribal laws regarding age of 25 for training and manage assets, and procurement) purposes, or by nonincur debt arrange and procure Members with financial -sue; waive sovereign insurance industry experience and immunity under General Council terms and monthly reports to expertise subject to tribal council available budget." conditions. annual reports to General Council III.J: 'The following actions of III.I: the Board shall not be Board should have effective unless and until monthly meetings. approved by further action of the General Council or Tribal Council as specified herein:" -approval of annual

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹² Discussion of **Explicit** Company # of Board Composition of Board Capital Invested | Exclusive Tribal Mention of Independence **Documents** Date Length Members **Board Members Responsibilities** or Tribal **Control Provisions** Immunity Provisions Liability operating budget -waiver of sovereign immunity -approval of annual budget -approval of "any proposed expenditure of Kashia Services or a subsidiary that exceeds or is for a purpose not identified in an approved budget" Lac Vieux Desert Band 7/8/11 No Resolution #2011-031 3 pages Not Not mentioned Not mentioned Not mentioned Not mentioned Not mentioned Approving the Creation mentioned of the Lac Vieux Desert Band of Lake Superior Indians Tribal Lending Enterprise Articles of Organization Article 6: "Management 7/8/11 No 2 pages Not Not mentioned Not mentioned Not mentioned Not mentioned of the Sovereign Lending of the limited liability mentioned Solutions, LLC Articles company is vested in one of Organization Manager. This role can be fulfilled by a management contractor should the company desire." 1.9: Operating Agreement of |7/8/11 11 pages Yes Not There is no Not mentioned 2.1: any change in "as of July 8th, the management will be Sovereign Lending mentioned, Board-there is a ""Manager" shall mean a Solutions, LLC "Manager," a [Tribe] has made reported to tribe company or companies but see 1.2: contribution of 3.1(c): "any successor that the Tribe may engage company "It is the operating the manager shall be to manage the company. funds on behalf of appointed by the Tribal company that is The manager shall intent of the or to the Company described in § 1.9. as provided in Council" conduct the business of Member that

the Company

shall be a

single-

manager

Exhibit A."

However, Exhibit

A is not attached

to document.

3.2: tribal approval is

required to a) restrict

assets of company, b) sell

the Company...subject

only to those restrictions

or this Agreement, shall

set forth in the Resolution

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹²

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹² Discussion of **Explicit** Company Composition of Board # of Board Capital Invested | Exclusive Tribal Mention of Independence **Documents** Date Length Members **Board Members Responsibilities** or Tribal **Control Provisions** Immunity Provisions Liability Not 8/26/14 | 3 pages No Lists Tribal Not mentioned Not mentioned Not mentioned Not mentioned Resolution T2014-066. Council members mentioned Approving the creation Michelle Hazen of the Wholly Owned and James and Operated Tribal Williams as "Co-Lending Entity- Big Managers" of Picture Loans, LLC company. 2/4/15 Resolution T2015-09 No Not 2 pages Not mentioned Not mentioned Not mentioned Not mentioned Not mentioned Authorizing and mentioned Approving First Amended Articles of Organization and First Amended Operating Agreement of Big Picture Loans, LLC To Reflect Tribal Economic Development Holdings, LLC, As Member 2/5/15 Yes Not Article 6: First Amended Articles 3 pages Not mentioned Not mentioned Not mentioned Not mentioned "Management of the of Organization of Big mentioned Picture Loans, LLC Company shall be vested in Co-Managers as appointed or hired by the Member [Tribal Economic Development Holdings, LLC]. This role may also be filled by a management contractor should the Company so desire." MHA Nation ◆ Resolution Approving of 4/2012 Not mentioned Not mentioned 3 pages No Not Not mentioned Not mentioned Not mentioned A Business Loan for \$5 mentioned Million to Make Cents, Inc.

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹² Discussion of **Explicit** Company # of Board Composition of Board Capital Invested | Exclusive Tribal Mention of Independence **Documents** Date Length Members **Board Members Responsibilities** or Tribal **Control Provisions** Immunity Provisions Liability Otoe-Missouria Resolution # 54293, 5/4/11 Yes President of "[T]he Board of 2 pages 5 members Not mentioned Not mentioned Not mentioned **Creating Great Plains** Development Directors of Great Lending, LLC authority and Plains Lending, LLC Tribal Viceshall have the authority Chairman must be to create subsidiary members, tribal LLCs which are wholly council will owned by the tribe." appoint remaining 3 members. Remaining 3 members do not need to be members of the tribe. 3.2: 7.1: Operating Agreement of unknow 8 pages No 3.5: Prerequisites for 4.1-3: Not mentioned Great Plains Lending, Board not develop strategic, "[T]he Tribe has -selling, leasing, LLC Disclosed. business, marketing contributed acquiring property that programs and plans. sufficient capital exceeds \$50,000 6.1: -schedule work crews and resources to - incurring debt greater Board of purchase materials for allow for the than \$100,000 - making distributions Directors company contracts ongoing business determine their - bid on work projects of the company ... beyond quarterly own for company Company will distributions to tribe - make all filings in compensation for operate separately - encumbering company from the Tribe and services rendered. relevant jurisdictions amending articles or report necessary will not require 3.2(d): information to tribe continuing operating agreement - "The directors meet monthly" financial support may delegate their from the tribe. Note: Agreement responsibilities to 8.2: distinguishes between However, it may officers or other "Member," which is the -Deliver annual fiscal be necessary to personnel of the report to the Tribe. obtain "Tribe as Sole Member of Company, but the Company," and [independent] "Tribe," which references shall continue to funding for be responsible for working capital the Otoe-Missouria Tribe. the discharge of and/or capital 1.1.j, 1.1.n. acquisitions by the the delegated Company." authority. A Director may

Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses¹¹² Discussion of **Explicit** Company # of Board Composition of Board Capital Invested | Exclusive Tribal Mention of Independence **Documents** Date Length Members **Board Members Responsibilities** or Tribal **Control Provisions** Immunity Provisions Liability serve as an officer 5.1-2: "All Profits and in addition to their position as a Losses shall be Director. allocated to the Tribe as the sole member...All Cash Flow shall be distributed to the Tribe, at least quarterly." Tunica Biloxi Charter of Mobiloans 4/8/14 Yes Not Not mentioned Not mentioned Not mentioned VII: Company managed Not mentioned 4 pages mentioned by manager 2nd Amended Operating 7/26/11 6 pages 2.1. 6.1: 3.2: 3.2: 3.2 6.4: 3.4: Not mentioned Agreement of Mobiloans Yes "Manager" is All members of meet biweekly. "Nothing in the "Tribal Action. The Tribe 4-person 'Board of charter or this is and shall at all times be Board of managers" must Note: agreement, nor any the sole owner and sole be members of Managers. 3.6: activity of the member of the Company. tribe and at least 2 "Insider contracts. An Company, shall All action and power must be members implicate or in any exercised by the Tribe Note: officer of the company 3.2: of the tribal and any member of the way involve the shall be by action Board shall be "The act of a council. credit of the Tribe. officially taken by the Tribal Council during a disqualified from The Company majority of duly convened meeting." the members conducting business or shall have only contracting with the of the Board those assets shall be the Company for any formally assigned 3.5: at of the purpose other than to it by the Tribal -approval of annual Manager, it employment or Council, together budget and business plan being compensation in with those assets it -appoint executive intended that accordance with this may acquire or director, CEO, COO the Board agreement." generate from - approval of sale of asset outside budget or ordinary acts as a other sources and course of business single business Manager... activities." - waiving any immunity no member of the Company of the of the - approval to commit any Board has tribal resource or burden the authority tribe to act - approval of Company

Figure 17: Summary	Figure 17: Summary of Tribal Documents Purporting to Create Payday Lending Businesses ¹¹²								
Documents	Date	Length	Wention of		Composition of Board Members	Board	Discussion of Capital Invested or Tribal Liability	Control Provisions	Company Independence Provisions
				individually as the Manager to bind the company."				participation in any partnership, joint venture, LLC, or other business	

^{♦ =} Lender without confirmed California connection.

The next section analyzes the documents purportedly affiliated with each tribe separately, specifically addressing whether the documents indicate significant tribal control and comparing the document to other publicly available information about the tribe.

i. Kashia Band

The Kashia Band's purported "lending business ordinance" states that it will "[establish] a new Tribal business entity to operate one or more consumer lending businesses pursuant to the sovereign authority of the Kashia Band of Pomo Indians." The ordinance gives the company broad discretion to establish subsidiaries without tribal approval. The ordinance does not address how the payday business will function, or how the business would obtain the capital necessary to make such loans.

The tribal website does not indicate that the tribe owns a lending business or list the lending board of directors as one of the departments of the tribe. In contrast, the site does publicize the tribe's Department of Environmental Planning, Tribal Council, Utility District, Cultural Department, and Housing Department. However, the tribal website does list employment opportunities with the Kashia Lending Enterprise and Kashia Lending Commission (a license application for individuals to lend with the tribe).

ii. MHA Nation

The MHA Nation published a resolution referring to the creation of a lending business. ¹²³ The MHA Nation lent \$5,000,000 to Make Cents, Inc., a "tribally owned corporation established pursuant to a charter issued by the Tribal Business Council" that

 116 *Departments*, Kashia Band of Pomo Indians, http://stewartspoint.org/wp/departments/ (last visited Jan 22, 2017).

¹¹⁴ Kashia Band, Lending Business Ordinance #13. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹¹⁵ *Id.* at § II.C.

¹¹⁷ http://stewartspoint.org/wp/departments/environmental/ (last visited Jan. 22, 2017).

http://stewartspoint.org/wp/tribal-council/ (last visited Jan. 22, 2017).

¹¹⁹ http://stewartspoint.org/wp/departments/kashaya-utility-district/ (last visited Jan. 22, 2017).

¹²⁰ http://stewartspoint.org/wp/departments/cultural/ (last visited Jan. 22, 2017).

¹²¹ http://stewartspoint.org/wp/departments/housin/ (last visited Jan. 22, 2017).

¹²² http://stewartspoint.org/wp/employment-opportunities/ (viewed Dec. 1, 2016).

¹²³ MHA Nation Resolution No. 12-038-VJB. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

was "in the business of micro lending in the form of pay day type loans." However, this company is not mentioned on the active lending websites associated with the MHA Nation and the business does not appear to exist today. 125

iii. <u>Tunica-Biloxi Tribe</u>

The Tunica-Biloxi Tribe submitted a "Charter of Mobiloans" and "Operating Agreement" in the course of litigation to demonstrate Mobiloans was owned by the Tunica-Biloxi Tribe. The "Operating Agreement" specified that Mobiloans must have its principal place of business on tribal land unless the tribe permits otherwise. The Operating Agreement refers to the Board of Directors as "the Manager" and states that "no member of the Board has the authority to act individually as the Manager to bind the company," meaning that only a majority vote of the Board has authority to bind the company. However, the documents do not explicitly disclose what the responsibilities of the "Manager" are outside of the monthly reporting requirements of "The Board" described in Art. III, § 3.2 and 3.2.2 of the "Operating Agreement." Page 128

There is little corroboration of the information in the governing documents from other sources. The tribal website of the Tunica-Biloxi describes tribal departments

¹²⁴ *Id*.

The Better Business Bureau (BBB) has a listing for Makes Cents Inc., stating "This company offers small loans to tribal members of the 'Three Affiliated Tribes of the Fort Berthold Reservation', a sovereign nation located in the USA, and operating within the Tribe's Reservation. These loans are NOT a payday loan or a cash advance, but are personalized installment loans." BETTER BUSINESS BUREAU, https://www.bbb.org/minnesota/business-reviews/loans/makes-cents-in-parshall-nd-96370117/complaints (last visited Jan. 20, 2017). The BBB recorded two complaints against Makes Cents where consumers borrowed from Sovereign Advance, d/b/a Makes Cents, Inc. *See* BETTER BUSINESS BUREAU, https://www.bbb.org/minnesota/business-reviews/loans/makes-cents-inc-in-parshall-nd-96370117/reviews-and-complaints (last visited Jan. 20, 2017).

¹²⁶ Everette v. NDG Fin. Corp., Doc. 21-3. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹²⁷ Second Amended and Restated Limited Liability Company Operating Agreement of Mobiloans, LLC, Art. I, § 1.2. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹²⁸ Second Amended and Restated Limited Liability Company Operating Agreement of Mobiloans, LLC § 3.2 (stating in part "The Board shall be responsible for the management of the Company and subject to the terms of this Agreement, including without limitation, Section 3.5, shall have the right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on its behalf, to sign for it or on its behalf or otherwise to bind the Company."). *See id.* § 3.2.2 ("Board shall meet with and report to the tribal council not less than once each fiscal quarter (and other such times as requested by the Chairman of the Tribe) and shall submit monthly financials of the Company to the Tribal Council.")

underneath the tab for "Tribal Government." However, the tribal website does not include the Board for Mobiloans as one of the departments run by the tribe. While the tribal website has a page dedicated to Mobiloans, LLC, the page does not describe who in the tribe works for Mobiloans or where the offices are located; instead, the page directs viewers to the Mobiloans lending website. There is no information publicly available on either the tribe's or Mobiloans' website about how tribal members could become involved in working for Mobiloans, when Mobiloans' Board of Directors is meeting, or what oversight the tribal council has offered to Mobiloans in the past. Additionally, there is no record of "the Board" of Mobiloans submitting financial reports or conducting financial presentation for the tribal council on the tribal website.

iv. Otoe-Missouria Tribe

In a case against a lender purportedly owned by the Otoe-Missouria Tribe—Great Plains Lending, LLC—the lender submitted a tribal resolution that purported to create the lending company to the court, as well as an operating agreement, in an effort to demonstrate tribal ownership. ¹³¹ The resolution states that the Board of Directors of Great Plains Lending, LLC "shall consist of five (5) members including the President of the Development Authority and the Tribal Vice-Chairman. The remaining Board members shall be appointed by the Tribal Council and shall serve three (3) year terms." Neither the resolution nor the operating agreement require that the remaining members be enrolled in the tribe. As a result, the majority vote on the Board could be won by the three non-tribal members on the board. The resolution also states that "the Board of Directors of Great Plains Lending, LLC shall have the authority to create subsidiary LLCs which are wholly owned by the tribe," meaning that the Board of Directors of Great Plains Lending, and not the tribal council, will determine when to create subsidiary payday companies.

The operating agreement is unsigned and does not list the tribal council vote results. It also appears to have a conflict pertaining to the capital contributions and loss allocation between the company and the tribe. Art. IV § 4.1-3 states that the tribe has contributed "sufficient capital" (without disclosing how much money the tribe has contributed) and that the company "will operate separately from the Tribe and will not require continuing financial support from the tribe." However, in Art. V § 5.1, the agreement states "All Profits and Losses shall be allocated to the Tribe as the sole member."

¹²⁹ *Departments*, TUNICA-BILOXI TRIBE, http://www.tunicabiloxi.org/departments.html (last visited Feb. 2, 2017).

¹³⁰ *Mobiloans*, TUNICA-BILOXI TRIBE, http://www.tunicabiloxi.org/mobiloans%2c-llc.html (last visited Feb. 2, 2017).

¹³¹ Finn v. Great Plains Lending, Doc. 7-1. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

The tribe's website does discuss the tribe's involvement in the payday lending business. The tribe lists American Web Loan and Great Plains Lending under its "Financial Service Companies" that are part of its "Tribal Enterprises." However, the governing documents pertaining to the creation of the lending entity are omitted from the minutes and resolutions published on the website. Although the minutes and resolutions documents are posted monthly from October 2009 to the present, the website omits minutes and resolutions from January 2011 until August 2012. 134

v. Chippewa Cree Tribe of Rocky Boy's Reservation

Plain Green—a lender that claimed affiliation with the Chippewa Cree—submitted a resolution and Articles of Organization to demonstrate tribal ownership during litigation. Section 5.1 of the Articles of Organization implies that the Company may operate beyond tribal land, stating "The Company shall be a resident of and maintain its corporate headquarters on the Rocky Boy's Indian Reservation, in Montana, but may conduct its business activities any place in or outside the United States. The Company may have such other offices..." The power of the Managing Members, selected by the tribal Business Council, appears limited to the objectives for the tribe, not to the overall functioning of the company itself. Section 7.6 of the Articles of Organization states that the Managing Members have no authority over the CEO of Plain Green. Section 3.2 gives the company a broad array of powers, including entering into business contracts, incurring debt and raising funds, and acquiring trademarks and patents for the entities affiliated with the lender. These powers are not explicitly limited by tribal oversight; the only meaningful tribal interaction is an annual report the company must submit to the tribe discussed in Section 6.3.

In contrast to the Articles of Organization, the "Term Sheet For Think Finance-Chippewa Cree Transaction" (Term Sheet) indicates that the tribe has less control than the Articles of Organization indicate. ¹³⁸ The Term Sheet states that "TF [Think Finance]

¹³² Financial Services, OTOE-MISSOURIA TRIBE, http://www.omtribe.org/index.php?financial-services (last visited Jan 11, 2017).

¹³³ Government Minutes and Resolution, OTOE-MISSOURIA TRIBE, http://www.omtribe.org/index.php?government-minutes-and-resolution (last visited Jan 11, 2017).

¹³⁴ *Id*.

¹³⁵ See Plain Green, LLC Articles of Organization. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹³⁶ *Id*.

¹³⁷ *Id.* § 3.2, 7.

¹³⁸ *Gringas v. Rosette*, Doc. 23-2. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

will . . . provide risk management, application processing, underwriting assistance, payment processing, payment processing, and ongoing customer support . . . and market and/or identify access channels for consumer loans on the Tribe's behalf." The Term Sheet states that Think Finance agreed to pay all legal fees for the tribe and assigned counsel to the tribe for legal conflict that arose out of the payday affiliation. The Term Sheet explains that the Tribe was required to pass tribal governing documents as a condition of the agreement to receive funds from Plain Green. The Term Sheet reveals that the tribe will adopt a financial code that is "acceptable to all parties and provide for the licensing of an arm of the tribe to engage in consumer lending," will establish a bank account at a US financial institution, and will offer two originating addresses for the lending business. Additionally, the term sheet requires the tribe to "Revise the Tribal" Credit Transaction Code to provide for a broader array of lending products." Interestingly, the Term Sheet suggests that the tribe did not provide funding for the loans when the company was formed; the Term Sheet clarifies that "Haynes [Haynes Investments, Inc.] will arrange to provide funding to the Tribe to enable it to make each of the Loans."

vi. Lac Vieux Desert Band

Sovereign Lending Solutions—a lender that claimed affiliation with Lac Vieux Desert Band—submitted resolutions forming and dissolving Sovereign Lending Solutions as well as the Articles of Organization and the Operating Agreement of the Sovereign Lending Solutions to the court in *Bynon v. Mansfield.* The resolutions offer little information about the operations of the lending business. However, the Operating Agreement provides some insight. Section 2.1 of the Operating Agreement indicates that the tribe made capital contributions to the company, described in Exhibit A (which is not attached to the document submitted to the court). As a result, it is unknown how much capital, if any, the tribe contributed and what the contributions of other investors were. Section 3.1 of the Agreement explains that the Company may hire a "manager," a party that has "the power and authority to do and perform all actions as may be necessary or appropriate to the conduct of the Company's business." However, this section contradicts a different provision, which states that the tribe—not the company—can "engage" a manager to manage the company. ¹⁴¹ Yet another section, Section 3.1(d), states that "The Manager may only be removed as Manager as determined by a federal or state court for

¹³⁹ *Id.* at 1.

¹⁴⁰Bynon v. Mansfield, Docs. 6-7, 6-8, 6-10. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹⁴¹ Operating Agreement of Sovereign Lending Solutions § 1.9. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

acting with willful misconduct, fraud, or gross negligence." ¹⁴² By referring the matter to federal or state court, and not tribal court, the tribe has even less control over how a Manager that has been appointed manages the payday lending company. The manager largely operates the payday lender with minimal oversight and only needs tribal approval in a limited set of circumstances. ¹⁴³ The Operating Agreement requires that the manager record all consumer complaints and enforcement actions taken by the purported "tribal consumer finance regulatory agency." ¹⁴⁴ The Operating Agreement also entitles the tribe to inspect all company documents.

The "Organizing Documents" for Big Picture Loans adopt similar language to the language used in the Sovereign Lending Solutions documents. However, no operating agreement is published for Big Picture Loans. Additionally the resolution delineates James Williams, Jr., and Michelle Hazen as the Co-Managers of the lending entity had makes Tribal Economic Development Holdings, LLC, not the tribe, the sole member owning the lending company. 147

b. Tribal Documents Purportedly Creating Tribal Lending Regulatory Agencies

While reviewing court dockets and tribal websites, researchers discovered tribal documents related to the creation of a tribal lending regulatory agency. Researchers noted distinct similarities in the formatting and content of many of the documents supposedly creating agencies. For example, the Lac Du Flambeau's consumer financial services regulatory agency ordinance was substantially similar to the Guidiville ordinance published by Pathlending.com, the Habematolel Tribal Consumer Financial Services

¹⁴² *Id*.

¹⁴³ *Id.* § 3.2 (tribal council approval is needed to restrict assets of company, sell or dispose of company assets, or waive sovereign immunity), § 3.1(c) (any change in management company must be appointed by the tribal council.

¹⁴⁴ *Id.* § 3.4(d). The tribal website did not disclose records of consumer complaints or how the tribe or tribal regulatory body dealt with those theoretical complaints. For a discussion of the regulatory agency, see Section IV.H.1.b.

¹⁴⁵ The Lac Vieux website lists resolution T2014-16, Approving the Creation of the Wholly Owned and Operated Tribal Lending Entity- Big Picture Loans, LLC; resolution T2015-09 Authorizing and Approving First Amended Articles of Organization and First Amended Operating Agreement of Big Picture Loans, LLC To Reflect Tribal Economic Development Holdings, LLC; and First Amended Articles of Organization of Big Picture Loans, LLC as the "organizing documents" for Big Picture Loans. LAC VIEUX DESERT BAND, http://www.lvdtribal.com/economic.html (last visited April 10, 2017) (once on the home page, scroll down to hyperlinked text "organizing documents" underneath Big Picture Loans).

¹⁴⁶ Resolution T2014-066, *Id*.

¹⁴⁷ First Amended Articles of Organization of Big Picture Loans, *Id.*

Regulatory ordinance, and the code published by the Lac Vieux Desert Band. ¹⁴⁸ The formatting, font, length of the ordinance, and wording were very similar from tribe to tribe.

Figure 18 lists the relevant documents and where they were found. The date the agency was created is listed if available. Document length is listed to indicate possible likeness between documents associated with different tribes.

Fi	Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies						
	Tribe	Document	Length	Source			
1.	Chippewa Cree	Chippewa Cree Tribal Codes, Tribal Lending and Regulatory Code	29 pages	Pennsylvania v. Think Fin., Inc., No. 2:14-cv-07139-JCJ, Doc. 67-4 (E.D. Pa. Aug. 28, 2015).			
2.	Guidiville	Guidiville Indian Rancheria Tribal Lending Regulatory Ordinance (10-1) (12/13/2010)	33 pages	Path Lending Website: https://www.pathlending.com/Portals/0/Regulation_P DFs/Guidiville%20Bank%20of%20Pomo%20Indian s%20Ordinance%2010-1.pdf			
3.	Habematolel Tribe	The Habematolel Pomo of Upper Lake Tribal Consumer Financial Services Regulatory Ordinance	35 pages	ArrowShade website: http://arrowshade.com/wp- content/uploads/2016/06/TribalOrdinance.pdf			
4.	Kashia Band	Lending Commission Ordinance #12 (8/10/13)	13 pages	Tribal website: http://stewartspoint.org/wp/wp-content/uploads/2012/07/Ordinance-12-Lending-Commission-Ordinance.pdf			
5.	Lac Du Flambeau	Tribal Code Chapter 94 (adopted 12/10/12, amended 7/22/14)	34 pages	Tribal website: https://www.ldftribe.com/uploads/files/Court- Ordinances/CHAP94-Tribal-Consumer-Financial- Services-Reulatory-Ordinance.pdf			
6.	Lac Vieux Desert Band	Tribal Consumer Financial Services Regulatory Code	32 pages	Decker v. RS Fin. Servs. LLC, No. 5:14-cv-00242-HE, Doc. 19-6 (W.D. Okla. April 14, 2014). Tribal website: http://lvdtribal.com/pdf/2015%2011%2003%20Triball%20Consumer%20Financial%20Services%20Regulatory%20Code.pdf			
		Resolutions Approving and Adopting Amendments to the Consumer Financial Services Regulatory Code 2011-030 (7/8/11), 2011-043	1-3 pages each	Decker v. RS Financial Services, supra, Doc. 19-6 (April 14, 2014).			

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¹⁴⁸ Compare Guidiville Ordinance 10-1; with Lac Du Flambeau Tribal Code Ch. 94; Habematolel Consumer Financial Services Regulatory Ordinance; and Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, supra.

	Tribe	Document	Length	Source
		(9/27/11) 2011-053		
		(11/18/11), 2012-055		
		(9/6/12), 2012-073		
		(11/9/12), t2013-037		
		(7/16/13)		
		Tribal Financial Services	22	Tribal website:
		Regulatory Authority	pages	http://www.lvdtribal.com/pdf/TFSRA-
		Commission Regulations		Regulations.pdf
7.	Otoe-	Resolution #210565	1 page	Finn v. Great Plains Lending, No. 2:15-cv-04658-
	Missouria	Adopting The Consumer		AB, Doc. 7-1 (E.D. Pa. Dec. 15, 2015).
		Finance Services Regulatory		
		Commission Ordinance		
		(FY2010)		
		Consumer Finance Services	9	Finn v. Great Plains Lending, supra, Doc. 7-1 (Dec
		Regulatory Commission	pages	15, 2015).

Only five tribes published an ordinance or resolution establishing a "consumer financial services regulatory agency" on their website or had it published on a lending website. Although the Otoe-Missouria Tribe does not list any information about a consumer finance regulatory commission on its tribal website, there is an independent website purporting to be that of an Otoe-Missouria Consumer Finance Regulatory Commission. Researchers looked at tribal websites and attempted a general internet search for the name of the agency to identify whether the agency had issued orders, investigated licensees, or promulgated regulations. Only one tribe—the Lac Vieux Desert Band—was found to have enacted a tribal financial services regulatory code and published the authority's promulgated rules on its website. No other tribe had

None of the rest of the tribal code is published on the website apart from the purported regulatory authority.

¹⁴⁹ One additional tribe, the Tunica Biloxi Tribe of Louisiana, was mentioned in press reports as starting a Consumer Lending Regulatory Commission. Mark Fogarty, INDIAN COUNTRY TODAY MEDIA NETWORK (April 13, 2016), http://indiancountrytodaymedianetwork.com/2016/04/13/tunica-biloxi-launches-consumer-lending-regulatory-commission-164071. However, no Tunica-Biloxi agency was evident from either Google searches or from the tribe's website. *See* TUNICA-BILOXI TRIBE, http://www.tunica.org/ (last visited Jan. 17, 2017).

¹⁵⁰ Departments, OTOE-MISSOURIA TRIBE, http://www.omtribe.org/index.php?departments (last visited Jan. 11, 2017) (listing other agencies, including regulatory agencies such as the Environmental Department, which issues hunting/fishing licenses).

¹⁵¹ OTOE-MISSOURIA FINANCIAL SERVICES REGULATORY COMMISSION, http://www.omfsrc.com/ (last visited Dec. 15, 2016).

¹⁵² Tribal Financial Services Regulatory Authority, LAC VIEUX DESERT BAND, http://www.lvdtribal.com/tfsra.html (last visited Dec. 22, 2016) (publishing the purported regulatory code and promulgated rules).

corroborating information suggesting that the regulatory agency had promulgated regulations, issued orders, or investigated and disciplined lenders. Although not disclosing the Regulatory Commission elsewhere on its website, the Habematolel Tribe published a job posting for the position of Commissioner on August 15, 2016. Similarly, the Kashia Band published the form to apply for licensure with the regulatory agency, but did not publish additional information about the agency itself on its website. 154

As seen in Figure 18, above, some lending websites reference tribal regulatory agencies that are uncorroborated by any tribal source and present inconsistencies regarding tribal approval. Two tribes—the Habematolel and the Guidiville—have purported consumer financial services regulatory agency ordinances published by third parties. The purported Habematolel ordinance is published on a lead-generating company's website, ArrowShade, while the purported Guidiville ordinance is published on a lending website, PathLending.com. The Guidiville Indian Rancheria ordinance is certified with a statement that says the amendment was passed by a vote of 2 council members for, 0 opposed, and 0 against, which raises questions about its legitimacy.

¹⁵³ *Job Posting*, HABEMATOLEL TRIBE, http://www.upperlakepomo.com/forms/HPUL-TLE-TCFSRC-Job-Description.pdf (last visited April 10, 2017).

