

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

In the matters of

GOLDEN VALLEY LENDING, INC.;
MAJESTIC LAKE FINANCIAL, INC.;
MOUNTAIN SUMMIT FINANCIAL, INC.;
SILVER CLOUD FINANCIAL, INC.; and
UPPER LAKE PROCESSING SERVICES,
INC.

**JOINT PETITION FOR AN ORDER SETTING ASIDE
CIVIL INVESTIGATIVE DEMANDS OF OCTOBER 25, 2019**

I. INTRODUCTION

The Bureau recently issued Civil Investigative Demands to five separate arms of the Habematolel Pomo of Upper Lake (the Tribe or HPUL)¹ in hopes of accomplishing through the CID process what it could not do—and ultimately abandoned—when it sued them in federal court nearly three years ago. In that lawsuit, the Bureau theorized that the Tribe’s online lending enterprise was involved in collection activity relating to loans that “consumers did not owe.” The recent CIDs evince a plan to revive those allegations—they also seek information about collection activity on loans that “consumers did not owe”—on a much broader scale and without the safeguards of judicial oversight. Then, as now, the Bureau’s misinformed view of Tribal sovereignty, Tribal law, and Tribal lending lacks merit for myriad reasons. Instead of inappropriately subjecting the Tribe to a game of Chutes and Ladders—forcing it to climb ever higher only to re-start the process from the beginning years later—the Bureau should set aside the investigative demands.

The grounds for this petition are as follows:

(1) The Bureau lacks authority to investigate arm-of-the-Tribe entities.

The Consumer Financial Protection Act (CFPA) makes clear that the Tribe—defined as a “State” under the law—is among those charged with enforcing and regulating the law, and is not among the “persons” who are subject to federal oversight by the Bureau. Because they are

¹ The CIDs were issued to four entities (the Tribal Lenders) who were named by the Bureau as defendants in a prior lawsuit: Golden Valley Lending, Inc.; Majestic Lake Financial, Inc.; Mountain Summit Financial, Inc.; and Silver Cloud Financial, Inc. The Bureau issued another CID to Upper Lake Processing Services, Inc., an arm of the tribe that provides call-center and administrative support to the Tribal Lenders. All five of these companies (the Tribal Entities) benefit from tribal sovereign immunity as tribal-created entities (“arms of the Tribe”). *See generally Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 176 (4th Cir. 2019).

owned and controlled by the Tribe, the Tribal Entities are “arms of the Tribe” and benefit from tribal sovereignty, which Congress did not abrogate in enacting the CFPA.

(2) The Tribe cannot comply with the CIDs without violating a protective order issued by its prudential regulator.

The Tribal Consumer Financial Services Regulatory Commission—the Tribal Entities’ prudential regulator—issued a protective order barring the Tribal Entities from complying with the CID. The Commission has concluded that responding to the CIDs “would not only violate Tribal and federal law, but would also constitute a severe infringement of the Tribe’s inherent sovereignty.”

(3) The CIDs are unenforceable because they lack a proper purpose.

The CIDs seek information stretching all the way back to January 1, 2012—nearly eight years ago and many years beyond the scope of any discovery the Bureau could have reasonably expected to obtain through litigation. That the Bureau would voluntarily dismiss the lawsuit, only to later leverage the full weight of its investigative powers to expand its inquiry outside the judicial process—and far beyond the applicable three-year statute of limitations—amounts to an abuse of process.

(4) The CIDs are overly broad and unduly burdensome.

Complying with the CIDs will impose a significant strain on a small and already-burdened Tribe seeking to turn around centuries of hardship and become economically self-sufficient. Every dollar spent addressing the CID is a dollar diverted from the Tribe’s governmental programs. As merely a first step in complying with the CIDs, the Tribal Entities estimate they will need to search approximately 60 custodians’ emails (representing 100% of their management team) plus approximately 1 terabyte (TB) of additional data. That burden is compounded by the lack of a proper purpose and the CIDs’ other deficiencies.

(5) The CIDs should be withdrawn or stayed pending the Supreme Court’s anticipated determination of the legality of the Bureau’s structure.

The Supreme Court is poised to finally rule on the constitutionality of the Bureau’s leadership structure. Like the *Seila Law* case itself, the CIDs here raise issues that speak to the fundamental power of the Bureau. Any attempt to resolve those issues now could prove pointless by the time the Supreme Court issues its expected decision next year. Coupled with the burden and expense required to respond to the CIDs, which could prove wasteful, the uncertainty surrounding the Bureau’s authority warrants withdrawal of the CIDs or, at a minimum, a stay.

II. BACKGROUND

As with all Indian tribes, the Tribe and its members have been subjected to indignities large and small at the hands of the federal government for generations. As part of the effort to redress those wrongs, restore tribal dignity and sovereignty, respect tribal culture, and decrease tribal dependence on federal funding, modern federal Indian policy encourages and promotes self-sufficiency and autonomy among Indian tribes. To that end, the Tribe in recent years has carefully exercised its sovereign authority to lawfully offer financial services to customers freely choosing to access them from the Tribe’s jurisdiction via the internet. Pursuant to its own regulatory requirements, the Tribe has been diligently building an online lending enterprise through the Tribal Entities which, as arms of the Tribe, enjoy all the benefits of sovereignty including immunity. *See Big Picture Loans*, 929 F.3d at 176, 185 (dismissing on tribal sovereign immunity grounds a suit against tribal lenders where the tribe “elect[ed] to engage in commerce using tribally created entities, *i.e.*, arms of the tribe...”). Revenue from the Tribe’s enterprises funds social and educational programs, creates jobs, and bolsters public health efforts (among

other things). While the Bureau should set aside the CIDs for the many reasons discussed in this petition, the following factual background provides necessary context.²

A. Tribal Lending is Part of a Long-Term Effort to Achieve Tribal Economic Self-Sufficiency.

The Habematolel Pomo have been rooted in California’s Clear Lake Basin for over 8,000 years. Like many tribes, the HPUL have endured centuries of adversity—too often imposed by the federal government. In just one tragic example, the U.S. Cavalry in 1850 slaughtered over 60 of the Tribe’s ancestors, including women and children, in what is commonly known as the “Bloody Island Massacre.” Despite further hardships in the ensuing decades, including forcible relocation, four Pomo groups banded together in 1878 to form a community known as Habematolel, near Upper Lake, that evolved to become the modern-day Tribe.

During the grim, McCarthy-era period, federal Indian policy included a plan for the termination of all Indian tribes and the forced assimilation of tribal members through boarding schools and other methods of cultural genocide. In 1958, Congress began the termination process for the Tribe when it enacted the California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619 (1958). The law’s main intent was to revoke federal aid, force the Tribe to wind-up its governmental operations (including distributing its assets), and eventually terminate the tribal government. Fortunately for the Tribe, the termination era was short lived and by the early 1970s President Nixon formalized the modern federal Indian policy of self-determination and self-sufficiency. The Tribe filed a lawsuit in 1975 formally seeking to reverse the termination

² This account derives from public sources including, primarily, the Affidavit of Sherry Treppa, Chairperson of the Tribe’s Executive Council, as filed in *Hengle v. Asner*, No. 3:19-cv-250 (E.D. Va. June 21, 2019), ECF No. 44. The Treppa Affidavit, consisting of an 87-page narrative as well as 111 exhibits, provides a detailed history of the Tribe and its online lending business, largely answering the CIDs’ Interrogatories. The affidavit is attached as Exhibit A to this petition (without its original exhibits).

process; after 8 years of litigation the Tribe prevailed. Despite the court victory, the Bureau of Indian Affairs for decades obstructed efforts by the Tribe to re-establish its lands and formal Constitution. The Tribe finally adopted its modern Constitution in 2004.

Since then, the Tribe worked diligently on the immediate priorities of nation-building (restoring its sovereign governmental systems) and economic self-sufficiency. It receives some federal funding but, given the long history of animosity from the federal government, the Tribe is wary of relying too heavily on outside assistance. The Tribe's first development efforts focused on gaming. Cognizant of the importance of self-regulation with respect to gaming, in 2005 the Tribe passed laws governing its gaming operations. After establishing a proper Tribal regulatory environment, the Tribe began taking steps to open a casino. After years of intense effort, the Tribal-owned Running Creek Casino opened in 2012. While the casino benefits the Tribe in many ways (it provides employment opportunities for Tribal members and serves as a general source of pride) it does not generate meaningful revenue because of the reservation's isolated location.

Undeterred, the Tribe continuously explores new ways to achieve economic autonomy in a remote area with a limited land base. Internet-based businesses allow the Tribe to meet the otherwise insurmountable challenges inherent in pursuing self-sufficiency in a small, remote location. In 2009, the Tribe began exploring online lending models with the aim of creating a sustainable (and wholly-owned and controlled) source of revenue. In 2011, employing the same self-regulatory approach it advanced in the gaming context, the Tribe created a regulatory framework for lending from the Tribe's jurisdiction. In March 2012, the Tribe incorporated its first lending portfolio, Silver Cloud Financial, Inc. The Tribal regulatory body issued its first license and the other entities and licenses followed.

After centuries of hardship and setbacks, the Tribe is finally turning a corner. Its online lending businesses provide revenue sufficient to fund the vast majority of the Tribe’s overall operating budget including vital government programs relating to health, education, and job creation—all designed to break the cycle of poverty created by failed federal policies. Federal public policy demands that the United States “guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes.” 25 U.S.C. § 4301(a)(6). The importance of this policy is reflected in a resolution passed by the U.S. Senate just this month, *see* S. Res. 414, 116th Cong. (Nov. 7, 2019), and permeates all aspects of Federal-Indian relations.³ The success of the Tribe’s online lending business is a virtual case study in the sound application of that policy.

B. The Tribal Entities Are Wholly-Owned Arms of the Tribe whose Operations Are Overseen by a Tribal Regulator.

All five of the Tribal Entities are arms of the Tribe. Each entity was incorporated as a wholly-owned arm of the Tribe, with the express intention that the Tribe’s sovereign immunity would extend to the companies. Because the Tribe has always controlled all aspects of the business and followed relevant corporate formalities for each entity, the Tribal Entities are entitled to sovereign immunity. *See Big Picture Loans*, 929 F.3d at 176.

As is common in nearly any start-up venture, the Tribe enlisted support from outside entities to initially assist in the funding and build-out of the online lending businesses—a concept

³ *See, e.g.*, Indian Trust Asset Reform Act, 25 U.S.C. § 5601(2) (stressing the “unique Federal responsibility to Indians”); Indian Gaming Regulatory Act, 25 U.S.C. § 2701(4) (“[A] principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.”); Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5302(b) (“[T]he United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.”).

endorsed and promoted by Congress in modern federal Indian policy.⁴ To reduce the financial risk inherent in unsecured lending, while still retaining control of its portfolios, the Tribe employed risk management techniques common in the banking industry, including the use of participation interest agreements. Leveraging outside assistance is consistent with federal policy on tribal self-sufficiency. *See* 25 U.S.C. § 4301(a)(12) (promoting “the resources of the private market” and outside “technical expertise” to help achieve “the twin goals of economic self-sufficiency and political self-determination for Native Americans”). Nonetheless, it was always the Tribe’s goal to reduce, and ultimately eliminate, third-party expenses and to vertically-integrate the core aspects of its operations into Tribal ownership.

To that end, beginning in 2013, the Tribe began acquiring companies to fulfill its many operational needs. By early 2014 it owned all the core operational aspects of the lending businesses. The Tribe then took the logical next step in its overall effort to achieve self-sufficiency—it bought out the outstanding participation contracts. The Tribal Executive Council—the governing body of the Tribe, which also serves as the Board of Directors for each company—was involved in every step of the buyouts, as it has been involved in every aspect of the businesses since their inception. To this day, all five of the Tribal Entities are fully owned, controlled, and managed by the Tribe.

The Tribal Entities are also overseen by a Tribal regulator. As a sovereign entity, the Tribe takes seriously its responsibility for self-government. The Tribe debated and ratified a lending ordinance (the Tribal Consumer Financial Services Regulatory Ordinance) in December

⁴ *See* 25 U.S.C. § 4301 (a)(12) (“[T]he twin goals of economic self-sufficiency and political self-determination for Native Americans can best be served by making available to address the challenges faced by those groups— (A) the resources of the private market; (B) adequate capital; and (C) technical expertise.”).

2011 which, as amended, imposes a robust regulatory framework on its consumer financial services industry. The Ordinance follows a regulatory framework similar to the model promoted and approved by Congress with respect to gaming. *See* Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988). While under no requirement to do so, through its Ordinance the Tribe adopted many of the requirements and practices of federal consumer protection laws.⁵ The Ordinance governs the consumer-facing aspects of the Tribal Entities' operations. The Tribe also established the Tribal Consumer Financial Services Regulatory Commission, which is charged with protecting the integrity of Tribal consumer financial services. As an independent agency of the Tribe's government, it audits each of the Tribal entities at least annually using a format like the Bureau's desk audit (including the use of highly-qualified experts).

As set forth more fully in the Treppa Affidavit, the loans offered to consumers are unsecured loans that are paid in installments, leaving the Tribe with limited remedies if a customer defaults. The Tribe considers itself an under-banked Tribe that provides services to a similarly under-banked population. The Tribal Lenders' websites and loan agreements repeatedly make clear they are arms of the Habematolel Pomo of Upper Lake Tribe, and that the loan contracts are governed by Tribal law. Customers must acknowledge the applicability of Tribal law as part of the loan application process. The Tribe also seeks to provide fair dispute resolution procedures, including by offering binding arbitration through the American Arbitration Association/JAMS that is not subject to Tribal override. Finally, the lenders have a

⁵ Copies of the 2011 and 2015 amended ordinance are available as attachments to the Treppa Affidavit. *See* Tribal Lending Regulatory Ordinance (2011), *Hengle v. Asner*, No. 3:19-cv-250 (E.D. Va. June 21, 2019), ECF No. 44-7; Tribal Lending Regulatory Ordinance (2015), *id.*, ECF No. 44-8. They are also attached here as Exhibits B and C, respectively.

very low complaint rate—less than 1% in 2018. In short, consumers choosing to accept loans from the Tribal Lenders access highly regulated, transparent, and fair services, which they acknowledge are governed by Tribal law and made in the Tribe’s jurisdiction.

C. The Bureau Already Subjected the Tribal Lenders to the NORA Process and a Lawsuit in 2017, Which It Dismissed Voluntarily in 2018.

In February 2017, the four Tribal Lenders received a Notice and Opportunity to Respond and Advise (NORA) letter from the Bureau’s enforcement staff. In a departure from the Office of Enforcement’s typical practice, the NORA was not preceded by any formal demand to the Tribal Entities and instead arrived out of the blue. In conjunction with the official NORA response, Chairperson Treppa unsuccessfully attempted, on a government-to-government basis, to engage then-Director Cordray in a dialogue on tribal sovereignty and tribal self-regulation but received no response.

In April 2017, over the Tribe’s objections, the Tribe learned through a CFPB press release that the CFPB had filed a lawsuit against the four Tribal Lenders alleging that they “originate and collect on installment loans that are void in whole or in part under state law.” Complaint ¶ 2, *CFPB v. Golden Valley Lending, Inc., et al.*, No. 2:17-cv-2521 (D. Kan. Apr. 27, 2017), ECF No. 1.⁶ The lawsuit lacked merit from the beginning. It plainly disregarded the Tribe’s sovereignty and basic choice of law contracting principles, and attempted by federal fiat to impose the laws of specific states on Tribal loans in violation of the basic tenets of federal Indian law. It prioritized the Bureau’s desire to flex muscle over principles of comity and

⁶ The Bureau originally filed the lawsuit in the Northern District of Illinois but the case was transferred to the District of Kansas on Sept. 8, 2017. *See* Transfer Order, *id.* at ECF No. 45 (Sept. 8, 2017).

deference to the Tribal Lenders' own prudential regulator, which offered to collaborate with the Bureau on any appropriate supervision.

After the defendants moved to dismiss the complaint, five *amicus* briefs were filed—all in favor of dismissal. Among the *amici* were two states (Oklahoma and New Mexico) which rightly pointed out that the CFPA differentiates between “persons” subjected to the Act’s provisions, and “States” which enjoy co-enforcement authority under the law. Federally recognized Indian tribes, like HPUL, are specifically included among the entities considered “States,” *see* 12 U.S.C. § 5481(27), and are therefore among the regulators, not the regulated, under the law. The briefs also pointed out that the Bureau was exceeding its authority by attempting to enforce state usury law.

The Tribal Lenders and *amici* observed that the lawsuit improperly impinged on Tribal sovereignty. Since “tribes” are included as “States” under the law, they pointed out that if the Bureau’s theory of liability was logically extended, there would be no limit, in manner or extent, to the power of the Bureau to insert itself into purely state affairs, including state-sponsored student loan programs and state-chartered credit unions. This was plainly not the intention of the CFPA, which, to the contrary, specifically demands that the Bureau coordinate with states (including tribes) in the interest of “consistent regulatory treatment.” 12 U.S.C. § 5495.

The Tribal Lenders denied violating any applicable federal law, asserted their sovereign immunity, and argued that the CFPB’s leadership structure is unconstitutional. After repeatedly seeking extensions of time to respond to the Tribal Lenders’ motion to dismiss—the last of which appealed to “recent leadership changes at the Bureau”⁷—at the deadline for filing a

⁷ Third Mot. for Mod’n of Br. Sched. at 1, *Golden Valley Lending, Inc.*, No. 2:17-cv-2521 (Dec. 5, 2017), ECF No. 98.

responsive brief the Bureau instead filed a notice of voluntary dismissal, ending the inquiry and lawsuit that began with the February 2017 NORA letter. Now, two years later, the Bureau (led by a roster of staff nearly identical to those who filed the lawsuit) seeks to revitalize its old theories through the CID process. For the reasons that follow, the Bureau's latest efforts suffer from the same infirmities as before and, accordingly, should be set aside.

III. ARGUMENT

The CIDs should be set aside entirely because the Bureau has no jurisdiction; the Tribal Entities cannot comply with them anyway in light of a Protective Order issued by their prudential regulator; the CIDs were issued for an improper purpose; and responding to the CIDs imposes an undue burden on the Tribe. At a minimum, the Bureau should stay enforcement of the CIDs until the Supreme Court has ruled on the constitutionality of the Bureau's leadership structure.

A. The Bureau Lacks Authority to Investigate Arm-of-the-Tribe Entities.

Our federalism—the idea that the federal government “will not unduly interfere” with legitimate state activities—is a core tenet of our constitutional system and “occupies a highly important place in our Nation’s history and its future.” *Younger v. Harris*, 401 U.S. 37, 44-45 (1971). Consistent with this high principle, when Congress enacted the Consumer Financial Protection Act it struck a careful balance between federal and state power.

Under the Act, the federal government and the States share responsibility as co-regulators of the financial services industry. The CFPB has certain authority, generally over larger, national participants in the consumer financial services market, and the States retain their traditional and well-established role as the primary regulator and overseer of state-based companies. For example, the Act makes clear that it shall not be “construed as altering, limiting,

or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.” 12 U.S.C. § 5552(d)(1) (Preservation of enforcement powers of States). Another provision describes limitations on the extent to which federal law may preempt state law. *Id.* § 5551 (Relation to State law). Still another requires the Bureau to coordinate with State agencies “to promote consistent regulatory treatment of consumer financial and investment products and services.” *Id.* § 5495.

Importantly, under the Act, Congress dictated that the Tribe be considered a “State,” which is defined as “any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands *or any federally recognized Indian tribe*, as defined by the Secretary of the Interior under section 5131(a) of Title 25.” 12 U.S.C.A. § 5481(27) (emphasis added).⁸ Thus, all aspects of the Act that reference the authority of States as regulators and enforcers of the law apply to the Tribe just the same as they apply to Kansas, Oklahoma, or New Mexico. As a legal extension of the Tribe, the “State” designation logically applies to the Tribal Entities.

⁸ Pursuant to modern federal Indian policy, the CFPA is no outlier. Congress regularly encourages the enactment and enforcement of Tribal law as on par with state law by defining “states” to include Tribes, such that they are treated alike. *See, e.g.*, 33 U.S.C. § 701h (environmental statute defining “states” to include “Federally recognized Indian tribes”); 42 U.S.C. § 1397n-12 (same in Social Security Act); 7 U.S.C. § 2012 (similar for the Food Stamp Program); 25 U.S.C. § 4103 (similar with regard to federal housing assistance); 42 U.S.C. § 1786 (for purposes of the Special Supplemental Nutrition Program for Women, Infants, and Children (known as “WIC”), defining “State agency” to include “the health department or comparable agency of . . . an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services”).

