

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

IN THE MATTER OF

THINK FINANCE, INC.

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) File No. _____
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**JOINT PETITION OF GREAT PLAINS LENDING, LLC, MOBILOANS, LLC,
AND PLAIN GREEN, LLC FOR AN ORDER SETTING ASIDE
THE CIVIL INVESTIGATIVE DEMAND ISSUED TO THINK FINANCE, INC.**

Neal Kumar Katyal
Stuart M. Altman
Audrey E. Moog
Hilary H. LoCicero
Dominic F. Perella
Lindsay D. Breedlove
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
(202) 637-5910 (facsimile)
Counsel for Petitioners

Robert A. Rosette
Saba Bazzazieh
ROSETTE, LLP
565 W. Chandler Boulevard
Suite 212
Chandler, Arizona 85225
(480) 889-8990
(480) 889-8997 (facsimile)
*Counsel for Great Plains Lending
LLC*

Richard P. Eckman
PEPPER HAMILTON LLP
1313 Market Street
Wilmington, DE 19801
(302) 777-6500
(302) 421-8390 (facsimile)

Richard J. Zack
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA
(215) 981-4000
(215) 981-4750 (facsimile)
*Counsel for MobiLoans, LLC
and Plain Green, LLC*

Pursuant to § 1052(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5562(f) (“Dodd-Frank Act” or “Act”), and 12 C.F.R. § 1080.6(d), the Otoe-Missouria Tribe of Indians (Great Plains Lending, LLC), the Tunica-Biloxi Tribe of Louisiana (MobiLoans, LLC), and the Chippewa Cree of Rocky Boy Montana (Plain Green, LLC) (collectively, “Petitioners” or the “Tribes”) hereby petition the Consumer Financial Protection Bureau (“Bureau”) to set aside the Civil Investigative Demand (“CID”) issued to Think Finance, Inc. on June 9, 2012.¹ Congress did not provide the Bureau with the authority to issue CIDs to Tribes, and the Bureau cannot lawfully procure from Think Finance information and documentation that it lacks the power to procure directly from the Tribes.

The Tribes’ Interests. When an administrative subpoena or CID affects the interests of third parties, those third parties may typically intervene to protect their interests. *See Enforce Administrative Subpoenas of S.E.C. v. Coopers & Lybrand*, 98 F.R.D. 414, 414 (S.D. Fla. 1982) (citing *Donaldson v. United States*, 400 U.S. 517, 531 (1971); *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1291, 1293 (D.C. Cir. 1980)); *see also Reisman v. Caplin*, 375 U.S. 440, 445 (1963) (parties summoned by an administrative subpoena ordinarily “may appear or intervene before the District Court and challenge the summons”). Here, the Tribes’ interests are affected by the CID issued to Think Finance because, by seeking information and documentation related to the services Think Finance provides to the Tribes, the Bureau is attempting to do indirectly what it cannot do directly—oversee and regulate the lending activities of the Tribes.

Discussion. The Bureau must set aside the CID issued to Think Finance. That is so because the Bureau lacks authority to compel information from or otherwise regulate Indian

¹ At Think Finance’s request, the Bureau extended the time to file petitions to modify or set aside the CID until July 17, 2012. The Tribes all object to the Think Finance CID for the same reasons. For efficiency, they have consolidated their arguments into this single Petition.

Tribes; the Think Finance CID is an effort to make an end run around that lack of authority by obtaining the information from a third party; and the law is clear that such end runs are impermissible.

1. Indian Tribes possess “inherent powers of a limited sovereignty which has never been extinguished.” *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (quotation marks omitted). “When [a] tribe establishes an entity to conduct certain activities,” the entity shares in the Tribe’s immunity and other sovereign rights “if it functions as an arm of the tribe.” *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). Great Plains Lending, MobiLoans, and Plain Green function as arms of their respective Tribes, *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010), and thus possess all the rights and privileges of tribal sovereignty.