Habematolel's regulatory agency is of particular interest because Tribal Council member Sherry Treppa emphasized how robust it was in a statement to the House of Representatives on February 10, 2016. *See* Statement of Sherry Treppa, *supra* note 22 (noting that the regulatory agency created through tribal ordinance is an enforcement agency empowered to uphold "consumer protection laws"). However, the Habematolel does not list any regulatory agency employees on its roster of committees, organizations, employees, and representatives. *HPUL Roster*, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 8; 2016 Office Directory, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 13-14. *See* http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-16-Sept.pdf.

¹⁵⁴ Kashia Lending Commission License Application For Individuals, KASHIA BAND, http://stewartspoint.org/wp/wp-content/uploads/2013/07/Kashia-Lending-License-Application-for-Individuals-Rev.-4-23-15-2.pdf (last visited April 10, 2017).

¹⁵⁵ Habematolel Tribal Consumer Financial Services Regulatory Ordinance, ARROWSHADE (Dec. 29, 2015), http://arrowshade.com/wp-content/uploads/2016/06/TribalOrdinance.pdf (originating on arrowshade.com website). But see HABEMATOLEL POMO OF UPPER LAKE INDIANS, http://www.upperlakepomo.com/ (not listing any governing documents). Guidiville Indian Rancheria Ordinance 10-1 (only listed on lending websites, there is no publicly available compilation of current tribal laws for the Guidiville Indian Rancheria.">https://www.upperlakepomo.com/ (not listing any governing documents). Guidiville Indian Rancheria Ordinance 10-1 (only listed on lending websites, there is no publicly available compilation of current tribal laws for the Guidiville Indian Rancheria.). https://www.upperlakepomo.com/ (not listing any governing documents). Guidiville Indian Rancheria Ordinance 10-1 (only listed on lending websites, there is no publicly available compilation of current tribal laws for the Guidiville Indian Rancheria.). https://www.upperlakepomo.com/ (not listing any governing documents). Guidiville Indian Rancheria Documents Purportation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, https://www.upperlakepomo.com/ (not listing any governing documents).

¹⁵⁶ Guidiville Indian Rancheria Ordinance 10-1. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*. Researchers were not able to find the tribal constitution of the Guidiville Tribe to ascertain tribal council voting procedures, so the effect of the vote listed in the certification is unclear. However, all of the tribes reviewed had a tribal council that consisted of 5 members or more (where tribal council information was available); the fact only two tribal council members are listed as voting was unusual.

The Otoe-Missouria ordinance—which is certified with a statement that there was a quorum of the tribal council present and 4 members voted for the ordinance while 0 voted against and 3 abstained from the vote¹⁵⁷—may have ultimately failed. If only 4 members voted for the ordinance, less than the majority of the tribal council, then the ordinance may not be legitimate, depending on the voting regulations of the Otoe-Missouria tribe. Similarly, oneclickcash.com posted a "license" given to it by the Santee Sioux Nation, but the Santee Sioux website does not reference any lending websites and does not refer to a licensing or regulatory agency on its own website. 159

Virtually all of the ordinances utilized different terminology to refer to the membership that constitutes the respective regulatory agency. The Lac Vieux Desert Band and the Guidiville Rancheria respectively purport to have formed a "Tribal Services Regulatory Authority" with "Agents." The Otoe-Missouria Tribe purportedly formed a "Consumer Finance Services Regulatory Commission" with "Commissioner Members." The Habematolel Tribe formed a "Tribal Consumer Financial Services Regulatory Commission" with "Commissioners." The Lac Du Flambeau Tribe purportedly formed a "Tribal Consumer Financial Services Regulatory Authority" with "Agents." The Kashia Band of Pomo Indians formed a "Lending Commission" with "Commissioners."

The tribal documents pertaining to the purported regulatory bodies are summarized in Figure 19. The tribe's name, title of the document, and the stated purpose of the agency as it pertains to consumers ¹⁶⁰ are listed. The chart also lists the stated powers of the agencies, what bodies are given the authority to promulgate regulations, whether regulations of the agencies have been published, whether there is an interest limit in the document creating the regulatory body, and who is required to be licensed. The chart also lists whether any evidence of agency action exists, meaning that there is some evidence that a party has been disciplined or counseled regarding their compliance or violation of the regulatory code. Where possible, the chart pulls direct statements from the text which pertain to the column topic. The chart also lists where in the tribal governing document the topic is discussed, where possible.

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¹⁵⁷ See Finn v. Great Plains Lending, Doc. 7-1. See Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁵⁸ Otoe-Missouria Constitution, Art. XI § 2(a), http://www.omtribe.org/index.php?government-constitution (The constitution discusses quorum, but fails to discuss the effect of abstaining votes, stating, "Five (5) members of the Tribal Council shall constitute a quorum of the Tribal Council membership thereof. No enactment of the Tribal Council will have any validity in the absence of a quorum.").

¹⁵⁹ SANTEE SIOUX NATION, http://santeesiouxnation.net/home.html (last visited Jan. 7, 2017) (no lending website or agency is referenced in the directory, tribal government, about us, or economic development pages. Additionally, Butch Denny, who signed the purported One Click Cash tribal license as the "commissioner, tribal financial services commission," does not exist on the tribal website.); ONECLICKCASH.COM, https://oneclickcash.com/license (showing a "license" from "the Santee Sioux Nation").

¹⁶⁰ Many of the ordinances contained provisions stating that the regulatory body was an extension of the tribe's sovereign immunity. This chart does not reflect the frequency of such language.

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies ¹⁶¹										
Document Creating Agency	# of Agency Members	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action		
Chippewa Cree	e				•					
Chippewa Cree Tribal Codes, Tribal Lending and Regulatory Code	1; a "Commi ssioner"	10-1-102 (e-f): "Ensure that Consumer Financial Services are conducted appropriately by Licensees and borrowers and that they remain free from corrupt, incompetent, unconscionable, dishonest, unfair, deceptive, and/or abusive practices. Protect and ensure the interests of the public in the offering of Consumer Financial Services. To provide fair and orderly Consumer complaint process to resolve Consumer Financial Services disputes"	10-4-108(a-g): - enforce regulations and rules of Code - examine each licensee and issue licenses investigate licensee for violations of the Code establish procedures to "[detect] any irregularities such as fraud." - review and respond to consumer complaints - employ "advisers"	10-4-111: "The Commissioner may promulgate regulations as necessary to carry out the implementation and orderly performance of the TCPB's duties and powers regarding the following;" - making findings to implement code, - interpretation of code - regulatory system for overseeing Consumer Financial Services - the process for investigations, hearing, or enforcement actions - the fee schedule for licenses regulations must be adopted by the TCPB (Tribal Consumer Protection Bureau) and approved by a resolution of the	No.	rate or charge, or usury	10-5-101: "A Person may not engage in or offer to engage in the business of Loans unless licensed by a Commissioner of the TCPB. A License may be granted to a Person located within the jurisdiction of the Tribe who uses the internet, facsimiles, or third Persons to conduct transactions with Consumers located outside of the jurisdiction of the Tribe, or to a Person located outside of the jurisdiction of the Tribe, or to a Person located outside of the jurisdiction of the Tribe who uses the internet, facsimiles, or third Persons to conduct transactions with Consumers in the jurisdiction of the Tribe." See 10-3-101, 10-3-201-211, 10-3-401-404, 10-3-501-502 for required disclosures, govern procedures for forming loan (i.e., giving borrower copy of loan			

¹⁶¹ Sources of tribal governing documents allegedly creating regulatory agencies are found in Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies ¹⁶¹										
Document Creating Agency	# of Agency Members	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action		
				Business Committee.		date of the incurrence of debt, unless the parties have otherwise agreed, and in the like proportion for longer or shorter term."	agreement), and general requirement that any interest assigned in writing applies to the loan.			
Guidiville										
Guidiville Indian Rancheria Tribal Lending Regulatory Ordinance (10-1) (12/13/2010)		1.2: "the intent of this ordinance is toensure that lending is conducted appropriately by licensees and borrowers and that it remains free from corrupt, incompetent, unconscionable and dishonest practices. Protect the interests of the public in the offering of lending services. Ensure the maintenance of public confidence in Tribal lending practices. Ensure that the Tribe provides a fair and impartial forum for the resolution of Lending disputes. Ensure that Tribal lending laws are strictly and fairly enforced upon persons involved in Tribal lending activities." 4.1:	determine procedures to detect irregularities and fraud - examine licensees annually - employ advisers - issue and determine fee	4.14: Agency promulgates regulations that become effective "thirty (30) days from the date of promulgation unless the Tribal Council, by resolution, rescinds the regulation."	No	6.3: -900% APR -"Maximum Interest Rate. In no event may the maximum rate (inclusive of interest and fees) on loans authorized by this Ordinance exceed the rate of nine- hundred (900%) per year." 7.3: None, "A	5.1(a): "Every Person desiring to transact the business of Lending as a Lender, Vendor, or Financial Backer within the Tribe's jurisdiction shall be required to obtain a one-year license." Note: 7.5: Lenders of short-term consumer loans cannot: -make more than 10 rollovers of existing loan -make a loan without right of rescission on part of borrower - pursue or threaten criminal action against a lender 7.6: - describes required	None		

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies 161 **Evidence** # of **Stated Purpose of Agency** Regulation Reg. Document Interest of Powers of Agency Licenses required Agency Pub-Creating re: Consumers (if **Promulgation** Limit Agency lished? Agency Members applicable) Authority Action Lender may "The Tribal Council hereby disclosures lenders must is entitled to sovereign charge and charters, creates and immunity. 6.5 describes provide. collect establishes the Tribal Lending how lenders are entitled interest in Regulatory Authority as a to sovereign immunity. respect of a governmental subdivision and Loan at arm of the Tribe. The such daily, Authority has charge of the weekly, implementation of the monthly, ordinances and regulations of annual or the Tribe relating to Lending other periodic activities and associated percentage licensing requirements." rate or rates as the agreement governing the Loan provides... and may calculate such interest by way of simple interest or other interest." 7.4: -permits charge for refinancing loan.

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies ¹⁶¹										
Document Creating Agency	# of Agency Members	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action		
Habematolel T	ribe									
The Habematolel Pomo of Upper Lake Tribal Consumer Financial Services Regulatory Ordinance	1-3	1.1: "The Tribe wishes in ensure that any Consumer Financial Services offered from the Tribe's trust Land is conducted in a fair and equitable fashion and therefore should be regulated by a Tribal governmental authority with the legal authority to license and regulate Consumer Financial Services within its jurisdictionThe Tribe recognizes the need to insure adequate protections and regulation of Consumer Data within the Tribe's jurisdiction. Tribal regulation and control of Consumer Financial Services offered from within the jurisdiction of the Tribe is essential for the protection of the public welfare and the integrity of the Tribe's Consumer Financial Services businesses." 1.2: The commission will ensure: - that Consumer Data is handled appropriately, - that "Tribal economic arms	4.9: - to promulgate regulations - to investigate and discipline licensees for violations of code/regulations - to issue and establish a fee schedule for licenses - to establish procedures to "permit any detection of any irregularities, fraud, or the like." - to "employ support personnel, and professional advisers and employees" - arbitrate, negotiate, or settle any dispute that relates to the Commission's authorized activities. 11.4: -conduct hearings requested by consumer	4.9: "To promulgate, adopt, and enforce regulations furthering the purpose and provisions of this Ordinance. The Commission shall set a reasonable implementation period following any such changes"	No.	8.2(c-d): None.	5.1: "Any Eligible Lender seeking to engage in Consumer Financial Services subject to this Ordinance shall apply for and receive a Consumer Financial Services License prior to engaging in Consumer Financial Services." 6: "Exemptions [from Ordinance]" -third-party providers that support licensee - national or state chartered bank or other federal insured financial institution and any of their subsidiaries. - Any credit bureau - any Person participating in future revenues of Loans issued by a Consumer Financial Services Licensee. - Any person providing customer service or software to support Licensee. - Any employee of exemptions listed. Note: 8.2 lists how the lender must engage with borrower during			

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies¹⁶¹ **Evidence** # of Regulation Document **Stated Purpose of Agency** Reg. of **Interest** Licenses required Creating Agency re: Consumers (if Powers of Agency Promulgation Pub-Limit Agency lished? Agency Members applicable) Authority Action remain free from corrupt, loan transaction, including: incompetent, unconscionable, give borrower copy of loan and dishonest practices." agreement It will: - lender is permitted to - "Protect the interests of the refinance a loan and collect a public in offering of Consumer Financial Services - lender is permitted to set unlimited interest, which and in the Processing of Consumer Data" may be variable interest "protect the interests of the - cannot conduct more than 4 public in offering of rollovers of a consumer loan Consumer Financial Services - loan must contain right of and in the Processing of rescission for consumer Consumer Data." - mandatory disclosures - ensure that Tribal law is allow the borrower to repay in full, with any advanced enforced and that there is a forum for "fair and orderly interest paid returned in full resolution" of consumer disputes. Kashia Band I.C: III.C: III.C.7: IV.A.1: Lending No V.B.2.b: None. - acquire and hold "[the Commission 'Each person or entity that Commission "Authorizing the Tribe to "No owns and operates a Ordinance establish and operate one assets, including bank will] develop Lender consumer lending business or more consumer lending regulations, policies, Licensee #12 (8/10/13) accounts, within the jurisdiction of the and procedures to businesses pursuant to the - develop operating may Kashia Band of Pomo sovereign authority of the implement budget charge Indians must at all times - recommend staffing Kashia Band of Pomo provisions of this fees, have a current and valid Indians; and defining basic | needs to "General ordinance." interest, Lender License issued by the requirements and council" or other commission." limitations applicable to III.E.2: select and execute considera lending business activities, "the Commission contracts tion for and establishing an agency - issue and establish shall advise the granting of Tribal Government fee schedule for General Council of a responsible to license and regarding the licenses consumer

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies 161										
Document Creating Agency	Agency	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action		
		regulate such businesses to ensure their proper operation."	- monitor and investigate licensees implement customer complaint procedures	Regulations it has adopted to satisfy the requirements of this section III.E. The General Council shall retain the authority to modify or revoke, in whole or in part, any Regulation adopted by the Commission as it deems proper."		loan that exceeds \$40 per \$100 lent."				
Lac Du Flamb	eau				•			•		
Tribal Code Chapter 94 (adopted 12/10/12, amended 7/22/14)	1-3	"the intent of this Ordinance is toEnsure that all Consumer Financial Services business and Debt Collection Activities are conducted appropriately by Licensees and Consumers and that it remains free from corrupt, incompetent, unconscionable, unfair, and dishonest practices. Protect the interests of the public in the offering of Consumer Financial Services and Debt Collection Activities."	4.13: - promulgate regulations - issue licenses - create procedures to investigate licensees or to detect "irregularities, fraud, or the like." - employ advisers - investigate and discipline any licensee or person engaging in consumer financial services - establish and maintain bank accounts - counsel leaders and consumers on their rights under the ordinance - establish programs to educate consumers regarding credit practices	purpose and provisions of this Ordinance; provided that such regulations shall take effect only upon approval of the Tribal Council." 4.16(b): "The Tribal Council, the Authority, or any Licensee may request the promulgation of a regulation by submitting a written	licensees and tribal council about new	Loan transaction with a consumer in which	5.1: "any Person or Vendor seeking to engage in Tribal Consumer Financial Services or Tribal Debt Collection Activities subject to this Ordinance or, when applicable, be employed by a Financial Services Licensee or Tribal Debt Collection Licensee, or Vendors, shall apply for and receive all required licenses prior to engaging in Tribal Consumer Financial Services or Tribal Debt Collection Activities, or being employed by a Financial Services Licensee or Tribal Debt Collection Licensee."			

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies 161 **Evidence** # of Regulation Reg. Document **Stated Purpose of Agency Interest** of Licenses required Creating Agency re: Consumers (if Powers of Agency **Promulgation** Pub-Limit Agency Agency Members applicable) Authority lished? Action and problems. proposed regulation to 7.3(b): 7.3(a)the Authority; Within "A Licensee shall not: 30 days, the will approve of each assess any interest, fee, or location where the lender | review the request...If charge that is great than any the proposed regulation applicable limitation, if any, operates does not conflict with prescribed in this ordinance. Use or cause to be published this Ordinance or any applicable law, the or disseminated any Authority shall notify advertisement that contains the Tribal Council, the false, misleading, or submitting Person, and deceptive statements or representations. Engage in any Licensees that may be affected by the unfair, deceptive or proposed regulation..." fraudulent practices. Tie or After notice is sent, otherwise condition the there is a 30-day providing of Consumer Financial Services or Debt comment period. Collection Activities to the "if the regulation is unopposed, the sale of any good or service Authority ... shall by the Licensee." promulgate and publish the proposed regulation 8.4: Short-term consumer loans by majority vote and it will be implemented." will not: If it is amended or - make more than 4 rollovers proposed, the authority of loan can 1) conduct a - make loan without right of hearing, 2) decline to rescission for consumer promulgate, or 3) pursue or threaten criminal amend the proposed action against consumer to regulation. collect debt - make loan without mandatory disclosures 8.5 lists debt collection

practices that are prohibited.

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies ¹⁶¹										
Document Creating Agency	# of Agency Members	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action		
Lac Vieux De	sert Band ¹⁶	52								
Tribal Consumer Financial Services Regulatory Code	1	1.2(a-f): "the intent of this Code is toEnsure that consumer financial services is conducted appropriately by Licensees and borrowers and that it remains free from corrupt, incompetent, unconscionable, and dishonest practices." "Protect the interests of the pubic in offering of consumer financial services." "Ensure the maintenance of public confidence in Tribal consumer financial service practices." "Ensure that the Tribe provides a Tribal-based forum for the fair and orderly resolution of consumer financial services disputes consistent with the Tribe's preservation of sovereign immunity" "Ensure that Tribal consumer financial services laws are enforced by the Tribe upon Persons	4.13: -promulgate, adopt, and enforce regulations to advance regulatory code - issue and investigate license applications; create schedule of fees for license application - investigate licensees for code compliance "establish procedures designed to permit detection of any irregularities, fraud, or the like" - employ advisers - discipline violations of the Code - sue, arbitrate, or negotiate any issue relating to the Authority's authorized activities establish and maintain bank accounts	4.13(a), (d), 4.15, 4.16: The agency creates regulations of the agency but, pursuant to 4.16(b)(6), "The Tribal Council may promulgate, rescind, or repeal a regulation at any time regardless of this promulgation procedure."	Yes	Small Loan transaction with a consumer in which the scheduled finance charges exceed \$50 per \$100 of principal per	5.1: "any Person seeking to engage in consumer financial services subject to this Code, or, when applicable, any Vendor seeking to provide services to a Licensee, shall apply for and receive all required licenses prior to engaging in consumer financial services" 5.4: License Denial, Suspension, or Revocation of License: - fail to pay fees -made material misstatement on application materials or provided incomplete or insufficient information - person isn't honest - violated code or regulations - falsified records or failed to keep adequate records - charged or convicted in any jurisdiction with a felony or			

1.00

¹⁶² A series of resolutions were purportedly passed that may have impacted the tribe's purported regulatory agency. Resolutions Approving and Adopting Amendments to the Consumer Financial Services Regulatory Code 2011-030 (7/8/11); 2011-043 (9/27/11); 2011-053 (11/18/11); 2012-055 (9/6/12); 2012-073 (11/9/12); t2013-037 (7/16/13). See Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*. Resolution T2013-037 references amending the code to "clarify" sections of the Regulatory code; nearly every section of the code is referenced. Resolutions 2011-30, 2011-43, 2011-53, and 2012-55 reference amendments in the document without attaching them to the resolution or summarizing them in the resolution text.

Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies 161

Document Creating Agency	# of Agency Members	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action
		involved in Tribal consumer financial services."					crime of dishonesty, has administrative order against person - employed person whom should have known was convicted of fraud, embezzlement, or theft - attempts or does bribe or steal from any person, tribal member, or the agency - poses threat to public interest or regulation of Tribal consumer financial services creates danger of unfair or illegal practices - demonstrated personal incompetency to manage personal or business finances.	
							Note: 7.2 lists requirements for lenders, including: -no oral lending agreements -can charge a late payment fee of 5% of the payment amount of \$300, whichever is greater. 11.2 lists requirements for small loan transactions, including: - can issue loans from \$50-5,000 - can enter into 3	

ummary	of Tribal Documents Pur	portedly Creating Re	egulatory Agencies ¹	61			
# of Agency Members		Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action
						transactions with same consumer at a time - duration of loan can be 3 days to 48 months.	
ia Tribe ¹⁶³							
3: tribal treasurer, tribal secretary, and one other member elected by the Tribal Council.	Section 103: "the Otoe-Missouria consumer Finance Services Regulatory Commission (hereinafter, "Commission" [is] the public body solely responsible for the regulation of the Tribe's consumer Finance Services operations. The purpose of the Commission is regulatory, not managerial"	investigations - compel 1) payment of \$1,000 for each violation to produce evidence compelled and 2) costs of investigation Section: 120: - issue cease and desist order - hold hearing for lender who receives cease and desist order	Section 125: "The Commission may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Consumer Finance Services Ordinance subject to approval by Tribal Council."	No.	None.	Section 104: "No person shall operate a Consumer Finance Services business within the jurisdiction of the Otoe- Missouria Tribe unless the person is licensed as provided in the Otoe- Missouria Tribe Consumer Finance Services Ordinance, save and except American Web Loan, Inc. (AWL) established pursuant to the laws of the Tribe which shall be granted a license upon its inception. AWL shall be subject to all other terms, conditions, rules, and regulations found herein." Note: Section 116 lists mandatory disclosures required to issue a loan	
	# of Agency Members ia Tribe 163 3: tribal treasurer, tribal secretary, and one other member elected by the Tribal	# of Agency Members Stated Purpose of Agency re: Consumers (if applicable) 3: tribal treasurer, tribal secretary, and one other member elected by the Tribal Council. # of Agency re: Consumers (if applicable) Section 103: "the Otoe-Missouria consumer Finance Services Regulatory Commission (hereinafter, "Commission" [is] the public body solely responsible for the regulation of the Tribe's consumer Finance Services operations. The purpose of the Commission is regulatory, not	# of Agency Members Stated Purpose of Agency re: Consumers (if applicable) Powers of Agency	# of Agency Members Stated Purpose of Agency re: Consumers (if applicable) Powers of Agency Regulation Promulgation Authority 3: tribal treasurer, tribal treasurer, tribal secretary, and one other member elected by the Finance Services operation. Tribal Council. Council. Section 103: Section 118: Commission can examine or investigate complaints or violations of Ordinance of Commission of the Tribe's consumer Finance Services operations. The purpose of the Commission is regulatory, not managerial" Section 125: "The Commission may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Commission is regulatory, not managerial" Compel evidence for hearing and investigation Compel evidence compelled and 2) costs of investigation Section: 120: issue cease and desist order hold hearing for lender who receives cease and Council." Communication Commission Commission Compol evidence Compel evidence	Agency Members re: Consumers (if applicable) Powers of Agency Promulgation Authority Published? 3: tribal treasurer, tribal treasurer, tribal and one other member elected by the Tribal Council. The purpose of the Commission is regulatory, not managerial" Section 103:	# of Agency Members Stated Purpose of Agency re: Consumers (if applicable) Powers of Agency Powers of Agency Regulation Promulgation Authority Reg. Published? Interest Limit 3: tribal treasurer, tribal secretary, and one other member elected by the Tribal Council. The purpose of the Commission is regulatory, not managerial" Section 118: Commission can examine or investigate complaints or violations of act, rule, regulation, or order of Commission is regulation, or order of Commission is regulatory, not managerial" Section 125: "The Commission and examine or investigate complaints or violations of act, rule, regulation, or order of Commission, e-compel evidence for hearing and investigations roughly provided and 2) costs of investigation Section: 120: -issue cease and desist order State of Agency Regulation Promulgation Reg. Published? Interest Limit	# of Agency Members Powers of Agency Published? Interest Limit Licenses required

 $^{^{163}\} Resolution\ \#210565\ Adopting\ The\ Consumer\ Finance\ Services\ Regulatory\ Commission\ Ordinance\ (FY2010)\ establishes\ the\ code.$

Figure 19: S	Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies 161							
Document Creating Agency	Agency	Stated Purpose of Agency re: Consumers (if applicable)	Powers of Agency	Regulation Promulgation Authority	Reg. Pub- lished?	Interest Limit	Licenses required	Evidence of Agency Action
			property of person who fails to offer compelled evidence.					
			Section 108: Commission can approve or deny applications.					

As is evident in Figure 19 above, the content of the ordinances related to the creation of commissions and authorities regulating "consumer financial services" were substantially similar to each other. All of the purported tribal documents required that either the lending businesses or the people engaged in lending businesses seek licensure with the agency to ensure compliance with tribal law. Additionally, all of the tribal documents gave the agency the authority to investigate consumer complaints. The ordinances established that either the tribal councils or the tribal councils' business committee would exert control over the regulatory agency through selecting its membership and/or approving promulgated regulations. According to tribal documents, members of the regulatory agency were employed by the tribe and compensated as determined by the tribal, or executive, council. 164 Interestingly, the small size of all tribes' appointed agency membership—1 to 3 people—suggests that the agencies, as formed, may have difficulty accomplishing the aims described in the documents, given the extent of licensing needed and the volume of consumer complaints associated with each lender. While some of the governing documents required that licensees be notified when regulations applicable to them changed or when commentary period regarding a change of regulations opened, none of the governing documents required public publication of agency regulations.

The regulations purportedly in force by the tribes do not appear beneficial to borrowers. All of the ordinances either permit an exorbitant interest cap or have no cap at all. While many of the ordinances have a dispute resolution provision, all of the

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Researchers were not able to find evidence of any regulatory body employees or Tribal Council minutes regarding regulatory agency employees' compensation in the Habematolel, Guidiville, Kashia Band, Lac Du Flambeau, or Lac Vieux Desert Band tribes.

¹⁶⁴ Habematolel Tribal Consumer Financial Services Regulatory Ordinance § 4.5; Guidiville Tribal Lending Regulatory Ordinance § 4.7; Kashia Lending Commission Ordinance § III.D.6; Lac Du Flambeau Tribal Code Ch. 94 § 4.8; Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code § 4.8(b). *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁶⁵ Kashia Lending Commission Ordinance § V.B.2.b (stating "[n]o lender Licensee may charge fees, interest, or other consideration for the granting of a consumer loan that exceeds \$40 per \$100 lent" but providing no limits on lending term duration); Lac Du Flambeau Tribal Code Ch. 94 § 8.3(d) ("A creditor may not enter into a Loan transaction with a consumer in which the scheduled finance charges exceed fifty dollars (\$50.00) per one hundred dollars (\$100.00) of principal per installment period."); Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code §11.3 (b) ("A Financial Services Licensee may not enter into a Small Loan Transaction with a consumer in which the scheduled finance charges exceed fifty dollars (\$50.00) per one hundred dollars (\$100.00) of principal per installment period."); Guidiville Lending Regulatory Ordinance § 6.3 ("In no even may the maximum rate (inclusive of interest and fees) on loans authorized by this Ordinance exceed the rate of nine-hundred (900%) per year.). *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁶⁶ Chippewa Cree Tribal Lending and Regulatory Code § 10-3-602; Guidiville Rancheria Tribal lending Regulatory Ordinance (10-1) § 10.1-3; Kashia Lending Commission Ordinance #12 § VI; Lac Du Flambeau Tribal Code Ch. 94 § 10.1-3; Habematolel Tribal Consumer Financial Services Ordinance

ordinances leave complaint investigation to the agency's discretion. ¹⁶⁷ The purported Habematolel and Guidiville ordinances state that if a borrower is not satisfied with a conflict resolution offered by the tribal agency, he or she may pursue alternative dispute resolution or a tribal council appeal. ¹⁶⁸ The wording of the provisions makes it unclear, however, whether the consumer goes to arbitration with the tribal agency or with the lender.