Conversely, an entity subject to the Act’s substantive regulations is separately defined as a “person.”⁹ The Bureau’s enforcement authority extends only to certain “persons” and plainly does not extend to “States” under the law. Only Congress can abrogate tribal sovereign immunity and it must do so unequivocally. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 790 (2014). It has not done so here. The separate definitions evince Congress’s clear intention to delineate between States (including tribes), on the one hand—who as regulators share enforcement authority under the Act—and persons, on the other, who are the subjects of federal and State regulation.

That Indian tribes are not among the entities subject to the Bureau’s authority is consistent with, and bolstered by, the great weight of authority governing Indian law in the United States. *See, e.g.*, 25 U.S.C. § 4301(a)(4) (recognizing “principles of inherent tribal sovereignty and the special relationship between Indian tribes and the United States”); *United States v. U.S. Fid. & Guar. Co.*, 309 U.S. 506, 512-13 (1940) (tribal immunity flows from tribes’ status as sovereign); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (any waiver of tribal sovereign immunity must be made explicitly and cannot be implied).

It is also consistent with Supreme Court precedent relating to the definition of a “person,” *see, e.g., Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 787 (2000) (under the False Claims Act, the term “person” cannot be read to include a “State” barring some “unmistakably clear” language in the law), and general principles of statutory construction applicable to Indian law, *see Mont. v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (finding that the special relationship between the U.S. and Indian tribes demands that statutes be

⁹ A “person” for purposes of the CFPA is “an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.” 12 U.S.C. § 5481(19).

“construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit”).¹⁰

B. The Tribe Cannot Comply with the CID without Violating a Protective Order from Its Prudential Regulator.

The Tribal Entities’ regulator, the Tribal Consumer Financial Services Regulatory Commission, issued a protective order to the Tribal Entities on November 11, 2019, barring the Tribal Entities from complying with the CID and instead directing them to submit any required information first to the Commission. Consistent with the Tribal Entities’ own position, the Commission has concluded that responding to the CIDs “would not only violate Tribal and federal law, but would also constitute a severe infringement of the Tribe’s inherent sovereignty.” (See Exhibit D, Protective Order, Case No. 2019-0001 (Nov. 11, 2019).)

The Commission stresses that it, not the CFPB, is primarily charged with “the responsibility of protecting the interests of the public in the offering of consumer financial services and maintaining the public confidence in Tribal consumer financial services practices.” (Ex. D, Protective Order at 2.) The Commission also concurs with the Tribal Entities’ observation here, *see supra* Sec. III.A., that, where Bureau authority exists at all, the CFPA creates a system of “co-regulation” between federal and state bodies (including the Tribe’s regulatory body). (Ex. D, Protective Order at 5.) Under that rubric, forcing the Tribal Entities to

¹⁰ The Tribe is aware that the Ninth Circuit has held in one instance that the Bureau does not “plainly lack[] jurisdiction” to issue CIDs to tribal lending entities. *CFPB v. Great Plains Lending, LLC*, 846 F.3d 1049, 1058 (9th Cir. 2017). That case arose after then-Director Richard Cordray denied a petition to set aside the relevant CIDs. Neither Director Cordray’s nor the Ninth Circuit’s decision are binding on Bureau Director Kraninger in connection with this Petition. In any event, the decision was in error because it relied improperly on dictum from one archaic Supreme Court case and ignored modern precedent supporting “the federal policy of encouraging tribal independence.” Pet. for Writ of Cert. at 18, *Great Plains Lending, LLC v. CFPB*, No. 17-184 (S. Ct. Aug. 3, 2017) (internal quote and citation omitted).

comply with the Bureau's CIDs would violate federal and Tribal law (*id.* at 7) as well as the U.S. government's trust responsibility to Indian tribes (*id.* at 6).

The practical effect of the Commission's Protective Order is that the Tribal Entities cannot directly comply with the CIDs until, at a minimum, the Bureau and the Commission "cooperate and coordinate" as required by the CFPA and the Commission's Order. (*Id.* at 8.)¹¹ While the CIDs should be set aside entirely, for the variety of reasons set forth in this petition, insofar as the Bureau declines to do so the Tribal Entities suggest that the Bureau stay enforcement of the CIDs until the co-regulators meet and jointly agree on the procedural and substantive issues reflected in the Protective Order.

C. The CIDs Are Unenforceable Because They Lack a Proper Purpose.

The CIDs lack a proper purpose, and are therefore unenforceable, because the Bureau is attempting to end-run the discovery process, and the limitations period, governing the litigation it abandoned nearly two years ago when, under Acting Director Mulvaney, it voluntarily dismissed its lawsuit against the four Tribal Lenders. If the Bureau were to file a new lawsuit today for UDAAP claims (the laws set forth in the CIDs' Notification of Purpose), it would be subject to the "three-year" statute of limitations set forth in the CFPA. *See* 12 U.S.C. § 5564(g)(1). This limits the Bureau to bringing UDAAP actions within three years "after the date of discovery" of the violation. *Id.* The date of discovery is when the Bureau obtains actual knowledge of the facts giving rise to the action or notice of facts, which in the exercise of reasonable diligence,

¹¹ *See also* CFPB Policy for Consultation with Tribal Gov'ts at 1 (accessed Nov. 15, 2019) (recognizing the "unique legal relationship" between the U.S. and tribes and pledging "regular and meaningful consultation and collaboration with tribal officials"), *available at* https://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.

would have led to actual knowledge.¹² As the Bureau’s prior NORA notice and lawsuit demonstrate, the Bureau knew or should have known of UDAAP claims long ago and any new lawsuit would be largely, if not entirely, time-barred.¹³ And yet, the applicable timeframe covered in the CIDs stretches all the way back to January 1, 2012. While the Tribal Entities recognize that the statute of limitations is an affirmative defense in litigation, it is also relevant here because it demonstrates an overreaching and improper purpose in issuing CIDs going back nearly eight years.

The Bureau is attempting to engage in a sweeping historical examination of the Tribal Lenders that it surely could not accomplish in federal court. The lawsuit alleged primarily “deception relating to the collection of loan payments which consumers did not owe.” Complaint at 23, *Golden Valley Lending*, No. 2:17-cv-2521 (D. Kan. Apr. 27, 2017), ECF No. 1. The Bureau subjected the Tribal Lenders to almost a year of litigation, forcing it to incur the costs and burdens of motions practice, not to mention the stress and reputational damage of being hauled into federal court, only to abandon its claims in the face of stiff opposition from the Tribal Lenders as well as five *amici* who pointed out, among other issues, the absurd consequences that would follow if the Bureau were allowed to sue a State under the CFPA and other limits of Bureau power. *See Br. Amicus Curiae* by State of Okl., *id.*, ECF No. 85 (Nov. 6, 2017). In dismissing its earlier lawsuit, the Bureau signaled its intention not to pursue its meritless claims against the Tribal Lenders.

¹² *See CFPB v. Nationwide Biweekly Admin., Inc.*, No. 15-cv-02106, 2017 U.S. Dist. LEXIS 145923, at *25 (N.D. Cal. Sept. 8, 2017); *CFPB v. NDG Fin. Corp.*, No. 15-cv-5211, 2016 U.S. Dist. LEXIS 177756, at *58 (S.D.N.Y. Dec. 2, 2016).

¹³ *Cf. CFPB v. Howard*, 2018 U.S. Dist. LEXIS 221956, at *5 (C.D. Cal. May 3, 2018) (granting defendant’s motion for summary judgment as to all conduct alleged to have occurred more than three years prior to the filing of the complaint, in light of the CFPB’s non-opposition).

Now, the Bureau is back, seeking an investigation, stretching back eight years, into whether any installment lenders “collected amounts that consumers did not owe.” *E.g.*, CID to Golden Valley Lending, Inc. at 1. The Bureau’s attempt to revive old theories—only this time in a much more expansive manner and outside the confines of judicial oversight—strongly suggests an improper purpose. The Tribal Lenders reserve, and intend to advance, every legal and equitable avenue to protect them from the Bureau’s irregular approach. *See generally SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 125 (3d Cir. 1981) (federal courts have “very significant” authority to prevent any form of agency abuse of its Congressional authority); *SEC v. Cuban*, 798 F. Supp. 2d 783, 792 (N.D. Tex. 2011) (unclean hands is an available defense to government enforcement action); *FTC v. Bisaro*, Misc. No. 10-289 (CKK) (AK), 2010 WL 3260042, at *6 (D.D.C. July 13, 2010) (permitting discovery to “ensure that enforcement of the subpoena would not amount to an abuse of process”).¹⁴

D. The CIDs are Overly Broad and Unduly Burdensome.

The CIDs impose an undue burden on the Tribal Entities. As explained above, *see supra* Sec. II., the Tribe’s online lending activities are only the latest in a long line of efforts to achieve the economic self-sufficiency promoted and promised by official U.S. policy and critical to the Tribe’s and its people’s long-term well-being. Revenue from the lending businesses is crucial to funding basic governmental programs including those relating to education, job stability, homeownership, elderly care, youth programs and public health. Any disruption to the Tribal

¹⁴ These arguments include all the arguments made in the dismissed litigation including but not limited to arguments that the Bureau cannot enforce state law, that the loans are governed by Tribal law, that the Bureau cannot enforce a usury limit, and that the Bureau cannot prove the loans are unfair, deceptive, or abusive.

Entities' business operations would impose a hardship not just on the businesses themselves, but directly on the Tribal people who depend on the proper functioning of Tribal government.

As discussed in the parties' meet and confer on November 13, the Tribal Entities estimate that responding to the CIDs would require collecting, searching, reviewing, and producing documents and other materials from approximately 60 custodians. It would also entail conducting the same laborious process with respect to approximately 1 terabyte (TB) of documents and data on a shared server.¹⁵ Requiring dozens of employees to devote time away from their business obligations, coupled with the broad nature of the requests and the commensurate high volume of expected responsive material, "threatens to unduly disrupt or seriously hinder normal operations" of the businesses sufficient to justify setting aside the CIDs. *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977).

Whether an investigative demand is unduly burdensome turns, in part, on "the nature, purposes, and scope of the inquiry." *Id.* at 903 (citation omitted). As discussed, the Bureau's lack of authority (*see supra* Sec. III.A.), failure to coordinate with the Tribe's prudential regulator (Sec. III.B.), and the absence of a lawful purpose (Sec. III.C.) all underscore and support the conclusion that the investigative demands impose an undue burden on the Tribes. *See also Texaco*, 555 F.2d at 882 (the burden is heightened where a demand lacks "a lawful purpose"). Accordingly, they should be set aside.

¹⁵ As stressed during the November 13 meet and confer, these are just estimates and are subject to further investigation. The estimates do not include the volume of material on individual employees' hard drives, which may substantially add to the volume of potentially responsive data.

E. The CIDs Should Be Withdrawn or Stayed Pending the Supreme Court’s Anticipated Decision on the Legality of the Bureau’s Structure.

It has been the position of the United States since at least December 2018 that the Bureau’s leadership structure is unconstitutional. *See, e.g.,* Br. of Resp’t United States at 22-23, *State Nat’l Bank of Big Spring v. Mnuchin*, No. 18-307 (S. Ct. Dec. 10, 2018). The Bureau itself has since agreed with this position. In *Seila Law LLC v. CFPB*, No. 19-7, the Supreme Court has agreed to review and potentially decide finally the extent to which the Bureau can lawfully take any action. The question presented is “[w]hether the vesting of substantial executive authority in the Consumer Financial Protection Bureau, an independent agency led by a single director, violates the separation of powers.” Petition for Writ of Certiorari at (I), *Seila Law* (June 28, 2019). The Court directed the parties to brief and argue an additional question: “If the Consumer Financial Protection Bureau is found unconstitutional on the basis of the separation of powers, can 12 U.S.C. § 5491(c)(3) be severed from the Dodd-Frank Act?”¹⁶

The CIDs should be withdrawn or stayed pending the Supreme Court’s anticipated resolution of these important constitutional questions. If the Supreme Court holds that the Bureau’s leadership structure is unconstitutional—and the remedy is something beyond just severing the provision allowing only for-cause removal of the director—compliance with the CIDs would have been unnecessary. The Bureau should spare the Tribal Entities the enormous, and potentially needless, burden of complying with the CIDs by setting them aside until the Supreme Court rules.

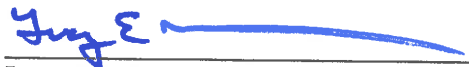
A stay pending the Supreme Court’s ruling is justified here in light of the rare issues at play involving fundamental questions relating to the Bureau’s power over tribes, the relationship

¹⁶ Supreme Court Docket, *Seila Law*, No. 19-7 (Oct. 18, 2019), *available at* <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-7.html>.

between the Bureau and the Tribe's prudential regulator, and the unique fact of a prior lawsuit by the Bureau against the Tribal Lenders. In other cases raising similarly consequential issues, the Bureau itself has sought a stay, or suggested that a stay is warranted. *See, e.g.,* Aff'n in Supp. of Mot. to Adjourn Oral Arg., *CFPB v. RD Legal Funding, LLC*, No. 18-3156 (2d Cir. Oct. 22, 2019), ECF No. 129 (seeking to stay argument pending the Supreme Court's resolution of *Seila Law*, which may "control this Court's resolution" of the case and "obviate the need" to address certain issues); CFPB Ltr. to Clerk, *CFPB v. CashCall, Inc.*, Nos. 18-55407, 18-55479 (9th Cir. Oct. 21, 2019), ECF No. 58 (offering supplemental briefing on the impact of the Supreme Court's forthcoming *Seila Law* decision). As in those cases, the Bureau should set aside or stay the CIDs here in order to avoid extensive briefing and argument over issues fundamental to the Bureau's power (not to mention the Tribe's burden and expense in responding) which may prove needless after the *Seila Law* decision.

Dated: November 18, 2019

Respectfully submitted,



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Counsel for the Tribal Entities

Meet and Confer Statement

Counsel for Petitioners Golden Valley Lending, Inc.; Majestic Lake Financial, Inc.; Mountain Summit Financial, Inc.; Silver Cloud Financial, Inc.; and Upper Lake Processing Services, Inc., (Tribal Entities or Petitioners) have conferred with counsel for the Bureau, pursuant to 12 C.F.R. § 1080.6(c), in a good faith effort to resolve, by agreement, the issues raised by this Petition and have been unable to reach an agreement.

On Wednesday, November 13, 2019 at 10:00am, Lucy Morris and Mark Rooney, counsel for Petitioners, conferred with Benjamin Vaughn, Gabriel Hopkins, Stephen Jacques, and Kristin Bateman, counsel for the Bureau, by phone concerning the Civil Investigative Demands. During the call, Petitioners' counsel objected to the CIDs and articulated the following grounds: (i) the Bureau lacks authority to investigate arm-of-the-tribe entities; (ii) the Tribe is under a protective order from its prudential regulator directing it not to comply until the regulator and the Bureau have had an opportunity to confer and cooperate; (iii) the CIDs lack a proper purpose; (iv) the CIDs are unduly burdensome; and (v) the questions surrounding the Bureau's authority in light of the pending Supreme Court case in *Seila Law* warrant at least a stay of the investigative demands.

In an effort to address many of the interrogatory requests, counsel for Petitioners offered to provide the Bureau with a copy of Sherry Treppa's sworn affidavit, with supporting exhibits, from the *Hengle* litigation. Bureau counsel indicated that they have already seen it.

Counsel for both sides had a dialogue about the document production burden, and counsel for the Petitioners described the number of custodial emails and expected large volume of data that would be required to be searched, analyzed, and reviewed in order to comply with the CID. Counsel for Petitioners made clear, however, that their arguments relating to burden were not limited to the burdensome volume of email and other data; they are further informed by the improper purpose and nature of the CIDs, which are relevant factors when examining a party's burden. Thus, while the Bureau expressed a willingness to discuss ways to reduce the volume of emails and other data at issue, the parties' inability to resolve the other issues prevented a resolution on the burden issue. The parties likewise were unable to reach any compromise on the other issues.

Because the parties were unable to reach an agreement concerning the issues described above, the Tribal Entities file this petition.

Dated: November 18, 2019



Lucy E. Morris

EXHIBIT A

Affidavit of Sherry Treppa

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

GEORGE HENGLE, SHERRY)
BLACKBURN, WILLIE ROSE, ELWOOD)
BUMBRAY, TIFFANI MYERS, STEVEN)
PIKE, SUE COLLINS, LAWRENCE)
MWETHUKU, *on behalf of themselves and*)
all individuals similarly situated,)

Plaintiffs,

v.

SCOTT ASNER, JOSHUA LANDY,)
RICHARD MOSELEY, JR., GOLDEN)
VALLEY LENDING, INC., SILVER)
CLOUD FINANCIAL, INC., MOUNTAIN)
SUMMIT FINANCIAL, INC., MAJESTIC)
LAKE FINANCIAL, INC., and UPPER)
LAKE PROCESSING SERVICES, INC.,)

Defendants.

Civil Action No. 3:19-250

**AFFIDAVIT OF SHERRY TREPPA
IN SUPPORT OF TRIBAL DEFENDANTS' MOTION TO DISMISS
AND MOTION TO COMPEL ARBITRATION**

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I, Sherry Treppa, hereby declare:

1. I am an enrolled member of the Habematolel Pomo of Upper Lake Tribe (“the Tribe”), a federally recognized Indian Nation located in Upper Lake, California.
2. I have been involved with the Tribe’s reorganization and government since 2002 and have served on the Tribe’s Executive Council since 2004. As explained in detail below, the Tribe’s Executive Council consists of seven elected officials and constitutes the governing body of the Tribe. I began my service as a Tribal officer as Vice Chairperson of the Tribal Executive Council. In 2008, I was elected Chairperson, and have continued to serve as Chairperson to this day.
3. In addition, I am Chairperson of the Boards of Directors and President of the four Tribally-incorporated lending portfolios at issue here (Silver Cloud Financial, Inc., Golden Valley Lending, Inc., Mountain Summit Financial Inc., and Majestic Lake Financial, Inc.). I am also Chairperson of the Boards of Directors and President of four other tribally-incorporated companies: Tribal Lending Enterprise, Inc., the parent company of all of our lending businesses; Upper Lake Processing Services, Inc., which provides support services to our lending portfolios; Pomo One Marketing Inc., our lead generation company, which also owns some of our intellectual property assets; and Uprova Holdings, LLC, our new corporate shared services company.¹ I have served as Chairperson of the Boards of Directors of all eight of these entities since their inception.

¹ Effective January 1, 2019, Tribal Lending Enterprise, Inc. employees were technically transferred to Uprova Holdings, LLC for corporate benefits reasons, but the transfer had no impact on the decision-making structure set forth in this affidavit.

4. In these capacities, I have actively overseen the Tribe's efforts to grow its economy in order to rebuild our sovereign Nation. A critical part of that process has been developing a self-sustaining lending business that is completely controlled by the Tribe and that generates essential revenue for our Tribal government.
5. Below I provide a general overview of our Tribe's origin, our early struggles with economic development, our decision to look to the internet to bring customers to our business, our decision to enter the online lending industry, our creation of our own lending portfolios, the steps we took to ensure Tribal control and ownership at all times, and how we grew those portfolios from small enterprises reliant on outside capital and contracts with outside service providers into the first tribally operated, completely self-funded, vertically integrated online lending business. We are immensely proud of our success in this competitive industry, and of how this business has empowered our Tribe to make large strides toward economic self-sufficiency and political self-determination.

I. Executive Summary

6. The Habematolel Pomo are indigenous to California's Clear Lake Basin and have called the area near Clear Lake home for at least 8,000 years.
7. We are a Tribe that narrowly survived centuries of federal policies that subjected us to unspeakable cruelties, including attempted genocide, that left scars that our people are still trying to overcome today. These misguided policies have left our Tribe essentially without a traditional tax base and in a remote geographic location that makes it virtually impossible for us to build an economy through tourism or physical visits to our land. Our Tribe, like many other tribes, has been forced to seek out innovative solutions to the persistent lack of funds needed to provide essential government services to our people.