2. The Dodd-Frank Act does not provide the Bureau authority to regulate, or compel information from, Indian Tribes. Congress chose in Dodd-Frank to place Tribes on equal footing with States: Tribes are included within the definition of “State” in the Act, and thus are included among the regulators, not the regulated. Dodd-Frank Act § 1002(27), 12 U.S.C. § 5481(27). Congress did not confer upon the Bureau the authority to directly regulate or oversee Tribes. *See* Dodd-Frank Act § 1021(c)(4), 12 U.S.C. § 5511(c)(4) (charging Bureau with supervising “covered persons”); Dodd-Frank Act § 1002(19), 12 U.S.C. § 5481(19) (defining person without referencing Tribes); *see also Vermont Agency of Nat’l Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000) (explaining that if Congress wants to include a sovereign within the reach of a CID provision, it must say so clearly and specifically; the word “person” does not suffice). Nor did Congress expressly abrogate either the Tribes’ inherent rights to regulate themselves, or the Tribes’ sovereign immunity from subpoena power. *C & L Enters., Inc. v. Citizen Band*

Potawatomi Indian Tribe of Okla., 532 U.S. 411, 418 (2001) (tribal sovereign immunity can only be abrogated explicitly); *EEOC v. Fond du Lac Heavy Equipment & Construction Co.*, 986 F.2d 246, 249 (8th Cir. 1993) (right to self-government can only be abrogated explicitly).

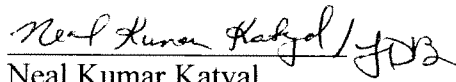
3. The Bureau thus lacks authority to regulate or compel information from the Tribes. By seeking documents and information about the Tribes and their lending-entity arms from Think Finance, the Bureau attempts to make an end run around that limitation and accomplish exactly what Congress forbade. The law is clear: The Bureau cannot achieve direct oversight of the Tribes through such tactics. *See Lewis v. Norton*, 424 F.3d 959, 963 (9th Cir. 2005) (holding that Plaintiffs' could not do an end run around tribal immunity by suing the United States).

4. In clear contravention of the Dodd-Frank Act, the Bureau also issued CIDs to the Tribes themselves. The Tribes filed a Petition to Set Aside the CIDs issued directly to them today, July 17, 2012. The arguments outlined above are set forth in significantly more detail in that Petition, and the Tribes hereby incorporate by reference all of the arguments and reservations of rights set forth in that Petition.

For these reasons and those contained in the Petition to Set Aside the CIDs issued to the Tribes, the Bureau must set aside the CID issued to Think Finance to the extent it requests information related to the services that Think Finance provides to the Tribes.

Dated: July 17, 2012

Respectfully submitted,



Neal Kumar Katyal
Stuart M. Altman
Audrey E. Moog
Hilary H. LoCicero
Dominic F. Perella
Lindsay D. Breedlove
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
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Counsel for Petitioners

Robert A. Rosette
Saba Bazzazieh
ROSETTE, LLP
565 W. Chandler Boulevard
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Richard J. Zack
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA
(215) 981-4000
(215) 981-4750 (facsimile)
*Counsel for MobiLoans, LLC and
Plain Green, LLC*

CERTIFICATION

Consistent with 12 C.F.R. § 1080.6(d)(1), counsel for Petitioners hereby certifies that they have conferred with counsel for the Bureau in a good-faith effort to resolve by agreement the issues raised by this Petition but have been unable to reach an agreement.

Neal Kumar Katyal / JOK
Neal Kumar Katyal

Counsel for Petitioners


CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 17 day of July, 2012, I caused a copy of the foregoing Joint Petition to Set Aside Civil Investigative Demands to be sent by electronic mail to the following:

Executive Secretary
Consumer Financial Protection Bureau
ExecSec@cfpb.gov

Assistant Director of the Division of Enforcement
Consumer Financial Protection Bureau
Enforcement@cfpb.gov

Maxwell (Max) Peltz
Meredith Osborn
Melanie Hirsch
Consumer Financial Protection Bureau
Maxwell.Peltz@cfpb.gov
meredith.osborn@cfpb.gov
melanie.hirsch@cfpb.gov



Neal Kumar Katyal