The lending businesses ostensibly owned by the tribes did not follow the lending limits prescribed in the tribal documents establishing consumer finance regulatory bodies. For example, the Kashia Band's ordinance purportedly imposes an interest rate cap of \$40 per \$100 principal lent. But Napa Lending, a lending website that claims to be "wholly owned" by the Kashia Band of Pomo Indians, states on its FAQ page that "[O]ur APR can range between 36% and 690%. Other tribes' regulatory agencies limit lending fees through installment period. This presumably allows an extremely high APR, as the APR would reflect the accumulation of lending period fees over time. The Lac Du Flambeau law imposes a 50% cap per installment period. Bright Star Cash, another lending website that claims to be "wholly owned" by the Lac Du Flambeau Tribe, discloses on its "rates" page that its APR is between 295-795% "for returning customers." Although the APR is exorbitantly high, it presumably complies with the Lac Du Flambeau law. Similarly, the Lac Vieux Desert Band of Pomo Indians imposes a cap of 50% per principal lent per installment period. But Big Picture Loans, LLC, a lending website that claims to be "wholly owned" by the Lac Vieux Desert Band of

§ 11.4-5; Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code § 9.3. *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

The alleged Otoe-Missouria Consumer Finance Services Regulatory Commission document did not include a dispute provision. *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁶⁷ Kashia Lending Commission Ordinance § VI (c); Habematolel Tribal Consumer Financial Services Regulatory Ordinance § 11; Guidiville Tribal Lending Regulatory Ordinance § 10; Lac Du Flambeau Tribal Code Ch. 94 § 10; Lac Vieux Desert Band Consumer Financial Services Regulatory Code § 9. *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁶⁸ Guidiville Tribal Lending Regulatory Ordinance § 10.1(c) (stating that the borrower can have a dispute resolved by either AAA or JAMS with the applicable rules governing the arbitration); Habematolel Tribal Consumer Financial Services Regulator Code § 11.5 (stating that a consumer can request a review of a commission decision by the requesting arbitration by AAA with CAR governing the arbitration). *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*. Both provisions only allow for the borrower to opt for arbitration. *Id*.

¹⁶⁹ Kashia Lending Commission Ordinance § V.B.2.b.

¹⁷⁰ FAO, NAPA LENDING, http://www.napalending.com/faq/.

¹⁷¹ Rates, BRIGHT STAR CASH, https://www.brightstarcash.com/Rates.aspx.

Pomo Indians, states that the "typical installment loan APR range on an initial payment scheduled 21 days from the effective date of the loan . . . [is] 780.03%-788.62%." ¹⁷²

All of the tribal documents that supposedly created consumer financial regulatory agencies gave the agencies themselves—sometimes with only a single member—the ability to promulgate their own regulations. Some of the ordinances also suggest that lenders have undue influence over the supposed tribal agency. The Lac Du Flambeau tribal code has an analogous provision to Lac Vieux Desert Band tribal code provision, which states "[t]he Tribal Council, the Authority, or any Licensee may request the promulgation of a regulation by submitting a written request and draft of the proposed regulation," after which the authority must approve the proposed regulation unless it conflicts with applicable law. ¹⁷³ As a result, the agency, and not the tribal council, largely controls how the agency operates.

Despite the existence of the tribal codes, ordinances, and resolutions listed in Figure 19, no tribe published the name of the head of the regulatory agency or the location of the regulatory agency's office on its tribal newsletters or tribal website.

2. Tribes' and Tribal Officials' Statements About Involvement in Payday Lending

In addition to inter-tribal documents, some tribes have spoken with media and the federal government about the lending industry. Of the 27 tribes researched for this report, ten tribes made statements to the press, discussed payday involvement in tribal newsletters, or had tribal officials that participated in government hearing about their affiliation with lenders. Tribal officials also signed declarations that were submitted by payday lenders defending themselves in litigation.

Tribal members' and officials' statements regarding the payday industry did not create a clear explanation of tribes' views regarding their involvement in the payday industry. In court documents and some press statements, tribal leaders commented generally on the economic benefits the lending business gave the tribe, the importance of sovereign immunity, and the tribe's general dependence on the revenue received from the payday affiliation.¹⁷⁴ Almost all of the 11 tribal officials who provided declarations for

¹⁷³ Lac Du Flambeau Tribal Code Ch. 94 § 4.16 (a-b); Lac Vieux Desert Band Tribal Consumer Financial Services Regulatory Code § 4.16(b). *See* Figure 18: Sources of Tribal Documents Purportedly Creating Regulatory Agencies, *supra*.

¹⁷² FAQ, BIG PICTURE LOANS, https://www.bigpictureloans.com/faq.

¹⁷⁴ In *People v. MNE* where the California Commissioner for Business Oversight brought suit against five payday companies allegedly affiliated with two tribes—the Miami Nation of Oklahoma and the Santee Sioux of Nebraska—the California Supreme Court noted the absence of specific information contained within the tribal council's declarations. 386 P.3d 357, 376-77 (Cal. Dec. 22, 2016). Specifically, the court noted, "The record reveals a nominally close relationship between SFS and the Santee Sioux, and between MNE Services and the Miami Tribe. But it contains scant evidence that either tribe actually controls, oversees, or significantly benefits from the underlying business operations of the online

payday lenders in litigation were members of the "tribal" payday lobbyist, NAFSA. These declarations gave few specifics about the concrete arrangement between the tribe and management companies effectively running the payday business. In contrast, in press accounts, some tribal leaders exhibited a general unawareness of the inner workings of the lending business. In press statements, many tribes highlighted how they had struggled through economic hardship and were grateful to receive any revenue or the development of any job opportunities for their tribal members.

a. Statements Made in Internal Tribal Documents and to Newspapers, Other Periodicals, and Government Entities

The following charts summarize statements tribal members and tribal council members have made about their involvement in payday lending in newspapers and tribal publications. Figure 20 lists the tribes that mention their purported involvement in payday lending through employment ads, tribal newsletters, or other publications published on their tribal website.

lenders... The evidence here consists primarily of affidavits by tribal officials (submitted by the business entities) and various affidavits and supporting documentation assembled as part of an FTC investigation of AMG (submitted by the Commissioner)." Id. See also Mark Azure, Declaration ¶ 8, Everette v. NDG Fin. Corp., Doc. 22-3 ("Riverbend [the internet payday company] supports the Tribe's economic development efforts generally. We use the monies earned through Riverbend to provide essential services to members (e.g., police, ambulance, fire services) and to reinvest in the Tribe's other economic efforts, such as our Tribal store and Tribal restaurant, as well as our Tribal construction business and IT business."); Sherry Treppa Declaration ¶28, Otoe-Missouria v. N.Y. Dept. of Fin. Servs., Doc. 14 ("The consumer financial service business has proven to be very successful and absolutely vital for funding Tribal government operations. Indeed, fixed costs of the tribe are paid exclusively through revenues generated by the Tribe's consumer financial services business, and without the business, the Tribe would be unable to maintain its current financial obligations."); Marshall Pierite Declaration ¶7, Pennsylvania v. Think Fin., Inc., Doc. 67-2 ("Since Mobiloans was created in 2011, revenue from the enterprise has been used to fund Tribal educational and social services, as well as general government expenses."); John Shotton Declaration ¶17, Pennsylvania v. Think Fin., Inc., Doc. 67-3 ("The Tribe's online lending business accounts for a significant portion of the Tribe's nonfederal governmental budget and has created dozens of jobs on tribal land, including financial support staff, Head Start educators, and tribal housing personnel."); James Williams, Jr. Declaration ¶17, Decker v. RS Fin. Servs. LLC, Doc. 19-10 ("Revenue generated from SLS served as a major source of funding for the Tribal government operations and the provision of essential government services...such as housing, education, social services, and health care."). See Figure 22: Tribal Declarations Filed in Litigation.

¹⁷⁵ NAFSA is discussed in Section I.A.1. *Compare* Figure 22: Tribal Declarations Filed in Litigation *with* Figure 23: NAFSA's Board of Directors in 2013 *and* Figure 24: NAFSA's Current Board of Directors.

Figure 20: S	Statements About Payday Business in	Tribal Newsletters or Tribal Websites
Tribe	Evidence of lending business on tribe's website	Summary of Statements
Flandreau Santee Sioux Tribe ◆	Employment Openings, FLANDREAU SANTEE SIOUX TRIBE, http://www.santeesioux.com/fsst_employment.html (Call center manager listed)	
Habematolel Tribe	Sherry Treppa, Chairperson's Report, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 3-4, 32, http://www.upperlakepomo.com/forms/HP UL-Arrow-Newsletter-16-Sept.pdf; Sherry Treppa, Chairperson's Report, HPUL Newsletter) 13:1 Jan June 2014, at 3, 6-7, 16, http://www.upperlakepomo.com/forms/HP UL-Arrow-Newsletter-14-01-06.pdf; Kimberly Cobarruba, Treasurer Update, HPUL Newsletter (Habematolel Newsletter) 13:1 Jan June 2014, at 8, http://www.upperlakepomo.com/forms/HP UL-Arrow-Newsletter-14-01-06.pdf; Sherry Treppa, Chairperson's Report, HPUL Newsletter (Habematolel Newsletter) Volume 13:3, Oct. 2014-March 2015, at 6, 24, 26-27, http://www.upperlakepomo.com/forms/HP UL-Arrow-Newsletter-14-Oct-15-Mar.pdf; Lending Enterprise Compliance Specialist, HABEMATOLEL TRIBE, http://www.upperlakepomo.com/forms/TL E-Compliance-Specialist-Job- Description.pdf (last visited April 24, 2017).	The September 2016 Newsletter's Tribal Chairperson's Report discusses working with federal and state lawmakers and regulators on behalf of "lending enterprise" to educate them and build "relationships/allies." September 2016 Newsletter also discusses using the revenue to create capital for loans to members. However, "HPUL committees" on page 8 of newsletter and office directory on page 12-14 do not include lending entities or regulatory body. 2014 Newsletter, Vol. 13:1, Chairperson's Report on pages 3, 6-7 provides a long discussion of the tribe's purported involvement in the payday industry, stating in part, "The Tribe's other chief economic venture TLE continues to successfully adapt and evolve as it navigates the ever changing regulatory landscape by recognizing the need to become less dependent on third parties for key business functions [L]ast year we acquired a call center and more recently a lead generation/marketing company. Notably, the TLEs related enterprises are and likely will continue to be the primary sources of the Tribe's discretionary income. Accordingly, we endeavor to safeguard this revenue stream as we focus on education (and legislation as applicable) on the federal and state levels to quell emerging oppositions. The TLEs are without a doubt a key factor in the stability of our economic future and therefore of utmost importance [S]hould the tribe have stopped at one business, as was suggested in a recent meeting, the Tribe's revenue stream would be cut by 70% or more. The net result would be fewer job potential and diminished program capacity. That's estimated at \$1,600,000 annually that the tribe would have walked away from. Fortunately, your leadership determined that one wasn't enough![T]he ULPS call center acquisition in 2013 and now ArrowShade, the lead generation/affiliate marketing company, our TLE businesses in 2014 employs 150+ people and it promises to be the source for "new" jobs for tribal members in 2014Earlier this year we created two customer service positions a

Figure 20: S	Figure 20: Statements About Payday Business in Tribal Newsletters or Tribal Websites			
Tribe	Evidence of lending business on tribe's website	Summary of Statements		
		withdrawn their consumer alerts relative to the two Tribes previously mentioned."		
		The 2014 Tribal Newsletter, Vol. 13:1, "Treasurer's Update" on page 8 states "To date we have earned over 54% of our expected guaranteed income to Silver Cloud Financial, over 69% of our expected guaranteed income to Golden Valley Lending, and over 25% of our expected guaranteed income to Mountain Summit Financial. Our lending enterprises continue to exceed our minimum income of \$20,0000 per month of which we are guaranteed to receive annually."		
		Tribal Newsletter 2014, Vol. 13:3 also contains significant language regarding the tribe's purported involvement in the payday industry in the "Chairperson's Report" on pages 3 and 24. It largely paraphrases the language from the Vol. 13:1 Newsletter, but adds that "Most recently, we renegotiated the capital structure for the [TLE] portfolios which enable us to immediately and substantially increase the revenues to the Tribe with an additional increase in 2 years and finally retirement of the debt in just over 3 years. Moreover, we are negotiating the expansion through introduction of new capital for a fourth portfolio, which will provide additional moneys to the Tribe as well as accelerate repayment of the previously mentioned notes." At 6. Page 16 discusses tribe's involvement with lead generator ArrowShade, stating in part, "ArrowShade is celebrating its 1 year anniversary this month (March). Having operated now for twelve months and counting, the company continues to grow at an aggressive pace[ArrowShade has] a boutique selection of high profile, state-licensed lenders such as Google-backed LendUp.comit services 82 lending entities, representing 18 tribes, and facilitates marketing transactions for over 70 publishers ArrowShade entered into a strategic partnership with Trandotcom Solutions LLC., who stands as the short term lending industries largest software platform provider." On page 26, Chairperson's Report publishes an article originally published by NAFSA regarding federal oversight for the tribe. On page 27, Chairperson's report discusses tribe's involvement in the "Tribal Government E-Commerce Conference" at Arizona State University's Sandra Day O'Connor College of Law.		
Lac Courte Oreilles	Re-Elect Bill Morrow for Tribal Governing Board, OFFICIAL NEWSLETTER (Lac Courte Oreilles) May 2013 Newsletter at 7, http://www.lco-nsn.gov/docs/newsletter/may-2013-newsletter.pdf	Bill Morrow states that his accomplishments include "In the last 12 months I was appointed by TGB to spearhead online gaming and online lending that will create employment for Tribal members, as well as boost the economy of the Tribe."		

Figure 20: S	Figure 20: Statements About Payday Business in Tribal Newsletters or Tribal Websites			
Tribe	Evidence of lending business on tribe's website	Summary of Statements		
Lac Du Flambeau	Loan Specialist, LDF BUSINESS DEVELOPMENT CORP., https://www.ldftribe.com/uploads/files/145 2875584_Loan-Specialist.pdf; Internet Lending Business, INWEWIN NEWSLETTER (Lac Du Flambeau) July 2013 at 8, https://www.ldftribe.com/files/news/July- 2013-Final_162.pdf.	2013 Newsletter states, "In late May, the Tribe launched an exciting new business that has unlimited potential – Internet Lending. While the business model has been around for years, and is sometimes confused with payday lending, there are many differences between the two types of businesses. Internet lending is done strictly online, as opposed to the traditional "brick and mortar" (store) payday loan operations. Some view payday loan and internet lending businesses as predatory, with companies taking advantage of individuals already in unpleasant financial situations. The Tribe's business model is proven, and offers safeguards against individuals defaulting. To avoid conflict, Tribal Members and residents of the state of Wisconsin will not be eligible for lending services. More than a year of research and much work has been done. In December 2012, the Tribal Council approved an Internet Lending Ordinance. The Ordinance sets forth the rules and regulations for internet lending operations, and the Tribal Council is now in the process of creating an Internet Lending Commission that will develop and implement regulatory standards and procedures, and ensure compliance to the standards and procedures. Initially the Internet Lending business is set to employ three full time staff to work in the call center and process loan applications. Projections indicate significant growth for the business within two years. Similar models currently in operation have added upwards of 100 positions within the first 12 to 18 months. The Tribe's lending model expects to add at least 40 jobs within the first year of operation. 'Our growth projects are modest and grounded in reality,' said Brent McFarland, Director of Business and Economic Development for the Tribe. 'We want to make sure we do everything right from the beginning. We don't want to grow too fast, and we want our staff to have all of the proper training and skills, which will create a lasting foundation for years to come.' The Tribe has partnered with one of the largest an		
Lac Vieux Desert Band	Economic Development, LAC VIEUX DESERT BAND, http://www.lvdtribal.com/economic.html (listing Big Picture Loans, LLC, Ascension Technologies, LLC, Tribal Economic Development Holdings, LLC as "tribally owned and operated financial service businesses"). Tribal Financial Services Regulatory Authority, LAC VIEUX DESERT BAND,	Economic Development Page: "The Lac Vieux Desert Band of Lake Superior Chippewa Indians has authorized consumer financial services businesses as legitimate means of generating revenue to develop the Tribe's economy in order to improve the Tribe's economic self-sufficiency, to enable the Tribe to better serve the social, economic, educational, and health and safety needs of its members and visitors, and to provide its members with opportunities to improve their own economic circumstances. To protect consumers, all Tribal Financial Service providers are required to be licensed as a Tribal business and by the Tribal Financial Services Regulatory Authority ("TFSRA"), and to adhere to the Tribal Financial Services Regulatory Code, as well as all applicable federal and Tribal laws and regulations."		

Figure 20: S	tatements About Payday Business in	Tribal Newsletters or Tribal Websites
Tribe	Evidence of lending business on tribe's website	Summary of Statements
		Tribal Financial Services Regulatory Authority, under Consumer Alert heading, "Please be advised that Sovereign Lending Solutions, LLC ("SLS"), a former tribally owned and operated tribal consumer financial service provider, doing business as Title Loan America, has dissolved effective September 15, 2014. The TFSRA previously alerted consumers that SLS had ceased operation and had assigned all assets, including loans and liens, to Management Solution, LLC ("MS"). The TFSRA has recently learned that after SLS had assigned all assets, MS reassigned those assets to Car Loan LLC, LLC, P.O. Box 11, Rarotonga, Cook Islands."
Miami Tribe	Miami Nation Enterprises page linked to tribal website, see http://mn-e.com/	
Otoe- Missouria	Financial Services Companies, OTOE-MISSOURIA TRIBE http://www.omtribe.org/index.php?financial-services (lists American Web Loan and Great Plains Lending).	
Tunica-Biloxi	MobiLoans, LLC, TUNICA-BILOXI TRIBE http://www.tunica.org/mobiloans%2c-llc.html/ (tribal website directly lists Mobiloans, LLC as one of its "tribal enterprises").	
Wakpamni Oglala Sioux	More Inaccuracy: Letter to the Editor of Native Sun News, WAKPAMNI LAKE COMMUNITY GOVERNMENT BLOG (Sept. 8, 2014) https://wakpamnilakecommunity.wordpress .com/2014/09/08/more-inaccuracy-letter-to- the-editor-of-native-sun-news/	Tribal President Geneva Loan Hill purportedly writes blog post discussing involvement in payday lending as opportunity to enrich sovereign immunity.

Figure 21 lists all statements tribal members and leaders have made about their tribe's involvement in payday lending in media sources more generally. For the Big Valley Tribe, Cheyenne River Sioux Tribe, Guidiville, Iipay Tribe, Kashia Band, La Posta Band, Mechoopda Tribe, Miami Tribe, Picayune Rancheria, Santee Sioux Nation, and Tunica-Biloxi, researchers did not find any statements related to the tribes' purported involvement in payday lending on their tribal website or in media articles.

Figure 21:	Tribal Members' State	ements to Nev	wspapers Regarding Payday Industry
Tribe	Media source	Speaker	Statement
Big Lagoon Rancheria	Julia Harte & Joanna Bernstein, <i>Payday</i> <i>Nation</i> , AL JAZEERA AMERICA, June 17, 2014, http://projects.aljazeera.com/2014/payday-nation/ .	Virgil Moorehead, Tribal Chairman	"'For us it's like, "State, if you'd played by the rules on the casino issue, I wouldn't have to fight you and look to other avenues to pay for the fight," 'Moorehead explained Tribal leaders like Moorehead say they do business only with lenders who follow the law by making out loans only to customers in states that do not cap interest rates. Lenders who wish to work with Big Lagoon must fill out a six-page application form and promise to abide by a lending code that the tribe adopted, said Moorehead."
	Rosette Defends "Secret" Payments, HAVRE DAILY NEWS, Sept. 10, 2014, http://havredailynews. com/story/2014/09/10/ local/rosette-defends- secret- payments/500160.html :	Joel Rosette, Sr., former Plain Green Executive and Tribal Council member	Discussing bribes Rosette received from Plain Green, "Rosette said he and Morsette did not ask for the payments. Plain Green's board of directors offered to pay them 5 percent of revenues because Rosette and Morsette had started a consulting business that the board feared would allow other tribes to open their own lending companies and compete with Plain Green's business In [Rosette's] prepared statement, he said 'I am saddened and depressed that my own tribe would make me out to be a scapegoat and look like a crook in this matter when all I did was assist in creating a very successful business that brought in millions to our tribe and created sorely needed jobs for our tribal membersThe real story that should be pursued is how our tribe only receives 4.5 percent of the revenues generated from Plain Green and at the same time the 'golden goose' (Think Finance) receives 95.5 percent of the revenues even though our tribe is supposed to own and control this business. Who owns and controls what?' "
Chippewa Cree	Ben Walsh, Outlawed By States, Payday Lenders Take Refuge On Reservations, HUFFINGTON POST, June 29, 2015, http://www.huffington post.com/2015/06/29/o nline-payday-lenders- reservations n 76250 06.html.	Anonymous tribal leader	Tribal leader describes contract formation between Chippewa Cree and Think Finance, "According to one tribal leader with direct knowledge of the deal, Think Finance also made it clear to the Chippewa Cree that if the tribe didn't accept Think Finance's terms, the company would be perfectly happy to find another tribe that would. Within two weeks of receiving Think Finance's letter, the Chippewa Cree, who had tried for a year to run their own lending business, agreed to the arrangement. The tribe partnered with Think Finance and renamed its lending company Plain Green. The tribe would own 51 percent of the company, and Think Finance would own 49 percent Although the company is nominally owned by the Chippewa Cree, the tribe has little actual involvement in its operations and receives a tiny fraction of the revenue generated by the business A former Plain Green executive and member of the Chippewa Cree tribe who requested anonymity due to fears of retribution told HuffPost that at the end of each day, a Plain Green officer signed off on all the loans approved by Think Finance's software."

Figure 21:	Tribal Members' State	ements to Nev	vspapers Regarding Payday Industry
Tribe	Media source	Speaker	Statement
Flandreau Santee Sioux Tribe	Poised for Growth Short-term Lending Call Center Opens, MOODY COUNTY ENTER., Nov. 25, 2014, http://www.moodycou ntyenterprise.com/v2 news_articles.php?pag e=76&story_id=5509.	Tony Reider, Tribal Council President	"The Flandreau Santee Sioux Tribe, which now owns the building, is busy clearing out the old bingo hall in the casino to make way for a new business venture – a short term lending call center, entitled FSST Financial Services, LLC. 'It's an online, short-term lending company that the tribe has acquired and the positions that we're hiring for right now are customer service positions. We're working on the first manager as well,' said FSST Tribal Council President, Tony Reider, who's heading up the new venture. He added, 'There are numerous other tribes operating this type of business. The approach we took however, was acquiring an existing business, one with sound and ethical business practices, versus going through growing pains of a start up.' Reider says the business is already up and running. The tribe plans to offer wages and benefits that are competitive with the Sioux Falls market. And, while right now there are only about twelve positions available, Reider says the potential for growth is tremendous, both in revenue and bringing well paying jobs to the area."
Fort Belknap Tribe	Dan Frosch & Alan Zibel, Tribes' Online Lending Faces Federal Squeeze, WALL ST. J., July 23, 2014, https://www.wsj.com/articles/tribes-online-lending-squeezed-by-regulators-1406158967 .	Michelle Fox, tribal member who "help[ed] start the lending business"; Mark Azure, tribe president	Discusses how there is a lack of employment opportunities for tribal members and the tribal economy is suffering. Describes how the Justice Department initiative, "Operation Choke Point," negatively impacted tribe's business.

			wspapers Regarding Payday Industry
Habematol el Tribe	Julia Harte & Joanna Bernstein, Payday Nation, AL JAZEERA AMERICA, June 17, 2014, http://projects.aljazeera.com/2014/payday-nation/ .	Sherry Treppa, Tribal Council President; Tribal Member Vanessa Niko	Not direct quotes from Treppa. Treppa wrote to reporter, stating that the revenues from the tribal casino had been below expectations, the revenue generated from the payday companies funded youth, education, infrastructure, and cultural programs. "Most of the rancheria's land is already occupied by the wigwamshaped Running Creek casino, which opened in 2012. But Running Creek, with its 349 slot machines, six gaming tables and two restaurants, has failed to live up to its promise. The revenues, wrote Sherry Treppa, the head of the tribal council, 'have been below expectations.' The casino cost the Habematolel Pomo \$30 million to build. The revenue generated from the payday lending businesses, Treppa said, funds the tribe's youth, infrastructure and cultural programs. Some of it is also used to pay for the schooling of tribal childrenBut rancheria members such as Vanessa Niko said they don't see these benefits on the rancheria itself, perhaps because none of the tribal council members live there. And Niko doesn't see any new employment opportunities opening up for herself or her five children. 'They don't have jobs for us unless you're on the council,' she said. Treppa declined all calls for comment after sending a list of talking points by email."
Lac Du Flambeau	Cary Spivak, Lac du Flambeau Chippewa enter payday loan business with eye to online gambling, MILWAUKEE-WISCONSIN J. SENTINEL, Dec. 29, 2013, http://archive.jsonline.com/business/lac-du-flambeau-chippewa-enter-payday-loan-business-with-eye-to-online-gambling-b99164952z1-237906421.html.	Tom Maulson, Tribe's president; Brent McFarland, director of business develop- ment	Article discusses tribal economic investment losses. "Tom Maulson, the tribe's blunt-talking president, dismisses critics who see gambling and high-interest, short-term lending as businesses that prey on the poor. 'It's legal to do, and we're doing it legally,' Maulson said Since May the tribe has launched three online payday lending companies, two of which came online this month, and set up the infrastructure for an Internet casino. If online gambling were legalized throughout the country or in Wisconsin, 'we could just flip a switch' and turn the online casino, which currently uses play money, into one that takes bets using real money, Maulson said The tribe's three lenders employ about eight people, a figure McFarland hopes grows to 120 in a year as the call center expands."

Figure 21:	Tribal Members' State	ements to Nev	vspapers Regarding Payday Industry
Tribe	Media source	Speaker	Statement
Lac Vieux	Chico Harlan, Indian Tribes Gambling On High-Interest Loans To Raise Revenue, WASH. POST, March 1, 2105, https://www.washingto npost.com/business/ec onomy/indian-tribes- gambling-on-high- interest-loans-to- raiserevenue/2015/03/ 01/8551642d-e51b- 4d3a-89c6- 4de0d3bdf385_story.ht ml .	Amber McGeshick, customer service worker at CastlePay- day.com; James Williams Jr., Tribe President	Article describes McGeshick's experiences as a tribal member and customer service worker and the tribe's reasons for getting into payday lending. "Lending has allowed the tribe to subsidize propane costs during winters, preventing members from facing a choice 'between heat and food,' tribal Chairman James Williams Jr. said. Lending allowed the tribe to cover the combined \$60,000 shipping costs for 12 old Federal Emergency Management Agency trailers — government hand-me-downs, including a few used in the Hurricane Katrina aftermath, that will soon turn into permanent housing The way Castle Payday is set up, borrowers' problems can feel far away. Their calls land in the Philippines, largely because the tribe doesn't have enough people to staff a call center; the Filipinos forward information to McGeshick's office via an instant messaging program. Borrowers' e-mails go directly to the tribe but even there, the responses are mostly prepackaged. When McGeshick writes back to customers, she picks from among several response templates — one explaining fees, for instance, another explaining payment options."
Desert Band	James Williams Jr. Tribal Lending Helps Consumers, Letter to the Editor, WASH. POST, March 5, 2015, https://www.washingto npost.com/opinions/tri bal-lending-helps- consumers/2015/03/05 /31cd08e4-c2ac-11e4- a188- 8e4971d37a8d_story.h tml?utm_term=.222c0 495e1bd.	James Williams Jr., Tribe President	Williams writes letter to the editor, stating: "The March 2 front-page article 'Tribes' bet on high-interest lending comes with uneasy feelings' omitted the fact that tribally owned businesses are regulated, geared toward customer satisfaction and take aggressive measures for consumer protection. Under tribal law, the Tribal Financial Services Regulatory Authority (TFSRA), an independent body that went unmentioned in the story, regulates our business. We're proud that 92 percent of our customers express satisfaction and would use our services again. Tribal law allows dissatisfied consumers to raise concerns with the business, the TFSRA and the constitutionally created Tribal Court — a dispute resolution process equivalent to that available in any state. The article also highlighted a series of calculations, metrics and 'worst case' scenarios. Those figures do not accurately reflect our customers' experiences. Our tribal lending businesses offer options to meet the financial needs of consumers at a time when they need it most. With a median per person income of \$51,559, our customers are equipped to manage their finances."