8. In 2004, our Tribe had a Secretarial Election that approved our modern Constitution. Since then, our chief goal has been to embrace modern federal Indian policy, outlined in the Congressional findings regarding tribal economic development in the Native American Business Development, Trade Promotion, and Tourism Act, 25 U.S.C. § 4301, *et seq.*, which rightfully promotes tribes' efforts to attain political self-determination through economic self-sufficiency.
9. Upon securing its Constitution, the Tribe immediately set out to restore a portion of its original land base. The Tribe had lost its land as a result of Congress's attempt to terminate the Tribe's federal recognition in the 1950s. Courts eventually ruled this termination illegal, but not before the Tribe could save its lands.
10. In order to build capital to acquire land, we began taking steps to open a casino. We first developed the necessary regulatory framework, including the enactment of a gaming ordinance. We also partnered with a casino developer to not only fund our efforts but manage and operate the casino once opened, under the oversight of the Tribe's Executive Council.
11. Our relations with our development partner grew strained when it attempted to restructure our loan and management agreements while those agreements were pending approval by the National Indian Gaming Commission ("NIGC"). We ultimately decided to withdraw the agreements from the approval process, transform the original agreement into a simple loan, and hire our own management team. The challenging experience of attempting to open the casino and negotiating with our development partner taught us invaluable lessons for our business ventures going forward. Most importantly, it taught us that the Tribe must carefully retain control of its economic endeavors so that our future is not in the hands of

non-Tribal parties. Although difficult to endure at the time, I credit our early challenges in gaming with teaching me, personally, and others in our government to use relationships with and resources from third parties as a tool and not a crutch, and to always retain focus on our ultimate goal of financial independence and self-reliance.

12. We soon learned that our remote location would prevent our casino from sustaining the economic future of our Tribe. Indeed, our casino has been at best revenue neutral.
13. We began to view the internet as the great equalizer for our people—a unique opportunity to virtually bring consumers to reservation lands to provide them with valuable services and improve the lives of our Tribal members.
14. In 2009, as a result of our experience with the casino project, the Tribe's Executive Council began to explore creating and operating an online lending business. Like any startup company, we faced major obstacles in launching our lending business. First, the Tribe needed a substantial amount of capital to begin issuing online loans. We had next to none. Second, the Tribe needed experience and infrastructure—call centers, computer technology, software, and human capital trained in the online lending industry. We lacked these capacities and resources as well.
15. Nonetheless, the Tribe resolved to create and operate its lending business in a way that embodied a commitment to Tribal sovereignty and control. Each company we have created has been incorporated under Tribal law, is completely Tribally owned, and is controlled by a Board of Directors consisting solely of the Tribe's Executive Council.
16. We first incorporated Tribal Lending Enterprise, Inc. This entity was created to serve as a holding company for the various entities that would make up our lending operation. We

then incorporated several lending portfolios to actually issue loans—five in total, between 2012 and 2013—all as wholly owned, sovereign arms of our Tribe.²

17. Because of our lack of startup capital, we could not assume the full risk profile associated with making subprime loans originated from Tribal land. Therefore, the Tribe turned to a mechanism commonly used in the banking industry. We decided to offer participation interests in our loans to spread to other parties risks beyond the Tribe's comfort level and financial resources. In short, third parties could elect to take on a share of the risk and potential revenue of individual loans, but without obtaining any ownership interest in or control over the loans. The Tribe chose this approach because it maximized Tribal control and our ability to phase out non-Tribal interests on a time schedule chosen by the Tribe.
18. To gain access to the necessary infrastructure for a lending business, we signed service contracts with already-operative call centers and providers of necessary software and technology. We did not outsource the process of finding and executing these contracts—we performed the proper due diligence and every agreement was signed by a member of the Executive Council. But we did not view these contracts as long-term solutions—the goal was always to acquire and integrate these core capabilities into our own business.
19. Our Tribe learned all aspects of this business quickly. We were soon able to make strategic asset purchases that allowed us to bring all core technology and infrastructure in-house. In 2013, the Tribe purchased the assets of a call center with whom it had contracted. It then assigned them to Upper Lake Processing Services, Inc., a Tribally-chartered corporation, which began to provide shared services to all of our lending portfolios. Soon after, we

² In addition to the four lending portfolios named in this Complaint, the Tribe incorporated a fifth portfolio, Dancing Winds Financial, in December of 2012. That portfolio was never officially launched.

purchased strategic software assets as another step toward vertical integration and assigned them to a new Tribal corporation called Pomo One Marketing, Inc.

20. In 2014, we took the next step of entering buyout agreements with the third-party participants in our initial three portfolios well before the end of our five-year participation agreements. These buyouts involved short-term seller financing that we repaid from our loan portfolios. This method of repayment allowed us to retire debt quickly without running the risk of defaulting on debt obligations. In 2018, we decided to buy out the only participant in our remaining, more recently-launched lending portfolio, Majestic Lake Financial, Inc. We did so using a fixed note obligation as a result of our increased financial solvency.
21. The Tribe has achieved self-sufficiency in a complex industry at an unprecedented pace. The Tribe has maintained complete control and ownership of our lending business since their inception. And in just a few short years, we secured core technical assets to become vertically-integrated and eliminated all outside financial participation in our loans. Today, three of our lending portfolios are debt-free and the current debt on the remaining portfolio is set to be retired next year. We believe our lending operations represent an extraordinary achievement in economically-challenged Indian Country and would be a clear success for any startup.
22. The loans we offer to customers are unsecured loans that are paid in installments, leaving us very limited remedies if a customer defaults. To reduce the risk of default, our lending portfolios use computer algorithms and data analytic tools to assess a customer's application. If a customer's creditworthiness or ability to repay does not meet the lending portfolio's underwriting requirements, or if the identity verification process fails, then the

application will be denied. For example, from all of the applications received by our lending portfolios in 2018, only 3.33% were accepted, and only 1.86% were approved and funded.

23. We have also endeavored to be transparent with our customers. We consider ourselves an under-banked Tribe that provides services to a similarly under-banked population. We determined that customers choosing to accept loans from our jurisdiction would access highly regulated, transparent, and fair services. And like any responsible sovereign, we established a regulatory body to ensure as much. Our websites and loan agreements repeatedly make clear that our lending companies are arms of the Habematolel Pomo of Upper Lake Tribe, and that our loan contracts are governed by Tribal law. Customers must acknowledge the applicability of Tribal law as part of the loan application process. The Tribal Consumer Financial Services Regulatory Commission, which licenses and audits every lending business, is led by a Commissioner knowledgeable in tribal law who receives technical support from a former United States Attorney and a former high-ranking enforcement official at the federal Consumer Financial Protection Bureau. We also seek to provide fair dispute resolution procedures, including by offering binding arbitration through the American Arbitration Association (“AAA”)/JAMS that is not subject to Tribal override. We are proud to have a very low complaint rate—less than 1% in 2018.
24. More broadly, we have never attempted to hide our business operations from the public. On the contrary, since we decided to enter the online lending industry, we have pursued government-to-government relationships at the state and federal levels with governors, legislators, regulators, and law enforcement officials in an attempt to educate and be transparent about our presence in this industry. We have sought (and in one case obtained)

Memoranda of Understanding with different states that acknowledge our sovereign authority to issue online loans; we collaborate with state consumer protection departments, which has involved the willful sharing of otherwise proprietary company information; and we constantly monitor federal and state consumer protection laws to ensure that our own lending ordinances reflect best practices. I have given presentations at meetings of both Democratic and Republican State Attorneys General. I have also testified about the history and progress of our lending business in front of countless federal and state regulatory and legislative bodies, including the House Financial Services Committee.³

25. These efforts to educate governments continue to produce a greater understanding of the historic mistreatment of native populations, as well as the evolution of tribal self-determination efforts that reach beyond gaming to e-commerce opportunities. In 2018, the Virginia Bureau of Financial Institutions issued a letter acknowledging that Mountain Summit Financial, Inc. is “an arm of the Habematolel Pomo of Upper Lake,” is “not required to be licensed under the laws that are enforced by the Bureau,” and thus was free to issue loans to consumers in that state. Ex. 2 at 2 (Letter from Commonwealth of Virginia State Corporation Commission, Bureau of Financial Institutions (Feb. 12, 2018)). More recently, two states provided amicus briefs on our behalf in a recent dispute with a federal agency that the agency subsequently dismissed—including one of the states whose laws the federal agency was attempting to enforce. *See* Brief as *Amicus Curiae* By State of Oklahoma (Dkt. No. 85); Brief as *Amicus Curiae* By State of New Mexico (Dkt. No. 94),

³ *See, e.g.,* Ex. 1 (*Short-Term, Small Dollar Lending: The CFPB’s Assault on Access to Credit and Trampling of State and Tribal Sovereignty: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs., 114th Cong. 2* (2016)) (statement of Honorable Sherry Treppa, Chairperson, Habematolel Pomo of Upper Lake)).

Consumer Financial Protection Bureau v. Golden Valley Lending, No. 17-2521-JAR-JPO (D. Kan. 2017).

26. The revenue we derive from online lending is essential to the Tribe. We have used funding from our lending business to create over a dozen different Tribal programs that fund job training, education, health, home ownership, contributions to local governments that aid our members and our neighbors, and many other things. These programs, funded almost exclusively by proceeds from the lending business, are designed to reverse the social ills created by past federal policies and instill a sense of pride, self-worth, and self-determination in our members, with the ultimate goal of promoting productive, stable citizens and families.
27. At the same time, our Tribal government has made the conscious decision not to direct all of the revenues from our business into the Tribal budget, for several reasons. First, we want to ensure our business remains self-sustaining and capable of providing opportunities for generations to come. There are countless examples of Tribal governments raiding their companies for “quick governmental cash” and sending their companies into a “death spiral” for lack of adequate capital—a particularly pronounced concern in a competitive environment like e-commerce. Second, as a developing sovereign Nation, we strive to strike a balance between providing means and increased opportunities for our Tribal citizens without creating a culture of dependency—a dynamic all nations face with their social and public welfare programs. How funds generated from our lending operations are directed is a careful balancing act for our Tribal government, and is a completely internal, sovereign matter.

28. While we believe we have achieved remarkable success in a highly competitive industry, we have not been immune from challenges. We have attempted to attract the best and the brightest talent to our business, but we have had to terminate executives who did not perform at the level we expected, or who committed one of the three cardinal sins for our Tribally owned business: failing to be completely transparent with the Tribe's Executive Council; exceeding the scope of their delegated authority; or ignoring a Council directive. Simply put, our most important business objective is to create companies that are endowed with and maintain Tribal control, and we have zero tolerance for anything or anyone that would jeopardize that goal.
29. Our people have deserved a better way of life for generations, and the online lending business has finally allowed our Tribe to provide them with the opportunity for one. Without the online lending industry, our Tribe will no longer be able to guarantee the better future that our people have finally come to expect.

II. Our Tribe's Origin And History With The Federal Government.

30. The Habematolel Tribe descends from four "pre-contact" groups⁴ known as the Xowalek, Danoxa, Yobotui, and Kaiyao-Matuku that have occupied the area of Upper Lake, California since time immemorial.
31. Upper Lake is located in rural Lake County, California, about two hours northwest of Sacramento and over three hours from San Francisco.
32. The Pomo people are a collection of smaller tribal groups who are indigenous to Northern California. The Pomos, along with the Patwin and Wintun, were made up of numerous small bands or villages spread throughout the area north of the Sacramento River Delta and

⁴ "Pre-contact" refers to groups that existed in North America before the arrival of Europeans.

between the Russian River and the California River Valleys, as well as along the Pacific Coast.

33. The Tribe's history is marred by a series of tragic interactions with the federal government. In 1850, the United States Cavalry assaulted many of the Tribe's ancestors, predominantly women and children, in an aggressive military operation known as the "Bloody Island Massacre" that was tantamount to attempted genocide. The following year, the United States promised lands to the Tribe's remaining ancestors in a federal treaty that was executed, but never ratified.
34. In 1856, the Pomos were gathered and forcibly relocated to the Nome Cult Indian Farm in Mendocino County. This land eventually became the Round Valley Indian Reservation. The Pomo people were forced to share the Reservation with eleven other tribes, all of whom had different cultures, languages, and traditions.
35. In 1878, four local Pomo groups joined together and purchased ninety acres of land north of Upper Lake and established a traditional community known as Habematolel, which loosely translates to the "people of rock village." This is the root of the modern-day Tribe.
36. In 1907, the federal government set aside the Upper Lake Rancheria for the Indians of Upper Lake. The Rancheria ultimately grew to 564 acres through a series of piecemeal conveyances.
37. In 1935, the Upper Lake Rancheria adopted and ratified a Constitution pursuant to the Indian Reorganization Act. This Constitution was amended in 1941.
38. The United States maintained governmental relations with the Rancheria until Congress passed the California Rancheria Act of 1958, Pub. L. No. 85-671, 72 Stat. 619 (1958), which had the effect of terminating the Tribe's recognition and federal aid, revoking its

Constitution, and distributing the Rancheria's assets to individual members. This decision had disastrous effects on the Tribe and our way of life and truly represents a dark time in our history.

39. In 1975, the Tribe filed an action in federal court against the United States, alleging that the termination of the Upper Lake Rancheria was unlawful.⁵ After years of litigation, the Tribe ultimately prevailed in 1983.

III. The Tribal Government's Modern Structure.

40. After restoration of the Tribe's recognition, the Bureau of Indian Affairs ("BIA") refused to recognize the Tribe's 1941 Constitution and required the Tribe to reorganize under federal law. The BIA then delayed the Tribe's reorganization process and prevented the Tribe from restoring its lands for years.
41. Despite these challenges, the Tribe commenced reorganization in 1998 and began the process of reinstituting a formal government. The Tribe formally approved its Constitution in a 2004 Secretarial Election, over 20 years after the illegal termination of the Tribe's recognition was overturned. See Ex. 3 (Constitution of the Habematolel, Pomo of Upper Lake).
42. Our Constitution establishes a seven-member Tribal Executive Council as the governing body of the Tribe, composed of a Chairperson, Vice-Chairperson, Secretary, Treasurer, and three Members-at-Large. *Id.* at 2-3.
43. All members of the Tribal Executive Council are Tribal members who are elected for four-year terms by a majority of voting-eligible Tribal members. *Id.* at 3.

⁵ The action was filed as *Upper Lake Pomo Association v. Andrus* and became *Upper Lake Pomo Association v. Watt*, after James Watt succeeded Cecil Andrus as Secretary of the Interior.

44. The Executive Council is the Tribe's governing body and is responsible for acting in all matters that concern the general welfare of the Tribe. The Council is tasked with passing all ordinances and resolutions relating to the Tribe's business, environmental, jurisdiction, health, education, and welfare needs. Our mission is to build a nation of citizens with the tools and opportunities to seek out success on their own and end generations of governmentally-instituted dependence.

IV. Our Tribe's Early Efforts To Become Economically Self-Sufficient.

45. Although our Tribe had won our lawsuit restoring federal recognition, the actions of the federal government during the attempted termination left the Tribe landless and with very few economic resources.
46. The Tribe receives some federal funding to provide essential social services including housing, Indian child welfare, and access to health care. This federal funding was meager at the outset and has diminished over the years. It is not sufficient to meet the basic needs of the Tribe and its members.
47. Moreover, given our history with the federal government, we cannot accept reliance on it as our sole source of funding for support and opportunities for our members. Nor is that what the federal government wants. In the modern era, Congress has made clear in statutes such as the Native American Business Development, Trade Promotion, and Tourism Act that federal policy is to encourage tribes to develop self-sustaining economies to support tribal sovereignty and self-determination. *See* 25 U.S.C. §§ 4301(a)(6), (a)(12), (b)(6).
48. In keeping with these values, the Tribe saw economic development and decreased reliance on outsiders, including the federal government, as the only sustainable path to rebuilding

our Nation. This objective has been my main focus since my election to the Tribal Executive Council in 2004.

49. Crucial to this effort was the Tribe's push for greater trust land from the federal government. Pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-79, the federal government will at times take certain parcels of land into trust for a sovereign Indian tribe.⁶ The majority of land occupied by tribes today has come from this trust process.
50. In 2008, the Tribe succeeded in having the Department of the Interior take approximately 11.24 acres of land into trust for the Tribe. Initially, the Tribe requested that Interior take 60.55 acres of land into trust, but we reduced our request to accommodate an ongoing multiyear environmental restoration project on some of that land by the surrounding county.
51. A few tribes have been able to achieve economic self-sufficiency and meet the needs of their people by operating a casino on tribal land. But whether this approach is successful depends significantly on the location of the land. Tribes are generally only able to achieve self-sufficiency through casinos or other businesses dependent on physical access when the land is conveniently located near a major urban area or place otherwise conducive to tourism.
52. Our Tribal land is meager in size and sufficiently remote that a casino is not a viable means of achieving financial independence for the Tribe. We know because we have tried.

⁶ See Fee to Trust, BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/bia/ots/fee-to-trust> (last visited June 20, 2019).

53. Like many tribes, we first attempted to develop a self-sustaining economy by opening a casino. Due to our lack of capital, we partnered with a casino developer to fund the legal, archeological, and environmental effort needed to open a Class III Casino.
54. To prepare for gaming, the Tribe developed the proper regulatory framework by passing a gaming ordinance and creating a regulatory body to oversee licensure related to the casino and ensure compliance with applicable federal and Tribal law.
55. Like many other tribes, we signed agreements in 2005 not only to secure capital to open the casino but also to have a third party manage and operate the casino under the oversight of the Tribe's Executive Council, using some employees not physically located on Tribal land—a common approach in the casino industry.
56. While our loan and management agreements were still pending with the NIGC for approval, the Tribe's development partner attempted to completely restructure our arrangements. After several months of intense negotiations with the development partner, in 2009 the Tribe withdrew the agreements from consideration by the NIGC, effectively nullifying the management agreement, and decided to hire its own management team. In other words, the Tribe abandoned its initial approach in favor of one that would guarantee us more control, even though doing so posed challenges to our growing Nation.
57. After several years of intensive effort, millions of dollars of debt, and a long, protracted negotiation with both the State of California and the Assistant Secretary of the Interior Office of Indian Gaming, the Tribe opened Running Creek Casino in 2012.
58. The casino provides many things that are invaluable to the Tribe: employment opportunities for Tribal citizens; employment opportunities for members of a surrounding community with high unemployment rates; an ability to make contributions to our local

community that has earned us a positive reputation; and above all, a source of pride and hope for our Nation. But because of its remote location, the casino does not provide revenues to the Tribe. In fact, in recent years, the Tribe often has used funds from its lending operations to prevent a default on the casino's debt and keep it open.

V. The Tribe's Initial Consideration Of The Online Lending Industry.

59. Given the limitations described above, the Tribe began considering creating its own online lending business in 2009. We saw the internet as a unique opportunity to allow consumers to virtually access goods and services from Tribal businesses within the Tribe's jurisdiction. The internet would, in other words, cure the disadvantage of our remote location.
60. From the very beginning, our objective was to create a sustainable lending business that was wholly owned and operated by the Tribe, and that provided resources to our Tribe for the benefit of its members. We also hoped that the lending business would generate revenues to allow us to expand our efforts to contribute to our surrounding community.
61. The Tribe faced significant hurdles in entering the online lending business. First, operating a lending business requires significant capital. At the outset of its entry into the lending business, the Tribe had next to none. Second, operating a lending business requires substantial infrastructure and expertise. For example, lending businesses require extremely complex computer software and algorithms to connect with and evaluate loan applicants to attempt to minimize bad debt write offs. Lending businesses also require call centers staffed with trained employees to communicate with customers. When we decided to enter the industry, we did not have this necessary infrastructure or expertise at hand.