Tribe	Media source	Speaker	Statement
	Zeke Faux, Payday Lenders Are Changing The Game Ahead of a U.S. Crackdown, BLOOMBERG BUSINESSWEEK, Feb. 4, 2016, https://www.bloomber g.com/news/articles/20 16-02-04/payday- lenders-are-changing- the-game-ahead-of-a- u-s-crackdown.	James Williams Jr., Tribe President	Article discusses tribe's acquisition of Bellicose Capital, stating: "Bellicose has collected tens of millions of dollars, with the tribe keeping about 2 percent of the revenue, according to documents provided by a person involved in the deal James Williams, chairman of the Lac Vieux Desert tribe, says the websites have a bright future and will help fund medical, educational, and social services. 'This is, without question, the most important economic development in the more than 179-year-long history of our tribe,' Williams says."
MHA Nation ◆	MHA Nation: Outraged at Consumer Financial Protection Bureau for Supporting NYS Litigation Against Tribal Lenders, INDIAN COUNTRY MEDIA NETWORK, Dec. 9, 2013, https://indiancountrym edianetwork.com/news /business/mha-nation- outraged-at-consumer- financial-protection- bureau-for-supporting- nys-litigation-against- tribal-lenders/.	Tex Hall, Chairman of Tribe	Hall "issues statement" which is then published by the Indian Country Media Network in Indian Country Today website, a public media website oriented toward members of Native American tribes. Hall criticizes CFPB for filing an Amicus Brief in N.T. Dept. of Financial Services litigation against 3 tribes, stating: "'As mandated by Executive Order 13175, all federal agencies must engage in meaningful consultation on issues that affect tribes' right to self-government and self-determination. In its own meager Policy for Consultation with Tribal Governments that barely exceeds one page in length after excluding legal disclaimers, the CFPB has expressed its commitment to honor this federal-tribal relationship. Over the course of multiple meetings that tribes have had with the CFPB, CFPB personnel has repeatedly asserted that they understand the tribes' concerns and would be responsive to them. 'Yet, in its brief filed only weeks ago in a New York federal court, the CFPB continues conduct to accomplish indirectly what it cannot do directly. Acknowledging in its brief that it is tasked with the enforcement of federal law, the CFPB then argues for 12 pages that the court should allow New York to enforce its state laws against the tribes. The law of this land is to the contrary – only Congress, not the CFBP, not the State of New York, has authority to abrogate tribal sovereignty."
Modoc Tribe of Oklahoma	Jessica Silver-Greenberg, <i>Payday Lenders Join with Indian Tribes</i> , WALL ST. J., Feb. 10, 2011, http://www.wsj.com/articles/SB10001424052 748703716904576134 304155106320 .	Bill Follis, Chief of Modoc Tribe	"Mr. Follis, the chief of the Modoc tribe in Miami, Okla., said getting into the payday-loan business has generated jobs that are a welcome addition to the tribal-owned cigarette store, recycling plant and 25,000-square-foot casino near Interstate 44. Sitting in his office in a farmhouse dwarfed by the Stables Casino, with 546 slot machines and two restaurants, Mr. Follis wouldn't say how much money the tribe gets from payday loans or identify the lender it owns. Modoc officials have been approached by other payday-loan companies in the past six months, he said. Asked where the tribe's payday-loan operation is located, Mr. Follis replied that he thinks 'it's somewhere in Kansas.'"

Tribe	Media source	Speaker	Statement
Otoe- Missouria	Zeke Faux, Behind 700% Loans, Profits Flow Through Red Rock to Wall Street, BLOOMBERG TECH. (Nov. 24, 2014), http://www.bloomberg .com/news/articles/201 4-11-24/payday-loan- fortune-backed-by- medley-found-behind- indian-casino .	John Shotton, Tribal President; Bat Shunatona, Tribal Treasurer; Charles Moncoonye a, Tribal Vice Chairman	"Curry met the Otoe-Missouria's tribal council in Red Rock about five years ago, Moncooye said. Few visitors come to the town, 95 miles south of Wichita, Kansas, where the tribe migrated from Nebraska around 1880 after much of its reservation was sold to make way for railroads. 'They put on a dog-and-pony show about how good they are, how much money they were bringing in,' said Bat Shunatona, then the tribe's treasurer The council asked few questions during Curry's presentation and granted a license to American Web Loan in February 2010, according to Moncooyea, who was put in charge of the company. 'I didn't do much at all, just looked at the checks and passed them on,' said Moncooyea, who added that he'd hoped to learn the business and eventually cut Curry out. 'We were just a pawn.'" Earlier, Faux reported: "Curry's presentation, filed in federal court in Illinois by an investment banker suing him over fees, shows that Curry's MacFarlane Group Inc. generates more than \$100 million a year in revenue from American Web Loan and another website owned by the Otoe-Missouria. The tribe keeps about 1 percent, according to Charles Moncooyea, who helped strike the deal with Curry in 2010 when he was the tribe's vice chairman. 'All we wanted was money coming into the tribe,' Moncooyea said in a telephone interview. 'As time went on, I realized that we didn't have any control at all.' Shotton says that's not true. The tribe owns the websites, hires outside help when needed, as it does with its four casinos, and keeps all the profit, he said. 'Short-term lending on the Internet for us has been one of the most successful ventures we've been involved in since gaming,' he said in an interview in his office across from the casino, where a drum decorated with the tribal seal hangs on a wall. 'The profits were immediate and they were substantial.' Curry said in a telephone interview that he's only a consultant. He also said that the presentation was prepared by an outside firm and that many figures in it are inaccurate esti

Tribe	Media source	Speaker	Statement
	Otoe-Missouria Tribe Rallies Against Pending Litigation, NATIVE TIMES, July 24, 2015, http://www.nativetime s.com/index.php/busin ess/news/11825-otoe- missouria-tribe-rallies- against-pending- litigation.	John Shotton, Tribal President	"Shotton and the other tribal council members led the march, and afterwards Shotton expressed his appreciation for all the support. 'I just want to say, especially right now, I'm very proud to be an Otoe-Missouria Indian,' Shotton said as his emotions shook his voice. 'I'm very proud (and) can't think of any other place I'd rather be.' He said he is not worried for himself, but for the people. He worries about 'real deal things that are life affective,' such as increasing services to elders and education. He also commended the tribal council for their deep commitment and caring for the people, regardless if they don't always agree. He said, 'We didn't always get everything right, we didn't always succeed,' but they have taken risks and look forward to opening a new casino. 'All I know is I am Otoe-Missouria Indian from Red Rock, Oklahoma, and they're not going to intimidate me,' he said. 'Thank you all for all your support. I grew up here, I know our mentality. You can say what you want to me, call me what you want, whatever, but you're not going to pick on my people. I'm going to stand up for you.' Shotton said the Otoe-Missouria are a cultural people before they're a business, and when faced with adversity, they come together. He ended his speech by reminding everyone the threat against their sovereignty is real."
Turtle Mountain Band of Chippewa Indians	Turtle Mountain Band Launches Payday Lending Business Online, INDIANZ.COM (July 19, 2012), http://www.indianz.co m/News/2012/006478. asp.	Merle St. Claire, Tribal Chairman	"BlueChip Financial provides loans over the Internet. The company employs 12 people and plans to hire more. 'It's going to create jobs that we are happy to have on the reservation,' Chairman Merle St. Claire told The Minot Daily News. 'We just don't have employment opportunities so this is going to create one more avenue for people to go to work.' The tribe is using the services of ZestFinance to determine who is worthy of a loan. The company will be reporting loan information to credit bureaus."
Wakpamni Oglala Sioux	Eamon Javers, How Some Payday Lenders Charge Over 700% on Loans, CNBC (Sept. 17, 2012) http://www.cnbc.com/i d/49035819.	Richard Little Hawk, Tribal Secretary	Article discusses how then-tribal president Sandy Two Lance was caught on tape saying that she is going to sign a payday contract on behalf of the tribe without the tribal council's approval. Tribal Secretary Richard Little Hawk didn't believe contract was valid. CNBC reports: "'We were not aware of this payday lending project on the Internet until you brought it to our attention,' said Richard Little Hawk, the secretary of the Wakpamni District. 'We believe that a fraud has been committed on us and these individuals pulled a fast one on us.'CNBC contacted tribal president Sandy Two Lance who agreed that her signature on the payday lending contract had not been made according to tribal procedure, but she said she shredded the agreement when other members of the tribe complained. Richard Little Hawk said he has not spoken to Sandy Two Lance in months, and does not know where the tribal president is."

Tribe	Media source	Speaker	Statement
	Julia Harte & Joanna Bernstein, <i>Payday Nation</i> , AL JAZEERA AMERICA, June 18, 2014, http://projects.aljazeer a.com/2014/payday- nation/sioux-tribe- payday.html.	Arlene Catches the Enemy, Economic Development Office Worker	Tribe turns down offer to become involved in payday lending from member Raycen Raines. Catches the Enemy, who worked in the tribe's economic development office, states: "It was predatory lending." (A corporation run by a member of the tribe sued Catches the Enemy for allegedly making false statements in this article. <i>See</i> note 88, <i>supra</i> .)

♦ = Lender without confirmed California connection.

Some important themes arose from the statements tribes and tribal council officials made both to their tribes and to the outside community. Tribal officials generally tried to downplay the predatory lending side of the internet payday loan business. Some tribal officials referred to the enterprise as "short term loans," "installment loans," "Tribal Lending Enterprises," or loan businesses. The In a tribal newsletter, the Lac Du Flambeau Tribe was careful to distinguish its "internet lending" from payday lending. The Italy Italy

http://www.moodycountyenterprise.com/v2_news_articles.php?page=76&story_id=5509; Sherry Treppa, *Chairperson's Report*, HPUL NEWSLETTER (Habematolel Newsletter) 13:1 Jan.- June 2014, at 3, 6-7, 16, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf.

¹⁷⁶ Mackenzie Lee, *eCommerce Call Center Opening in Hays*, KRTV.COM (July 13, 2016); http://www.krtv.com/story/32430632/e-commerce-call-center-opening-in-hays; Faux, *Behind 700% Loans*, *supra* note 57; Spivak, *supra* note 27; *Poised for Growth Short-term Lending Call Center Opens*, MOODY COUNTY ENTER., Nov. 25, 2014, at

¹⁷⁷ Internet Lending Business, INWEWIN NEWSLETTER (Lac Du Flambeau) July 2013 at 8, https://www.ldftribe.com/files/news/July-2013-Final_162.pdf ("In late May, the Tribe launched an exciting new business that has unlimited potential - Internet Lending. While the business model has been around for years, and is sometimes confused with payday lending, there are many differences between the two types of businesses. Internet lending is done strictly online, as opposed to the traditional "brick and mortar" (store) payday loan operations. Some view payday loan and internet lending businesses as predatory, with companies taking advantage of individuals already in unpleasant financial situations. The Tribe's business model is proven, and offers safeguards against individuals defaulting. To avoid conflict, Tribal Members and residents of the state of Wisconsin will not be eligible for lending services.").

¹⁷⁸ Harte & Bernstein, *Payday Nation*, supra note 20.

¹⁷⁹ Spivak, *supra* note 27.

Washington Post article about tribes' affiliation with payday lenders, asserted that the lenders are regulated by the tribes and benefit consumers. When explaining their new business venture, Flandreau Santee Sioux officials highlighted other tribes' involvement with lending. Isl

According to reports in local and national newspapers, tribal contact with payday lenders was often catalyzed by economic hardship. The Big Lagoon Rancheria and Habematolel Tribe considered payday lending after casino ventures failed to generate significant revenue. ¹⁸² Tribal officials all pointed to economic and employment gains that could be garnered through a relationship with a lender, ¹⁸³ implying that those gains would be significant for the tribe, but few specified how much revenue the tribe was actually receiving from the payday lending business. ¹⁸⁴ A tribal official from Fort Belknap highlighted how the loan operation allowed the tribe to operate tribal services and open up additional tribal businesses. ¹⁸⁵ James Williams Jr., Tribal Chairman of the Lac Vieux Desert Band Tribe, stated that the revenue from payday lending covered critical survival costs of tribal members, like twelve old FEMA trailers for members to survive the

¹⁸⁰ James Williams Jr., *Tribal Lending Helps Consumers, Letter to the Editor*, WASH. POST (March 5, 2015), https://www.washingtonpost.com/opinions/tribal-lending-helps-consumers/2015/03/05/31cd08e4-c2ac-11e4-a188-8e4971d37a8d_story.html?utm_term=.222c0495e1bd.

¹⁸¹ See Poised for Growth Short-term Lending Call Center Opens, MOODY COUNTY ENTER., supra note 176.

¹⁸² Bernstein & Harte, *The Sovereign Matchmaker, supra* note 20.

¹⁸³ Lac Du Flambeau Newsletter, *supra* note 177 (describing desired employment gains from internet lending); Silver-Greenberg, *supra* note 10 ("Mr. Follis, the chief of the Modoc tribe in Miami, Okla., said getting into the payday-loan business has generated jobs that are a welcome addition to the tribal-owned cigarette store, recycling plant and 25,000-square-foot casino near Interstate 44. ... Mr. Follis wouldn't say how much money the tribe gets from payday loans or identify the lender it owns. Modoc officials have been approached by other payday-loan companies in the past six months, he said.").

One tribal official from the Chippewa Cree Tribe, Joel Rosette, Sr., stated that the Chippewa Cree was only earning 4.5% of revenues generated from the payday company they allegedly owned, Plain Green. *Rosette Defends "Secret" Payments*, HAVRE DAILY NEWS, Sept. 10, 2014, http://havredailynews.com/story/2014/09/10/local/rosette-defends-secret-payments/500160.html. However, he only made those statements after it was publicly revealed that he was being bribed and embezzling money from the Chippewa Cree. Andrew Westney, *Ex-Tribal Lending CEOS Sentenced to Bribery, Embezzlement*, LAW360 (March 9, 2016), https://www.law360.com/articles/769084/ex-tribal-lending-ceos-sentenced-for-bribery-embezzlement. His comments were confirmed through the "term sheet" between the Chippewa Cree offered in litigation. *Gringas v. Rosette*, Doc. 23-2. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

¹⁸⁵ Jack McNeel, *From a Jerky Smokehouse to New Construction: Business Is Booming On Fort Belknap*, INDIAN COUNTRY TODAY MEDIA NETWORK (July 3, 2014), http://indiancountrytodaymedianetwork.com/gallery/photo/jerky-smokehouse-new-construction-business-booming-fort-belknap-155631.

winter. ¹⁸⁶ Bill Follis, president of the Modoc Tribe, claimed that the tribe's involvement in payday lending created jobs, but didn't specify how many or in what capacity. ¹⁸⁷ Merle St. Claire, Chairman of the Turtle Mountain Band of Chippewa, claimed that involvement in the payday industry would create jobs that were difficult to create otherwise. ¹⁸⁸

In addition to news media, the lobbyist group NAFSA widely advertised an online documentary entitled "An Unlikely Solution." The film featured consumers, tribal members, tribal council members, and former state and federal officials discussing tribal lending. In general, the tribal council members featured in the film *An Unlikely Solution* discussed the poverty and isolation their tribe faces. Richard Williams, the Lac Vieux Desert Band Gaming Commissioner, stated, "We are in one of the most remote places in the United States. Although we do have some large cities within 100 miles of us we still sit in the middle of nowhere ¹⁹⁰ This is crazy especially on an old Indian. And it's hard, especially recently with the influx in the prices of propane. It's crazy. And I feared for my people, especially having to live in cold houses and possibly freezing. You know, what's more important, to be warm or have something to eat, and no one wants to make those types of choices." ¹⁹¹ Sandra Knight, Vice Chairperson of the Mechoopda Tribe, said, "I'm hopeful that we'll be able to really function as a whole tribal government and be able to offer services to our members as we're supposed to do through our tribal constitution, we're in charge of the general welfare of our members, but we don't have the funds to address their basic needs right now ¹⁹² We have a tribal membership of about 500 and most of our membership is children . . . we just are desperate for services for them, quality services, that are specialized in um, substance abuse, that can help us with gang affiliation. We just don't have the resources to address those issues for our members "193

Tribal officials within the same tribe did not always offer the same perspective on the lender-tribe relationship. For example, tribal officials from the Otoe-Missouria Tribe disagreed about the nature of the tribe's involvement in the lending business, with one official stating that the "[tribe] didn't have any control at all" whereas another tribal

¹⁸⁶ Harlan, *supra* note 23.

¹⁸⁷ Silver-Greenberg, *supra* note 10.

¹⁸⁸ Turtle Mountain Band Launches Payday Lending Business Online, INDIANZ.COM (July 19, 2012), http://www.indianz.com/News/2012/006478.asp.

¹⁸⁹ An Unlikely Solution, supra note 26.

¹⁹⁰ *Id.* at 4:12.

¹⁹¹ *Id.* at 4:39.

¹⁹² *Id.* at 14:03.

¹⁹³ *Id.* at 14:44.

official claimed that the tribe owns and operates the lending business. ¹⁹⁴ Wakpamni tribal members disagreed about the amount of involvement the tribe had with lenders claiming to be affiliated with them, with one tribal official shocked to discover that the tribe was listed on a payday lending website. ¹⁹⁵ Although AJAM and a tribal member reported that the tribe had refused affiliation with a lender, following the publication of the article, a blog credited to Geneva Loan Hill, President of the Wakpamni Lake Community Government, defended the tribe's purported involvement in payday lending. ¹⁹⁶

Some tribal leaders characterized their involvement in internet lending as an opportunity to build their sovereignty. Tex Hall, Chairman of the MHA Nation, strongly criticized the CFPB for encouraging state oversight of payday companies claiming to be affiliated with Native American tribes. ¹⁹⁷ The President of the Wakpamni Lake Community was offended at the idea that a tribe would be "duped or isn't smart enough to make its own governmental judgments about what businesses the Community should be in order to raise revenues" and did not believe that the loan products offered were abusive. ¹⁹⁸ Native Americans protested against fines related to payday lending levied against the Otoe-Missouria Tribe by the Connecticut government, stating that the fines "attacked [the tribe's] sovereignty." ¹⁹⁹ The protesters also encouraged tribal members to "stand behind our leaders as they go through this trying time, because they are working to

¹⁹⁴ Faux, Behind 700% Loans, supra note 57.

¹⁹⁵ Eamon Javers, *How Some Payday Lenders Charge Over 700% on Loans*, CNBC, Sept. 17, 2012, http://www.cnbc.com/id/49035819; *see* Nehamas, *supra* note 18.

¹⁹⁶ More Inaccuracy: Letter to the Editor of Native Sun News, WAKPAMNI LAKE COMMUNITY GOVERNMENT BLOG (Sept. 8, 2014), https://wakpamnilakecommunity.wordpress.com/2014/09/08/more-inaccuracy-letter-to-the-editor-of-native-sun-news/ ("The Community is working toward the goal of self-sufficiency. We are pulling ourselves up by our own bootstraps. Our business development efforts are historic, broad-ranging, including business parks, tourism, arts-and-crafts, and even supporting a tribal member's fashion design business. Some we are just starting some we have been doing for years. Online lending is just one of our enterprises, but an important one that is helping us diversify our economy.") But see Brandon Ecoffey, Oglala Man's Business Dealings Under Scrutiny, NATIVE SUN NEWS (Aug. 14, 2011), http://indianz.com/News/2014/014790.asp (describing how the Wakpamni Tribe nearly became involved with internet lending.). For more analysis of the Wakpamni Tribe's purported involvement in the payday industry, see Section VI.B.2.

¹⁹⁷ MHA nation: Outraged at Consumer Financial Protection Bureau for Supporting NYS Litigation Against Tribal Lenders, INDIAN COUNTRY MEDIA NETWORK, Dec. 9, 2013, https://indiancountrymedianetwork.com/news/business/mha-nation-outraged-at-consumer-financial-protection-bureau-for-supporting-nys-litigation-against-tribal-lenders/.

¹⁹⁸ More Inaccuracy: Letter to the Editor of Native Sun News, supra note 196 ("We do not blindly go into business deals. Nor do we cede control to individuals or outsiders in any of our businesses.").

¹⁹⁹ Otoe-Missouria Tribe Rallies Against Pending Litigation, NATIVE TIMES, July 24, 2015, http://www.nativetimes.com/index.php/business/news/11825-otoe-missouria-tribe-rallies-against-pending-litigation (the article did not disclose whether the speakers quoted in the article were members of the Otoe-Missouria).

innovate on our behalf."²⁰⁰ In *An Unlikely Solution*, John Shotton, Chairman of the Otoe-Missouria Tribe, stated, "There's a real feeling out there that somehow Indian people need to be, um, parented. When I say parented, I mean that we're not capable of making our own decisions, that we're not capable or educated enough to not be taken advantage of. Well, I feel very strongly that people like myself, my tribal council I work with, are very educated, we look very hard into what we're gonna do, we assess the environment, and we do what we feel is right for our community and for our people."²⁰¹ Michelle Hazen, member of the Lac Vieux Desert Band and President/CEO of Duck Creek Tribal Financial, intimated that enforcement was motivated by prejudice or greed, stating, "I'm never surprised, what we encounter when we try to provide, when we find ways to provide for our people because it seems like whenever we come up with something, it's always under attack. Just like when we went into gaming 25 years ago. I don't know if it's because they don't come up with the ideas or that Indian people aren't supposed to be that smart to come up with these ideas to provide for their people, that's kind of how I look at it "²⁰²"

Public statements suggested that some tribes have not been heavily involved in the payday business they claim they "own." For example a Modoc Tribe chief admitted he did not know where the payday-loan operation his tribe supposedly owned was located. The Turtle Mountain Band of the Chippewa Tribe uses an outside tech company, ZestFinance, run by an ex-Google Chief Information Officer Douglas Merril, to make lending decisions. The Otoe-Missouria Tribe, meanwhile, "acquired" MacFarlane Group from founder Mark Curry—a known payday lender operator—stating that it would "increase the profitability of our online lending business" even though the tribe had only made 1% of the profits from prior agreements with the company. Members of the Chippewa Cree Tribe who spoke with the Huffington Post on the condition of anonymity explained that the tribe had no "meaningful role in the lending process" even though the

²⁰⁰ *Id*.

²⁰¹ An Unlikely Solution, supra note 26, at 30:25.

²⁰² *Id.* at 31:48.

²⁰³ Silver-Greenberg, *supra* note 10 (stating "it's somewhere in Kansas.").

²⁰⁴ See John Lippert, Lender Charging 390% Uses Big Data to Screen Out Deadbeats, BLOOMBERG, Oct. 3, 2014, https://www.bloomberg.com/news/articles/2014-10-01/lender-charging-390-uses-data-to-screen-out-deadbeats (stating that Merrill's program determines who to lend to, borrowers aren't allowed to take a second loan until they pay off the first one, and stating that ZestFinance made loans through their website, ZestCash, and Spotloan, a website "owned" by the Turtle Mountain Band of Chippewa Indian Tribe of North Dakota. Spotloan had offered 100,000 loans through ZestFinance prior to publication of the article in 2014).

²⁰⁵ Steve Vockrodt, *American Indian Tribe Buys Mission-based Payday Loan Servicing Firm MacFarlane Group*, KANSAS CITY STAR, Oct. 27, 2016, http://www.kansascity.com/news/business/article110935942.html.

tribe supposedly owned the company. None of the tribal officials or members featured in *An Unlikely Solution* discussed how much revenue their tribes received from the payday lending, how many jobs were created through the payday business, or how the tribe provided oversight over the payday entity. On the tribe provided oversight over the payday entity.

b. Tribal Officials' Statements in Court Documents

Researchers reviewed the dockets of federal court cases listed on PACER.gov and looked specifically at documents that were submitted in support of motions to dismiss. Figure 22 reflects what they found.

Generally, the declarations were vague about the actual division of authority between the tribe and components of the payday business. The majority of the declarations were offered by individuals who were or are on the Board of Directors of NAFSA. The declarations offered by the payday companies or tribes were similar in their content and even the order of points made. The declarations were also similar in that they all vaguely highlighted how the revenue from the payday business supported tribal operations that the tribe would not be able to afford otherwise. A few declarations specifically highlighted the failure of other tribal economic ventures as one of the reasons that the tribe was particularly invested in the payday business. Only one of the declarations described with any specificity how the tribe participated in issuing loans, how many tribal members were employed by the payday company, or specifically how much revenue the tribe gained from the payday business. The only declaration that did provide specificity was that of Neal Rosette Sr., an ex-tribal council member who was prosecuted for receiving bribes from the payday business for his complicity in the tribe's payday agreement.²⁰⁸ His declaration was submitted by the named plaintiff in a class action against Plain Green and ThinkFinance.

Declarations signed by the same tribal member but submitted in different cases were substantially similar in content, order of content presented, and sentence structure. ²⁰⁹ Declarations signed by different officials from the same tribe to support

²⁰⁶ Walsh, *supra* note 17.

²⁰⁷ An Unlikely Solution, supra note 26.

²⁰⁸ Matt Volz, *Tribal Member Defends Receiving Hidden Payments*, GREAT FALLS TRIBUNE, Sept. 9, 2014, http://www.greatfallstribune.com/story/news/local/2014/09/09/tribal-member-defends-receiving-hidden-payments/15357299/.

²⁰⁹ Compare Marshall Pierite Decl., Pennsylvania v. Think Finance, Inc., Doc. 67-2, with Marshall Pierite Decl., Everette v. NDG Fin. Corp., Doc. 21-2; Compare John Shotton Decl., Pennsylvania v. Think Fin., Inc., Doc. 67-3 with John Shotton Decl., Otoe-Missouria v. N.Y. Dept. of Fin. Servs., Doc. 10; Compare James Williams, Jr. Decl., Otoe-Missouria v. N.Y. Dept. of Fin. Servs., Doc. 11, with James Williams, Jr. Decl., Decker v. RS Fin. Servs., LLC, Doc. 19-10. See Figure 22: Tribal Declarations Filed in Litigation.

payday companies also contained distinct similarities in wording, content, and order of content.²¹⁰

The Otoe-Missouria Tribe and Lac Vieux Desert Band declarations offered by payday lenders during litigation contained misleading omissions pertaining to the nature of the profits received by the tribe. The Otoe-Missouria declarations, while emphasizing that the payday entities are "wholly owned by the tribe" and describing how revenues are distributed to tribe operations, do not disclose that 99% of profits from the payday company were purportedly being distributed to MacFarlane Group, a nontribal company "assist[ing]" the tribe with "underwriting, software development, marketing and call center support." Similarly, the Lac Vieux Desert Band's tribal council declarations failed to disclose that Bellicose Capital purportedly collects 98% of profits from the lending websites claiming affiliation with the tribe. 212

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²¹⁰ Compare Michelle Fox Decl. Everette v. NDG Fin. Corp., Doc. 22-2 (July 6, 2015) with Mark Azure Decl., Everette v. NDG Fin. Corp., Doc. 22-3. See Figure 22: Tribal Declarations Filed in Litigation.

²¹¹ Vockrodt, *supra* note 205 (explaining that, at least in 2014, the Otoe-Missouria only received 1% of profits). The Otoe-Missouria declarations did not disclose that revenue distribution structure, even though the declarations were submitted from 2013-2016. John Shotton Decl., *Pennsylvania v. Think Fin.*, Doc. 67-3; *Dillon v. BMO Harris Bank*, Doc. 151; *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, Doc. 10; Ted Grant Decl. *Finn v. Great Plains Lending*, Doc. 7-1. *See* Figure 22: Tribal Declarations Filed in Litigation.

²¹² Zeke Faux, *Payday Lenders Are Changing The Game Ahead of a U.S. Crackdown*, BLOOMBERG BUSINESSWEEK, Feb. 4, 2016, https://www.bloomberg.com/news/articles/2016-02-04/payday-lenders-are-changing-the-game-ahead-of-a-u-s-crackdown (*Payday Lenders Are Changing*); Press Release, *Lac Vieux Desert Band of Lake Superior Chippewa Indians Bolsters Tribal Economic Development Portfolio with Purchase of Bellicose Capital*, Lac Vieux Desert Band (Jan. 27, 2016), http://www.prnewswire.com/news-releases/lac-vieux-desert-band-of-lake-superior-chippewa-indians-bolsters-tribal-economic-development-portfolio-with-purchase-of-bellicose-capital-llc-300210679.html. Lac Vieux Desert Band tribal declarations did not disclose the pay structure between tribe and lender. James Williams, Jr. Decl., *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, Doc. 11; *Decker v. RS Fin. Servs. LLC*, Doc. 19-10. *See* Figure 22: Tribal Declarations Filed in Litigation.

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³				
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration		
	Ted Whitford, member	Pennsylvania v. Think Fin., Inc., 2:14-cv-07139-JCJ, Doc. 10 (E.D. Pa Aug. 28, 2015).	Describes role as member of the Chippewa Cree Tribe and role on the Board of Directors of Plain Green (¶1-2, 4). Describes history of Tribe and status of Plain Green as "economic arm of the Tribe" (¶3, 5). "Since Plain Green was created in 2011, revenue from the enterprise has been used to fund Tribal educational and social services, as well as general government expenses" (¶6). Describes Tribal Consumer Regulatory Code as "provid[ing] for supervision and oversight of the activities of the tribal lending business, including Plain Green" (¶7).		
Chippewa Cree Tribe	Neal Rosette, Sr., member** Only declaration provided by consumer's attorney	Gringas v. Rosette, 5:15-cv-00101-gwc, Doc. 23-3 (D. Vt. Aug. 13, 2015).	Describes role as member of the Chippewa Cree and former position within Plain Green, LLC (¶1-3). Explains that Plain Green was wholly owned by the Chippewa Cree (¶4). "Even before Plain Green, LLC's formation, Plain Green, LLC has partnered with Think Finance, Inc. Think Finance Inc. is a Texas-based company that provides Plain Green, LLC with services and products necessary to accomplish Plain Green, LLC's lending Think Finance Inc. and its subsidiaries receive about ninety-five percent (95%) of the profit made from the loans. Plain Green, LLC is entitled to only 4.5% of the profit made from the loans. The primary reason that Think Finance, Inc. was so interested in partnering with an Indian Tribe was to circumvent the various State laws governing interest rates on payday and other sub-prime loans." (¶5-7). "When Chairman St. Mark [questioned the fairness of Plain Green, LLC and Think Finance division of profits] Think Finance Inc. met with tribal council members and told them that Chairman St. Marks needed to be removed from office or Think Finance, Inc. would pull out of the business arrangement. Think Finance, Inc. specifically instructed the tribal council to impeach Chairman St. Marks." (¶9-10). Describes Pepper Hamilton's legal representation of the tribe in relation to Think Finance and Plain Green. (¶11-13).		
Fort Belknap	Michelle Fox, member of tribe and CEO of Island Mountain Development Corp.	Everette v. NDG Fin. Corp., 1:15-cv-01261-CCB, Doc. 22-2 (D. Md. July 6, 2015).	Describes her role as a member within the tribe and role as CEO of Island Mountain Development Group (¶1,3). Discusses GVA Holdings, LLC, which owns Riverbend, LLC as a subsidiary without discussing her role within GVA Holdings (¶4-6). "Riverbend supports the tribe's economic development efforts generally. We use the monies earned through Riverbend to provide essential services to citizens (e.g., police, ambulance, fire services) and to reinvest in the Tribe's other economic efforts, such as our Tribal store and Tribal Restaurant, as well as our Tribal construction business and IT business" (a word-for-word statement from Mark Azure's declaration) (¶7). (¶8) Pulls dislocated sentences from Mark Azure's declaration. States her role as Riverbend's CEO (¶9).		