62. As a result, it was clear that at the outset the Tribe would have to do what many startup businesses do—enter into business arrangements with third parties and borrow startup capital. These arrangements with non-Tribal members would help us to achieve “[t]he twin goals of economic self-sufficiency and political self-determination . . . by making available . . . the resources of the private market; adequate capital; and technical expertise,” as Congress envisioned. 25 U.S.C. § 4301(a)(12).
63. As a result of our experience with gaming, our intent was always that these core business arrangements would be short-term and structured in a way that would not disrupt our overall commitment to Tribal control and ownership.
64. With these objectives in mind, the Tribe’s Executive Council began discussing e-commerce opportunities with the legal counsel it was using for its casino initiative, Rosette LLP.
65. In early 2011, Rosette LLP identified several parties interested in aiding Indian tribes in establishing lending operations.
66. The Tribe ultimately chose to work with individuals who had an understanding of the economic challenges in Indian country and were interested in aiding the Tribe in creating its own lending business from the ground up.
67. Rosette LLP continued to serve as the Tribe’s legal counsel until 2016.

VI. The Creation Of Tribal Law Governing Online Lending.

68. Before entering the lending business, the Tribe recognized the need to update its own laws and regulations to provide a robust framework for regulating consumer financial services offered from Tribal jurisdiction.

69. The Tribe ratified its lending ordinance in December 2011. *See* Ex. 6 (Tribal Lending Regulatory Ordinance (2011)). Enacting laws is a quintessentially sovereign function, but the Tribe elected to take guidance from state and federal consumer protection laws. In particular, the Tribe incorporated substantive standards of numerous federal banking and consumer protection laws, including but not limited to the Truth in Lending Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, the Telemarketing Sales Rule, and Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices. *See* Ex. 7 at 20-21 (Tribal Lending Regulatory Ordinance (2015)); *see also* Ex. 103 at 17 (Tribal Lending Regulatory Ordinance (2012)). The Tribe thus subjects its consumer financial services business to many of the same requirements and audits that federal and state laws impose on non-tribal businesses. The Tribe resolved that all tribal lending entities would have to comply with this legislation. Over the years, the Tribe has continued to amend its lending ordinance to take account of changes to state best practices and federal regulations. *See* Ex. 103 (Tribal Lending Regulatory Ordinance (2012)); Ex. 7 (Tribal Lending Regulatory Ordinance (2015)).
70. The Tribe also exercised its sovereign authority to establish the Tribal Consumer Financial Services Regulatory Commission (the “Commission”) to oversee the Tribe’s consumer financial services business. The independent Commission licenses all tribal lending entities, and no Tribal lending entity can operate without a license. All lending entities are expected to maintain a compliance management system to ensure adherence to Tribal law, including the provisions of Tribal law that incorporate substantive standards of federal law,

as well as internal controls and processes to allow the Commission to exercise meaningful oversight. The lending entities are audited at least annually by the Commission, and the Commission has the full autonomy to exercise its enforcement authority should a lending business violate the Tribe's consumer protection laws. The Commission also has the authority to suggest revisions to the lending ordinance, but revisions cannot be implemented absent approval by the Executive Council.

71. Today, the Commission is led by Commissioner David Tomas, a Tribal member. Commissioner Tomas has a great deal of experience in Tribal governance and in business operations and has helped with our efforts to develop productive relationships with state and federal enforcement authorities. For technical matters the Commissioner employs the expertise of Brendan Johnson, the former U.S. Attorney for the District of South Dakota; and Sarah Auchterlonie, the former acting deputy enforcement director for the federal Consumer Financial Protection Bureau. The Commission chose Mr. Johnson due to his in-depth understanding of the interplay of federal law and Indian law and chose Ms. Auchterlonie for her expertise in consumer finance regulatory law.

VII. The Creation Of The Tribal Lending Enterprise.

72. Once the Tribe had set up the necessary legal framework, it began the process of setting up its lending portfolios. To do so, the Tribe employed basic corporate precepts that other businesses have traditionally used to manage resources and risk.
73. First, pursuant to its Business Corporation Ordinance, the Tribe created Tribal Lending Enterprise, Inc. ("TLE"), in March 2012. *See* Ex. 8 (TLE Articles of Incorporation). TLE was formally established by resolution of the Tribe's Executive Council. *See* Ex. 9 (Resolution 08-10-01 Approving Creation of TLE).

74. That Resolution specified that the purpose of TLE would be “limited to ownership and management of the other assets of the Tribal Lending Enterprise.” *See Id.* at 4. In other words, TLE was to be the parent company for the smaller lending portfolios that the Tribe would eventually create.
75. TLE was to serve as the epicenter of the Tribe’s online lending effort, and TLE’s Board of Directors was to become the lending operation’s core leadership. The company’s Articles of Incorporation specify that the TLE Board must be composed solely of the members of our Tribal Executive Council. *See Ex. 8* at 6 (“The initial Board of Directors shall be comprised of each then-sitting member of the Executive Council.”).
76. Making the Boards of our lending companies coextensive with our Tribal Executive Council is something that we have done across our lending business. We chose this approach in order to maintain Tribal control and ensure that all companies remained ideologically and logistically aligned. We envisioned that this structure would allow our portfolios to run more efficiently by assigning key decision-making for all our lending entities to the same Tribal body.

VIII. Securing General Membership Approval.

77. The Tribe’s Constitution reserves any waiver of sovereign immunity to the Tribe’s General Membership (all voting members of the Tribe). But the General Membership meets only once a quarter, and the Executive Council knew from experience with gaming efforts that it would be impractical to require membership approval for the many contracts with third parties needed to get our business off the ground. Accordingly, the Executive Council requested and received authority to explicitly waive the sovereign immunity of the Tribe’s

entities with regard to business transactions directly or indirectly related to the Tribe's consumer financial services business. *See* Ex. 10 (Resolution No. 01-12-01).

78. We have agreed to limited waivers of sovereign immunity in select contracts with third parties, but those waivers have always been limited to the terms of the contracts and have never conferred broader immunity on any entity or individual. The limited waivers were essential to our efforts to get our business off the ground. For example, without these waivers, potential financial participants would have no recourse in the event of a default, and thus would have been unwilling to provide us with any capital. But we were unwilling to expand any waiver of immunity we conferred beyond what was absolutely necessary to support our business.

IX. The Creation Of Our Four Lending Portfolios.

79. The next task for the Tribe was to incorporate the individual lending portfolios out of which the Tribe would actually issue consumer loans.
80. The Tribe incorporated its individual lending portfolios as entities wholly owned by TLE. Those are, in the order in which they were incorporated: Silver Cloud Financial, Inc. ("Silver Cloud"), Golden Valley Lending, Inc. ("Golden Valley"), Mountain Summit Financial, Inc. ("Mountain Summit"), and Majestic Lake Financial, Inc. ("Majestic Lake") (collectively, "the lending portfolios").
81. The lending portfolios were created at different times throughout the course of the Tribe's involvement in the online lending industry. The Tribal Executive Council incorporated Silver Cloud in March 2012. *See* Ex. 11 (Silver Cloud Articles of Incorporation). The Tribe's second lending company, Golden Valley, was incorporated by the Tribal Executive Council in August 2012. *See* Ex. 12 (Golden Valley Articles of Incorporation). The third,

Mountain Summit, was also incorporated in August 2012. *See* Ex. 13 (Mountain Summit Articles of Incorporation). The last, Majestic Lake, was incorporated in March 2013 but did not begin operating until 2015. *See* Ex. 14 (Majestic Lake Articles of Incorporation).

82. Because Majestic Lake was incorporated and began operation last, that company had a different trajectory than the other three. What follows is a timeline of the key events in the life cycles of our four lending portfolios, which today are completely self-sustaining and free of any outside financial participation.

a. Our Tribe secured limited early seed money to get its lending business off the ground.

83. After the Tribal Executive Council established the legal and regulatory foundation for its entry into the online lending business, the Tribe began a limited search for outside investment.
84. We could not originate loans ourselves without startup capital. Accordingly, in 2012, the Tribe secured loans to provide seed money to cover initial infrastructure and operating costs for our first lending companies, Silver Cloud and Golden Valley. Those loans were provided by Shannon Group, LLC, a Kansas City, Missouri-based company.
85. Silver Cloud and the Shannon Group executed a loan agreement on July 21, 2012. *See* Ex. 15 (Silver Cloud-Shannon Group Loan Agreement). The Shannon Group loaned \$1,500,000 to Silver Cloud, paid in two installments. *Id.* at 2-3. The loan was to be used only “as working capital and to implement, operate and maintain the [Tribe’s] consumer lending business.” *Id.* at 3. In October of that year, the Shannon Group provided a second loan in the amount of \$500,000 to cover initial infrastructure and operating costs for Golden

Valley. *See* Ex. 20 (Golden Valley-Shannon Loan Agreement).⁷ *See* Ex. 20 (Golden Valley-Shannon Loan Agreement).

86. Both of these loans were executed with the consent of the Tribal Executive Council. As would become standard practice for all agreements with outside funding, the Tribe engaged in a limited waiver of its sovereign immunity with respect to the Shannon Group in order to execute the loan agreements.

87. Shannon Group's loan to Silver Cloud was paid off in July 2014, only two years after it was issued. Its loan to Golden Valley was also paid off within two years, in January 2014. This early repayment was consistent with our practice of trying to eliminate third-party debt as quickly as practicable.

b. Our Tribe then entered into participation interest agreements with third parties.

88. Because the Tribe could not yet fully internalize the full risk of originating unsecured subprime loans from its land, its next step was to structure an agreement with outside participants that would allow the Tribe to spread this risk across different parties.

89. The Tribe's decision to utilize the participation model—an approach commonly used by banks throughout the country⁸—was consistent with its overall goal of ensuring Tribal control. Under this approach, the Tribe would retain full ownership of its loans while allowing third parties to share only in the risk and the possible profits.

⁷ Although the terms of the loan allowed Golden Valley to borrow up to \$1,000,000, Golden Valley only borrowed \$500,000. Ex. 20 at 2-3.

⁸ *See* U.S. Department of the Treasury, *Best Practices From Participating States: Loan Participation Programs* (2015), available at https://www.treasury.gov/resource-center/sb-programs/Documents/LPP%20Best%20Practices_Sept%202015_v%20FINAL.pdf (last accessed June 20, 2019).

90. In general, the participation model worked as follows: The Tribe would first underwrite a loan and agree to provide that loan to the consumer. After making the loan, the Tribe would then offer participants the opportunity to participate in that loan, up to a maximum amount allowed under the parties' participation agreement. The participant would inform the Tribe of the percentage in which it intended to participate in each loan. The participant would then wire payment to the Tribe for the purchase price of its participation interest.
91. In the early stages, the Tribe offered participants the opportunity to take on a substantial amount of the risk of the loans given the Tribe's lack of institutional capital—typically, around 97.75% of the amount ultimately issued to the consumer. The deals the Tribe consummated required the participant to pay the portfolio 100% of the face value of the loans in which it intended to participate and permitted it to recover 97.75% of the net revenue from the loans.
92. This structure did not mean that the Tribal portfolios received only 2.25% of the fees received on each loan. As noted above, the Tribe would initially receive payment for the full face value of a loan, even though a participant was never permitted to participate in a loan's full value. The Tribe was then entitled to retain 2.25% of gross revenues, defined as gross receipts less bad debt write offs and plus bad debt recovery. The Tribe would then deduct operating expenses—including lead costs, underwriting, capital costs, and call center support services—before arriving at the amount of net proceeds from which the participants' 97.75% interest would be repaid. In practice, this approach meant that the portfolios received much more than 2.25% of the revenues from the loans they issued. In 2013, for example, the Tribe retained in its Tribal budget and lending operations 12.21% of the revenue generated by Silver Cloud. *See* Ex. 106 at 2 (Portfolio Financial Summary).

And only one year later, that number increased to 36.35%. *Id.* Year by year, the Tribe was well on its way to achieving its goal of retaining 100% of the revenue from its lending portfolios.

93. As a backstop to the participation arrangement, the original participants also agreed that the Tribal portfolios would earn a guaranteed minimum payment of \$20,000 per month for the first few months, regardless of the amount of revenue generated by the loans. The purpose of this arrangement was to allow the Tribe to build capital early on to facilitate the growth and expansion of its lending business.
94. The Tribe ultimately used the participation model to get all four of its lending portfolios off the ground. Although all participation agreements were signed for five-year terms, the Tribe ended up terminating all participation interests well before the five-year terms expired.
95. The Tribe did not relinquish any control over its business in the course of securing participation interests. To the contrary, every participation agreement the Tribe ever signed made clear that the Tribe would have sole and exclusive control over all phases of the lending business, including, without limitation, developing and identifying lending opportunities, evaluating the creditworthiness of prospective borrowers, deciding whether to make a loan to a prospective borrower, making all advances of principal required by a loan, managing compliance with the terms and conditions of loans made, and managing all financial and operational aspects of the lending business. *See, e.g.*, Ex. 16 at 8-12 (Silver Cloud-Nagus Participation Agreement). Every loan issued from the Tribe's portfolios was approved directly by a member of the Tribal Executive Council or through an established process that was subject to Tribal law.

96. The sole exceptions to complete Tribal control over all aspects of the business were the Deposit Account Control Agreements (“DACAs”) that the Tribe signed in the early days of the first portfolios. DACAs are common across many industries, and are frequently used by lenders to tribal gaming operations. In fact, the Tribe’s casino lender maintains a DACA on its casino accounts even today. These agreements allowed participants limited control over withdrawals from Tribal bank accounts in which participant funds were stored. *See e.g.*, Ex. 17 (Silver Cloud-Shannon-Nagus DACA Agreement).⁹ The Tribe and the participants had a mutual understanding that these agreements could be used only in the event that a party breached the participation agreement. These agreements are both commonplace and unavoidable in many aspects of tribal business. As with any funding source to a tribal entity, participants used DACAs to protect their interests; most had little or no prior experience doing business with Indian tribes and feared that a lone Tribal bad actor with access to company accounts might misappropriate funds. For the Tribe, these agreements, as in gaming, were thus a normal and necessary prerequisite to securing the funding it needed.

97. The DACAs were phased out over time as the Tribe and the participants developed a positive, trusting relationship. The Tribe’s lending business has not been subject to a DACA since late 2013.

c. Silver Cloud participation agreements.

98. The Tribe’s first participation agreement was signed with Nagus Enterprises, LLC (“Nagus”), a Delaware limited liability company, in July 2012 and amended in November

⁹ Ex. 17 is a representative copy of the cited DACA agreement that was ultimately fully executed. However, this copy bears only my signature.

2012. *See* Ex. 16 (Silver Cloud-Nagus Participation Agreement). The participation agreement gave Nagus the first right of refusal to participate in up to 97.75% of every loan issued by Silver Cloud over a five-year term. *Id.* at 7-8. Nagus had no obligation under the agreement to purchase a certain amount or percentage of loans. *Id.* The Tribe retained a minimum 2.25% interest in each consumer loan issued by Silver Cloud. *Id.*

99. Silver Cloud was to pay to Nagus as frequently as each day and as infrequently as once per week the participant's share of revenues collected on the repaid loans. *Id.* at 11. On that same day, Silver Cloud would transfer to TLE the amount reflecting the Tribe's retained interest in those same loans. *Id.* And, as previously explained, the parties agreed that Silver Cloud would retain a minimum payout of \$20,000 per month for the first six months of the agreement so that it could continue to grow its portfolio. *Id.*
100. The agreement also specified that Silver Cloud would furnish Nagus on the fifth business day of each calendar quarter with a report of all loans in which Nagus purchased a participation interest. *Id.* Beyond that contractual requirement, the participation agreement conferred no general right to access any of the portfolio's internal or operational information, though the participants did receive periodic updates on the business. *Id.*
101. The agreement also highlighted the Tribe's control over operation of the business in the following ways:
- Silver Cloud retained the sole authority to establish all underwriting criteria;
 - Silver Cloud was to be identified in all loan documents as the sole lender;
 - Silver Cloud was to underwrite each refinancing of any existing loan;
 - An officer of Silver Cloud was to make the final determination as to whether to issue or refinance a consumer loan;

- Silver Cloud retained the right to handle and resolve all customer complaints. *Id.* at 20.

102. As detailed further below, Nagus played no role in our contracting with third parties to provide support to our lending portfolios; I reviewed and executed all of those agreements.
103. Silver Cloud entered a participation agreement with a second participant, Edison Creek, LLC (“Edison Creek”), in November 2012. Under the agreement, Edison Creek was given a right to purchase up to a 15% participation interest in each Silver Cloud loan. Ex. 18 at 7-8 (Silver Cloud-Edison Creek Participation Agreement). The agreement was otherwise identical to that entered into with Nagus, and similarly reaffirmed the Tribe’s full control over its own loan portfolio.
104. In July 2013, Silver Cloud entered a third and final participation agreement with RM Partners, LLC. Under the agreement, RM Partners, LLC was given the first right of refusal to purchase up to a 30% participation interest in each of Silver Cloud’s loans. *See* Ex. 19 at 7-8 (Silver Cloud-RM Partners Participation Agreement). The terms of the agreement were otherwise identical to previous agreements and similarly reaffirmed the Tribe’s full control over its own loan portfolio.
105. Although the aggregate outside participation allowed for under these agreements was more than 100% of a loan’s value, the Tribe always maintained a minimum of 2.25% retained interest in each loan. In the event that multiple participants wished to participate in a loan, the contracts specified the terms under which the 97.75% participation interest the Tribe offered would be divided among the participants on a pro-rata basis. *See, e.g., id.* at 8.

d. Golden Valley participation agreements.

106. The Tribe followed the same process when it incorporated its second lending company, Golden Valley, in October 2012.
107. The Tribe signed its only participation interest agreement for Golden Valley with Cobalt Hills, LLC (“Cobalt Hills”), a Delaware limited liability company, on October 17, 2012. Under this agreement, Golden Valley retained a minimum 2.25% interest in each of the loans in its loan portfolio and gave Cobalt Hills the first right of refusal for a five-year term to participate in the remaining 97.75% of each loan. *See* Ex. 21 at 7 (Golden Valley-Cobalt Hills Participation Agreement). Golden Valley retained the same right to sell participation interests to other participants, in which case Golden Valley would divide the available percentage interest in loans on a pro-rata basis among all eligible participants. *Id.* This participation agreement contained identical terms to Silver Cloud’s, including the many provisions reaffirming the Tribe’s complete control over operation of the business.

e. Mountain Summit participation agreements.

108. The Tribe launched its third lending portfolio, Mountain Summit, in October 2013. Ultimately, the Tribe entered into three participation agreements for its Mountain Summit portfolio. By this time, the Tribe’s awareness of and experience in the online lending business had increased, as had its profitability. Accordingly, these contracts participated out, in total, up to 96.5% of each loan, with the Tribe’s stake increasing along with its own capital reserve.
109. Mountain Summit entered into one participation agreement with Granite River Holdings, LLC (“Granite River”), in which Mountain Summit retained a minimum 3.5% interest in each of the loans in its portfolio, and Granite River was given first right of refusal of up to

96.5% participation in each loan in the portfolio. Ex. 22 at 8 (Mountain Summit-Granite Holdings Participation Agreement).

110. Mountain Summit signed a second participation agreement with RTR Solutions, LLC, (“RTR”). That agreement gave RTR the option to purchase up to 96.5% participation in each loan in the company’s lending portfolio. Ex. 23 at 8 (Mountain Summit-RTR Participation Agreement).
111. Mountain Summit signed a third agreement with Cherry Wood Capital, LLC, (“Cherry Wood”). Under the agreement, Cherry Wood was given a first right of refusal to purchase up to a 32% participation interest in each loan issued by Mountain Summit. Ex. 24 at 8 (Mountain Summit-Cherry Wood Participation Agreement).
112. Although the aggregate outside participation allowed for under these agreements was more than 96.5%, the Tribe always maintained a 3.5% retained interest in each loan. In the event that multiple participants wished to participate in a loan, the contracts specified the terms under which the 96.5% participation interest the Tribe had offered would be divided among the participants on a pro-rata basis. *See, e.g., id.*
113. These participation agreements contained identical terms to Silver Cloud’s, including the many provisions reaffirming the Tribe’s control over operation of the business.

X. The Tribe Secured Initial Contracts For Employees, Technology, And Infrastructure.

114. Around the same time that it began entering into participation agreements in order to manage the risks associated with sustaining a sizable lending portfolio, the Tribe sought to acquire the infrastructure necessary for operating an online lending business. The Tribe needed trained employees, computer technology, software, and the like, none of which it owned or had any experience with operating.