²¹³ Litigation referenced in this chart is discussed in Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation, *supra*.

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³				
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration		
			Describes loan origination process, stating they are "originated from the Reservation by Tribal personnel," without explaining how tribe is involved in establishing loan (¶15-17). Discusses plaintiff's contact with Riverbend Finance, LLC (¶18-27).		
	Mark Azure, President of Fort Belknap Community Council	Everette v. NDG Fin. Corp., supra, Doc. 22-3 (July 6, 2015).	Describes role as President of Community Council (¶1-3). Describes financial hardship of tribe due to "general impoverish[ment] and [being] very geographically remote" and lack of profitable endeavors; "Our primary industry on the Reservation is agriculture and ranching. But in the last five years, e-commerce opportunities have presented a new ray of hope for the Tribe and its members, helping provide a stable revenue base for the Tribal government's delivery of services to the Tribe's citizens." (¶4). Describes Michelle Fox's role in the tribal businesses as CEO of Island Mountain Development Corp. and "coordinat[ing] the Tribe's economic development activities through GVA Holdings, LLC (GVA) and its tribal enterprise subsidiaries, including the Riverbend online consumer lending enterprise named as Defendant" (¶5). Explaining that Riverbend Finance, LLC is a wholly owned tribal business that operates under tribal law (¶6). Discusses how Riverbend supports the Tribe's economic development efforts generally. We use the monies earned through Riverbend to provide essential services to members (e.g., police, ambulance, fire services) and to reinvest in the Tribe's other economic efforts, such as our Tribal store and Tribal restaurant, as well as our Tribal construction business and IT business Riverbend is located on the Reservation, where Tribal employees, who are tribal citizens, originate loans. Approximately 70 Tribal citizens are presently employed on the Reservation directly by the Tribe's lending operations, including Riverbend as well as other ventures." (¶10). Vaguely discusses the importance of the "Tribe's lending business" to the tribe; "the Tribe is proactive and conservative with its lending business, constantly working to innovate, create business products, and fundamentally, to treat our customers well, to employ the best consumer protection standards and to earn our customers' repeat business and the solid positive reputation our Tribe's lending business enjoys." (¶11). "[F]rom my elected Tri		

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³				
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration		
			Riverbend's practice is to refund or reduce the loan obligations of customers who are not satisfied with the service they received If the Tribal Council were still unable to resolve a customer's dispute, our policy would be to offer, at Riverbend's sole cost, American Arbitration Association arbitration of the consumer's dispute before a retired state or federal judge in the consumer's home state, as limited by the consumer's Loan Agreement." (¶17).		
Guidiville	Michael Derry, CEO of Black Oak Development	Meyer v. Accredited Collection Agency, Inc., 1:13- cv-00444-LG-JCG, Doc. 56-1 (S.D. Miss. Dec. 29, 2015).	Describes his own role with Black Oak Development, which is "a tribal corporationwholly owned by the Guidiville Tribe" and noting "I also hold positions with various other tribal entities formed under tribal law." (¶1). Does not state that he is a member of the tribe. Denies that debt collectors are associated with the Guidiville Tribe (¶3).		
Habematolel Tribe	Sherry Treppa, Chairperson of Tribe's Executive Council	Otoe-Missouria v. N.Y. Dept. of Fin. Servs., 1:13-cv-05930-RJS, Doc. 14 (S.D.N.Y. Aug. 29, 2013).	Describes Ms. Treppa's membership in tribe and role as Chairperson of the Tribe's Executive Council. (¶1-4). Describes history of Habematolel Tribe (¶5-20). Describes Tribe's failed attempt to develop a "small gaming facility" (¶21-24) which caused the Tribe "owed millions of dollars to its casino developer, and had no means to repay the debt" (¶24) until tribe opened a casino in 2012 (¶25-26). Describes tribe's introduction to payday industry; "In 2012, the Tribe was searching for additional economic development opportunities the Tribe's general membership voted to pursue the business development opportunity, and the Executive Council endeavored to review, approve and enact a regulatory ordinance legalizing and regulating consumer financial services on the Tribe's trust land the Tribe began operating its online consumer financial services business in 2012. The consumer financial service business has proven to be very successful and absolutely vital for funding Tribal government operations. Indeed, fixed costs of the Tribe are paid exclusively through revenues generated by the Tribe's consumer financial services business, and without the business, the Tribe would be unable to maintain its current financial obligations. The business has also created employment opportunities for Tribal members" (¶27-29). Describes the Tribe's membership in NAFSA (¶30). Describes the danger of state regulation of tribal lending business (¶31).		
Lac Vieux	James Williams, Jr., elected Chairman of Lac Vieux Desert Band	Otoe-Missouria v. N.Y. Dept. of Fin. Servs., supra, Doc. 11 (Aug. 29, 2013).	Describes role within tribe as Chairman of Lac Vieux Desert Band (¶1-2). Describes history of tribe, formation of LLC code on March 30, 2010, and development of a casino that has not been successful because "geographic isolation and inclement weather have prevented the kind of revenue generation the Tribe requires to support itself, making it imperative that the Tribe find additional ways to supplement our gaming operations to continue to fund government operations and essential services the government provides for its membership." (¶3-13). Discusses formation		

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³				
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration		
			of Red Rock Tribal Lending, LLC (¶14-15). Describes the formation of the Tribal Consumer Financial Services Regulatory Code and Authority and Red Rock Tribal Lending's good standing with the Authority (¶16-18). Discusses the loan application process, loan "application is reviewed and assessed by the Tribal loan underwriting system. The ultimate authority to decide whether or not to fund a loan lies with the Tribe- both through technological aids and software capabilities as well as approvals by Red Rock officers Through technological aids and underwriting software, loans are approved through processes that occur on the Reservation in various forms, including by approvals by Red Rock's CEO." (¶19). "Tribal lending has been an invaluable vehicle for economic growth, Tribal services, and Tribal development. The impact of Tribal lending on tribal growth and opportunity, employment and governmental financial stability has been immeasurable. The Tribe's lending enterprises currently account for 46 percent of the Tribe's governmental budget Revenues from Tribal lending have been used towards housing, youth programs, health and wellness, and law enforcement. Tribal lending has created numerous jobs on the Reservation, including customer service support staff and the newly hired CEO, our Tribal Council Secretary and Tribal member, Giizhigookway." (¶22-23). "The Tribe's lending initiative gives the Tribe a chance to lift itself up from years of struggle and poverty, underfunded government and financial uncertainty towards stable, legitimate economic growth, development and economic prosperity and success." (¶26). Describes contact with New York State Department of Financial Services (¶26-33).		
		Decker v. RS Fin. Servs. LLC, 5:14-cv-00242-HE, Doc. 19- 10 (W.D. Okla. April 16, 2014). ²¹⁵	Lists when tribe formed LLC code in 2010 (¶9-10) and Tribal Consumer Financial Services Regulatory Code in 2011 (¶11-12). Describes creation of Sovereign Lending Solutions, LLC (SLS) (¶13). Describes tribe's dire economic situation (¶8) and the financial benefit of SLS; "Revenue generated from SLS served as a major source of funding for the Tribal government operations and the provision of essential government services to its 672 members such as housing, education, social services, and health care. The Tribe heavily relied on SLS to meet its programmatic funding needs where there would otherwise be a shortfall and SLS, through its Operating Agreement, was required to disburse substantially all profits received to the Tribe on a monthly basis." (¶17-18). "The Tribe's lending initiative gives the Tribe a chance to lift itself up from years of struggle and		

²¹⁴ The tribe reportedly contracted with Bellicose to conduct underwriting, with the Tribe only receiving 2% of the revenue from the loans. Faux, *Payday Lenders Are Changing, supra* note 212; Press Release, Lac Vieux Desert Band, *supra* note 212.

²¹⁵ For discussion of why this case regarding a title loan was included in this report, see note 87.

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³			
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration	
			poverty, underfunded government, and financial uncertainty toward stable, legitimate economic growth, development, and economic prosperity and success." (¶20). Describes the operations of SLS; "the Tribe plays a critical role in the lending operations of the companySLS is managed by Tribal member Co-Managers who are engaged in business decisions on a day-to-day basis. In my capacity as Chairman of the Tribal Council, and thus, Chairman of the sole member of SLS, I remain informed and abreast of the issues related to the continued successful operation of this Tribally owned business. I am intimately aware of the financial benefit derived from SLS, and the way that the Tribal Council has utilized SLS revenues to fund Tribal Government operations." (¶19). No specific mention of how much revenue tribe received from lending business.	
	Giizhigookway, ²¹⁶ member	Decker v. RS Fin. Servs. LLC, supra, Doc.19-11 (April 16, 2014).	Describes her role as "Co-Manager of Sovereign Lending Solutions, LLC, d/b/a Title Loan America" and role on the tribal council (¶4-6). Vaguely describes funding flow to tribe; "As an instrumentality of the Tribe, SLS distributed funds from its earnings to its sole member, the Tribe, who in turn deposited these proceeds in whole into the Tribe's general fund where said funds were used for government operations, programs, and the employment of tribal citizens." (¶8). Vaguely describes how Sarah Decker entered into a pawn agreement with SLS; "To the best of my knowledgePlaintiff Sarah Decker entered into a Pawn Ticket Agreement with SLS on or about January 23, 2013 pursuant to Tribal law for a loanTo the best of my knowledgeas collateral for the loan, Plaintiff gave SLS a security interest in her 2006 Chevy Equinox." (¶14-16). Describes the ticket agreement generally without specific information about what was sent to plaintiff (¶16-19). Generally describes Plaintiff's contact with customer service and repossession of Plaintiff's car (¶20-28).	

²¹⁶ This same name is also affiliated with Michelle Hazen in Lac Vieux Desert Band of Lake Superior Chippewa Indians Resolution T2014-066, Approving the creation of the Wholly Owned and Operated Tribal Lending Entity – Big Picture Loans, LLC.

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³			
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration	
Otoe-Missouria Tribe	John Shotton, elected Chairman	Pennsylvania v. Think Fin., Inc., supra, Doc. 67-3 (M.D.N.C. Aug. 28, 2015).	Describes role in tribe and role in Great Plains Lending as Secretary/Treasurer (¶2-3). Discusses formation of LLC law on May 4, 2011 (¶7-9), formation of Great Plains Lending on May 4, 2011 (¶10), and the formation of the Otoe-Missouria Consumer Finance Services Regulatory Commission (¶12-13). "The Commission has been active in assuring that Great Plains has complied with tribal law and voluntarily with federal laws. (Exhibit D. Operating Agreement of Great Plains Lending, LLC.)" Suggests that lending commission participated in forming the operating agreement. Describes tribe's benefits; "The Tribe's online lending business accounts for a significant portion of the Tribe's nonfederal governmental budget and has created dozens of jobs on tribal land, including financial support staff, Head Start educators, and tribal housing personnel. Revenues from tribal lending have been used towards additional classrooms, books, and teachers for Head Start programs, as well as new after-school and summer programs for tribal youth. Revenues have also been used to support several tribal government programs that benefit the general membership, including child care services, employment training, health care and wellness coverage, child protection, and family violence protection. Outside of gaming, tribal lending has been the most significant economic development opportunity that has been available to the Tribe, in terms of both revenue and job creationThey extend the opportunity for the Tribe to move beyond the bottom line of economic footing." (¶ 17-20).	

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³			
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration	
		Dillon v. BMO Harris Bank., supra, Doc. 151 (July 15, 2015).	Describes role within Great Plains (¶1-2). Describes Loan application process and loan documents (¶3-4). Describes plaintiff James Dillon's loans (¶5-8), loan agreement (¶9-12) and arbitration provision (¶13-15). The declaration does not explicitly state that there was tribal involvement in approving the loan.	
		Otoe-Missouria v. N.Y. Dept. of Fin. Servs., supra, Doc. 10 (Aug. 29, 2013).	Describes role within Great Plains Lending and role as Chairman within the Tribe. (¶1-3) Describes history of the Tribe and addition of the LLC code to the tribal code on May 4, 2011. (¶4-14) Describes formation of Great Plains Lending and American Web Loans. (¶14-15) Describes formation of Consumer Finance Services Regulatory Ordinance and Commission and explaining that Great Plains and American Web Loans have licenses in good standing. (¶17-19) Describes the loan process; "the loan application process takes place through a website owned and controlled by the Tribethe application is reviewed and assessed by the Tribal loan underwriting system. The ultimate authority to decide whether or not to fund a loan lies with the Tribe" (¶21). "The impact of Tribal lending on tribal growth and opportunity has been immeasurable, and its effects have proven critical for tribal advancement and financial assistance. The Tribe's lending enterprises account for close to half of the Tribe's non-federal tribal budget, and has provided critical funding for new Tribal housing and renovations. Tribal lending has created dozens of jobs on Tribal land, including financial support staff, Head Start educators, and Tribal housing personnel. Revenues from Tribal lending have been used towards additional classrooms, books, and teachers for Head Start programs, as well as new after school and summer programs for Tribal youth. Revenues have also been used to support several Tribal government programs that benefit the general membership, including child care services, employment training, health care and wellness coverage, child protection, and family violence prevention." (¶22-29). "[T]ribal lending has been the most significant economic development opportunity that has been available to the Tribe, in terms of both revenue and job creation they extend the opportunity for the Tribe to move beyond the bottom line of economic footing. Tribal lending gives the Tribe a chance to depart from years of struggling through poverty towards le	

²¹⁷ When this declaration was signed, underwriting was being conducted by a non-tribal company, MacFarlane Group, and the tribe only received 1% of the profits from the loans. Vockrodt, *supra* note 205. The tribe recently acquired the company. *Id.*

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³			
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration	
			services to the Tribe's citizens." (¶41).	
	Ted Grant, Vice Chairman of Otoe- Missouria Tribe	Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016).	Describes role as Vice-Chairman of the Otoe-Missouria Tribe and role as CEO and President of the Board of Directors of Great Plains (¶1,7). Describes various tribal documents used to form Great Plains Lending (¶2-6). "All members of the Board of Directors are members of the Tribe" that are appointed by the tribal council and can be removed at any time (¶7-8). "Great Plains was created to advance tribal economic development and to aid in addressing issues of public health, safety, and welfare, including through the creation of employment opportunities and a revenue stream for the funding of important governmental programs. All profits inure to the benefit of the Tribe and its members, and are used to pay for an array of governmental services, such as housing and educational programs." (¶9). "Great Plains conducts business from the Tribe's lands in Oklahoma." (¶10). Describes how tribe intended to share sovereign immunity with Great Plains (¶11, 14). Describes how "consumer finance services businesses" are overseen by the Otoe-Missouria Consumer Finance Services Regulatory Commission (¶12-13).	
Tunica-Biloxi Tribe	Marshall Pierite, Chairman of Mobiloans, past Chairman of the tribe, enrolled member of tribe	Pennsylvania v. Think Fin., Inc., supra, Doc. 67-2 (Aug. 28, 2015).	Describes role as Chairman of Mobiloans and role within tribe—historically as Tribal Council member and now as general member (¶1)Describes the history of the tribe (same language as other declaration) (¶2-3). "The Tribe provides educational, health, and other social services to many, if not all, [tribal] members. The funding for these services comes from a variety of sources, but the Tribe is heavily dependent upon revenue from certain business enterprises that operate as a vital and integral part of the Tribe and tribal government. Much of this work is carried out through the Tribe's Economic Development Corporation." (¶4). Describes formation of Mobiloans (¶5-6). "Since Mobiloans was created in 2011, revenue from the enterprise has been used to fund Tribal educational and social services, as well as government expenses. For example, Mobiloans revenue has been used to fund Teach for America positions in the parish that benefit the tribe and community as a whole. Additional revenue has improved health care services for tribal members." (¶7). Describes Tribal control of Mobiloans, highlighting the operating agreement; "In addition to being wholly owned by the Tribe, MobiLoans is also completely controlled by, and integrated with, the Tribe through the EDC." (¶8). Discusses role as Chairman of Mobiloans and role within tribe- historically as Tribal Council member and now as general member (¶1-2). Describes history of tribe and role of economic development corporation (¶3-4). Discusses Mobiloans' formation vaguely as a "tribal lending entity created as an economic arm of the Tribe and organized and chartered under the laws and	

Fig	Figure 22: Tribal Declarations Filed in Litigation ²¹³			
Tribe	Tribal or Corporate Official Signing Declaration	Case	Summary of Declaration	
			inherent sovereign authority of the Tunica Biloxi Tribe of Louisiana." (¶5). "Since Mobiloans was created in 2011, revenue from the enterprise has been used to fund Tribal educational and social services, as well as government expenses. For example, Mobiloans revenue has been used to fund Teach for America positions in the parish that benefit the tribe and community as a whole. Additional revenue has improved health care services for tribal members." (¶7). "Mobiloans is not only wholly owned by, and provides revenue to, the Tribe but it is also regulated by, and integrated with, the Tribe through the EDC." (¶8).	

I. California Law and Enforcement Against Payday Lenders

1. The California Deferred Deposit Transaction Law

The California Deferred Deposit Transaction Law (the CDDTL), which is codified at Cal. Fin. §§ 23000-106, empowers the state's Department of Business Oversight (DBO) to regulate payday lenders and requires payday lenders to be licensed by the DBO.²¹⁸ The statutory language of the law is broad: "A person shall not offer, originate, or make a deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred deposit transaction without first obtaining a license from the commissioner and complying with the provisions of this division."²¹⁹ The CDDTL regulates the procedures payday lenders must follow when engaging in a "deferred deposit transaction" (payday loan); requires that loans be accompanied by certain written disclosures to consumers regarding the payment and fee schedule and their rights upon debt collection;²²⁰ limits the amount of a payday loan to \$300;²²¹ limits the charges lenders can tack onto a payday loan;²²² and dictates how licensees may offer loans, how they are permitted to advertise their loans, and enforcement mechanisms.

Violations of the CDDTL carry both criminal and civil penalties.²²³ The CDDTL also provides considerable remedies for consumers. For example, if a lender "willfully violates" the CDDTL, the payday contract is voided and the lender cannot collect on either the principal or fees of the loan.²²⁴ If a lender charges the borrowers fees in excess or the fees or charges allowed in the CDDTL or a lender has violated the CDDTL "for any reason other than a willful act," the lender may only collect the principal of the loan.²²⁵ A person injured by a violation of the CDDTL may bring an action for damages up to three times the damages actually incurred, an equity proceeding to restrain and enjoin violations, or both.²²⁶

²¹⁸ CAL. FIN. CODE §§ 23001, 23005, 23070-71 (West 2015). The Department of Business Oversight provides a database of licensed payday lenders here. https://docqnet.dbo.ca.gov/licensesearch/.

²¹⁹ *Id.* at § 23005(a).

²²⁰ *Id.* at § 23035.

²²¹ *Id.* at § 23035(a).

²²² Id. at §§ 23036, 23037.

²²³ *Id.* at §§ 23064, 23064.5, 23065.

²²⁴ *Id.* at § 23060.

²²⁵ *Id.* at §§ 23061-62.

 $^{^{226}}$ Id. at § 23064 (if plaintiff prevails, plaintiff will also be awarded reasonable attorney's fees and costs).

To enforce the CDDTL, the DBO issues, suspends, and revokes licenses, and may issue Desist and Refrain Orders and administrative penalties to unlicensed lenders or licensees violating the CDDTL to prevent them from lending in the state. DBO has the power to prevent individuals or deferred deposit originators from operating payday operations if they have committed a civil, criminal, or administrative offense involving "dishonesty, fraud, or deceit" or other offense related to the qualification or duties of a person engaged in payday lending. DBO has the power to prevent individuals or deferred deposit originators from operating payday operations if they have committed a civil, criminal, or administrative offense involving "dishonesty, fraud, or deceit" or other offense related to the qualification or duties of a person engaged in payday lending.

2. Application of the CDDTL to "Tribal" Payday Lenders

"Tribal" lenders could potentially face significant liability under the CDDTL. Registered lenders are required to disclose information about all of the parties which hold 10% equity or more in the company—something "tribal" payday lenders seem to try to obscure. Likewise, the CDDTL prohibits lenders from hiding interest rates and fee schedules from consumers, issuing multiple loans to the same consumer simultaneously, and engaging in illegal loan collection practices—practices which, as documented in this report, several of these lenders allegedly engage in. 230

California has long been struggling to make internet lenders—and particularly those with purported ties to tribes—subject to state regulations.²³¹ However, none of the lenders researched for this report appears to be licensed by DBO—even though many either were lending to California consumers or claimed affiliation with a tribe located in California.

One possible reason lenders claiming tribal affiliation have not registered with the DBO is that they may have, at least until very recently, assumed that their claimed tribal affiliation and accompanying entitlement to tribal immunity made them exempt from

²²⁷ *Id.* at §§ 23005(a), 23045, 23050-54, 23058.

²²⁸ *Id.* at § 23011.5.

²²⁹ *Id.* at § 23008 (Commissioner of DBO will investigate parties with 10% or more outstanding interests or equity securities), § 23011 (Commissioner will deny license application if parties holding 10% or more equity or interests in the company have been convicted of or committed any act "involving dishonesty, fraud, or deceit"); CAL. CODE REGS. tit. 10, § 2020 (2009) (listing in item 6 that applicant business must list all parties with 10% or more outstanding interests or equity securities in the applicant business).

²³⁰ See Figure 19: Summary of Tribal Documents Purportedly Creating Regulatory Agencies, *supra* (all allow multiple "roll overs" for a fee violating § 23036).

²³¹ See Marc Lifsher, Internet payday lenders with ties to Indians dodge California regulators, L.A. TIMES Apr. 13, 2009, http://articles.latimes.com/2009/apr/13/business/fi-internet-loans13. Based on the information compiled for this report, it seems likely that that many online "tribal" lenders routinely violate Cal. Fin. Code §23036, which prohibits charging borrowers for extending the repayment period; and fail to follow the disclosure requirements of the CDDTL, use multiple unlicensed names for a singular unlicensed payday business, use deceptive lending websites that confuse consumers about the terms of the loan, and give second payday loans before the first is paid off. See Cal. Fin. Code §§ 23019, 23023, 23027, 23035, & 23036.

California laws, including the DBO's registration requirements. However, the California Supreme Court's decision in *People v. MNE* (described below) has paved the way for the lower courts to finally directly determine the applicability of the CDDTL to purported tribal lenders.

Another potential explanation for tribal lenders' failure to register with the DBO is that tribal lenders considered the relatively low rate of CDDTL enforcement in California (only 52 actions in 4 years against 44 actors) and concluded that their risk of being targeted by an enforcement action was low. Lastly, it is possible that "tribal" lenders have assumed that the CDDTL, which was enacted before the explosion of online payday lending, ²³² did not apply to lenders who issue loans through Automated Clearing House (ACH) transactions; a number of the statute's provisions could be read as presuming a brick-and-mortar storefront. ²³³ However, the DBO currently enforces the CDDTL against internet lenders, and a recent DBO administrative decision confirmed that the DBO believes the CDDTL applies to internet lenders generally.

3. Relevant DBO Enforcement

The DBO engaged in 974 enforcement actions against "Financial Service Providers" between January 2013 and March 2017. Of those, the DBO brought 52 CDDTL enforcement actions against 44 payday entities, 25 of which did business solely online. With just one exception, however, the DBO did not take any enforcement actions against the lenders profiled in this report in the last four years.

²³² The CDDTL was enacted by California Senate Bill 898 (Chapter 777, Statutes 2002) in 2002 and amended by Assembly Bill 971 (Chapter 17, Statutes 2004) and originally became operative on December 31, 2004.

²³³ See, e.g., CAL. FIN. CODE § 23018(a) ("A license...shall be conspicuously posted in the place of business authorized by the licensee."); § 23019 (requiring that licensees "post a complete, detailed, and unambiguous schedule of fees . . . in letters not less than one-half inch in height" and that this information be posted "in a conspicuous location in the unobstructed view of the public within the licensee's location"); *id.* at §§ 23035(a) and 23001(a) (explaining that a deferred deposit transaction is an agreement where a lender agrees to delay depositing a consumer's "personal check," but not defining what constitutes a "personal check"); *id.* at § 23037(a) (prohibiting the "use [of] the same check for a subsequent transaction"); *id.* at § 23037(g) (prohibiting lenders from "accept[ing] more than one check for a single deferred deposit transaction"). Although the California legislature has amended the CDDTL, it has not clarified how these provisions apply to websites or internet transactions.

The DBO posts its enforcement actions on its website, http://www.dbo.ca.gov/ENF/Default.asp. The DBO separates its enforcement actions into groups; we reviewed actions compiled under "Financial Service Providers," which includes payday lenders (among other types of businesses). See Search for DBO Enforcement Actions, CAL. DBO, http://www.dbo.ca.gov/enforcement_search.asp. The DBO publishes a summary of the enforcement actions taken against Financial Service Providers for each month. Each enforcement action listing includes the defendant(s), the action taken, and the violation and charging section under which the DBO brought the action. Our researcher clicked through each document for all months between January 2013 and March 2017 to identify how many enforcement actions the DBO engaged in generally and how many of those involved the CDDTL. She then tracked the names of

We were only able to identify two instances where the DBO has commenced enforcement against a lender that the agency had identified as claiming tribal affiliation. First, *People v. Miami Nation Enterprises* began with DBO enforcement prior to 2007 against lenders that claimed to be subsidiaries of Miami Nation Enterprise and SFS, Inc., companies that claimed to be arms of the tribe. Beginning in 2006, the DBO commenced multiple desist and refrain orders against Ameriloan, United Cash Loans, US Fast Cash, Preferred Cash, and One Click Cash. ²³⁶ And in 2007, DBO filed a complaint in state court against these companies seeking a temporary restraining order and injunctions for violations of Cal. Fin. § 23005, 23035, 23036, and 23050. ²³⁷ Neither action mentions Miami Nation Enterprises or SFS, Inc., or any connection between the lenders and the Miami Nation Tribe or the Santee Sioux; these companies and their claimed tribal affiliation were probably not identified until they specially appeared to oppose the lawsuit on tribal immunity grounds.

While the opinion of the California Supreme Court in *People v. MNE* did not address the CDDTL at all, the intermediate court of appeals did address the defendant lenders' argument that the CDDTL did not apply to them:

The payday loan companies argue, whether or not they enjoy immunity from suit, a preliminary injunction in this case is improper because the transactions at issue utilize an ACH transaction to complete an electronic transfer of funds. Accordingly, they assert, their activities are not subject to the provisions of the DDTL, which, by its express terms, applies only to transactions involving the deferred deposit of a customer's 'personal check.' 238

The DBO responded that "deferred deposit transactions utilizing an automated clearing house are the functional equivalent of deferred deposit transactions utilizing a personal check" and argued that "the DDTL was intended to cover deferred deposit transactions, whether effected through a written instrument or electronic means, and that any other interpretation would violate the spirit of the DDTL and lead to absurd

the defendants connected to a CDDTL enforcement and reviewed each individual enforcement order to determine whether each defendant operated solely online, had brick-and-mortar stores, operated both online and in a brick and mortar store, offered loans through a different mechanism, or whether its means of operating was unknown.

²³⁵ The California Supreme Court's recent decision in *People v. MNE*, 386 P.3d 357, is part of the significant ongoing litigation arising from the DBO's attempt to regulate several online lenders that claimed to be subsidiaries of two purportedly tribally owned companies, Miami Nation Enterprise and SFS, Inc.

²³⁶ Desist and Refrain Order, *People v. Miami Nation Enters.*, (Aug. 22, 2006), http://www.dbo.ca.gov/ENF/pdf/2006/ameriloan.pdf.

²³⁷ Complaint for Temporary Restraining Order, *People v. Miami Nation Enters.*, No. BC373536 (Cal. Super. Ct. Jun. 29, 2007), http://www.dbo.ca.gov/ENF/pdf/a/ameriloan ctro.pdf.

²³⁸ Ameriloan v. Superior Ct., 169 Cal. App. 4th 81, 99 (Ct. App. 2008) (citing § 23001(a)).

results." *Id.* While the court did not determine the scope of the CDDTL's application, it noted:

The literal language of the DDTL does not include automated clearing house transactions, yet it is difficult to conjure any valid policy reason for excluding consumers who obtain internet-based payday loans from the protections afforded by the law. The ideal result, of course, would be for the Legislature to resolve any ambiguity by clarifying its intent concerning the DDTL's applicability to automated clearing house transactions.²³⁹

Although the California legislature subsequently amended the CDDTL to include "electronic signatures," § 23005 (added in 2002, operative in 2004, amended in 2014, effective 2015), neither the CDDTL nor the accompanying DBO regulations clarify that the CDDTL applies to online lenders. However, the DBO does enforce the CDDTL against lenders that use ACH transactions, and in 2013-14 the DBO began defining the "personal checks" described in § 23001(a) as inclusive of "the electronic equivalent of a personal check."

The only other relevant CDDTL enforcement action we found involved www.zip19.com, a d/b/a of Northway Financial and Northway Broker Ltd. Although the Northway companies—which operated multiple lending websites that allegedly violated the CDDTL, including cashtransfercenters.com, 247Greenstreet.com, pixycash.com, and zip19.com—were apparently originally licensed in the European nation of Malta when the DBO action commenced in 2008, the www.zip19.com website had added tribal-affiliation language by 2014. The current status of this enforcement proceeding could not be determined.

²³⁹ *Id.* at 100.

²⁴⁰ See, e.g., Desist and Refrain Order, Commissioner v. Brighton FNL LLC at *2, ¶ 3 (May 6, 2014), http://www.dbo.ca.gov/ENF/pdf/2014/BrightonFNLLLC.pdf ("'Deferred deposit transaction' means a transaction whereby a person defers depositing a customer's personal check until a specific date, pursuant to a written agreement for a fee or other charge. 'Personal check,' which is referenced in California Financial Code section 23001, subdivision (a), includes the electronic equivalent of a personal check, such as an Automated Clearing House ("ACH") or debit card transaction.").

²⁴¹ See Desist and Refrain Order for Violations of Cal. Fin. §§ 23060, 23058, *Commissioner v. Northway Fin. Corp. Ltd.*, at *10-12, ¶ 29-37 (May 14, 2014), http://www.dbo.ca.gov/ENF/pdf/2014/Zip19.com-OrderVoiding&Citations.pdf.

²⁴² See id. at *11-12, ¶ 37 ("As of April 28, 2014, <u>www.zip19.com</u> states the following: 'Oasis Funds, LLC does business as Zip19.com. Oasis Funds, LLC is a tribal limited liability company organized under tribal law and an economic development arm of, instrumentality of, and wholly owned and controlled by the Lac Courte Oreilles band of Lake Superior Chippewa Indians, a federally recognized sovereign American Indian tribe.'").

4. Court and Administrative Decisions Interpreting the CDDTL

There are very few court decisions interpreting the CDDTL, and none conclusively spell out the law's application to internet or "tribal" lenders. We found only six cases in either state or federal court that either stemmed from violation of a CDDTL provision or mentioned the CDDTL. Only two of theses cases—the *Ameriloan/People v. MNE* matter discussed above, and *Pioneer Military Lending, Inc. v. Dufauchard*, No. S-06-1445LKK/PAN, 2006 WL 2053486 (E.D. Cal. July 21, 2006)—were the only ones that stemmed from DBO enforcement against a lender. Of the four remaining cases, three were class actions involving borrowers who received payday loans. The last case, *Reyes v. Checksmart Fin.*, was a labor dispute, where the plaintiff sued her employer, Checksmart Financial, for alleged violations of the CDDTL and California labor law. ²⁴⁵

There are also few administrative opinions discussing how the CDDTL applies to online lending. The CDDTL allows a defendant to request an administrative hearing following the issuance of a citation or fine. The defendant then has 30 days to request an administrative hearing. The hearing is conducted in accordance with Cal. Gov. § 11500 *et seq.*, which requires an administrative law judge on the staff of the Office of Administrative Hearings to oversee the proceeding—either to oversee how the agency conducts an informal hearing or to hear the case alone. If the hearing is conducted alone, the administrative opinion is then adopted, amended, or rejected by the agency (here, the DBO).

We found nine administrative decisions pertaining to DBO enforcement of the CDDTL. Of those cases, only one pertained to a lender that operated a website. In *In re*

²⁴³ See *Gilbert v. Money Mutual, LLC*, No. 13-cv-01171, 2016 WL 7785453 at *3 (N.D. Cal. Feb. 8, 2016) ("There is a dearth of authority on the proper interpretation of the CDDTL.").

²⁴⁴ *Pham v. JPMorgan Chase Bank*, ²⁴⁴ 2013 WL 1501505 (N.D. Cal. April 10, 2013)(the only opinions available on Westlaw pertained to removing and remanding the case between federal and state courts; opinions did not discuss the CDDTL), 2014 WL 231913 (N.D. Cal. Jan. 21, 2014); *Stone v. Advance Am.*, 2010 WL 1433540 (S.D. Cal. April 8, 2010); *Gilbert v. MoneyMutual, LLC*, 2014 WL 12644028 (N.D. Cal. May 10, 2016), *sub nom. Gilbert v. Bank of America*.

²⁴⁵ Reyes v. Checksmart Fin., LLC, 2014 WL 1618809 (N.D. Cal. April 21, 2014) (holding that the CDDTL only applies to injured consumers, not employees).

²⁴⁶ CAL. FIN. CODE § 23058.

²⁴⁷ *Id.* at § 23058(c).

²⁴⁸ CAL. GOV'T CODE §§ 11502, 11517(a)(West 1995).

²⁴⁹ *Id.* at § 11517.

Checks Cashed For Less, Inc. 2008 WL 8054058 (Cal. Dept. Corp. Oct. 28, 2008), the DBO ruled that a lending website required the same notices as a physical store.²⁵⁰

In sum, DBO enforcement of the CDDTL against payday lenders claiming tribal affiliation has been extremely limited. However, it seems likely that enforcement will increase following the California Supreme Court's decision in *People v. MNE*, which will make it more challenging for lenders to rely on tribal immunity to argue that they are not required to comply with the CDDTL.

V. SECONDARY ACTORS IN TRIBAL PAYDAY SCHEME

In our investigation into tribes' connections with payday lenders, we identified two significant groups of secondary actors in the tribal payday sphere: lobbyists and "lead generating sites." Lobbying groups have emerged to both legitimize "tribal" payday lenders and give credence to the proposition that tribes own and operate the businesses. Lead generating sites—websites that are not direct lenders, but that shop an application to multiple lenders—have taken over the URLs of former lending websites.²⁵¹

A. Lobbying Groups Advancing Tribal Involvement in Online Payday Lending

Payday lending websites claiming affiliation with a Native American tribe frequently featured the logo of one of two lobbying organizations: the Native American Financial Services Association (NAFSA), and the Online Lenders Alliance (OLA). Both organizations are located in the Washington, DC, area.

1. The Native American Financial Services Association (NAFSA)

NAFSA is a lobbyist group that "provides vital services to tribal governments serving the underbanked with better short term financial services, furthering economic development opportunities in Indian Country." NAFSA works to legitimize tribes' involvement in online lending. On its website, NAFSA publishes "best practices" for tribal lending 253 and advances the idea that involvement in ecommerce advances tribal

²⁵² *About,* NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/about/ (last visited Jan. 15, 2017). See note 35, *supra*, regarding changes in NAFSA website.

²⁵⁰ See In re Checks Cashed For Less, Inc. 2008 WL 8054058 at *13 (Cal. Dept. Corp. Oct. 28, 2008) ("Respondent violated section 23027, subdivision (b) by failing to include in its website... that the department licensed respondent's deferred deposit transaction operations (Citation C).").

²⁵¹ Lead generating websites are discussed in Section I.B.

²⁵³Best Practices, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/best-practices/.

sovereignty.²⁵⁴ The website emphasizes that "short term installment loans" are distinct from payday loans and serve a legitimate financial purpose.²⁵⁵ NAFSA publishes model tribal resolutions in support of tribal involvement in online lending. NAFSA's website places a spotlight on the Otoe-Missouria, a tribe that is supposedly benefitting from its relationship with online lending.²⁵⁶ NAFSA also suggests that federal oversight over tribal online lending is a continuation of a history of federal persecution of Native communities.²⁵⁷

Over the last four years, NAFSA has spent tens of thousands of dollars lobbying the federal government.²⁵⁸ According to Senate records, NAFSA has lobbied on the issue

The Otoe-Missouria are listed as a case study on the website, where the website describes a plethora of different budget items the tribe's involvement in the payday industry has financed; "Budget: Accounts for 25% of Otoe-Missouria's Non-federal Tribal budget; Employment: Created 65 jobs on Tribal land, including financial support staff, Head Start educators, and Tribal housing personnel; Infrastructure: Critical funding for new tribal housing and renovation; Education: Additional classrooms, books, and teachers for Head Start, New after-school program, New Summer Youth program; Tribal Services: Child Care Services, employment training, natural resources development, financial assistance, utility assistance, healthcare and wellness coverage, emergency assistance; Social Services: Child protection, Low- income Home Energy Assistance Program, family violence protection." *E-commerce Initiative*, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/otoe-e-commerce-initiative-2/. The Otoe-Missouria may not have benefitted from their lending relationship as much as is stated by NAFSA. Faux, *Behind 700% Loans*, *supra* note 57. (describing how the Otoe-Missouria only keeps 1% of profits generated from the payday lender.).

²⁵⁴Mission and Vision, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/our-mission-and-vision/ (their mission is "To advocate for tribal sovereignty, promote responsible financial services, and provide better economic opportunity in Indian Country for the benefit of tribal communities."); Historical Tribal Sovereignty & Relations, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, https://www.mynafsa.org/historical-sovereignty-relations/.

²⁵⁵Issues, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/organization-2/issues/ (explaining that short-term lending helps consumers with little credit fulfill basic needs); Barry Brandon, https://indiancountrytodaymedianetwork.com/2014/07/10/al-jazeera-blew-it-payday-nation ("There are significant differences between the types of lending we engage in and the traditional payday loan industry. Our members provide online, short-term installment loans to the millions of consumers who demand our products and who have few alternatives when forced to deal with an unplanned financial need.").

²⁵⁶ E-commerce Initiative, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION, http://www.mynafsa.org/otoe-e-commerce-initiative-2/; Useful Information, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION http://www.mynafsa.org/useful-information/ (listing various tribes' and tribal groups resolution supporting tribal involvement in ecommerce.).

²⁵⁷ See Barry Brandon, *The Feds Choke Off Native American Income*, WALL ST. J., Sept. 8, 2014, http://www.wsj.com/articles/barry-brandon-the-feds-choke-off-native-american-income-1410218309.

²⁵⁸ The Center for Responsible Politics collects information regarding lobbying expenditures from the Senate Office of Public Records. *See Native American Financial Services Assn.*, OPENSECRETS.ORG, https://www.opensecrets.org/lobby/clientsum.php?id=F104528&year=2013 (last visited April 10, 2017). It has published data from the last four years only.

of tribal sovereignty as it relates to online lending, specifically filing nine lobbying reports with regard to the SAFE Lending Act of 2013. NAFSA files taxes as a 501(c)(6) organization and had a total revenue above \$1 million in 2013 and 2014. In addition to lobbying, NAFSA also sponsors large "Tribal Government E-Commerce" Conferences. Tribes may be persuaded as to the legitimacy of tribal payday partnerships through these development conferences.

Many of the individuals currently or previously on NAFSA's Board of Directors also submitted declarations or affidavits in support of a payday company during litigation. In 2013, NAFSA listed the following individuals as members of its Board of Directors on their Form 990. ²⁶²

For other conference agendas, see 2017 Conference Detailed Agenda, Sovereignty and E-Commerce: Innovating and Reshaping the Borders of Indian Country, https://conferences.asucollegeoflaw.com/ilp-ecommerceProgram.pdf; 2015 Conference Detailed Agenda, Inaugural Tribal Government E-Commerce: Innovating a New Geography of Indian Country, http://conferences.asucollegeoflaw.com/ilp-ecommerce/files/2012/02/tribal-government-ecommerce-program-3.pdf (Gary Litefoot Davis, past executive director of NAFSA, was the lunch keynote speaker while Lance Gumbs, then current – now past – Executive director of NAFSA was a keynote speaker at the "Pathbreaker's Banquet").

The presence of NAFSA members and tribal council members who advocate on behalf of "tribal" payday lending was also discussed in a tribal newsletter. Sherry Treppa, *Chairperson's Report*, HPUL NEWSLETTER (Habematolel Newsletter) Volume 13:3, Oct. 2014-March 2015, at 27, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-Oct-15-Mar.pdf;

²⁵⁹ See id.

²⁶⁰ Nonprofit Explorer, *Native American Financial Services Assn*, PROPUBLICA, https://projects.propublica.org/nonprofits/organizations/455572815.

²⁶¹ One conference that is strongly influenced by the payday industry is the Sovereignty and E-Commerce CLE conference held at Arizona State University's Sandra Day O'Connor College of Law. Many of the sponsors of past conferences have been related to the payday industry. For example, at the 2016 conference, the title sponsor and presenting sponsors were the Otoe-Missouria Tribe and the Habematolel tribe, respectively, Think Finance was a lunch movie and screen sponsor, NAFSA was a reception sponsor, the Lac Vieux Desert Band was a Panel sponsor and refreshment sponsor, Plain Green was a lanyard sponsor, and the LDF Business Development Corporation was a printing sponsor. Wiring the Rez: Expanding the Borders of Indian County through Ecommerce, ASU COLLEGE OF LAW Conferences.asucollegeoflaw.com/ilp-wiringtherez/ (last visited May 3, 2016). Three of the speakers (out of four total) on a two hour panel entitled "E-Commerce Entrepreneurship: Internet Commerce in Real Life" were affiliated with the payday industry: Gary Davis, current Executive Director of NAFSA, Ron Symon, President of ArrowShade, Division of Pomo One Marketing Inc., and Brent McFarland, Chief Operating Officer of LDF Business Development Corp. 2016 Conference Detailed Agenda, Wiring the Rez: Expanding the Borders of Indian Country through E-Commerce, http://conferences.asucollegeoflaw.com/ilp-wiringtherez/files/2012/02/Wiring-the-Rez_Agenda-FINAL-01_31_2016.pdf.

²⁶² Nonprofit Explorer, *supra* note 260 (scroll to Fiscal Year Ending Dec. 13 and click green button, "Download" for 2013 tax forms.).

Figure 23: NAFSA's Board of Directors in 2013			
Member	Tribe ²⁶³	Role on Board of Directors	
Sherry Treppa	Habematolel Tribe	Vice Chairwoman	
John Shotton	Otoe-Missouria	President	
Chance Alberta ²⁶⁴	Unknown	Treasurer	
Giizhigookway	Lac Vieux Desert Band	Secretary	
Chippewa Cree Tribe of Rocky Boy MT ²⁶⁵		Director	
La Posta Band of Mission Indians In		Director	
Turtle Mountain Band- Chippewa Tribe		Director	
Pueblo of Pojaque		Director	
Barry Brandon Hvmken Consultants ²⁶⁶	Unknown	Executive Director	

Figure 24 lists NAFSA's current Board of Directors. The chart lists the tribal member, tribe the individual is associated with, and the individual's role within NAFSA's Board of Directors.

Figure 24: NAFSA's Current Board of Directors			
Member	Tribe	Role On NAFSA	
		Board of Directors	
John Shotton	Otoe-Missouria Tribe	Chairman	
Mic Isham	Lac Courte Oreilles	Vice-Chairman	
Beau Mitchell	Chippewa Cree Tribe	Treasurer	
Jim Williams	Lac Vieux Desert Band	Secretary	
Javaughn Miller ²⁶⁷	La Posta Band	Director	

 $^{^{263}}$ The tribal affiliation of the individuals is not provided on the NAFSA tax form; this information was obtained through independent research.

²⁶⁴ Chance Alberta may be Jeffrey Chance Alberta, Tribal Council member of the Picayune Rancheria of Chukchansi Indians, who was the target of an IRS criminal investigation. Marc Benjamin, *IRS Targets a Chukchansi Tribal Council Member*, FRESNO BEE, Aug. 17, 2015, http://www.fresnobee.com/news/local/article31355438.html.

²⁶⁵ The tribes' names are listed as members of NAFSA's Board of Directors on the tax form. Nonprofit Explorer, *supra* note 260.

²⁶⁶ Barry Brandon received \$300,000 of reportable compensation as a "Key Employee." Nonprofit Explorer, *supra* note 260.

²⁶⁷ The Washington State DFI lists Javaughn Miller as the Tribal Administrator to contact with consumer complaints about La Posta Tribal Lending Enterprise, DBA Gentle Breeze Online. *See* Consumer Alert, *La Posta Tribal Lending Enterprise (Gentle Breeze Online) Not Licensed In Washington*, Washington

Figure 24: NAFSA's Current Board of Directors			
Member	Tribe	Role On NAFSA Board of Directors	
Ben G. Ray, III	Big Valley Band	Director	
Donald Duncan	Guidiville	Director	
Melinda Young	Lac Du Flambeau	Director	
Sandra Knight	Mechoopda	Director	

NAFSA apparently sponsored a documentary film regarding the tribal payday industry, *An Unlikely Solution*, which is available for free online.²⁶⁸ The film highlights the economic desperation of the tribes and tribes' dependence on the revenue from online lending. However, the film fails to disclose how much revenue payday lending creates for tribes. The film posits that installment loans are distinct from payday lending and that installment loans are needed by poor-credit consumers. The film prominently features NAFSA, John Shotton, Sherry Treppa, and members of the Lac Vieux Desert Band, and the Mechoopda Tribe. The film features interviews by consumers, tribal members, state and federal politicians, and tribal council members. Statements in the film from tribal council and tribal members echo the content of the declarations submitted in court. From 30:15 to 33:00, the film features tribal council members Michelle Hazen, John Shotton, and Sherry Treppa discussing their view that federal and state regulation of tribal payday lenders is motivated by discrimination against Native Americans.

2. Online Lenders Alliance (OLA)

OLA is a lobbyist group for payday lenders with a mission to "promote a diverse and responsible marketplace for access to innovative online financial services through education, communication, collaboration and advocacy with policy makers and opinion leaders." In contrast to NAFSA, OLA does not advocate for tribal lending explicitly. Instead, it offers updates on current regulation of purportedly tribally affiliated

State DFI (Sept. 25, 2013), http://www.dfi.wa.gov/consumer/alerts/la-posta-tribal-lending-enterprise-gentle-breeze-online-unlicensed-payday-loans.

The film can be streamed at http://www.anunlikelysolution.com/. For information about NAFSA's promotion of the film, see Press Release, Indian Country Film "An Unlikely Solution" Wins Big At Hollywood International Independent Documentary Film Awards, Native American Financial Services Association (Jan. 14, 2016), http://www.prnewswire.com/news-releases/indian-country-film-an-unlikely-solution-wins-big-at-hollywood-international-independent-documentary-film-awards-300204537.html; New Documentary on Tribal Online Lending & Consumer Benefit Available Online, NATIVE AMERICAN FINANCIAL SERVICES ASSOCIATION (Aug. 18, 2015), https://nativefinance.org/documentary-tribal-online-lending-consumer-benefit-online/.

²⁶⁹ *About*, ONLINE LENDERS ALLIANCE, http://onlinelendersalliance.org/about/ (last visited Dec. 12, 2016).

websites.²⁷⁰ OLA spends tens of thousands of dollars both lobbying²⁷¹ and giving financial contributions to candidates.²⁷² OLA contributed to the Congressional Committees on Indian Affairs in 2008, 2010, 2014, and 2016.²⁷³ From 2011-2014, OLA had between \$3 million and \$5 million in total revenue.

Similar to NAFSA, OLA refers to payday loans as short-term loans.²⁷⁴ Numerous lending websites claiming tribal affiliation list the "OLA seal" at the bottom of their website, even though OLA does not comment on tribal lending at all.²⁷⁵ Players involved with payday lenders claiming to be affiliated with tribes are listed as members of the Board of Directors of OLA²⁷⁶, including Mark Curry,²⁷⁷ Josh Mitchem,²⁷⁸ Vincent Ney,²⁷⁹ and Ken Rees.²⁸⁰

²⁷⁰ Carter Dougherty, *U.S. Regulators Squeeze Banks to Cut Ties to Some Online Lenders*, BLOOMBERG, Aug. 14, 2013, http://onlinelendersalliance.org/u-s-regulators-squeeze-banks-to-cut-ties-to-some-online-lenders/; *Indian Tribes Said to Sue N.Y. Financial Regulator*, BLOOMBERG, http://onlinelendersalliance.org/indian-tribes-said-to-sue-n-y-financial-regulator/.

²⁷¹ Online Lenders Alliance Client Profile: Summary, 2016, CENTER FOR RESPONSIVE POLITICS, https://www.opensecrets.org/lobby/clientsum.php?id=D000028151.

²⁷² Online Lenders Alliance Money to congressional candidates: 2016 Cycle, CENTER FOR RESPONSIVE POLITICS, https://www.opensecrets.org/orgs/toprecips.php?id=D000028151&cycle=2016.

²⁷³ Online Lenders Alliance Congressional Committees, CENTER FOR RESPONSIVE POLITICS, https://www.opensecrets.org/orgs/congcmtes.php?id=D000028151&cycle=2016; https://www.opensecrets.org/orgs/congcmtes.php?id=D000028151&cycle=2010; https://www.opensecrets.org/orgs/congcmtes.php?id=D000028151&cycle=2008.

²⁷⁴ FAQ, ONLINE LENDERS ALLIANCE, http://onlinelendersalliance.org/about/fag/.

²⁷⁵ See, e.g., Americanwebloan.com, cashfairy.com, covermecash.com, greentrustcash.com, ipltoday.com, sovereignadvance.com, westrivercash.com, bigpictureloans.com.

²⁷⁶ Nonprofit Explorer, *Online Lenders Alliance*, PROPUBLICA.ORG, https://projects.propublica.org/nonprofits/organizations/202890680 (last visited Feb. 27, 2017).

²⁷⁷ Curry owned MacFarlane Group, the management company that kept 99% of the profits from the payday lending company the Otoe-Missouria Tribe allegedly owned. Faux, *Behind 700% Loans, supra* note 57. The Otoe-Missouria allegedly acquired the company in 2016. Vockrodt, *supra* note 205.

were located, including tribal payday companies. David Hudnall, *The Usury Suspects, Part 3: Tivol's expres knows where the real money is*, PITCH.COM (Jan. 16, 2014), http://www.pitch.com/news/article/20565968/the-usury-suspects-part-3-tivols-expres-knows-where-the-real-money-is; David Hudnall, *Inside the collapse of the local payday giant LTS Management*, PITCH.COM (May 20, 2014), http://www.pitch.com/news/article/20565099/inside-the-collapse-of-local-payday-giant-lts-management Mitchem was also sued for his involvement with tribal payday companies in *Everette v. NDG Fin. Corp.*. *See* Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation, *supra*.

²⁷⁹ Ney is alleged to be affiliated with a payday lender claiming affiliation with a member of the Chukchansi Tribe was paid \$150,000 a month. Michael Lipkin, *Katten, Others Hit With \$4M Suit Over*

B. Lead Generating Websites

Researchers determined that many of the direct lenders listed in the AJAM data were no longer operating websites that allowed consumers to apply for a loan directly from them. Instead, the websites solicited loan applications and distributed them among many payday lenders. These sites are termed "online lead generators" within the online payday industry and operate as networks designed to connect a single borrower to multiple website interfaces to maximize how many borrowers they can reach. They then create what is known within the online payday industry as a "ping tree." A ping tree is an "automated technology platform used by lead generators to distribute and offer consumer leads for review and possible purchase by lenders." One such site notes on its "Certain Disclosures Regarding Lead Generation" page that "Tribal lenders and offshore lenders typically charge higher interest rates than lenders adhering to state laws. Because they charge higher interest rates, these lenders generally are willing to pay more for leads and thus rank at the top of our ping tree." The application page of an "online lead generator" website often does not clearly indicate to the consumer who they are submitting their payday application to.

The following graphic from the Online Lenders Alliance describes how lead generating websites facilitate borrowers receiving loans:

Payday Loan Service, LAW360.COM (April 11, 2014), https://www.law360.com/articles/527677/katten-others-hit-with-4m-suit-over-payday-loan-service.

²⁸⁰ Rees has managed a company formerly known as Think Cash and now Plain Green that is associated with the Chippewa Cree Tribe. *See* Walsh, *supra* note 17.

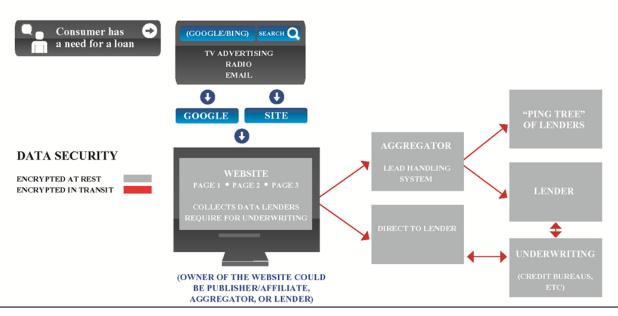
²⁸¹ Online Lead Generation In the Small Dollar Lending Market: Serving Nonprime Consumers, Online Lenders Alliance (July 2016), http://onlinelendersalliance.org/wp-content/uploads/2016/11/FINAL-LEAD-GEN-REPORT-JULY-20162.pdf.

²⁸² *Id.* at 3.

²⁸³ Certain Disclosures Regarding Lead Generation, GREENCORPCASHCOM.COM, https://www.rndframe.com/server/lead-generator-disclosures.html?site=www.greencorpcashcom.com (last visited April 10, 2017).

²⁸⁴ See, e.g., GREENCORPCASHCOM.COM, GreenCorpcash.com (last visited April 10, 2017), supra note 283. The application appears on the home page and does not notify the consumer that their application will be sent to multiple lenders until they click the "Terms of Use" hyperlinked text above the Apply Now button. The Terms of Use page states, "NOT A LENDER We are a lead generator. Certain important disclosures about lead generation are here. Your use of this Website is conditioned upon your having read these disclosures. This Website does not constitute an offer or solicitation to lend. We are NOT A LENDER, do not make loan or credit decisions, and do not broker loans. The operator of this Website is not an agent, representative or broker of any lender and does not endorse or charge you for any service or product." *Id.* (Click on FAQ on home page). The text "here" is further hyperlinked; that text links to the "Certain Disclosures Regarding Lead Generation" page. *See* note 283, *supra*.

SHORT-TERM LENDING ONLINE PROCESS



Online Lead Generation In the Small Dollar Lending Market: Serving Nonprime Consumers, Online Lenders Alliance (July 2016), http://onlinelendersalliance.org/wp-content/uploads/2016/11/FINAL-LEAD-GEN-REPORT-JULY-20162.pdf.

Many URLs that were previously associated with direct lenders are now associated with lead generating websites. For instance, in 2013, Ameriloan was a direct lender that claimed affiliation with the Miami Nation of Oklahoma. However, now, in lieu of the direct lender website, a lead generating website exists (http://www.ameriloanscash.com/).

At least one tribe, the Habematolel Tribe, claims to facilitate a lead generating website operation. ArrowShade is a division of Pomo One Marketing, owned by the Habematolel Pomo of Upper Lake. ArrowShade advertises itself as an "affiliate network for short-term loans wholly owned by a tribal sovereign." Tribal newsletters state that "revenues from these aforementioned lending related businesses fund 100% of the tribe's non-grant budget." Although the tribal newsletter states that "ArrowShade, the lead

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²⁸⁵ Consumer Alert, *Miami Nation Enterprise Not Licensed In Washington*, Washington State DFI (Oct. 18, 2013), http://www.dfi.wa.gov/consumer/alerts/miami-nation-enterprises-unlicensed-payday-loans.

²⁸⁶ ARROWSHADE, http://arrowshade.com/.