115. Again, because of the Tribe's small population and lack of industry experience, it lacked the capacity to build its entire lending operation from scratch; doing so would have taken years and would have severely delayed any profit from flowing to benefit the Tribe and its members. Thus, although the Tribe hoped to cultivate its own talent and infrastructure over time, it was realistic about what it needed to do in order to be successful in the short term.
116. The Tribe's first effort on this front was to secure a contracting agreement with a support center of trained customer service employees.
117. Silver Cloud contracted call center support with a company called National Performance Agency, LLC ("NPA LLC"), which was based in Overland Park, Kansas. NPA LLC was essentially an independent operations center that provided the Tribe with customer service, account management, and a call center. As was the case with all business transactions, the Tribal Executive Council passed a resolution on July 21, 2012, authorizing Silver Cloud to sign a services agreement with NPA LLC and authorizing a limited waiver of Silver Cloud's sovereign immunity for this purpose. *See* Ex. 25 (Resolution No. 7-12-04). The services contract was signed that same day. *See* Ex. 26 (NPA LLC-Silver Cloud Services Agreement). The Tribe's other portfolios entered into similar servicing and licensing agreements at various points throughout their trajectory until the Tribe was able to bring all major operations in-house.
118. NPA LLC provided support services to the Tribe's lending business, including help with implementing the Tribe's strict underwriting process. NPA LLC also became the primary call center through which the Tribe serviced its loans.
119. The Tribe, through Silver Cloud, also contracted with a company called Cyberclick for the use of its software platform. Among other things, Cyberclick provided access to software

allowing the lending business to screen loan applications and manage potential customer relationships. As was the case with the NPA LLC agreement, the Tribal Executive Council approved a services and licensing agreement between Silver Cloud and Cyberclick that provided for Silver Cloud's use of Cyberclick's software. *See* Ex. 27 (Silver Cloud-Cyberclick Services Agreement);¹⁰ Ex. 28 (Resolution No. 10-13-16).

120. Online lending involves many moving parts beyond call center support services and software; operators of an online lending business often must retain dozens of outside vendors and contractors in order to operate successfully. But we were unwilling to trust an outsider to handle these vendor agreements. Instead, I, as Chairperson, personally reviewed, amended as necessary, and signed the terms of every single outside vendor agreement. The Board maintained active oversight of our servicing agreements even in later years, when the Tribe delegated limited authority to non-Tribal executives to help secure and negotiate these agreements. The Board and I took these steps in an effort to become proficient in this industry and so that the Tribe could retain autonomy and control over all aspects of its growing business.

121. Silver Cloud ultimately entered into over a dozen agreements with other vendors, including payment processors, credit reporting agencies, financial literacy services, loan management systems, and extra call centers for evenings and weekends. Golden Valley and Mountain Summit entered into virtually the same agreements with all the same vendors.

¹⁰ This exhibit is a representative copy of the amendment to the services agreement between Silver Cloud and Cyberclick, which was ultimately fully executed.

XI. In 2013, The Tribe Began Buying Out Core Outside Infrastructure And Achieved Vertical Integration.

122. By 2013, the Tribe's lending business was well off the ground. Our Tribe started to feel that we had a command of the industry and were ready to take the logical next step of acquiring core service providers to allow us to vertically integrate our business.
123. The first step in this process was to create another Tribal entity that the Tribe would use to centralize all infrastructure and operations.
124. The Tribe, by resolution of the Tribal Executive Council, created Upper Lake Processing Services, Inc. ("ULPS") in 2013. Like the four lending portfolios, ULPS was created as a wholly-owned subsidiary of TLE and thus the Tribe itself. And like the four lending portfolios, the Board of Directors of ULPS was comprised only of our seven-member Tribal Executive Council. *See* Ex. 29 (ULPS Articles of Incorporation).
125. Our vision was that ULPS would provide operational support to the four lending portfolios, and that each lending portfolio would enter into an Intra-Tribal Services Agreement with ULPS. The Tribe was interested in having a very strict division of labor between its companies to maximize efficiency and maintain control over all operations. A typical agreement between ULPS and one of the four lending portfolios specified, for example, that ULPS was to provide for the lending company personnel and equipment, responsibility for answering customer service inquiries, and the use of the lending portfolio's chosen technology and software in connection with its loan servicing services. *See* Ex. 30 (ULPS-Golden Valley Intra-Tribal Services Agreement). These types of shared services agreements are commonly used throughout the industry to reduce costs and enhance efficiencies.

126. In 2013, the Tribal Executive Council approved plans for ULPS to acquire NPA LLC's assets, which were identified as core needs for the Tribe. That agreement was executed on July 15th of that year. *See* Ex. 31 (ULPS-NPA LLC Asset Purchase Agreement). The agreement transferred to ULPS all of NPA LLC's tangible property, equipment, software, seller contracts, and data and records. *Id.* No information was destroyed in this transition. Once the asset acquisition was completed, the Tribe essentially owned its own call center support facility and software applications.
127. ULPS purchased NPA LLC's assets for \$232,000. *See* Ex. 32 at 2 (ULPS-NPA LLC Promissory Note). ULPS purchased NPA LLC's assets using money from the operating expenses of its first three lending portfolios. Because this transaction was a purchase of tangible property and not a merger, NPA LLC technically still existed as a separate non-Tribal entity once the Tribe assumed control over all of its assets.
128. The Tribe made the decision to keep ULPS's call center operations in Kansas, while planning to eventually develop another call center on Tribal land. There were three reasons for this decision. First, our Tribal land was not yet equipped to operate a full call center. Critical infrastructure, including upgrading internet service to this rural area, had to be created. Second, our land is in the Pacific Time Zone, and it is very difficult to run a call center that can cover the entire United States from that time zone. For this reason, most businesses that depend on call centers generally locate at least part of their call center operations in the Central Time Zone. Third, our Tribe has only 161 adult members, very few of whom lived within commuting distance of the reservation or had the requisite education. The Tribe thus chose to rehire NPA LLC call center employees as Tribal employees of ULPS and permitted them to continue working in Kansas. *See* Ex. 33

(ULPS-NPA LLC Transition Services Agreement). ULPS agreed to hire Josh Landy as a Vice President only for a transitional period. Landy had been serving as a manager of NPA LLC before the asset purchase. The Tribe was concerned that it would lose some of NPA LLC's employees due to the change in management, and it hoped that Landy could help ease that transition and provide a sense of continuity in the first few months of new ownership.

129. Since we acquired NPA LLC's assets, the Tribe has replaced virtually all of the original employees at NPA LLC through attrition and termination. The Tribal Board has chosen a slate of completely new upper level management with no relationship to any of the past financial participants.
130. ULPS's Tribal headquarters were located in modular facilities, until we opened a second call center on Tribal land on December 1, 2018. We have since expanded the Upper Lake call center into a new, 80-seat facility, which we intend to use to employ dozens more Tribal employees.
131. Software is another important part of an online lending operation. After the Tribe purchased NPA LLC's assets and created ULPS, it set to work on procuring other technology it needed for the operation and issuance of loans, including Cyberclick's software assets.
132. In March 2014, the Tribe created wholly owned subsidiary Habematolel Holdings Inc. ("HHI"), which it intended to use to facilitate stock purchase agreements. *See* Ex. 34 (HHI Articles of Incorporation). HHI then entered into a stock purchase agreement with Brighton River Holdings, LLC ("Brighton River"), the company that owned 100% of Cyberclick's shares. *See* Ex. 35 (HHI-Brighton River Stock Purchase Agreement). HHI

paid \$225,000 for all shares of Cyberclick. *Id.* at 2. As a result, the Tribe was Cyberclick's sole owner.

133. In March 2014, the Tribal Executive Council approved articles of incorporation for Pomo One Marketing, Inc., ("Pomo One"), a new company the Tribe intended to use to facilitate customer acquisition and marketing activities. Once again, the Tribe restricted control of Pomo One within the Tribal Executive Council; its Board of Directors is exactly the same as each other lending entity, and I serve as the company's president. *See* Ex. 36 (Pomo One Articles of Incorporation).
134. The Tribal Executive Council subsequently resolved to transfer Cyberclick's software assets to Pomo One, while all stock in Cyberclick remained controlled by HHI. *See* Ex. 37 (Pomo One-Cyberclick Bill of Sale Assignment). That bill of sale and assignment was executed on March 21, 2014. *Id.* at 2. On that same day, after these assets had been transferred from Cyberclick to Pomo One, the Tribe made the decision to formally dissolve Cyberclick. *See* Ex. 38 (Cyberclick Unanimous Consent Dissolution).
135. Using the assets acquired from Cyberclick, the Tribe launched its d/b/a Arrowshade from Pomo One. Pomo One entered into separate licensing and lead agreements with Silver Cloud, Golden Valley, and Mountain Summit. These transactions brought another important aspect of the lending business within Tribal control. An example of a typical servicing agreement between Pomo One and our lending portfolios is attached. *See* Ex. 39 (Pomo One-Mountain Summit Lead Agreement).
136. Since this acquisition, the Tribe has expanded Pomo One's offerings. Another critical part of online lending is lead generation and aggregation. Customers do not typically apply for loans on one of our lending company websites. The more common practice is for the

consumer to enter a loan application on one of the first websites that the consumer finds after a simple web search for an online loan. These websites are run by businesses known as lead generators or affiliates. A separate set of companies known as lead aggregators then acquire these leads and sell them to lenders. In the early days of our operations, our portfolios purchased leads from lead aggregators, after an underwriting algorithm determined if the leads were likely to result in consumers who could qualify for loans under the Tribe's underwriting criteria. But today, Arrowshade has taken on this lead aggregation role for the Tribe, and provides the Tribe's lending businesses with the majority of their leads. In fact, Arrowshade often provides the Tribe with more leads than it could turn into loans. The Tribe also has strict underwriting criteria, and some of the leads collected by Arrowshade fall outside of the Tribe's underwriting criteria. Arrowshade accordingly began selling those leads to other lenders.

137. Today, across our business, only fifteen employees remain who worked for the entities whose assets were eventually transferred to ULPS and Pomo One. We employ just under 170 people across our business.
138. While the Tribe accomplished vertical integration primarily by purchasing NPA LLC's assets and Cyberclick, complete control was much more involved than the simple effectuation of two purchase agreements. There are dozens of steps that go into issuing a consumer loan; the Tribe had to ensure that it had an understanding and control of each of these steps if it was going to assume control of all of them. I took personal responsibility for ensuring that our Tribe gained a command of all aspects of this business so that our efforts at vertical integration would succeed.

XII. In 2014, The Tribe Bought Out All Participants.

139. By early 2014 the Tribe now owned and controlled the core operational aspects of its lending business. Vertical integration, while requiring a large capital investment by the Tribe, brought larger profits and expertise, and the Tribe decided to take the next step of eliminating financial participation in its existing lending portfolios. The Tribe could have simply allowed its participation contracts to expire several years in the future. But based on our experiences in gaming, we sought to be free of any outside encumbrances as quickly as possible.
140. The Tribe accomplished this goal by using another method that is common in non-Tribal business transactions. It first created a separate acquisition company, in this case a Tribal Acquisition Company (“TAC”), for each of the three lending portfolios in existence at the time. The Tribe created simple names for each TAC that corresponded to the first letter of each of the lending portfolios. For example, the Tribe incorporated “Clear Lake TAC S” to facilitate the termination of participation agreements involved with Silver Cloud, “Clear Lake TAC G” for Golden Valley, and “Clear Lake TAC M” for Mountain Summit. *See* Ex. 40 (Clear Lake TAC S Articles of Incorporation); Ex. 41 (Clear Lake TAC G Articles of Incorporation); Ex. 42 (Clear Lake TAC M Articles of Incorporation).
141. In August 2014, each TAC merged with all the entities that had purchased participation interests in its companion lending portfolio. Each agreement specified that the TAC was to be the only entity that survived each merger. These mergers took effect by way of separate merger agreements, all of which were finalized in August 2014.
142. These buyout agreements were seller-financed. The parties set a purchase price for each participation agreement based on a negotiated multiplier of the value that the agreement

would have provided to the participant were it executed for its full term. The participants then issued loans in the amount of the purchase price to the corresponding TAC. The portfolios, pursuant to the terms of promissory notes negotiated by the parties, agreed to pay those loan amounts, plus 1.8% interest per annum.

143. The Tribe also negotiated sunset provisions that would extinguish all debt remaining after eight years. However, it was and always has been important to the Tribe to pay off its debt to demonstrate its creditworthiness for future business opportunities.
144. Some merger agreements involved different companies than the ones that had signed the participation agreements with the Tribe's portfolios. This disparity was a result of mergers and restructuring on the participant side prior to the consummation of the buyouts.
145. The Tribal Executive Council was involved in every step of the buyout process; after approving the creation of the TACs, it individually approved each merger agreement by Executive Council resolution. It then individually approved the issuance of the promissory note that corresponded to each merger agreement, as well as the issuance of a parental acknowledgement agreement. This agreement essentially memorialized that the Tribe itself was guaranteeing certain aspects of debt repayment for the lending portfolios. *See, e.g.,* Ex. 43 (Parental Acknowledgement Agreement).
146. The mergers between the TACs and the participant companies took effect on the date of the signing of the merger agreement; not the date on which the final payment was made to the seller.
147. Once each of the mergers took effect, the Tribal Executive Council consolidated all assets from each of the TACs into their respective lending portfolios along with any associated debt. Once the consolidation of assets and liabilities was complete, the TACs, which were

created only for the purpose of easily facilitating each merger, could be dissolved. After those transfers took place, Silver Cloud, Golden Valley, and Mountain Summit had successfully terminated all participation interests in their respective lending portfolios.

148. Although each promissory note contained slightly different terms, they all shared a few common features. Generally, each lending portfolio retained 5% or 7.5% of the monthly total of “receipts” (which were the principal and fees each portfolio recovered each month), less bad debt write-offs and plus bad debt recovery. This percentage would be paid as a monthly dividend to TLE. The lending portfolios also retained a percentage of monthly income for operating expenses, as well as a cash operating reserve so that the portfolios could maintain enough capital to continue issuing loans. The amount of this operating reserve fluctuated depending on market timing and conditions. Any income remaining after the Tribe reserved these three amounts for itself was then defined as “Net Cash Available.” The “Net Cash Available” was then used to pay down debt to the noteholders in accordance with the percentage of Net Cash Available to which each noteholder was entitled under the terms of the parties’ agreement. For instance, Silver Cloud had three noteholders, which were entitled to 42.5%, 42.5%, and 15% of Net Cash Available.
149. This method of payment was beneficial to the Tribe for several reasons. It allowed the notes to be repaid quickly, consistent with our goal of minimizing any encumbrances on our business. This method was also preferable to a fixed debt obligation (for example, a fixed monthly payment), because it allowed us to avoid the risk of default if a portfolio were to have a low-revenue month or incur unexpectedly high expenses.
150. Because the notes varied in size, the Tribe ultimately retired these notes at different times. The Tribe retired all of its Silver Cloud notes by August 2018; all of its Golden Valley

notes by March 2019; and all of its Mountain Summit notes by December 2018. All notes were retired well before each agreement's eight-year sunset provision, and the original three portfolios are completely debt-free.

a. Silver Cloud Buyout.

151. Two mergers and three promissory notes were needed in order to terminate all participation interests for Silver Cloud.
152. Clear Lake TAC S entered into its first merger agreement with Nagus on August 20, 2014. *See* Ex. 44 (Clear Lake TAC S-Nagus Merger Agreement).
153. The Nagus buyout agreement specified the parties' intent that Nagus "be merged with and into the Clear Lake TAC-S, with the CLTAC-S surviving that merger." *Id.* at 3. Silver Cloud paid, pursuant to a secured promissory note, \$24,112,215.33 for Nagus's total participation interest in Silver Cloud's portfolio. *Id.* at 5. This payment included a principal amount of \$22,316,435.86 plus \$1,795,779.47, which represented a 1.8% interest rate. *Id.*
154. Silver Cloud paid a monthly amount based on the terms set forth in the promissory note signed by the parties. This note, attached as Ex. 45 (Clear Lake TAC-Nagus Merger Promissory Note), specified as follows:
 - a. Silver Cloud was to pay on the 15th of each month the "Net Cash Available" in that calendar month. Ex. 45 at 2.
 - b. Following the structure described above, the parties' agreement defined Net Cash Available as 42.5% of any non-principal returns that Silver Cloud earned that month ("Receipts"), minus a comparable portion of the following:

- i. For the first two years of the note agreement, 5% per month of Receipts that Silver Cloud took in, which was distributed as a dividend to TLE. After two years, that percentage would increase to 7.5% for the remaining duration of the note term.
 - ii. Reasonable monthly operating expenses for Silver Cloud.
 - iii. A cash operating reserve sufficient to maintain a portfolio size (principal outstanding) of \$4-8 million so that Silver Cloud's portfolio would be at an efficient size to continue issuing loans. Ex. 45 at 2-3.
155. Each month, the Tribe determined the necessary size of the operating reserve. The size of the operating reserve fluctuated depending on market timing and conditions.
156. Silver Cloud executed a second promissory note with the David Vittor Revocable Trust as a result of its merger with Nagus.
157. Silver Cloud owed \$7,400,000 (\$6,848,878.21 at 1.8% interest) under this note. *See* Ex. 46 at 2 (Clear Lake TAC S-Vittor Promissory Note). The terms of this note were generally the same, except Vittor was to receive only 15% of the Net Cash Available each month, which is what remained after a proportional share of TLE's 5-7.5% dividend, operating expenses, and the same cash operating reserve. *Id.* at 2-3
158. After a series of mergers on the participant side, Clear Lake TAC S then merged with Creative Hills Holding. The merger was effectuated in exchange for a note in the amount of \$12,878,784.67—or \$12,312,316.24 in principal and \$475,468.43 in interest. *See* Ex. 47 at 2 (Clear Lake TAC S-Creative Hills Holding Merger Promissory Note).
159. The repayment terms for this note were identical to the terms for the note from the Nagus merger: The seller received 42.5% of "Net Cash Available" each month, which is what

remained after a proportional share of TLE's 5-7.5% dividend, operating expenses, and the same cash operating reserve. *Id.* at 2-3.

160. Silver Cloud eliminated its participation relationship with RM Partners using a different process. The Tribe lacked any relationship with RM Partners beyond the participation agreement with Silver Cloud, and received no responses to inquiries regarding RM Partners' desire to continue a participation relationship with Silver Cloud. As a result, the Tribe in September 2014 decided to simply terminate Silver Cloud's participation agreement with RM Partners.
161. After Silver Cloud's mergers with its participants were complete, Clear Lake TAC S was dissolved by unanimous consent of the Tribal Executive Council on August 21, 2014. *See* Ex. 48 (Clear Lake TAC S Certificate of Dissolution).
162. Silver Cloud's note for the Nagus merger was retired in June 2018. The note for the Creative Hills merger was retired in February 2017. The Vittor Trust note was retired in June 2018. All of these notes were retired ahead of schedule.
163. Since 2014, Silver Cloud has operated wholly without any financial participation in its loans by any non-Tribal party and has been debt-free since June 2018.

b. Golden Valley Buyout.

164. Two mergers and two promissory notes were needed in order to terminate all outside participation interests in the Tribe's Golden Valley portfolio.
165. Clear Lake TAC G, Golden Valley's corresponding TAC, first merged with NPA, Inc. *See* Ex. 49 (Clear Lake TAC G-NPA Inc. Merger Agreement).
166. Golden Valley's promissory note to NPA Inc.'s seller required that Golden Valley pay \$14,187,466.53 (\$13,659,955.93 principal at 1.8% interest, amounting to \$527,510.60). Ex. 50 at 2 (Clear Lake TAC G-Sunny Ridge Promissory Note). The note had a similar

structure to those involving the Silver Cloud buyout. Golden Valley was to pay on a monthly basis 30% of all “Net Cash Available,” which is what remained after a proportional share of TLE’s 5-7.5% dividend, operating expenses, and a cash operating reserve. *Id.* at 2-3. Because Golden Valley was a larger portfolio, it was entitled to retain a larger monthly cash operating reserve sufficient to maintain a portfolio size (principal outstanding) of \$7-12 million so that Golden Valley’s portfolio would be at an efficient size to continue issuing loans. *Id.* This monthly reserve similarly fluctuated based on market timing and conditions.

167. To complete the full buyout transaction, Clear Lake TAC G also formally merged with NPA LLC, the same company whose assets it had purchased the year before.
168. Under the NPA LLC note, Golden Valley was to pay \$64,162,533.48 (\$59,383,969.65 in principal and \$4,778,563.88 in interest at 1.8%). Ex. 51 at 2 (Clear Lake TAC G-NPA LLC Merger Promissory Note). Golden Valley was to pay the remaining 70% of all Net Cash Available after Golden Valley’s own standard deductions, which is what remained after a proportional share of TLE’s 5-7.5% dividend, operating expenses, and the same cash operating reserve. *Id.* at 2-3.
169. The assets and liabilities of Clear Lake TAC G were then transferred to Golden Valley, and Clear Lake TAC G was dissolved by unanimous consent of the Tribal Executive Council on August 21, 2014. Ex. 52 (Clear Lake TAC G Certificate of Dissolution).
170. Golden Valley’s note for the NPA Inc. merger was retired in June 2017. Its note for the NPA LLC merger, the largest note the Tribe held as a result of its termination of all participation interests, was retired in January 2019. Both of these notes were retired ahead of schedule.

171. Since 2014, Golden Valley has operated wholly without any financial participation in its loans by any non-Tribal party has been debt-free since January 2019.

c. Mountain Summit Buyout.

172. Two mergers and two promissory notes were needed in order to terminate all participation interests in the Tribe's Mountain Summit portfolio.

173. Clear Lake TAC M entered into a first merger agreement with Granite River Holdings, LLC ("Granite River") on August 20, 2014. *See* Ex. 53 (Clear Lake TAC M-Granite River Merger Agreement).

174. Under the terms of the Granite River promissory note, Mountain Summit paid \$5,800,000.00 (\$5,584,347.59 principal and \$215,652.41 at 1.8% interest). Ex. 54 at 2 (Clear Lake TAC M-Oceanside Breeze Promissory Note). The agreement defined "Net Cash Available" as 90% of Receipts until the Lender received \$1,200,000, at which point the monthly payment dropped down to 50% of Receipts. Receipts were defined as what remained after a proportional share of TLE's 5-7.5% dividend, operating expenses, and a monthly cash reserve sufficient to maintain a portfolio size of \$1.5-4 million (principal outstanding) that was to fluctuate based on market timing and conditions. *Id.* at 2-3.

175. The TAC's second merger agreement was with RTR Solutions, LLC. *See* Ex. 55 (Clear Lake TAC M-RTR Merger Agreement).

176. Under the RTR note, Mountain Summit paid \$11,800,000.00 (\$10,921,184.17 principal and \$878,815.83 interest at 1.8%). Ex. 56 at 2-3 (Clear Lake TAC M-RTR Promissory Note). That note specified that Mountain Summit was to pay each month all remaining Receipts, which were what remained after a proportional share of the same 5-7.5% TLE distribution, reasonable operating expenses, and the same operating cash reserve. *Id.*

177. Clear Lake TAC M's assets and liabilities were transferred to Mountain Summit, and Clear Lake TAC M was dissolved by unanimous consent of the Tribal Executive Council on August 21, 2014. *See* Ex. 57 (Clear Lake TAC M Certificate of Dissolution).
178. Mountain Summit's note for the Granite River promissory note was retired in March 2017. Its note for the RTR merger was retired in October 2018. These notes were also retired ahead of schedule.
179. Since 2014, Mountain Summit has operated wholly without any financial participation in its loans by any non-Tribal party and has been debt-free since October 2018.

XIII. In 2015, Our Tribe Began Operating A Fourth Lending Company.

180. In August 2015, the Tribe made the decision to launch its fourth and final lending company, Majestic Lake.¹¹ The Tribe believed that expansion would serve it better in the long run, including by generating revenue to pay down existing debts and ensuring that Tribal programs had an additional source of revenue. This expansion also involved limited outside financial participation to get the portfolio off the ground, but on different terms from previous participation agreements.
181. In order to launch a new lending portfolio in Majestic Lake, the Tribe secured a \$1.5 million seed loan from Signal Light, LLC ("Signal Light"). *See* Ex. 58 (Majestic Lake-Signal Light 2015 Promissory Note). Majestic Lake also signed a participation agreement with Signal Light on July 31, 2015. *See* Ex. 59 (Majestic Lake-Signal Light Participation Agreement).

¹¹ Although the Tribe incorporated Majestic Lake in March 2013, the portfolio did not begin issuing loans until it had secured the requisite seed funding.

182. The Tribe approached its agreement with Signal Light with increased bargaining power. It had established a track record of success within the industry and had acquired enough capital to assume a greater proportion of the risk in this portfolio. Signal Light was given the opportunity to purchase anywhere from a 75 to 99% participation interest in Majestic Lake's available loans. *Id.* at 8. But under this agreement, Majestic Lake did not pay the face value of the loans up front; both sides accepted the relative allocation of risk in accordance with their respective interest in each loan. The agreement also set forth the terms by which Majestic Lake would calculate the portion of profits that would be distributed each month. The Tribe's share in the company's profit was sizable; pursuant to the parties' definition of net income and the corresponding monthly "Tribal Share," the Tribe was to retain roughly one third of net income each month. For examples of how the parties' agreement divided Majestic Lake profits each month, please see Schedule 2 attached to Ex. 59 (Majestic Lake-Signal Light Participation Agreement).
183. This agreement, like all others entered into by the Tribe's other lending portfolios, specified that the Tribe was to "have sole and exclusive control over all phases of the lending business, including without limitation developing and identifying lending opportunities, evaluating the credit worthiness of prospective borrowers, deciding whether to make a loan to a prospective borrower, making all advances of principal required by a loan, managing compliance with the terms and conditions of loans made and managing all financial and operational aspects of the lending business." *Id.* at 1.2(a).
184. But this agreement made even more clear the Tribe's intention to cease offering participation interests as soon as practicable. The agreement specifies that "The Parties' expectation is that, by the end of the Term, the Tribal Parties will have developed the full,

independent financial capability to operate the small dollar consumer lending business at full scale to contribute significantly to financing the needs of the Tribe and its members.”

Id. at 2(d).

185. The Tribe retained the right to create new lending portfolios and to sell additional participation interests as it saw fit.
186. After two years, the Tribe and Signal Light mutually agreed to the early termination of the Participation Agreement and a purchase of Signal Light’s existing participation interests in the Majestic Lake loan portfolio.
187. The Tribal Executive Council authorized Majestic Lake to purchase all of Signal Light’s participation interest in Majestic Lake on January 6, 2018. *See* Ex. 60 (Majestic Lake Board Resolution No. 01-18-01). Pursuant to the terms of the parties’ related promissory note, Majestic Lake was to pay Signal Light \$17,000,000 for the negotiated value of Signal Light’s participation interest (\$16,797,722.31 principal and \$202,277.69 interest) in Majestic Lake. *See* Ex. 61 at 2 (Majestic Lake-Signal Light 2018 Promissory Note). Majestic Lake was to pay Signal Light \$8 million in total over the first fifteen months (amortized equally over those months) and then \$9 million over the course of the next fifteen months. *Id.* Because of the success of its business, the Tribe was comfortable structuring this buyout around fixed payment amounts rather than as a percentage of Majestic Lake’s revenue.
188. Signal Light’s loan to the Tribe will be paid in full next year. Since 2018, Majestic Lake has operated wholly without offering participation interests in any loans to non-Tribal party.

XIV. The Tribe Changes Outside Counsel In 2016.

189. After the Tribe's entry into the online lending business, Rosette LLP continued to provide the Tribe and the Tribe's entities with legal advice.
190. As part of the acquisition of NPA LLC's assets, the Tribe acquired the expertise of an in-house General Counsel and her team. As our trust in the in-house counsel grew, the Tribe drastically reduced Rosette LLP's work for our lending business. Additionally, with considerable transactional experience under our belt from both gaming and lending, the Tribe had interacted with a variety of other knowledgeable transactional and regulatory attorneys. Accordingly, we began supplementing our in-house legal expertise with several outside firms.
191. In June 2016, for a variety of reasons, the Tribal Executive Council voted to end the Tribe's relationship with Rosette LLP.

XV. Every Lending Entity Created By Our Tribe Was Incorporated As A Wholly-Owned Arm Of The Tribe With The Express Intention That The Entity Share In The Tribe's Sovereign Immunity.

192. The history of the development of our lending business proves that despite the Tribe's need to secure outside capital at the start, the Tribe has always ensured that its lending portfolios and associated parent and service companies are arms of our Tribe that are to share in the attributes of the Tribe's sovereignty, including our sovereign immunity.
193. First, each of our lending portfolios, TLE, ULPS, and Pomo One were all incorporated under Tribal law.
194. Second, the Tribe has always ensured that all of its subsidiaries were wholly owned by the Tribe itself. No one but the Tribe has ever owned any part of TLE, ULPS, Pomo One, Silver Cloud, Golden Valley, Mountain Summit, or Majestic Lake. Article 8 of the Articles

of Incorporation of each business provides that “[t]he Corporation shall issue one (1) share of stock, which share shall be owned by the TRIBE and voted upon by its Executive Council. No individual or entity other th[a]n the TRIBE or one of its subordinate entities shall acquire any ownership interest in the Corporation.” *See e.g.*, Ex. 8 at 7 (TLE Articles of Incorporation); Ex. 29 at 7 (ULPS Articles of Incorporation) (same clause); Ex. 36 at 7 (Pomo One Articles of Incorporation) (same); Ex. 11 at 1 (Silver Cloud Articles of Incorporation) (same).

195. Third, each lending portfolio’s incorporation documents make clear that the company is to be considered a “governmental instrumentality of the Tribe,” and that the Tribe confers on its portfolios all privileges and immunities to which the Tribe itself is entitled. *See, e.g.*, Ex. 11 at 2-5 (Silver Cloud Articles of Incorporation). ULPS and Pomo One’s incorporation documents similarly specify that the entities are to be considered sovereign arms of the Tribe itself. *See* Ex. 29 at 27 (ULPS Articles of Incorporation); Ex. 36 at 27 (Pomo One Articles of Incorporation).

196. Fourth, the Tribe has always made clear to its funding sources, vendors, and consumers that Tribal law and Tribal control formed the bedrock of this lending business.

XVI. Our Tribe Has Always Controlled All Aspects of Its Lending Business.

197. Because this business is so essential to our Tribe’s future, we could not risk control being in the hands of any person who is not a member of our Tribe.

198. As explained previously, each of the four lending portfolios, along with TLE, Pomo One, and ULPS, is composed of the exact same Board of Directors (the Tribal Executive Council) and Chairperson (me). I also serve as the Chairperson and President of each of these companies.

199. Our Tribe is committed to formal corporate structure to ensure that our business continues to run smoothly. We have separate board meetings for TLE and each of our lending portfolios, often held one after the other each month. For consistency's sake, most Board decisions are made at the corporate shared services level (TLE). But we also propose separate resolutions for each company as necessary, depending on the company's needs and performance at the time, and we are sure to hold separate votes for the implementation of a new policy for each entity, even if the Tribe is considering a proposal that would affect all entities equally.

200. Under this organizational structure, the TLE Board of Directors ("the Board"), and thus the members of the Tribal Executive Council, are solely responsible for, among other things:

- Approval of strategic direction
- Approval of annual budgets and forecasts
- Approval of capital structure and funding strategy
- Appointment of corporate officers, if any
- Approval of policies as proposed by any corporate officer
- Banking account issues
- Approval of benefits plans
- Approval of the hiring of any employee with an annual compensation and benefits package totaling over \$125,000.

201. The Board acts in one of three ways: action at meetings typically contained in minutes, through poll votes, and through formalized resolutions (which are rarely used). Given that this is a business and decisions are often required quickly, the majority of decisions are made via poll vote—often after one or a series of communications providing background,

actionable options and recommendations for next steps. The Board then affirms all poll votes at its next formal meeting.

202. The Board also forwards to the Tribal Executive Council all agreements with a limited waiver of sovereign immunity for review and approval.

203. Some illustrative examples of the role of each company's Board of Directors in the operation and control of its respective business include:

- Approval of the strategy and process. *See* Ex. 62 (TLE Poll Vote No. 02-01-2019); Ex. 63 (TLE Poll Vote No. 08-05-2017);
- Annual reviews of several employees. *See* Ex. 64 (TLE Poll Vote No. 02-02-2019); Ex. 65 (TLE Poll Vote No. 02-03-2019);
- Decisions to terminate employees. *See* Ex. 66 (TLE Poll Vote No. 06-01-2018);
- Decisions regarding hiring employees. *See* Ex. 67 (TLE Poll Vote No. 07-01-18);
- Approval of job descriptions, salaries and other employee issues. *See* Ex. 68 (TLE Poll Vote No. 08-01-2017); Ex. 69 (TLE Poll Vote No. 07-02-2018);
- Approval of legal matters. *See* Ex. 70 (Majestic Lake Poll Vote 02-02-2019); Ex. 71, (Majestic Lake Poll Vote No. 02-03-2019); Ex. 72 (TLE Poll Vote 08-06-2017);
- Approval of logo design and implementation. *See* Ex. 73 (TLE Poll Vote No. 02-04-2019);
- Approval of banking and financial matters. *See* Ex. 74 (TLE Poll Vote No. 08-04-2017).
- Approval of agreements by the lending entity Boards. *See* Ex. 75 (Silver Cloud Poll Votes 02-01-2019); Ex. 76 (Golden Valley Poll Vote 02-01-2019); Ex. 77

(Mountain Summit Poll Vote No. 02-01-2018); Ex. 78 (Mountain Summit Poll Vote 02-02-2019).

- Approval of health insurance benefits programs and payroll changes for employees. *See* Ex. 79 (TLE Poll Vote No. 02-07-2019); Ex. 80 (TLE Poll Vote No. 07-03-2018).

204. Over the years, we have hired individuals to serve in executive roles at the corporate shared services levels—primarily at ULPS and TLE. We wanted to ensure that our business was operating with corporate and industry best practices, and so we have set out to hire the best people we can find to aid the Board as we learn more and more about this complex industry. Before we transitioned to our current corporate structure (described in further detail below), we hired individuals to serve as Chief Executive Officer, Chief Operating Officer, Chief of Human Resources, and General Counsel. We also hired individuals to serve in President and Vice President roles at Pomo One and Arrowshade. These individuals all operated under delegations of authority from the Board that made clear what issues were exclusively within the domain of the Board and the Tribe, and then set out the job functions which these individuals were supposed to perform.

205. For example, when the Tribe incorporated ULPS in 2013, it enacted a Delegation of Authority Policy that applied to all non-Tribal executives at ULPS. ULPS's Board, which consists of the Tribal Executive Council, controls ULPS. But the Tribe initially retained an executive management team to ease the transition of ownership. The authority of this management team was strictly controlled by the delegation of authority from the Board. This delegation gave the management team the authority to engage in activities necessary for the day-to-day operation of ULPS. *See* Ex. 81 (ULPS Delegation of Authority Policy

8-10-13). It reserved all major decision making to the Board, including approval of strategic direction; waivers of sovereign immunity; approval of annual budgets; approval of capital structure; approval of all company policies; and approval of all major financial expenditures. *Id.*

206. Like many growing businesses, however, we have made our share of mistakes in these hiring decisions. We have had to terminate executives who did not perform at the level we expected, or who committed one of the three cardinal sins for our Tribally-owned business: failing to be completely transparent with the Board, exceeding the scope of their delegated authority, or ignoring a Board directive. As noted above, today, only 15 of the over 100 employees who were hired by the Tribal companies through their core services acquisitions remain employed by the Tribal business.

207. The foundational principle of our business is that it is Tribally controlled, and we have zero tolerance for anything or anyone that would take actions that appear to jeopardize that goal.

208. In 2018, we adopted a new organizational structure that is still in place today. Based on my knowledge and experience in the industry, gained over the last several years of learning both by doing and by amassing outside knowledge wherever I can, I was appointed by the Board as President of every entity in our lending business. We continue to delegate limited authority to a small set of Vice Presidents who are all employed through TLE. These Vice Presidents manage marketing, compliance, technology, human resources, and call center operations for the Tribe. The terms of these delegation agreements are nearly identical to those used in earlier years. The agreements for these individuals clearly limit their authority to their particular areas of expertise as outlined in the Tribe's delegation policy and reserve the vast majority of control over both day-to-day operation and strategic management for

the TLE Board. *See* Ex. 82 at 2-3 (TLE Delegation Policy). More specifically, the current delegation policy gives subordinate corporate officers limited power relating only to: a) approval of all agreements not exceeding twenty-five thousand dollars (\$25,000) in annualized impact to the TLE and/or its affiliates; b) supervision of all employees reporting to that officer; and c) management of consultants engaged pursuant to an agreement approved under the Delegation Policy. *Id.* at 5-6.

209. All other executive officers report to me or the Board. All decisions made by me as President must be presented to the full Board each month to ensure the Board is fully aware of all decisions made by the President. I also obtain full Board approval on all employee reviews performed by me in my capacity as President.

210. To ensure that we can operate at the fast pace needed to survive in e-commerce, we have also adopted a “decision tree” that requires different levels of input and approval based on the financial impact of a decision. Vice Presidents must obtain proper approval for any transaction totaling above \$25,000. *Id.* As President, I have signature authority for decisions up to \$250,000. Our Management Committee, which consists of me and Aimee Jackson, a Board member, can approve decisions up to \$500,000, but only if we are unanimous. The Board must sign off on all other decisions before they can be implemented.

XVII. The Tribe Is Involved In Every Step Of The Loan Servicing Process.

211. From the very beginning, our Tribe has sought to run an honest and fair lending business. We have done so primarily by retaining complete control over the issuance of loans to consumers with the goal of providing them with a transparent and positive experience. The Tribe maintains robust oversight of lending operations, establishes its own strict

underwriting criteria, and ensures that consumers have recourse in the event that they are dissatisfied with the terms of their loan agreement.

212. First, the Tribe's lending business must be licensed by our Tribal regulatory Commission before they may engage in lending. And as previously explained, the lending portfolios must maintain a compliance management system to ensure compliance with Tribal law, including the numerous portions of federal law we have incorporated. This system must include a full suite of written policies that cover all aspects of lending.
213. Each lender must also have internal controls and processes that allow it to monitor its operations to ensure that its procedures follow those policies. As an additional control, our regulatory Commission audits these companies regularly. If deficiencies are identified during an audit, or if a lender fails in any way to satisfy their compliance obligations, the Commission is empowered to take corrective action. Such action includes imposing fines and penalties, as well as suspending and/or revoking the lender's license to extend credit.
214. It also important to note that we fill a gap in the financial services industry—we often extend loans to consumers who are in need of credit but are unable to secure funds from a traditional bank. For example, some consumers are unable qualify for credit cards, or cannot afford the expensive fees that can come with a bounced check. The loans that our portfolios offer are unsecured loans that are paid in installments, which means our lenders have very limited remedies if a customer defaults.
215. Our Tribe's lending business uses computer algorithms and data analytic tools to assess a consumer's application. Generally, an application's requested loan amount is then compared against a customer's income and existing credit obligations, because these are strong factors in determining their creditworthiness and ability to repay. If the applicant

does not meet the lending company's underwriting requirements, or if the identity verification portion fails, then the application will be denied. The Tribe gathers the information from subprime data companies that have been purchased by the country's three major credit reporting agencies—Experian, Equifax, and Transunion—to help evaluate whether to accept a loan application.

216. Data from the Tribe's lending business illustrates the rigor and effectiveness of our underwriting. From all of the applications received in 2018, only 3.33% were accepted, and only 1.86% were approved and funded. Put another way: 98.14% of potential customers are rejected in underwriting. This commitment to responsible lending helps to prevent customers from taking loans they are unable to repay.
217. The typical customer that our tribal lenders approve for credit is approximately 42 years old with a median income of around \$44,000. The median loan amount is roughly \$825, and, although the installment contract is structured on a ten-month payment schedule, customers are encouraged to pay extra toward the principal or pay off the loan early without penalty. On average, customers pay off their loans in fewer than 100 days. Data also shows that our customers have moderate borrowing patterns: when measured over two years, our customers have an average of 1.6 loans.
218. We have no interest in operating a predatory lending business. Our Tribe is extremely proud of the strong consumer protections we have put in place and our low complaint rate for our lending portfolios. In 2018, our total complaint rate across all our lending portfolios was less than 1%.