²⁸⁷ Sherry Treppa, *Chairperson's Report*, HPUL NEWSLETTER (Habematolel Newsletter) Vol. 13:3, Oct. 2014-March 2015, at 24, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-Oct-15-Mar.pdf. See also Sherry Treppa, *Chairperson's Report*, HPUL NEWSLETTER (Habematolel Newsletter) Vol. 13:1 Jan.-June 2014, at 6, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf ("the TLE's [tribal lending enterprises] are and likely will continue to be the primary sources of

generation/affiliate marketing company, our TLE businesses in 2014 employs 150+ people and it promises to be the source of "new" jobs for tribal members in 2014," none of the ArrowShade employees listed on the ArrowShade website disclosed that they were tribal members, and the company's office is not located on tribal land. 289

C. "Tribal Matchmakers"

In addition to lobbyist groups and lead generating businesses, another industry— "tribal matchmakers"—has emerged to complement payday industry's efforts to find suitable tribes to partner with. Tribal matchmakers are individuals who facilitate connections between lenders and tribes.²⁹⁰ These matchmakers have credibility with the tribes and encourage them to enter agreements with lenders.²⁹¹ They offer "consulting" services, expensive manuals, reports on current enforcement actions, and blogs to help payday businesses and tribes find each other.²⁹² Tribal matchmakers take approximately 10-15% of the small percentage the tribe takes from the payday lender, according to AJAM.²⁹³

VI. RELATIONSHIPS BETWEEN TRIBES AND PAYDAY LENDERS – CASE STUDIES

Researchers sought to determine the nature of relationships between various lenders and tribes by roughly applying the arm-of-the-tribe factors used by the recent California Supreme Court decision *People ex rel. Owen v. Miami Nation Enterprises et al.* ²⁹⁴ These factors are: (1) the entity's method of creation, (2) whether the tribe intended

the Tribe's discretionary income...the TLE's are without a doubt a key factor in the stability of our economic future and therefore of the utmost importance....").

²⁸⁸ *Id*.

²⁸⁹ ARROWSHADE, http://arrowshade.com/. For more discussion of ArrowShade, see Section VI.B.6.

²⁹⁰ See Bernstein & Harte, *The Sovereign Matchmaker*, *supra* note 20; Parker, *supra* note 20 ("My firm brokers business relationships between federally recognized tribes and PDLs [payday lenders]... At the current time, we have linked six(s) PDLs with three (3) federally recognized tribes."); Nehamas, *supra* note 18 (describing how Raycen Raines, a tribal member, pitched a lender-tribe online lending agreement to the tribe which the tribe ultimately turned down).

²⁹¹ See Bernstein & Harte, *The Sovereign Matchmaker*, supra note 20 ("Ayles-Ayler [a payday loan consultant] said[,] 'At one point, the chief cut out of the conversation we were having and said, "Allen [the tribal matchmaker], are you in this?" and he said, "Yes," and they said, "If you're in this, then so are we." '").

²⁹² Consulting, TRIHOUSE CONSULTING http://paydayloanindustryblog.com/reports/#axzz4Yh7w4Lya;; Who We Are, PAYDAYLOANUNIVERSITY.COM, http://www.paydayloanuniversity.com/who-we-are-2/.

²⁹³ Harte & Bernstein, *Payday Nation*, supra note 20.

²⁹⁴ *People v. MNE*, 386 P.3d 357 (Cal. 2016).

the entity to share in its immunity, (3) the entity's purpose, (4) the tribe's control over the entity, and (5) the financial relationship between the tribe and the entity. Suspicious of "formal relationship[s]" because "organizational arrangements on paper do not necessarily illuminate how businesses operate in practice," the court explained that "this test takes into account both formal and functional considerations—in other words, not only the legal or organizational relationship between the tribe and the entity, but also the practical operation of the entity in relation to the tribe." The decision also clarified a critical rule: at least in California courts, the defendant payday lender bears the burden of showing that it is an arm of the tribe and thus entitled to tribal immunity, rather than the consumer or state being required to prove a lender is *not* an arm of the tribe.²⁹⁷

Under the California Supreme Court's test, few if any of the payday lenders researched for this report would likely qualify as arms of their respective tribes. However, because the burden has now shifted to payday lenders to come forward with evidence of tribal ownership, control, etc., future litigation may reveal more about the these relationships than is currently publicly available. Researchers identified the tribes with the most publicly available information relevant to the lender-tribe relationship—the Cheyenne River Sioux, ²⁹⁸ Wakpamni Oglala Sioux, Miami Tribe of Oklahoma, Otoe-Missouria, Lac Vieux Desert Band of Lake Superior Chippewa, and Habematolel Pomo of Upper Lake—and described them in case studies.

A. Summary of Data Collected

Figure 25 offers a visual of the information available regarding each tribe's relationship to payday lenders. The chart identifies statements on tribal websites addressing the tribe's involvement in the payday lending industry; secondary evidence on the tribe's website such as job applications or references to lending in the tribal newsletter; statements by tribal members to the media; and whether a tribal council member is involved in any pro-payday lobbyist groups (discussed in Section I.A.). The chart also lists whether the tribe was implicated, either directly or indirectly, in litigation (Section IV.G.2); whether tribal documents exist which document the tribe's involvement with payday lending (Section IV.H.1); whether the tribe appears to have a tribal payday regulatory body (Section IV.H.1); and whether tribal members submitted a declaration or affidavit in the course of litigation (Section IV.H.2). Lastly, the chart specifies whether

²⁹⁵ *Id*.

²⁹⁶ *Id.* at 365, 374-75.

²⁹⁷ *Id.* at 368 ("A tribally affiliated entity, just like a state-affiliated entity, bears the burden of proving it is entitled to immunity."). Prior to this opinion, in California, the party opposing the entity moving for tribal immunity would have to prove that tribal immunity did not apply. *See id.* at 367-68.

²⁹⁸ This case study largely relies on the information that became available through litigation efforts with which Public Justice was directly or indirectly involved and was only loosely informed by research for this report.

there is trademark information available about payday lenders purportedly affiliated with tribe (Section IV.F.4); and whether any of the sources reviewed indicated the existence of a third party operating the payday lender.

Figure 25: Summary of All Available Data For Each Tribe Website Manager/Operator? **Tribal Council Member Regulatory Body** Declaration from Tribal Council Member For Purportedly Third-Party Statement on Tribe Secondary Evidence on **Tribal Members** Media Statements from Lobbyist Involvement with **Civil Litigation Addressing Lending Tribal documents** Tribal Payday Affiliated Payday Co. **Trademark Information** Listing, etc.) (Newsletter, Employment Tribe Website Tribal Website Tribe 1. Big Lagoon Rancheria Yes 2. Big Valley Tribe **NAFSA** Yes 3. Cheyenne River Sioux Western Sky/Martin Webb Yes Tribe 4. Chippewa Cree NAFSA Yes Yes Yes Yes Think Finance Yes 5. Flandreau Santee Sioux Yes Yes Yes Tribe ♦ Five For Fighting LLC, Total 6. Fort Belknap Tribe Yes Yes **NAFSA** Yes Yes Yes Management, Inc. 7. Guidiville **NAFSA** Yes Yes Yes Yes **NAFSA** Yes 8. Habematolel Tribe Yes Yes Yes Yes Yes Yes (past) 9. Iipay Tribe Yes Yes **NAFSA** 10. Kashia Band Yes Yes 12. La Posta Band **NAFSA** Yes 11. Lac Courte Oreilles ◆ **NAFSA** Yes Yes 13. Lac Du Flambeau Yes Yes Yes **NAFSA** Yes Yes Access Financial

Figure 25: Summary of All Available Data For Each Tribe Manager/Operator? Website **Statement on Tribe** Secondary Evidence on Media Statements from Lobbyist Involvement with **Tribal Council Member** Civil Litigation **Addressing Lending Tribal documents Regulatory Body** Tribal Payday **Council Member Declaration from Tribal** Affiliated Payday Co. For Purportedly Trademark Information Third-Party Tribal Website Listing, etc.) Tribe Website Tribal Members (Newsletter, Employment Tribe 14. Lac Vieux Desert Band NAFSA Yes Bellicose Capital Yes Yes Yes Yes Yes Yes Yes 15. Laguna Pueblo ♦ Yes 16. MHA Nation ♦ **NAFSA** Yes Yes Ouasi 17. Mechoopda Tribe Yes **NAFSA** 18. Miami Tribe Yes Scott Tucker Yes Yes Yes 19. Modoc Tribe of Statement Noting Company Not On Yes Yes Yes Yes Oklahoma Tribal Land. Macfarlane Group, Three Different **NAFSA** 20. Otoe-Missouria Yes Yes Yes Yes Yes Yes Yes Yes Addresses On Trademark Listing 21. Picayune Rancheria Vincent Ney Yes 23. Santee Sioux Nation of Yes Yes Scott Tucker Nebraska 24. Tunica-Biloxi Tribe Yes Yes Yes Yes Yes Yes 25. Turtle Mountain Band ZestFinance Yes Yes Yes Ouasi Yes of Chippewa Indians 26. United Keetoowah Band Yes Yes of Cherokee Indians

27. Wakpamni Oglala Sioux

Raycen Raines

Yes

NAFSA

^{♦ =} Lender without confirmed California connection.

B. Case Studies

None of the tribes researched explained with specificity how much control they exerted over the payday entity or how much revenue they actually received, nor did they demonstrate that they provided the majority of the employees needed to operate the payday company. Tribal officials often spoke of extreme financial desperation due to, among other things, geographic isolation²⁹⁹ or failed investment efforts.³⁰⁰

1. Cheyenne River Sioux, Western Sky, and CashCall

The triangle of relationships between Cheyenne River Sioux and the payday lenders Western Sky and CashCall has been well-documented in litigation. The arrangement between Western Sky and CashCall, including the "tribal" connection, are detailed in the Central District of California's order in *Consumer Financial Protection Bureau v. CashCall, Inc.* 301 In short, CashCall—a California corporation based in Orange County—started offering payday loans primarily to California borrowers in 2003. When it expanded into other states in 2006, it "opted not to obtain licenses to lend" in those states in an effort to escape the reach of those states' usury laws. 302 Instead, it entered into a rent-a-bank arrangement with state-chartered banks.

When the banks withdrew from their arrangement with CashCall (under pressure from the FDIC), CashCall's lawyers recommended that the lender move to a "tribal model." Under this model, which was supposed to work like the "rent-a-bank" model, a tribal lender would make the loans and sell them to CashCall, and the loans would purportedly not be subject to state law. CashCall's outside attorney introduced the company's general counsel to Martin Webb, a member of the Cheyenne River Sioux Tribe who had founded other payday lending companies using this particular "tribal model." Webb then founded Western Sky Financial as a South Dakota limited liability company with Webb as its sole owner. Western Sky built a call center on tribal land and employed tribal members. CashCall and Western Sky entered into agreements through which a CashCall subsidiary would purchase loans made by Western Sky. CashCall funded the loans and took all the financial risk. CashCall paid Western Sky the full

²⁹⁹ See Mark Azure Decl., Everette v. NDG Fin. Corp., Doc. 22-3; John Shotton Decl., Otoe-Missouria v. N.Y. Dept. of Fin. Servs., Doc. 10. See Figure 22: Tribal Declarations Filed in Litigation, supra.

³⁰⁰ See Sherry Treppa Decl., Otoe-Missouria v. N.Y. Dept. of Fin. Servs., Doc. 14; James Williams, Jr. Decl., Decker v. RS Fin. Servs., LLC, Doc. 19-10. See Figure 22: Tribal Declarations Filed in Litigation, supra.

³⁰¹ No. 15-7522-JFW, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016).

³⁰² *Id.* at *1.

³⁰³ *Id.* at *2.

³⁰⁴ *Id.* at *3.

amount dispersed to the borrower, and guaranteed a minimum payment of \$100,000 per month plus a \$10,000 administrative fee. CashCall also paid for many of Western Sky's expenses and indemnified it.

There was no evidence in the court cases to indicate that the Cheyenne River Sioux intended for Western Sky to have its tribal immunity; no evidence that Western Sky's purpose was to benefit the tribe in any way; and no evidence that the tribe controlled Western Sky, given that its sole owner was an individual tribal member. Likewise, none of the profits went to the tribe itself—some went to the individual owner of Western Sky, but most appear to have gone to the non-Indian owner of Western Sky's affiliated companies. Despite all this, Western Sky, CashCall and their affiliates attempted to use their purported tribal connection—the fact that Western Sky is technically owned by a member of the Cheyenne River Sioux Tribe—to escape liability for violating consumer protection laws.

First, when states (and the CFPB) pursued consumer protection actions against Western Sky and CashCall, the companies raised a tribal immunity defense. For example, when the State of Minnesota alleged that CashCall and its affiliates were using Western Sky to make usurious loans to Minnesota consumers, the defendants argued that "Western Sky is shielded by tribal sovereign immunity because it is owned by a tribal member, is located on a reservation, and finalizes its loans on a reservation. They further contended that because their contractual agreement with Western Sky allows them to 'stand in the shoes' of Western Sky, they too have tribal sovereign immunity." The court rejected that argument, holding that even if tribal immunity were shown to be assignable, the defendants had failed to demonstrate that Western Sky was entitled to tribal immunity because it "is not owned or operated by an Indian tribe, is not a tribal entity, and does not exist for the benefit of a tribe." Instead, Western Sky was "a South Dakota limited-liability company whose sole member holds himself out to be a member of the Cheyenne River Sioux Tribe The CRST did not approve Western Sky's creation, and Western Sky's profits do not benefit the tribe."

The loan agreements identified Western Sky as the lender and informed borrowers that the loans were "subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation." The loan agreements also provided that they were "governed by the . . . laws of the Cheyenne River Sioux Tribe" and that "Neither this Agreement nor Lender is subject to the laws of any state of the

18, 2014).

³⁰⁵ State ex rel. Swanson v. CashCall, Inc., No. A13-2086, 2014 WL 4056028, at *1 (Minn. Ct. App. Aug. 18, 2014).

³⁰⁶ *Id.* at *2 (Minn. Ct. App. Aug. 18, 2014); *see also W. Sky Fin., LLC v. State ex rel. Olens*, 793 S.E.2d 357, 366–67 (Ga. 2016) (collecting cases, noting that "[o]ther state and federal courts, in cases involving these same Defendants and their lending practices, have rejected the argument that tribal sovereignty defeats state court jurisdiction over them to enforce state law for off-reservation activities. We reject that argument, as well.").

United States of America."³⁰⁷ In *CFPB v. CashCall*, the court found that CashCall, not Western Sky, was the true lender. The court also concluded that the Cheyenne River Sioux Tribe had "no substantial relationship to the parties or the transactions" and that there was thus no basis for the designation of tribal law in the loan contract.³⁰⁸

Courts have also rejected attempts by CashCall, Western Sky, and their affiliates to block lawsuits by invoking the arbitration clause in the loan contracts. These agreements provided that the loan was subject only to the law of the tribe and expressly renounced any application of federal or state law—and purported to require arbitration before a tribal forum. Courts, in cases where Public Justice was counsel, recognized that the arbitration clause is unenforceable—both because it required arbitration before a nonexistent arbitrator (the tribe, which has denied all knowledge of any such arbitrations) and because it expressly renounced any application of state or federal law.

Hayes v. Delbert Servs. Corp. 309 involved alleged violations of consumer protection laws by defendant Delbert, a servicing agent and debt collector to which a company affiliated with CashCall and Western Sky transferred loans. The Fourth Circuit noted that, "[w]hile Western Sky was owned by a tribal member, Delbert claimed no tribal ownership or affiliation" and "does not attempt to ground its renunciation of federal law in any claim of tribal affiliation." Instead, the defendant attempted to enforce the arbitration clause in the loan agreement. But the court rejected the arbitration clause, holding that it was invalid "for the fundamental reason that it purports to renounce wholesale the application of any federal law to the plaintiffs' federal claims. . . . Delbert seeks to avoid federal law through the prospective waiver of federal law provision found in the arbitration agreement. But that provision is simply unenforceable. With one hand, the arbitration agreement offers an alternative dispute resolution procedure in which aggrieved persons may bring their claims, and with the other, it proceeds to take those very claims away. The just and efficient system of arbitration intended by Congress when it passed the FAA may not play host to this sort of farce."³¹¹ The decision is detailed in this blog.

In *Parnell v. W. Sky Fin.*, *LLC*,³¹² the Eleventh Circuit—following its previous decision in *Parm v. National Bank of California*³¹³—held that Western Sky's arbitration clause is unenforceable. The clause provided, in part: "You agree that any Dispute, except as provided below, will be resolved by Arbitration, which shall be conducted by

³⁰⁷ *Id.* at *4.

³⁰⁸ *Id.* at *8.

³⁰⁹ 811 F.3d 666 (4th Cir. 2016).

³¹⁰ *Id.* at 669, 673.

³¹¹ *Id.* at 673-74.

³¹² 664 Fed. Appx. 841, 2016 WL 6832933, at *2 (11th Cir. Nov. 21, 2016).

³¹³ 835 F.3d 1331 (11th Cir. 2016).

the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Agreement." The main problem with Western Sky's arbitration agreement, the court explained, was that it forces consumers to arbitrate their disputes through the Cheyenne River Sioux Tribal Nation—a "forum" that has no arbitrators or consumer dispute rules.

In April, CashCall filed suit against the attorney and law firm that advised them they would be able to make payday loans free from any risk of liability under federal or state laws by adopting the "tribal model." ³¹⁴

2. Wakpamni Oglala Sioux, FastMoneyStore.net

The inactive lenders Fastmoneystore.net, Bayside Cash, Boulevard Cash, Cash Cloud, Fireside Cash, Seaside Dollar, and Seaside Cash all operated websites that claimed to be affiliated to the Wakpamni Oglala Sioux. Napa Lending claims an affiliation with the Kashia Band on its home page, but states that the lending company is a "subsidiary agency of the Wakpamni Lake Community Corporation, an arm and entity organized under and governed by the laws of the Oglala Sioux Tribe of the Pine Ridge Reservation," on its FAQ page. Despite claims of tribal affiliation made by the websites, statements made by Wakpamni Oglala Sioux tribal members to AJAM and CNBC reporters suggested that the tribe was wholly unaware that it supposedly owned payday companies. Moreover, the tribal members' statements suggest that the tribe did not receive any benefits from any payday company.

Apparently, the Wakpamni Oglala Sioux did at one point consider the possibility of partnering with a payday company through tribal member Raycen Raines, but ultimately turned down the offer. AJAM reported that "Raines' proposal shortchanged the tribe [because] [m]ost of the money would go to a non-native-owned company, Arizona-based Cash Cloud LLC, which actually ran the lending business." Although the tribe declined, AJAM reported that Raines used the tribe's name to establish "Wakpamni Community Corp., a holding company that legally owns" the lending websites Raines established. Fastmoneystore.net, one of the payday businesses Raines established, "used a post office box on the reservation as its legal address, even though Cash Cloud made and serviced the loans from Arizona." AJAM reported that, in 2014, "at least 14 payday lending websites claim to do business from Pine Ridge [the Wakpamni Oglala Sioux reservation]" but did not list the names of those lenders. Two

³¹⁴ Complaint, *CashCall, Inc. v. Katten Muchin Rosenman LLP*, No. 30-2017-00914968 (Cal. Super. Ct. filed April 14, 2017).

³¹⁵ Nehamas, *supra* note 18.

³¹⁶ *Id*.

³¹⁷ *Id*.

³¹⁸ *Id*.

tribal council members—Arlene Catches the Enemy, and tribal president Bryan Brewer—told AJAM reporters that they were wholly unaware that there were any payday lenders claiming to operate out of the tribal lands without the tribe's approval. 319

Reporting by CNBC, while containing some differences, largely corroborates AJAM's reporting. According to CNBC reporters, the Wakpamni Oglala Sioux council president agreed to allow an unidentified payday company to use the tribe's name but then proceeded to withdraw her approval. The payday company continued to claim that it was wholly owned by the tribe even though the tribal council declined the offer and the council president withdrew her support. The tribe was unaware that the payday company, Fastmoneystore.net, had continued to use its name. The tribal council secretary, Richard Hawk, stated, "We were not aware of this payday lending project on the Internet until you brought it to our attention We believe that a fraud has been committed on us and these individuals pulled a fast one on us." CNBC reporters noted that Fastmoneystore.net "is the DBA for the Wakpamni Lake Community of the Oglala Sioux Tribe, a Sovereign Nation. Loans made by Fast Money Store are serviced by Cash Cloud LLC," which is the same entity affiliated with Raycen Raines as identified in AJAM reporting.

The only evidence suggesting that the Wakpamni Oglala Sioux may have indeed known of the payday lender—and possibly received benefits from the lending businesses—is a blog, https://wakpamnilakecommunity.wordpress.com. However, that

³¹⁹ *Id.* ("Catches the Enemy had no idea Raines had set up the lending companies without the tribe's approval. She said the first she heard of it was when AJAM asked about the lender's connection to the Oglala Sioux. 'We're doing what?' she exclaimed in surprise over the phone.... 'We need to investigate. We have to look into it,' the tribal president, Bryan Brewer, said... 'I'm really sorry we don't know what's going on.'). Because AJAM did not list the names of the lenders claiming to be affiliated with the Wakpamni, we do not know if they denied knowledge of the lenders referenced in Figure 9: Lending Websites Claiming Tribal Affiliation , *supra*.

³²⁰ Javers, *supra* note 195 ("Tribal President Sandy Two Lance failed to get the support she needed to sign the proposed contract. On the tape of the meeting, however, she says she will sign the deal anyway. 'I know you are going to say you can't do that without the executive board,' she says on the recording. 'But I'm going to do it and see where we go. I'm expecting restraining orders after I sign this.'... CNBC contacted tribal president Sandy Two Lance who agreed that her signature on the payday lending contract had not been made according to tribal procedure, but she said she shredded the agreement when other members of the tribe complained.")

³²¹ *Id*.

³²² *Id*.

³²³ *Id*.

³²⁴ See Nehamas, supra note 18.

³²⁵ It is not clear who operates the blog or whether the blog is tribally sanctioned. There is no information about the author and the blog is posted on a common blog platform, wordpress.com. The blog's initial two entries: (1) *Wakpamni Lake Community Responds to Al Jazeera News Inaccuracies;* and (2) *More Inaccuracy: Letter To The Editor of Native Sun News*, contest AJAM's and Native Sun News' description

source does not provide specific information of when or how the tribe created any payday lending businesses, or copies of any of the tribal documents showing the creation of a tribal business. The tribe does not publish an official tribal website, and we could find no public record of any tribal documents or tribal council meeting transcripts regarding the stance of the tribal council on the payday lending industry.

Researchers did not find any statements or any tribal documents that indicate whether the tribe was or is aware of the other inactive payday companies claiming affiliation with the tribe identified in this report.

3. Miami Tribe of Oklahoma, Miami Nation Enterprises, AMG Services, and Scott Tucker

Scott Tucker's payday lending enterprise has probably been the subject of the most litigation and public investigations of any of the known "tribal" payday lenders. Tucker, a Kansas millionaire who is known for his hobby of racing Ferraris, was previously convicted on federal charges related to a fraudulent lending scheme in the 1990s. Tucker's enterprise included Miami Nation Enterprises, SFS, AMG Services, and numerous lending websites such as Ameriloan, US Fast Cash, and United Cash Loans.

Along with Charles Hallinan, Tucker was one of the first to use the "tribal payday" model. His lending companies have been investigated by the Federal Trade Commission (FTC) and the California DBO, and he has been indicted on criminal RICO charges by the U.S. Attorney for the Southern District of New York and is under investigation by other prosecutors. Meanwhile, cases are pending in several courts involving whether corporations nominally founded and owned by tribes—such as the Miami Tribe of Oklahoma, Modoc Tribe of Oklahoma, and the Santee Sioux Tribe of Nebraska—can claim tribal immunity. Public Justice is counsel in two of those pending cases.

of Raycen Raines and the tribe's involvement in the payday company. The posts are purportedly written by Geneva Lone-Hill, the President of Wakpamni Lake Community Government. The blog only has 6 other entries: 1 entry dated Dec. 2, 2014 and May 12, 2016, and four entries dated May 13, 2016). The other blog posts, apart from the two discrediting the reporting on the tribe's involvement with the payday industry, are photographs. The blog also has a tab stating "Wakpamni Lake Community—Press Statement" which discusses the federal criminal complaint *United States v. Galanis*.

https://wakpamnilakecommunity.wordpress.com/wakpamni-lake-community-press-statement/ (last visited April 27, 2017). For information about *United States v. Galanis*, see note 88, *supra*.

³²⁶ More background on Tucker's history with payday lending is available on Public Justice's website at http://bit.ly/2BnKzZE, http://bit.ly/2kcNQaP and http://bit.ly/2k9rbft.

³²⁷ See United States v. Tucker, No. CR-90-00163-01 (W.D. Mo. Aug. 13, 1990); United States v. Tucker, Case No. 4:81-CR-00001 (W.D. Mo. Jan. 4, 1991).

In other cases, courts have already begun to recognize that Scott Tucker, not any tribe, founded, controlled, operated, funded, and was the primary beneficiary of the lending businesses at issue.

First, in *FTC v. AMG Services*, *Inc.*, ³²⁸ the court held that the evidence demonstrated that Scott Tucker controlled the lending companies. The court explained:

Scott Tucker directed the creation and organization of the Lending Defendants, which operated merely as a veneer for Scott Tucker's lending entities. Specifically, Scott Tucker presented the Santee Sioux Tribe of Nebraska, the Miami Tribe of Oklahoma, and the Modoc Tribe of Oklahoma with business proposals that would allow the tribes to become "authorized lenders" for NMS. . . . These proposals required the Scott Tucker Loan Servicing Companies to provide "the capital to fund all loan transactions" and "the personnel, equipment and knowledge to make the business an immediate success," while the tribes were not required to invest any capital in the business. . . . Instead, the tribes were merely required to designate one employee and to do "all things reasonably necessary to carry on the Pay Day Loan business as a lender with the full support of [a Scott Tucker Loan Servicing Company]." In exchange, the tribes would receive a guaranteed monthly fee. . . . Scott Tucker arranged for the drafting of the tribal lending ordinances that the tribes ultimately enacted without any significant changes. . . .

Scott Tucker structured the Lending Defendants to be completely dependent on the Scott Tucker Loan Servicing Companies. The service agreements signed by Scott Tucker between UMS and the tribes required UMS to "furnish . . . all support staff, equipment and business arrangements required to conduct an efficient payday loan business." . . . Further, UMS agreed to provide all capital for the payday loan operation "to be administered wholly and only by UMS." Moreover, the Lending Defendants' 30(b)(6) representative, Natalie Dempsey, testified that "all the consumer loans ever offered by [the Lending Defendants have] been serviced by AMG, CLK or NM Services." 329

AMG and other Tucker-affiliated companies have argued in court that the Miami Tribe created AMG Services as a wholly owned tribal corporation, which then took over Tucker's company, CLK Management. But the evidence before this court made clear that Tucker's role stayed the same after the tribes got involved. AMG's meeting minutes described AMG's merger with CLK as "just a name change." Tucker retained total

³²⁸ 2016 WL 5791416 (D. Nev. Sept. 30, 2016).

³²⁹ *Id.* at *7.

control over the company's bank accounts—and even the accounts owned on paper by the Miami Tribe. Meanwhile, all the purportedly "tribal" companies operated from the same address in Overland Park, Kansas, where Tucker's other companies were based. He also continually comingled funds between his various accounts without regard to whether some of the accounts were for businesses purportedly owned by tribes, using the money for everything from paying personal settlements, to vacation homes, to travel for his Ferrari-racing hobby.

In February 2016, the U.S. Attorney issued a press release stating that Scott Tucker "engaged in a series of deceptions" designed "to create the illusion that the Tribes owned and controlled Tucker's payday lending business." In particular, the press release explains, Tucker "entered into agreements with . . . the Miami Tribe of Oklahoma," and that "[t]he purpose of th[is] agreement[] was to cause the Tribes to claim they owned and operated parts of Tucker's payday lending enterprise, so that when states sought to enforce laws prohibiting Tucker's loans, Tucker's lending business would claim to be protected by sovereign immunity." The press release further states that Tucker's attorneys "prepared false factual declarations from tribal representatives that were submitted to state courts, falsely claiming, among other things, that the tribal corporations substantively owned, controlled, and managed" Tucker's businesses.

The indictment, which went into more detail, explained that Tucker and his legal team "prepared and submitted to courts materially false and misleading affidavits about the relationship between [the Tribes] and the Tucker Payday Lenders to create the false impression that [the Tribes] played a substantive role in the ownership and operation of the Tucker Payday Lenders. ³³⁵ In truth and in fact, as Tucker . . . well knew and privately admitted, [the Tribes] played no such role, and were instead deliberately used by Tucker . . . as mere conduits for Tucker's unlawful business. In reliance on these materially false and misleading affidavits, state courts dismissed certain state lawsuits on "tribal sovereign immunity" grounds. ³³⁶

The indictment further explains that "AMG Services, Inc. . . . was at all relevant times directly or beneficially owned and operated by Scott Tucker," not the tribes.

³³⁰ *Id.* at *7-8.

³³¹ *Id.* at *9.