219. In sum, our Tribe exercises strict control over our lending criteria so that we can be sure that we are operating a business that fills a gap in the traditional banking system while also being sufficiently protective of consumer interests.

220. But we are also cognizant of the evolving litigation and regulatory environment in which we operate, and we have occasionally had to make business decisions to not accept loan applications from consumers who reside in certain states. Virginia is one example; we have not accepted loan applications from consumers residing in the state since February 2018.

XVIII. The Tribe Designed The Loan Application Process To Ensure That Applicants Are Aware Of Their Rights And Responsibilities.

221. The lending portfolios implement the Tribe's lending criteria through an online application process. For ease of reference, I will describe the process Silver Cloud used during the relevant time period, but the process for the other lending portfolios did not differ in any material way, and it has not changed materially since the lending portfolios began operations.

222. New customers begin by navigating or being redirected to the lending company's home page or landing page. Although some customers might land directly on the portfolio's homepage as a result of inputting the lending company's website address or through an internet search for an online loan, it is more common that a customer is directed to the Esignature page via a lead aggregator. On the home page, customers who have not completed an application through a lead aggregator begin the application process by choosing a desired loan amount and clicking "apply now." The customer then completes the loan application. As part of the application process, the customer provides basic

personal and financial information, including information on his or her employment and income. This information is already provided by applicants arriving to the Esignature page via a lead aggregator.

223. If the lender approves the application, the customer is asked to confirm the desired loan amount and is shown the due date for the first payment.

224. Before the application process is complete, the customer is presented with several documents for review. The applicant may view each of the required documents by clicking a bolded and brand-colored hyperlink. Next to each hyperlink is a description of the document and a check box. Only after checking the required boxes may the applicant click the “Sign Now” button to electronically sign the documents and complete the application. At the top of the page, the applicant is reminded that by checking the required boxes and clicking the “Sign Now” button, he or she will be electronically signing the loan documents and completing the transaction. Immediately above the “Sign Now” button, the customer is reminded that clicking the button will complete the loan application. The applicant is also reminded that “[w]hen you apply your signature, you are confirming that you have read, understand and agree to the terms in these documents.” The following image is a representative example of the page that is presented to the customer, and indicates the required fields in red.¹²

¹² Mr. Mwethuku was presented a slightly different iteration of this page, but it presented him with similar documents and requirements.

Check the boxes below and click "Sign Now" to electronically sign your Loan Documents and complete your transaction.

Loan Documents

☐

Electronic Consent Authorization - This [Electronic Consent Authorization](#) allows the transaction to be completed electronically and any required disclosures to be provided to you electronically.

☐

Consumer Loan and Arbitration Agreement - The [Consumer Loan and Arbitration Agreement](#) is your loan agreement that contains important information about the terms of your loan and your payment schedule. Remember: You can pay off your loan at any time without penalty using our online payment portal!

☐

Electronic Payment Authorization - The [Electronic Payment Authorization](#) allows Majestic Lake Financial, Inc. to send funds to your financial account, and debit the account in accordance with the terms in this agreement.

☐

Privacy Notice - The [Privacy Notice](#) informs you how Majestic Lake Financial, Inc. collects, uses and shares your personal information.

Select Your Communication Preferences

☐

Yes, I would like payment reminders and other notifications about my loan. *Notifications will be sent in accordance with our [Communication Policy](#). You may change your notification preferences at any time. Notifications may include VIP and other rate discounts.*

☐

Yes, I would like payment reminders and other notifications by text. *When you check this box, you allow us to send you payment reminders and other notifications to your mobile phone as a text message in accordance with our [Text Messaging Policy](#). You may change your notification preferences at any time. Notifications may include VIP and other rate discounts.*

Click the "Sign now" button below to sign your Loan Documents electronically and complete your loan transaction. When you apply your signature, you are confirming that you have read, understand and agree to the terms in these documents.

SIGN NOW

CLICK HERE TO PRINT ALL DOCUMENTS

225. As shown above, one of the documents the applicant must assert to have read, understood, and agreed to the terms presented therein is the "Consumer Loan and Arbitration Agreement" (the "Agreement"). This is the main loan agreement governing the relationship between the lender and the borrower. Next to the checkbox associated with the Agreement, the applicant is told that the "Consumer Loan and Arbitration Agreement is your loan agreement that contains important information about the terms of your loan and your payment schedule." To assist the applicant in reviewing this critical document before finalizing the application, the words "Consumer Loan and Arbitration Agreement" are highlighted in a branded color indicating a clickable hyperlink, and the customer may click on that link to view the Agreement before signing. Alternatively, or in addition to clicking the link, and before or after signing the loan documents, the customer may print

the loan documents or request copies by mail. Moreover, each borrower who submits his or her loan application can log in to the website to view their loan documents.¹³

226. Each plaintiff signed a separate Consumer Loan and Arbitration Agreement every time they took out a loan. I have reviewed each plaintiff's Agreements, and copies of those Agreements are attached to this affidavit as Exs. 83-100. The Agreements indicate the date and time that each plaintiff checked the box signing and affirming that he or she had read, understood, and agreed to the terms of the Consumer Loan and Arbitration Agreement, as well as the IP address from which he or she did so. In particular:

- a. Plaintiff Steven Pike electronically signed Golden Valley's Consumer Loan and Arbitration Agreement on August 2, 2016. Ex. 83 at 8 (Steven Pike 8/2/2016 Loan Agreement).
- b. Plaintiff Sherry Blackburn received in total four loans from Majestic Lake. She completed her first loan application on October 19, 2015. She electronically signed Majestic Lake's Consumer Loan and Arbitration Agreement that same day. Ex. 84 at 12 (Sherry Blackburn 10/19/2015 Loan Agreement). Ms. Blackburn received a second loan from Majestic Lake on January 6, 2016. Ex. 85 at 10 (Sherry Blackburn 1/7/2016 Loan Agreement). She received another loan on April 14, 2016, and a fourth on May 23, 2016. Ex. 86 at 8 (Sherry Blackburn 4/14/2016 Loan

¹³ In mid-2017, we implemented new features to our websites that included an additional required box to be checked by loan applicants. This box and its associated text is located at the top of the page and is entitled "Tribal Ordinance." Next to the box the website notes: "I consent to the jurisdiction of the Habematolel Pomo of Upper Lake and agree that its Tribal laws govern the application for services, as well as all related transactions, which all occur with Tribal jurisdiction." In addition to this language, a brand-colored hyperlink in the words "View/Print" is available and directs the applicant to the agreement itself. This box was viewed and checked by Elwood Bumbray, as well as Willie Rose on his third loan.

Agreement); Ex. 87 at 9 (Sherry Blackburn 5/23/2016 Loan Agreement). Each of these additional loans required her to go through the same application process, including assertions for each separate loan that she read, understood, and agreed to the Consumer Loan and Arbitration Agreement. She was also required to sign each new Agreement.

- c. Plaintiff Elwood Bumbray electronically signed Majestic Lake's Consumer Loan and Arbitration Agreement on November 9, 2017. Ex. 88 at 7 (Elwood Bumbray 11/9/2017 Loan Agreement).
- d. Plaintiff George Hengle received in total three loans from Majestic Lake Financial. He completed his first loan application on September 12, 2016, the same day on which he electronically signed Majestic Lake's Consumer Loan and Arbitration Agreement. Ex. 89 at 8 (George Hengle 9/12/2016 Loan Agreement). He received a second loan on September 28, 2016, and a third on October 24, 2016, Ex. 90 at 8 (George Hengle 9/28/2016 Loan Agreement); Ex. 91 at 9 (George Hengle 10/24/2016 Loan Agreement). Each of these additional loans required him to go through the same application process, including assertions for each separate loan that he read, understood, and agreed to the Consumer Loan and Arbitration Agreement. He was also required to sign each new Agreement.
- e. Plaintiff Tiffani Myers received in total two loans from Mountain Summit Financial. She completed her first loan application on July 19, 2016, the same day on which she electronically signed Mountain Summit's Consumer Loan and Arbitration Agreement. Ex. 92 at 8-9 (Tiffani Myers 7/19/2016 Loan Agreement). She received a second loan on September 9, 2016,. Ex. 93 8-9 (Tiffani Meyers

9/9/2016 Loan Agreement). Each loan required her to go through the same application process, including assertions for each separate loan that she read, understood, and agreed to the Consumer Loan and Arbitration Agreement. She was also required to sign each new Agreement.

- f. Plaintiff Sue Collins in total received three loans from Mountain Summit Financial. She completed her first loan application on January 14, 2016, the same day on which she electronically signed Mountain Summit's Consumer Loan and Arbitration Agreement. Ex. 94 at 8-9 (Sue Collins 1/14/2016 Loan Agreement). She received a second loan on May 19, 2016, and a third on February 10, 2017. Ex. 95 at 8-9 (Sue Collins 5/19/2016 Loan Agreement); Ex. 96 at 8-9 (Sue Collins 2/10/2017 Loan Agreement). Each of these additional loans required her to go through the same application process, including assertions for each separate loan that she read, understood, and agreed to the Consumer Loan and Arbitration Agreement. She was also required to sign each new Agreement.
- g. Plaintiff Willie Rose in total received three loans from Silver Cloud. The first was on October 29, 2016, the same day on which he electronically signed Silver Cloud's Consumer Loan and Arbitration Agreement. Ex. 97 at 9 (Willie Rose 10/29/2016 Loan Agreement). He received a second loan on June 2, 2017, and a third on January 29, 2018. Ex. 98 at 7 (Willie Rose 6/2/2017 Loan Agreement); Ex. 99 at 8 (Willie Rose 1/29/2018 Loan Agreement). Each loan required him to go through the same application process, including assertions for each separate loan that he read, understood, and agreed to the Consumer Loan and Arbitration Agreement. He was also required to sign each new Agreement.

h. Plaintiff Lawrence Mwethuku electronically signed Golden Valley's Consumer Loan and Arbitration Agreement on July 29, 2013. Ex. 100 at 5 (Lawrence Mwethuku 7/29/2013 Loan Agreement). His agreement was different from the other plaintiffs in that it included a provision allowing him to opt out of the arbitration process, and he sent Golden Valley written notice that he had opted out of the arbitration process on September 6, 2013. Ex. 101 at 1 (Lawrence Mwethuku Opt Out Letter). Mr. Mwethuku's loan agreement explained that by opting out of the arbitration provisions, he agreed to bring any disputes arising from the agreement before the Tribal Forum, and that he consented to the Tribal Forum's jurisdiction over such claims.

XIX. The Tribe Designed The Consumer Loan And Arbitration Agreement To Provide A Convenient, Efficient, And Fair Dispute-Resolution Process.

227. Plaintiffs' Consumer Loan and Arbitration Agreements contain largely identical language providing that all disputes related to the agreement will be resolved by binding arbitration pursuant to Tribal law. For ease of reference, I will describe the language in the agreement between plaintiff Tiffani Myers and Mountain Summit, which is attached to this affidavit as Ex. 93; I will refer generally to language in "the Agreements" with respect to all of plaintiffs' Consumer Loan and Arbitration Agreements, and I will note any instances in which one of the Plaintiffs' agreements differs from the quoted language.
228. The Tribe took several steps to make sure that the Agreements were especially clear with respect to the dispute-resolution process and governing law. Each is identified at the top of the first page as the "**CONSUMER LOAN AND ARBITRATION AGREEMENT.**" Ex. 93 at 1 (Tiffani Myers 7/19/2016 Loan Agreement). The dispute-resolution section

begins with a section titled “**RESOLVING DISPUTES; WAIVER OF JURY TRIAL AND ARBITRATION PROVISION**,” which provides that:

In general, binding arbitration is a process in which persons with a dispute waive their rights to file a lawsuit in court and waive their rights to have a jury trial. Instead, the parties agree to submit their disputes to a neutral third person (an “arbitrator”) for a decision. Arbitration provisions are private and less formal than court proceeding[s]. Each party to a dispute has an opportunity to present their evidence to the arbitrator regarding the dispute. After considering each party’s evidence and arguments, the arbitrator then issues a final and binding decision resolving the dispute. We will follow and you agree to follow Our policy of arbitrating all disputes, including the scope and validity of this Arbitration Provision. As part of agreeing to arbitrate any dispute, You explicitly waive any right You may have to participate in any class action against Us.

Id. at 6.¹⁴

229. The Agreements further emphasize, in all capital letters, the rights the applicant is waiving, by requiring the borrower to “acknowledge and agree that by entering into this Arbitration Provision:”

(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;

(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and

(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE . . . IN ANY REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FLED AGAINST US AND/OR RELATED THIRD PARTIES.

¹⁴ Mr. Mwethuku’s agreement contains a slightly different version of the second-to-last sentence. It states: “Unless You opt out of the arbitration process set forth below, We will follow our Policy of arbitrating all disputes with customers, including the scope and validity of this Arbitration Provision.” Ex. 100 at 3.

230. Ex. 92 at 6. To avoid ambiguity, the Agreements further state that “[a]ll disputes including any Representative Claims against Us and/or related third parties shall be resolved by binding arbitration only on an individual basis with You.” *Id.* at 6. The Agreements explain that they are defining “dispute” with “the broadest possible meaning” and that definition expressly includes, among other things:

- “all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision;”
- “all tribal, federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Agreement, the information You gave Us before entering into this Agreement, including the customer information application, and/or any past agreement or agreements between You and Us;”
- “all counterclaims, cross-claims and third-party claims;”
- “all common law claims, based upon contract, tort, fraud, or other intentional torts;”
- “all claims based upon a violation of any tribal, state or federal constitution, statute or regulation;”
- “all claims asserted by Us against You, including claims for money damages to collect any sum We claim You owe us;”
- “all claims asserted by You individually against Us” and related third parties “including claims for money damages and/or equitable or injunctive relief;” and
- “all claims asserted by You . . . as a representative and member of a class of persons, or in any other representative capacity, against Us and/or related third parties”

Id.

231. In addition to ensuring that borrowers are aware of the applicable dispute-resolution process, the Tribe took steps to offer both sides to any dispute a fair and efficient resolution. For example, the Agreements give the borrower the right to select one of the two most prominent national arbitration organizations (the American Arbitration Association (“AAA”) or JAMS) to conduct the arbitration, and the “rules and procedures used by the applicable arbitration organization applicable to consumer disputes” govern the dispute in tandem with laws of the Habematolel Pomo of Upper Lake Tribe. *Id.* at 6-7. Moreover,

in addition to the rules of the applicable arbitration organization, the Agreements mandate that any arbitration be “governed by” the Federal Arbitration Act and require that the arbitrator “apply applicable substantive Tribal law consistent with the Federal Arbitration Act.” *Id.* at 7. As I describe below, Tribal law incorporates numerous substantive provisions of federal consumer protection law. The Agreements also allow the arbitrator to award statutory damages and reasonable attorneys’ fees and expenses if allowed by statute or applicable law. *Id.*

232. In distinction to some other dispute-resolution systems in our industry, we have chosen to make the decision of the arbitrator final and binding on both sides. *Id.* There is no avenue for the Tribe to seek further Tribal review of an unfavorable decision.
233. The Tribe chose these procedures because the rules cited are designed for disputes raised by consumers and help ensure a neutral and fair arbitration process.
234. Furthermore, the Agreements are written to ensure that the borrower can meaningfully participate in the process. Regardless of which party demands arbitration, the borrower may request that the arbitration take place within 30 miles of his or her home or another mutually agreed-upon location. *Id.* And we have agreed to advance the borrower’s portion of the arbitration expenses (which we agree not to recoup in the event the borrower is successful). *Id.*
235. In short, the Tribe is invested in resolving disputes fairly and conveniently, and it has always sought to provide consumers with an arbitration mechanism that is fair to and binding on both parties. We have entered into arbitration with one consumer in the past. Donald Robinson, a resident of Nevada, sought leave to sue Majestic Lake for unlicensed high-interest lending allegedly contrary to Nevada statute, and the parties submitted the

dispute to a JAMS arbitrator. A copy of the arbitrator's order is attached to this affidavit as Ex. 102. The arbitrator first assessed the agreement's delegation clause and concluded that it was valid. The arbitrator then determined that the loan contract was not unconscionable, noting that the requirements to arbitrate claims and have claims be governed by Tribal law appeared in multiple places in the contract, and that the application of "the law of another sovereign nation does not necessarily render a contract unconscionable." Ex. 102 at 9 (Decision and Order Re: Class Action Waiver and Enforcement of the Arbitration Agreement). The arbitrator did, however, allow the claimant to submit additional briefing on several issues, including on the enforceability of any award against Tribal Defendants and the "take it or leave it" nature of the loan contract as applied to the claimant. *Id.* at 11. The matter was subsequently resolved outside arbitration.

XX. The Tribe Took Steps To Ensure That Applicants Are Aware That They Are Contracting With Arms Of The Tribe And That Their Agreements Are Governed By Tribal Law.

236. Plaintiffs' loan agreements also made clear that the lending entity with which they contracted was an arm of the Tribe and entitled to the Tribe's sovereign immunity. For example, the first paragraph of the loan terms in Ms. Myers's agreement states that "In this Agreement, 'Company,' 'We,' 'Our' and 'Us' means Mountain Summit Financial, Inc., an arm of the Habematolel Pomo of Upper Lake Tribe of Indians that is a federally recognized Native American Indian Tribe." Ex. 93 at 2. The next paragraph, titled "Promise to Pay," explains that the borrower "promise[s] to pay to the order of Mountain Summit Financial Inc., an arm of the Habematolel Pomo of Upper Lake Tribe of Indians, a federally recognized Native American Indian Tribe, or any subsequent holder of this Agreement any

and all sums due hereunder.” *Id.* at 2-3. The agreement later highlights the consequence of these earlier provisions, explaining in the “Preservation of Sovereign Immunity” provision that:

This loan and all related documents are being submitted by you to us as an economic arm, instrumentality, and corporation owned by the Tribe. The Tribe is a federally-recognized Tribe and enjoys governmental sovereign immunity. Because we 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 Us. Any complaint must be submitted by you or on your behalf to us as described below. It is the express intention of the Tribe and Us operating as an economic arm of the Tribe, to fully preserve, and not waive either in whole or in part, sovereign governmental immunity, and any other rights, titles, privileges, and immunities, to which we and the Tribe are entitled. To protect and preserve the rights of the parties, no person may assume a waiver of sovereign immunity.

Id. at 6. With the exception of Mr. Mwethuku’s agreement, the agreements signed by the remaining Plaintiffs contain the same language.¹⁵

237. The loan agreements also specified that the loans were governed by tribal law. In a provision titled “Governing Law,” the agreements state:

This Agreement is made and accepted in the sovereign territory of the Habematolel Pomo of Upper Lake, and shall be governed by applicable tribal law, including but not limited to the Habematolel Tribal Consumer Financial Services Regulatory Ordinance. You hereby agree that this governing law provision applies no matter where You reside at the time You request Your loan from Mountain Summit Financial, Inc. Mountain Summit Financial, Inc. is regulated by the Habematolel Pomo of Upper Lake Tribal Consumer Financial Services Commission. You may contact the Commission by mail at P.O. Box 516 Upper Lake CA 95485.

Id. at 8.

¹⁵ Although Mr. Mwethuku’s agreement did not contain the “Preservation of Sovereign Immunity” provision, it did include the “Promise to Pay” provisions which made clear that the relevant lending entity, Golden Valley, was “an arm of the Habematolel Pomo of Upper Lake Tribe of Indians.” Ex. 100 at 2-3.