³³² U.S. Attorney's Office, *Manhattan U.S. Attorney Announces Charges Against Owner of, and Attorney for,* \$2 *Billion Unlawful Internet Payday Lending Enterprise* (Feb. 10, 2016), at https://www.justice.gov/usaosdny/pr/manhattan-us-attorney-announces-charges-against-owner-and-attorney-2-billion-unlawful.

³³³ *Id*.

³³⁴ *Id.* at 3-4.

³³⁵ Indictment, U.S. v. Scott Tucker & Timothy Muir, No. 1:16-cr-00091-PKC (SDNY Feb. 9, 2016).

 $^{^{336}}$ *Id.* at ¶ 6.

Likewise, the Indictment explains that, while Tucker and his attorneys "took steps to create the sham appearance of tribal ownership and control," in fact the Tribe "played no substantive role in the ownership or operation of the [companies] at any time. To create the sham appearance of tribal ownership, Tucker assigned nominal ownership" of the lending business to the tribes "and from time to time caused [the Tribes] to appear as the businesses' owners on certain corporate and financial documents. However, . . . [the Tribes] had no power to make any decisions . . ., no control over the income or expenses . . ., and no entitlement to the . . . profits."

Finally, the U.S. Attorney released a Non-Prosecution Agreement signed by both the Miami Tribe and AMG Services. 338 Under the terms of the non-prosecution agreement, the government has agreed not to criminally prosecute AMG for its "involvement in the payday lending business with Scott Tucker . . . and various companies controlled by Tucker." ³³⁹ In exchange, AMG has agreed to forfeit \$48 million in criminal proceeds from Tucker's payday lending enterprise. 340 Also under the terms of the non-prosecution agreement, AMG admitted the following facts: (1) Tucker approached the tribe with a proposed payday loan business agreement; (2) pursuant to this agreement, it was understood that the tribal corporation would receive a monthly fee in exchange for invoking tribal sovereign immunity in response to any state lawsuits; (3) Tucker and his entities in Overland Park, Kansas—and not the tribe—provided the capital for the loans, took the risk, and managed and controlled all operations of the payday loan business; (4) Tucker caused accounts to be opened in the name of the tribe's corporate entities, but Tucker, not the Tribe, controlled the bank accounts; and (5) tribal representatives submitted false declarations in state court overstating the tribe's role in Tucker's payday lending business.³⁴¹

These developments are being considered by courts evaluating tribal immunity defenses raised by AMG Services and other lending companies run by Scott Tucker.

The California Supreme Court recently issued a unanimous decision in a case involving Miami Nation Enterprises (MNE), a company purportedly owned by the Miami Tribe but which evidence shows was operated and controlled by Tucker. First, the court ruled that the party asserting a tribal immunity defense bears the burden of proving by a preponderance of the evidence that it is an "arm of the tribe." Second, the court held that until it has proven it is an arm of the tribe, an entity is not entitled to a presumption

 $^{^{337}}$ *Id.* at ¶ 23.

³³⁸ Letter from Preet Bharara to Guy Petrillo, Esq. & Exhibit A: Statement of Facts (Feb. 9, 2016), available at http://www.justice.gov/usao-sdny/file/823666/download.

³³⁹ *Id.* at 1.

³⁴⁰ *Id.* at 2.

³⁴¹ *Id.* at Exhibit A.

³⁴² *People v. MNE*, 386 P.3d 357.

of immunity. Third, the court adopted a modified version of the *Breakthrough* arm-of-the-tribe test, under which courts must examine evidence related to five factors. ³⁴³ Fourth, the court held that courts must look beyond formal evidence such as an entity's organizational papers, to functional evidence showing how the entity operates in practice. Fifth and finally, the California Supreme Court held that, based on the evidence before it, MNE failed to demonstrate that it is entitled to immunity.

Because *People v. MNE* is such an important contribution to the analysis of the tribal immunity defense, anyone interested in the development of the law in this area is advised to read the decision in full.³⁴⁴

4. Otoe-Missouria Tribe, Great Plains Lending, American Web Loan, Clear Creek Lending

We obtained information regarding the Otoe-Missouria's involvement in payday lending from multiple sources. Great Plains Lending has defended against state usury laws and is defending against a civil investigative demand order from the CFPB. In response to New York's Department of Financial Services reaching out to ACH and ODFI actors regarding state usury laws, the tribe sued the state of New York for allegedly infringing on its sovereign immunity. In addition, multiple tribal council officials have spoken to the press, and there has been press coverage of the tribe's arrangements with servicing companies, creating a media record. Lastly, Great Plains Lending and American Web Loan are explicitly mentioned on the tribal website, and the tribe has a tribal governing document purportedly establishing a lending regulatory agency.

In litigation, the Otoe-Missouria Tribe submitted tribal resolutions purportedly forming the payday company Great Plains Lending³⁴⁷ and declarations signed by tribal

³⁴³ *See Breakthrough*, 629 F.3d 117.

The California Supreme Court's decision in *People v. MNE* is publicly available at http://bit.ly/2jM3dmF.

³⁴⁵ The Otoe-Missouria and Lac Vieux Desert Band were the only tribes that asked either a state or a federal court for an injunction to prevent state regulatory agencies from enforcing state laws against the lenders purportedly affiliated with the tribe. *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, No. 1:13-cv-05930 (S.D.N.Y. filed Aug. 21, 2013). For more discussion of litigation where payday lenders or tribes were parties, see Figure 15: Litigation History Involving Payday Businesses Claiming Tribal Affiliation.

³⁴⁶ Financial Services Companies, OTOE-MISSOURIA TRIBE, http://www.omtribe.org/who-we-are-enterprises-financial-services (last visited May 4, 2017).

³⁴⁷ Finn v. Great Plains Lending, No. 2:15-cv-04658-AB, Doc. 7-1 (E.D. Pa Dec. 15, 2015); Finn v. Great Plains Lending, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016); Pennsylvania v. Think Fin. Inc., No. 2:14-cv-07139, Doc. 67-3. See Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

Chairperson John Shotton³⁴⁸ evidencing tribal intent to extend sovereign immunity to two payday lenders – Great Plains Lending and American Web Loan – purportedly affiliated with the tribe. Shotton is one of only two tribal members who have submitted declarations in payday litigation against lenders claiming affiliation with his tribe.³⁴⁹ He is also the chairman of NAFSA.³⁵⁰

Shotton's declarations do not provide specifics regarding revenue, any employment opportunities the lending business has created for the tribe, or how much authority the tribe has over the payday company. Moreover, his claims of a "tribal underwriting system" in declarations offered to the court are potentially suspect. According to press reports, during the time when Shotton issued those declarations, the tribe "partnered with MacFarlane Group for the last six years to assist its American Web Loan business with underwriting, software development, marketing and call center support. . . . MacFarlane Group generated more than \$100 million in revenue from American Web Loan and another website owned by the Otoe-Missouria Tribe, with the tribe keeping 1 percent." While Ted Grant—the Vice Chairman of the Otoe-Missouria Tribe and CEO and President of the Board of Directors of Great Plains—also submitted a declaration attesting to tribal oversight of payday company Great Plains, his was significantly shorter and more vague than Shotton's. 353

While the resolution creating Great Plains and the accompanying operating agreement appear to be tribal documents, the contents of those documents are unusually vague. The Board of Directors purportedly governing the lender consists of the "President of the Development Authority and Tribal Vice Chairman" with the remaining three members chosen by the tribal council. ³⁵⁴ There is no requirement that the remaining

³⁴⁸ Pennsylvania v. Think Fin., Inc., supra, Doc. 67-3 (M.D.N.C. Aug. 28, 2015); Dillon v. BMO Harris Bank., No. 1:13-cv-897, Doc. 151 (M.D.N.C. July 15, 2015); Otoe-Missouria v. N.Y. Dept. of Fin. Servs., supra, Doc. 10 (S.D.N.Y. Aug. 29, 2013).

³⁴⁹ Great Plains Lending also submitted a declaration signed by Ted Grant in response to a alleged violation of the Telephone Consumer Protection Act. Ted Grant Decl., *Finn v. Great Plains Lending*, No. 5:16-cv-00415, Doc. 7-1 (W.D. Okla. July 15, 2016). *See* Figure 22: Tribal Declarations Filed in Litigation, *supra*.

³⁵⁰ A lobbyist group discussed in Section I.A.1. Shotton's position in NAFSA may have influenced his ability to get declarations from other NAFSA board members submitted in *Otoe-Missouria v. N.Y. Dept. of Fin. Servs. See* Figure 22: Tribal Declarations Filed in Litigation, *supra*.

³⁵¹ Declaration of John Shotton, *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, *supra*, Doc. 10 (Aug. 29, 2013).

³⁵² Vockrodt, *supra* note 205.

³⁵³ Ted Grant Decl., *Finn v. Great Plains Lending*, *supra*; John Shotton Decl., *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, Doc. 10., *supra*.

³⁵⁴ Resolution # 54293, Creating Great Plains Lending, LLC. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

three members—a majority vote—be tribal council or even tribal members. The Operating Agreement of Great Plains Lending explains that the "Tribe has contributed sufficient capital and resources to allow for the ongoing business of the company. . . . Company will operate separately from the Tribe and will not require continuing financial support from the tribe. However, it may be necessary to obtain [independent] funding for working capital and/or capital acquisitions by the Company..." This suggests that even in the creation documents, the tribe may not have provided the majority of the capital needed for the company to operate and may not own all of the company's equity. The allocation of capital investments is also significant because it may provide hints into how profits are distributed. The lack of specificity regarding who provided capital in what quantities and the possibility that majority votes could be accomplished by non-tribal members raises questions about who bears liability should the company fail, how profits are distributed, and who ultimately controls the payday company.

Researchers also checked the trademark registration accompanying each payday company purportedly owned by the Otoe-Missouria. American Web Loan, Clear Creek Lending, and Great Plains Lending have a trademark registered with American Web Loan Holdings, American Web Loan, Inc., and Great Plains Lending, LLC, respectively. Although the tribe is located in Red Rock, Oklahoma, the registrants list their locations in Las Vegas, Ponca City, Oklahoma (roughly 24 miles from Red Rock), and Edmond, Oklahoma (roughly 70 miles from Red Rock), respectively. Neither the resolution creating Great Plains Lending nor the Operating Agreement explicitly allow the company to operate outside of tribal lands. While this information is incomplete, the registration of trademarks to locations outside the tribal lands may suggest that the Operating Agreement's own rules are not being followed.

Statements by tribal members who are now wholly unconnected to the payday companies indicate that the tribe may have little to no control over the payday entities they purportedly own. Charles Moncooyea, the Vice Chairman when the tribe became involved with the payday industry, told one journalist, "I didn't do much at all [for the payday company], just looked at the checks and passed them on. . . . We were just a pawn." He continued, "All we wanted was money coming into the tribe. . . . As time went on, I realized that we didn't have any control at all." Moncooyea confirmed that the tribe received only 1% of the revenue generated by the payday company managed by the MacFarlane group. While the tribe claims to have "acquired" MacFarlane Group, none of the details of the acquisition have been made public. 358

³⁵⁵ Faux, Behind 700% Loans, supra note 57.

³⁵⁶ *Id.* at 246.

³⁵⁷ *Id*.

³⁵⁸ Vockrodt, *supra* note 205.

5. Lac Vieux Desert Band, Castle Payday, Big Picture Loans, Sovereign Lending Solutions, Red Rock Lending, and Bellicose Capital

As with the Otoe-Missouria, there is a good deal of information about the Lac Vieux Desert Band from a variety of sources. Lac Vieux Desert Band tribal council members signed declarations that were submitted by their purportedly affiliated "tribal lender" lender Sovereign Lending Solution in litigation.³⁵⁹ The tribe also teamed up with the Otoe-Missouria to sue the New York Department of Financial Services to stop the state from enforcing state usury laws, where James Williams, Jr., describes the formation of payday lender Red Rock Lending and emphasizes the importance of the lender to the tribe. Tribal members have also spoken to the press, and the tribal website discloses the existence of a payday lender. Also, there is evidence that the Lac Vieux Desert Band had tribal members employed by the payday company Castle Payday working on tribal land in a call center. Additionally, they purchased the company that was previously providing the majority of their operational costs and systems, Bellicose Capital.

The Lac Vieux Desert Band published creation documents for Big Picture Loans, LLC, on its website. 363 Those creation documents do not provide much detail about the actual operations of the payday business beyond establishing that the tribe will hire a "manager" to run the payday company. The documents do disclose that tribal members Michelle Hazen and James Williams are Co-Managers of the current payday company, Big Picture Loans. In the trademark registration, the name and address of the registrant is substantially similar to that of the tribe's reservation. 366

³⁵⁹ Tribal officials submitted documents regarding a dispute around a title loan received from Sovereign Lending Solutions in *Decker v. RS Fin. Servs. LLC*, 5:14-cv-00242-HE, Doc. 19-10, 19-11 (W.D. Okla. April 16, 2014). It is included here because the Operating Agreement refers to the lender as a "tribal lender." *Id.* Doc. 19-5 (April 14, 2014).

³⁶⁰ Otoe-Missouria v. N.Y. Dept. of Fin. Servs., supra, Doc. 11 (Aug. 29, 2013).

³⁶¹ Harlan, *supra* note 23.

³⁶² Press Release, Lac Vieux Desert Band, *supra* note 212.

³⁶³ Tribal Financial Services, LAC VIEUX DESERT BAND, http://www.lvdtribal.com/economic.html.

³⁶⁴ Operating Agreement of Sovereign Lending Solutions, LLC § 1.9; First Amended Articles of Organization of Big Picture Loans, LLC § 6. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

³⁶⁵ Lac Vieux Desert Band Resolution T2014-066. *See* Figure 16: Sources of Tribal Corporation Formation Documents Purporting to Create Payday Lending Businesses or Tribal Documents Purportedly Creating Regulatory Agencies, By Tribe, *supra*.

³⁶⁶ While the street addresses are different, they are both located in Watersmeet, MI.

Bloomberg investigated the relationship between Bellicose Capital and Lac Vieux Desert Band. 367 Previously, Lac Vieux Desert Band used Bellicose Capital to operate their payday websites. 368 As a part of their arrangement, Bellicose received the majority of revenues while the tribe received just 2%. 369 The tribe bought Bellicose recently, with a deal that required "\$1.3 million upfront, plus as much as \$300 million in future payments, depending on how the business does. Bellicose projects the tribe will eventually earn \$58 million a year." It is unclear whether or how "co-managers" Michelle Hazen and James Williams were previously affiliated with Bellicose Capital, or how the payday companies' operations will change now that the tribe has acquired Bellicose.

Journalists have documented that the tribe has had a history of being minimally involved in the day to day operations of the payday lender. The Washington Post investigated the CastlePayday³⁷⁰ call center on Lac Vieux Desert Band's reservation and interviewed a member of the tribe that worked in the center.³⁷¹ Only 11 workers staffed the call center, and those workers did not directly field the majority of customers' calls. Customer calls "land[ed] in the Philippines, largely because the tribe [didn't] have enough people to staff a call center; the Filipinos forward[ed] information to [the tribal] office via an instant messaging program. Borrowers' e-mails [went] directly to the tribe but even there, the responses are mostly prepackaged. When [a tribal employee wrote] back to customers, she pick[ed] from among several response templates—one explaining fees, for instance, another explaining payment options."³⁷² However, while the fact that tribal members operate some of the call center operations indicates a modicum of involvement in the payday operations, it says nothing about whether the tribe participates in more meaningful decisions, such as determining which borrowers receive loans.

6. Habematolel Tribe, ArrowShade, Mountain Summit Financial, Silver Cloud, and Golden Valley

Of all the tribes researched, the Habematolel Tribe appears to be more involved in the operation of the payday business than others. While none of the payday entities claiming to be affiliated with the Habematolel Tribe was the subject of litigation until

³⁶⁷ Faux, *Payday Lenders Are Changing, supra* note 212.

³⁶⁸ *Id*.

³⁶⁹ *Id*.

³⁷⁰ CastlePayday is now an inactive payday lender that redirects to the lending website currently affiliated with Lac Vieux Desert Band, Big Picture Loans. BIG PICTURE LOANS, https://www.bigpictureloans.com/CastlePaydayRedirectLanding (note CastlePayday Redirect Landing in the URL).

³⁷¹ Harlan, *supra* note 23.

³⁷² *Id*.

very recently,³⁷³ tribal members have offered statements regarding the tribe's involvement in the payday industry; there was significant discussion of the tribe's involvement in the payday industry in tribal newsletters; reporters have investigated the Habematolel Tribe; and there is trademark information registered to the payday entities purportedly affiliated with the tribe. However, even though this tribe has the greatest number of indicators suggesting that the tribe may have some control over the affiliated payday companies, statements in the tribal newsletters suggest that the tribe still may be in a "rent-a-tribe" arrangement with its affiliated payday businesses.

Sherry Treppa, the Habematolel Tribal Chairperson, has submitted declarations in other tribes' payday litigation and has testified in a legislative hearing. The tribal council has discussed the tribe's involvement with payday lenders in the tribal newsletters on at least three occasions. Additionally, the trademark registered to payday lender Mountain Summit Financial is registered to the lender at an address in the same town as the tribe.

On the other hand, ArrowShade, the lead generating company purportedly owned by the tribe, ³⁷⁵ publishes information about its employees and operations, and none of the information published suggests significant tribal involvement, as discussed below. The

http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-16-Sept.pdf; Sherry Treppa, Chairperson's Report, HPUL NEWSLETTER (Habematolel Newsletter) 13:1 Jan.- June 2014, at 3, 6-7, 16, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf; Kimberly Cobarruba, Treasurer Update, HPUL NEWSLETTER (Habematolel Newsletter) 13:1 Jan.- June 2014, at 8, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf; Sherry Treppa, Chairperson's Report, HPUL NEWSLETTER (Habematolel Newsletter) Volume 13:3, Oct. 2014-March 2015, at 6, 24, 26-27, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-Oct-15-Mar.pdf.

On April 27, 2017, the CFPB filed a lawsuit against four companies purportedly owned by the Habematolel—Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Mountain Summit Financial, Inc., and Majestic Lake Financial, Inc.—for "deceiving consumers by collecting debt they were not legally owed." *CFPB Sues Four Online Lenders for Collecting on Debts Consumers Did Not Legally Owe*, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-four-online-lenders-collecting-debts-consumers-did-not-legally-owe/.

³⁷⁴ Sherry Treppa, *Chairperson's Report*, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 3-4, 32,

³⁷⁵ "ArrowShade is a division of Pomo One Marketing, a wholly owned economic development arm and sovereign enterprise of the Habematolel Pomo of Upper Lake, California. As a federally recognized Indian Nation, the Tribe is uniquely positioned to support and engage in online consumer financial services. The United States Congress has recognized tribal governments as states with regard to consumer financial services in the Dodd Frank Act. Further, the Tribe has exercised its own sovereign authority by adopting its own stringent set of licensing laws and regulations, which it enforces. Under this framework, ArrowShade offers the unrivaled ability to operate within a unique environment and is governed by robust tribal regulatory bodies. These operations reflect the Tribe's commitment to self-determination and its efforts toward economic self-sufficiency. Because of this business, the Tribe has transformed it own economic outlook and also instilled hope amongst consumers with otherwise limited financial options in their most critical time of financial need." ArrowSHADE, http://arrowshade.com/ (last visited Feb. 26, 2017).

Habematolel Tribe was also featured in AJAM's series *Payday Nation* and statements from other tribal members suggest that the tribe's control over the payday entities may be more uncertain than it appears from Treppa's statements.³⁷⁶ Lastly, although the tribe operates a website, there is no publicly available documentation showing that the tribe created the entities it purportedly owns. Similarly, the creation documents memorializing the formation of the payday companies claiming to be affiliated with the Habematolel Tribe are not publicly available.

The tribal newsletters indicate that Treppa is the primary advocate for the tribe's involvement in the payday industry. Treppa discussed some of the tribe's involvement with the payday industry in tribal newsletters, asserting that the tribe's involvement in the payday industry was a significant source of revenue and at one point suggesting that the tribe's expanding involvement was earning the tribe "\$1,600,000 annually." Treppa's statements in the tribal newsletters implied that the tribe's involvement in the payday industry depends on third parties, particularly with regard to capital for payday loans. The Chairperson's Report states:

"Most recently, we renegotiated the capital structure for the [TLE] portfolios which enable us to immediately and substantially increase the revenues to the Tribe with an additional increase in 2 years and finally retirement of the debt in just over 3 years. Moreover, we are negotiating the expansion through introduction of new capital for a fourth portfolio, which will provide additional moneys to the Tribe as well as accelerate repayment of the previously mentioned notes."

How the tribal enterprises are operating profitably while Treppa mentions, in the same year, that the tribe is still repaying debt is unclear. However, in both tribal newsletters, a declaration, and her statements in the film *An Unlikely Solution*, Treppa continually asserts that the tribe's involvement in the payday industry is providing critical funds.³⁷⁸

³⁷⁷ Sherry Treppa, *Chairperson's Report*, HPUL NEWSLETTER (Habematolel Newsletter) 13:1 Jan.-June

2014, at 6, http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-14-01-06.pdf.

³⁷⁶ See Harte & Bernstein, Payday Nation, supra note 20.

of the programs for our elders, it provides for scholarships and that's a very important project that we've been working on, we've got kids that are coming out of college now that we've helped, we've got various youth-oriented programs, and it wholly supports our education program." *An Unlikely Solution*, film, at 9:54, http://www.anunlikelysolution.com/. "The consumer financial service business has proven to be very successful and absolutely vital for funding Tribal government operations. Indeed, fixed costs of the Tribe are paid exclusively through revenues generated by the Tribe's consumer financial services business, and without the business, the Tribe would be unable to maintain its current financial obligations. The business has also created employment opportunities for Tribal members..." Sherry Treppa Decl., *Otoe-Missouria v. N.Y. Dept. of Fin. Servs.*, Doc. 14, ¶28-29. *See* Figure 22: Tribal Declarations Filed in Litigation, *supra*.

Treppa's statements imply that the tribe was an active, negotiating partner that participated in determining the "capital structure for the [TLE] portfolios." While she did not provide specifics about how much funding the tribe is receiving, the "Treasurer Update" in tribal newsletter Vol.13:1³⁷⁹ states, "To date we have earned over 54% of our expected guaranteed income to Silver Cloud Financial, over 69% of our expected guaranteed income to Golden Valley Lending, and over 25% of our expected guaranteed income to Mountain Summit Financial. Our lending enterprises continue to exceed our minimum income of \$20,000.00 per month of which we are guaranteed to receive annually." The "guaranteed income" referenced in the "treasurer's update" may be a "monthly fee of 1 to 2 percent of revenue" that AJAM reporters identified payday lenders pay to tribes to "use their sovereign immunity" where "lenders typically manage the business operations themselves." The tribal newsletter directory supports the assumption that the Habematolel Tribe may be receiving a monthly fee from a payday lender in exchange for their sovereign immunity; none of the newsletters lists payday managers or employees as tribal staff. The state of the receiving in the newsletters lists payday managers or employees as tribal staff.

Treppa's declarations about the benefits of the lending business to the tribe are also contradicted by a tribe member's statements to AJAM reporters. According to AJAM, one tribal member, Vanessa Niko, said, "they don't see these benefits on the rancheria itself, perhaps because none of the tribal council members live there." AJAM further reported, "...Niko doesn't see any new employment opportunities opening up for herself or her five children. They don't have jobs for us unless you're on the council, [Niko] said." AJAM further reported that "[t]he payday lending enterprises are not operated out of the settlement, and Habematolel Pomo members interviewed on a recent visit said none of them had any jobs related to payday lending."

The websites of the companies themselves are also revealing. Although the tribe purportedly owns ArrowShade, a lead generating company, the company's employees are not tribal members. One employee, Joel Vogel, was the "Director of Leads and Analytics

³⁷⁹ None of the other newsletters discussing the tribe's involvement in the payday industry feature a "Treasurer Update."

³⁸⁰ Cobarruba, *supra* note 374.

Bernstein & Harte, *The Sovereign Matchmaker*, *supra* note 20. This arrangement could also be analogous to the terms in the Chippewa Cree Terms Sheet with Think Finance. There, "[the lender] shall pay the Tribe 4.5% of cash revenue received on account of the Loans for which GPLS has acquired a participation interest each month and will advance to the Tribe as a prepayment on revenue, \$50,000 each month for the first six months or until such time that the amount received exceeds \$50,000." *See Gingras v. Rosette*, No. 5:15-cv-00101-gwc, Doc. 23-2 at 2 (D. Vt. Aug. 13, 2015).

³⁸² *HPUL Roster*, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 8; *2016 Office Directory*, ARROW (Habematolel Tribe Newsletter) Sept. 2016, at 13-14. *See* http://www.upperlakepomo.com/forms/HPUL-Arrow-Newsletter-16-Sept.pdf.

³⁸³ Bernstein & Harte, *The Sovereign Matchmaker*, *supra* note 20.

³⁸⁴ *Id*.

for MacFarlane Group" and "Client Services Manager at Geneva Roth Ventures." ³⁸⁵ Another employee, Genel Ilysova, "a native of Azerjaijan [sic]," "plays an active role in the industry and contributes her expertise to the Online Lenders Alliance, Consumer Financial Services Association and the Native American Financial Services Association." ³⁸⁶ The MacFarlane Group, with which some of the employees of ArrowShade were associated, is well-known in the tribal payday sphere for predatory tactics. ³⁸⁷

VII. CONCLUSION

While the universe of tribal payday lending has long been secretive and difficult to analyze, by compiling information from numerous disparate sources, including court records, investigative reporting, tribal documents, tribal member statements, and lending websites, we have identified some basic trends in how lenders and tribes describe their relationships.

Lenders—both on their websites, and in documents submitted to courts to prove tribal ownership—tended to emphasize tribal ownership and control over the business. Court documents, including declarations signed by tribal officials, typically emphasized that the lending business was formed, owned, controlled, and operated by the tribe, for the tribe's benefit, and focused on the tribe's need for money and the tribal council's alleged intent that the lender share in the tribe's sovereign immunity. At the same time, these documents rarely provided any detail about the financial arrangements, operations, or oversight.

Lending sites commonly clearly identified the lender as tribally owned and operated. They also consistently emphasized that their loans were not governed by state or federal consumer protection laws while also imposing contract terms that would prevent borrowers from holding the lender accountable for violations of law, including

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³⁸⁵ ARROWSHADE, http://arrowshade.com/member/joel-vogel/ (last visited Feb. 25, 2017). Geneva Roth Ventures was another payday loan operations run by Mark Curry prior to his engagement with MacFarlane Group. Dugan Arnett, *Payday loan case showcases brutal interest rates in an industry under fire*, KANSAS CITY STAR, July 12, 2014, http://www.kansascity.com/news/local/article719247.html.

³⁸⁶ ARROWSHADE, http://arrowshade.com/member/genel-ilyasova/ (last visited Feb. 25, 2017).

Faux, *Behind 700% Loans, supra* note 57 ("Revenue from American Web Loan flows through the tribe to a firm owned by Mark Curry, according to a presentation his company gave to potential private-equity investors last year. Curry, whose payday-loan websites have been sanctioned by state regulators for the past seven years, is in turn backed by a New York hedge fund, Medley Opportunity Fund II LP... Curry's presentation, filed in federal court in Illinois by an investment banker suing him over fees, shows that Curry's MacFarlane Group Inc. generates more than \$100 million a year in revenue from American Web Loan and another website owned by the Otoe-Missouria. The tribe keeps about 1 percent, according to Charles Moncooyea, who helped strike the deal with Curry in 2010 when he was the tribe's vice chairman.").

arbitration clauses or tribal jurisdiction clauses, class-action bans, and shortened times to bring claims.

The websites of the tribes that purportedly own these lenders, in contrast, rarely corroborated the lenders' claims. These sites almost never had any information about the lending business each tribe supposedly owned, such as tribal council records, lists of tribal employees of the lending business, or revenue statements—even though several tribal sites offered information about other kinds of tribal businesses. And while some lending sites claimed their loans were overseen by tribes or regulated by tribal lending laws, we found no evidence that tribes were meaningfully protecting borrowers by limiting interest rates or providing legitimate dispute resolution forums. To the extent we found any tribal lending regulations, all either permitted exorbitant interest rates or had no cap whatsoever.

Meanwhile, tribal leaders and other tribal members interviewed by reporters often knew little or nothing about their tribe's supposed involvement in payday lending, and several tribal officials made statements that openly contradicted claims the lenders (or sometimes other tribal officials) had made.

Our research strongly suggests that in many cases, the image lenders are presenting to courts and the public of tribal control, financial prosperity, and self-determination is simply not accurate. Where information about financial arrangements was available (primarily through court records), tribes generally received a tiny percentage of the profits (1-2%) from the lending enterprise, while non-Native individuals or businesses took the rest of the money. Indeed, we saw no evidence that any tribe was fully operating the payday lender it supposedly owns. However, more information is obviously needed to shine a light on this relatively new, and very secretive, industry.