238. Other provisions of the agreement similarly mentioned Tribal law, including those setting forth the process for arbitration, the location for arbitration, Tribal Defendants' commitment to advance the borrower's fees for arbitration, and the law that governs in arbitration.
239. Although the Agreements are expressly governed by Tribal law, the Tribe has crafted its own consumer-protection law to guarantee borrowers relevant federal protections. Specifically, the Habematolel Pomo of Upper Lake Tribal Consumer Financial Services Regulatory Ordinance, which is incorporated by reference into the Agreements and attached to this affidavit as Ex. 7, explains that it "is essential that the Tribal government regulate Consumer Financial Services in a manner commensurate with Tribal law and policy, and applicable federal law." It also provides that a licensee under the Ordinance, like the lending portfolios, "shall conduct business in a manner consistent with principles of federal consumer protection law, including, without limitation," the following:
- a. Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493;
 - b. Truth in Lending Act, 15 U.S.C. § 1601 et seq., and related regulations at 12 C.F.R. Part 226;
 - c. Consumer Leasing Act, 15 U.S.C. §§ 1667 et seq., and related regulations at 12 C.F.R. Part 213;
 - d. Fair Credit Billing Act, 15 U.S.C. § 1666a;
 - e. Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., and related regulations at 15 C.F.R. Part 202;

- f. Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., and related regulations at 12 C.F.R. Part 205;
- g. Fair Credit Report Act, 15 U.S.C. § 1681 et seq., and related regulations at 12 C.F.R. Part 222;
- h. Privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6901 et seq., and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314;
- i. Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and related regulations at 16 C.F.R. Part 901;
- j. Talent Amendment, 10 U.S.C. § 987, and related regulations of the Department of Defense at 32 C.F.R. Part 232;
- k. Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, and related regulation at 47 C.F.R. § 64.1200;
- l. Telemarketing Sales Rule at 16 C.F.R. § 310;
- m. Section 5 of the Federal Trade Commission Act at 15 U.S.C. § 45(a);
- n. Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596.

Ex. 7 at 20-21 (Tribal Lending Regulatory Ordinance (2015)).

XXI. Our Tribe Has Engaged In Meaningful Government Outreach As A Testament To Its Commitment To Operating A Sustainable Business.

240. Our Tribe has exercised its sovereign power in other ways beyond our robust legal and regulatory framework. We have actively sought opportunities to enter into cooperative agreements or compacts with states as a means to promote a transparent and collaborative government-to-government regulatory environment. In this endeavor I have met with governors, state and federal legislators, and regulators to explain the nature and function

of our business. This effort further highlights our commitment to being a lasting participant in this industry.

241. By way of example, our Tribe successfully entered into a Memorandum of Understanding (“MOU”) with the State of New Mexico in December 2014, which explicitly memorialized our Tribe’s sovereign authority to engage in online short-term lending and acknowledged that the legislation enacted by our Tribe effectively regulates transactions between consumers and licensed lenders that occur on Tribal land, adheres to best practices, and does not violate federal or Tribal law.
242. In October 2018, the Tribe entered into another Memorandum of Understanding with the Northshore Fire Protection District of California (“NSFPD”), the county fire district located near reservation land. *See* Ex. 104 (NSFPD HPUL MOU 2018). The Tribe sought this MOU in order to memorialize how the NSFPD would provide medical and fire response services to the Tribe’s new call center in the event of an emergency. *Id.* at 2. The MOU outlines a \$25,000 contribution the Tribe made to the NSFPD in exchange for this support. *Id.* at 4. Importantly, this MOU recognized the parties’ intent “jointly to strive to create an environment ... in which the Tribe can create a well-trained and experienced workforce for the Tribe’s e-commerce opportunities with the goal of creating an ‘e-commerce’ hub for the region ... and improving the economy of the Tribe, the region and the state and reducing institutional dependence in the area.” *Id.* at 3.
243. The California Department of Business Oversight’s Information-Sharing Pilot program offers another example of the initiatives our Tribe has undertaken to foster government-to-government cooperation with states. Our Tribe collaborated with the Department of

Business Oversight to explore opportunities to develop a framework that facilitates information exchanges between regulatory authorities.

244. I have also personally attended and/or spoken at conferences of both Republican and Democratic State Attorneys General in which I have endeavored to educate state officials about our Tribe's disadvantaged history, our efforts toward economic self-reliance, and how rural tribes like ours use e-commerce to benefit of our Tribes and local communities. A presentation I co-authored at a 2019 conference of Republican State Attorneys General is attached. *See* Ex. 105 (RAGA Tribal Presentation). The purpose of this presentation was to make these officials aware of the Tribe's eagerness to pursue additional government-to-government information-sharing relationships. *Id.*
245. As a result of this effort, states—including the government of Virginia—continue to recognize that our business is a sovereign Tribal lending operation, as consumers themselves repeatedly acknowledge before they are issued a loan. *See* Ex. 2 (Letter from Commonwealth of Virginia State Corporation Commission, Bureau of Financial Institutions (Feb. 12, 2018)). Specifically, the Virginia Bureau of Financial Services recently concluded after investigating a consumer complaint regarding a Mountain Summit loan agreement that Mountain Summit was “an arm of the Habematoletl Pomo of Upper Lake,” and was thus “not required to be licensed under the laws that are enforced by the Bureau.” *Id.* at 2.
246. We continue to pursue open dialogues and additional Memoranda of Understanding with other states, ever eager to work cooperatively and communicate openly.

XXII. The Lending Portfolios Have Employed Tribal Members Whenever Possible And Will Employ More in the Future.

247. Online lending is a very competitive business requiring a great deal of technical knowledge. Our Board made an early decision to retain non-Tribal members in day-to-day management positions when the Tribe could not find a Tribal member with the necessary technical knowledge for the job.
248. Our lending operation is generally staffed very leanly. In total, we employ fewer than 170 people, the majority of whom hold jobs at our call center or perform other duties for ULPS. The four lending portfolios themselves have no employees, as each relies on ULPS, TLE, and Pomo One for all logistical support and infrastructure under our shared services agreements.
249. We have a total of five TLE officers, aside from me, that oversee call center and other core services operations. Two of those officers are located in Overland Park, Kansas. The other three work remotely from different states throughout the country. These individuals travel to California and Overland Park often.
250. With the completion of our new call center facility on reservation land, we have also been able to expand employment opportunities for more Tribal members and will increase those opportunities in the near future. Building infrastructure on the reservation is difficult, particularly in e-commerce—until recently, our Tribe did not even have high-speed fiber access to the internet. But we overcame that obstacle and we have now expanded our call center to hold 80 seats that greatly increase the opportunity to employ Tribal members. In addition to the Executive Council, who compose the Board of each lending company, the companies currently directly employ four Tribal members and a member's spouse at the call center.

251. The Tribe is also proud of the jobs that our lending business has indirectly created for Tribal members. For example, the Tribe has used lending business revenue to employ Tribal members or spouses in the following positions:

- Cemetery maintenance director
- Tribal water operator
- Education director
- Two education coordinators
- Receptionist
- Tribal Programs and Services Coordinator
- Tribal historian and archivist
- A general Tribal work force where members perform entry-level manual labor as needed.

252. In addition, the lending business supports the Tribal employment provided by our Tribe's casino. The casino has never been profitable; it is located in a remote county that has many other casinos within tens of miles. The Tribe thus relies heavily on income from its lending portfolios to keep the casino operable. For years, the Tribe has avoided default on its casino only with revenue from its lending portfolios. This means that the Tribal members who are employed by the casino could lose their jobs if not for the revenue from the Tribe's lending business. We also employ other members of our local community, which has one of the highest unemployment and poverty rates in the state of California.

253. We are proud of the many employment opportunities that our lending business has created for our members, both directly and indirectly. But ultimately, it is our sovereign right to determine the future of our people. And as Chairperson of the Tribe, I am always cognizant

of the risk that our members will become dependent on government support, including government employment. Our Tribe is small—with around 275 enrolled members—and its long and difficult history has left those members generally behind in terms of educational and employment prospects.

254. It is our responsibility as a Tribal government to provide our citizens with education and training that allows them to seek out whatever opportunities they want—not just entry-level opportunities on Tribal land. It is likewise essential that our members find jobs outside of Tribal country, so that they can spread our culture and share in the diversity and promise of the United States. That is why we have never wanted all of our Tribal members to work within our business and lands. It is important to look beyond employment opportunities created by our business for Tribal members. The revenues generated by our business offer even greater opportunities through educational scholarships, childcare and work incentives that help our Tribal members grow and prosper on whatever self-determined path they choose for success – whether they work for us or not.

XXIII. The Tribe Has Derived Increasing Profit From Our Lending Portfolios As Our Business Has Grown.

255. As noted throughout this affidavit, the vast majority of our Tribal operating budget comes from revenue from our four lending portfolios. Since the inception of each of the lending portfolios, the Tribe has received a monthly dividend from one or more of the four. That dividend first gets disbursed to the lending company's parent, TLE, and TLE then disburses a portion of the total of these dividends to the Tribal budget.
256. Before the Tribe paid off its notes, it would use a portion of each lending company's net income each month to pay down its debt obligations. But as our portfolios have grown over

time, and as we have paid off those notes, our monthly share of income has grown. This progress is shown in the attached Ex. 106 (Portfolio Financial Summary Chart).

257. Ex. 106 is a summary chart reflecting the percentage of total earnings that remained with the Tribe and its companies from year to year (the “Tribal assets”) versus the percentage of earnings that were paid to outside individuals (the “Participants” or “Noteholders,” and collectively, the “non-Tribal share”). The non-Tribal share was calculated by totaling either the portfolio’s annual fee payments to participants or the portfolio’s annual debt repayments to noteholders (or both, in 2014 when the mergers were consummated). In the years that the Tribe’s lending portfolio was still a party to participation agreements, all income that left each portfolio to be distributed outside the Tribe was in the form of payment of collected fees to participants. Once the portfolio executed its buyout agreements, all income that left the portfolio to be distributed outside the Tribe was in the form of payment to noteholders. Because the four portfolios executed and terminated participation agreements at different times, the month and year in which each portfolio’s non-Tribal share switched from participation payments to noteholder payments is different.
258. The Tribal assets in each portfolio were calculated by subtracting the non-Tribal share from each portfolio’s annual net operating income to arrive at the amount of income retained by the portfolio (the “net Tribal income”). But the summary chart also reflects the fact that each portfolio also provided TLE an additional dividend that was calculated off of gross profit (the “TLE dividend”). This dividend was distributed from each portfolio to TLE before operating expenses were subtracted from gross profit in order to arrive at net operating income. In other words, the Tribal share in this chart represents the total of each

portfolio's annual Tribal income plus the total annual TLE dividend. In addition, the summary chart shows the Tribe's annual earnings from ULPS and Pomo One.

259. Ex. 106 shows that the Tribe retained a substantial portion of its earnings, even when it was making payments to participants or noteholders. In 2013, when the Tribe first entered into its participation agreements, it retained 7.44% of its total earnings. *See* Ex. 106 (Portfolio Financial Summary). In 2015, when the Tribe was paying off its debt obligations to the former participants, the Tribe retained 36.39% of all earnings from its lending business, while the remainder went to paying off its notes. In 2018, when the majority of these notes were retired, the Tribe's take-home share of net portfolio income increased again to 39.37%. *Id.* And so far in 2019, now that the Tribe has retired all but one note, it has retained 71.43% of all earnings from its lending business. *Id.*
260. Ex. 4 provides a monthly breakdown of the Tribe's progress toward paying down its notes and the Tribe's concomitant increasing share of retained income. This monthly summary shows that the Tribe has retained 100% of Silver Cloud's earnings since August 2018. *See* Ex. 4 (Portfolio Monthly Summary). The Tribe has retained 100% of Mountain Summit's earnings since December 2018. *Id.* The Tribe has retained 100% of all Golden Valley earnings since March 2019. *Id.* And once the Tribe retires its one remaining note for Majestic Lake in early next year, the Tribe will fully retain 100% of income from its entire lending business.
261. As a result of this progress, the portfolios' monthly dividends to TLE have also grown substantially. For example, in the first five start-up months of its operation in 2012, Silver

Cloud was distributing \$20,000 per month to TLE. *See* Ex. 107 (Tribal Dividend Calc).¹⁶ By 2015, post buyout, Silver Cloud was distributing about \$100,000 per month to TLE. *Id.* That number increased to \$200,000 per month by the second half of 2018. *Id.* Similarly, Golden Valley went from distributing only \$20,000 per month in 2012 to approximately \$200,000 per month in 2018. *Id.* Mountain Summit increased its dividend to TLE from \$20,000 per month in 2012 to approximately \$65,000 per month in 2018. *Id.* Majestic Lake has more consistently distributed close to or well over \$200,000 per month since its inception, in part because the Tribe was able to negotiate more favorable terms with its participant. *Id.*

262. The Tribe has also always collected a substantial dividend from Pomo One. In 2015, Pomo One's first full year of revenue generation, it distributed over \$1,000,000.00 to TLE. And by 2018, that annual distribution had increased to roughly \$1,700,000.00. Unlike the four portfolios and Pomo One, ULPS was never intended to generate revenue for the Tribe. It was instead meant to support the portfolios. Nonetheless, TLE has also traditionally received a smaller monthly dividend from ULPS: it collected about \$30,000 from ULPS each month from 2015 through 2018, for example.

263. The progress of our lending business has resulted in a steady increase in profit to TLE, and thus a corresponding steady increase in financial benefit to members of our Tribe. In 2013, TLE collected just short of \$950,000 from the lending portfolios. By 2015 that number had

¹⁶ Ex. 107, (Tribal Dividend Calc), reflects the total dividend distributed from each lending portfolio to its parent company, TLE, from year to year. The chart indicates that as the Tribe continued to pay off its noteholders, the monthly dividends to TLE constituted a greater percentage of each portfolio's gross profit.

increased more than five-fold to just over \$5,000,000. And by the end of last year, TLE had collected a yearly total of just shy of \$11,000,000 from its lending portfolios.

264. Our Tribe is well aware of the need to diversify business and revenue opportunities to protect the long-term sustainability of our economy. In order to do that, the Tribe maintains a substantial base of operating capital within each of the lending portfolios. So while the lending portfolios distribute a sizable percentage of their net income to TLE, they leave the remainder of revenue within the lending portfolios for growth, product development, reinvestment, and diversification.

265. A summary of each portfolio's dividend distribution to TLE in comparison to the income retained within each portfolio is attached as Ex. 5. This summary chart shows, for example, that in 2018, Silver Cloud distributed a \$2,092,596.71 dividend to TLE while retaining \$6,815,521.61 within its portfolio. *See* Ex. 5 (TLE Dividend vs. Portfolio Retention). In 2018 Mountain Summit distributed a \$773,220.87 dividend to TLE while retaining \$1,079,466.44 within its portfolio. In the same year, Majestic Lake distributed \$1,600,000.00 to TLE while retaining \$3,348,587.32 within its portfolio. And in 2018, Golden Valley distributed \$2,521,293.41 to TLE. *Id.* Because Golden Valley was accelerating payment on sizable notes for all of 2018, the portfolio did not retain any net income. But now that the notes have been fully repaid, the portfolio has already retained \$3,264,818.93 this year. *Id.*

XXIV. Profits From Our Lending Portfolios Go Directly To Tribal Welfare.

266. There is no question that our lending business was created for the express purpose of bettering the lives of members of our Tribe. All profits that are not reinvested in the lending

business go directly to Tribal program development, job creation, land acquisition, governmental support for Tribal members, cultural preservation, and community outreach.

267. Most notably, our lending business has allowed the Tribe to fully fund our own education department, put hundreds of thousands of dollars toward assistance for first-time home and auto purchases, and develop programs of varying scale that incentivize the pursuit of education, job stability, home ownership, care for our elders, and healthy living. *See* Ex. 108 (HPUL TLE Presentation). As our profits have grown, we have added new Nation-building programs and have expanded programs already in existence in order to better serve the members of our Tribe.

268. Tribal welfare programs made possible by our online lending business include:

- A loan program that allows tribal members to borrow up to \$500 to be repaid with their quarterly distribution. Over the years the amount allowed to be borrowed has increased to \$1,000 and members were given additional flexibility to choose how their loans would be repaid. *Id.* at 3.
- An Education Clothing Allowance Program that provides parents of school aged youth up to \$200 for school clothing. Last year, our Tribe spent over \$13,000 on new clothing for 57 students. We have budgeted \$24,000 for this calendar year. *Id.* at 4.
- An Honored Elders Assistance Program that provides tribal elders a \$500 monthly stipend. The Tribe gave grants to 21 Tribal members last year, totaling a \$125,000 expenditure. *Id.* at 4.
- A Supplemental Assistance Self Sufficiency Program (SASSP) to reimburse adult tribal members up to \$300 annually for general welfare living expenses such as

rent, mortgage, transportation, education and utilities payments. Over the course of the program, the annual cap for SASSP reimbursement has been increased and is currently at \$1,200 annually for allowable expenses to be reimbursed. The Tribe has spent over \$112,000 on this program this year. *Id.* at 5.

- A First Time Homebuyer Down Payment Assistance Program that provides Tribal members with \$10,000 for a down payment on the purchase of a new home. The Tribe has been able to help more than a dozen of its members buy their first home since the program was created in 2014. *Id.* at 5.
- A housing assistance program for students. The Tribe has spent more than \$150,000 to provide rental assistance to students pursuing higher education.
- A Youth Apprenticeship Program. The program includes a week-long orientation that includes assistance with a job search, applications and resumes, and the interview process. *Id.* at 6.
- A Youth Advancement Program to reward and incentivize continued education for tribal youth who graduate from middle school. Students receive \$400 to put toward a computer purchase as well as \$750 to spend on other high school expenses. As of 2018 the program has evolved to the Education Graduation Incentive Program, where it has expanded to include adults earning degrees and/or certificates from institutions of higher learning such as universities, junior colleges and trade schools. *Id.* at 7.
- An employment incentive program that provides cash assistance to those tribal members who were seeking self-sufficiency in four specific categories; employed,

seeking employment, full time student, or disabled. The purpose of this program is to encourage long-term employment among Tribal members. *Id.* at 7.

269. The Tribe has also donated hundreds of thousands of dollars to dozens of different local community projects, including providing uniforms for local youth sports teams; assisting with many family members' funeral expenses; funding various youth summer camps; replacing the lights on the local high school football stadium; funding a local first responder group; and funding high school and middle school class field trips. *Id.* at 18-23. The Tribe started making donations to the local community as soon as it began to receive income from its lending business, and those donations have steadily increased over the years. In 2017 alone, the Tribe donated \$166,758.75 to worthy local causes. *Id.* at 21-22. It has always been important to the Tribe to show that it intends to be a lasting and generous presence in its surrounding community.

270. We have also used funds from our lending business to restore some of our lost land, to expand assistance to our most vulnerable populations, and to assist working parents. Land restoration has been an important part of our Tribe's quest to reestablish our land base to what it once was. We have been able to acquire over \$1 million of new land since 2014. We have reserved this land to build Tribal administration offices, and to build a Tribal education center and community center. *See Id.* Some of this restored land is of great cultural and historical significance to our People. For example, the success of our lending business has enabled us to reacquire our ancestral cemetery.

271. Similarly, we have used some portion of profits to fund a program that reintroduces our members to Tribal culture, traditions, and our language. Our People have enjoyed learning about our traditional dance, crafts, and dress. *Id.* We hope that this program will help to

ensure that our younger generation preserves our traditions, and we believe that by preserving and restoring our culture, traditions, and language, we aid our People overcoming the adversity that generations of failed federal policy have imparted.

272. Our Tribe's success in the lending industry has created a great sense of pride for our People and has garnered admiration from our neighboring community. For more information on all of these programs and our charitable giving, *see* Ex. 108.

XXV. Our Tribe Would Be Financially Devastated Without Online Lending.

273. The lending business has been the engine for all of the economic, social, and educational progress our Tribe has made over the past decade. Simply put, this business has become integral to our Tribe's nation-building effort. If the Tribe ceased its involvement in online lending, this progress would be completely halted.
274. The vast majority of the Tribe's governmental operating budget comes from revenue from our lending portfolios. Although the Tribe receives some federal grant money, those federal funds are strictly earmarked; the Tribe's lending business income thus funds the vast majority of governmental services and Tribal programs. Tribal Enterprise Operations ("TEO") is the umbrella account that controls all profit and expenses from the Tribe's business ventures—namely, its lending business and casino. The majority of Tribal welfare programs and day-to-day governmental operations are funded through a smaller Tribal administrative budget, and all money that flows to the administrative budget comes from the TEO budget. In 2018, the sole source of revenue to the TEO budget was a \$4,722,255.00 dividend from TLE. Ex. 109 (TEO 2018 Worksheet). The TEO then distributed \$2,912,305.00 of that revenue to fund the Tribe's administrative budget. This \$2,912,305.00 distribution constituted the entirety of the Tribe's 2018 administrative

budget. *See* Ex. 110 (2018 Tribal Admin Budget vs. Expenditure) (noting that the Tribe's overall administrative budget for 2018 was \$2,912.305.00).

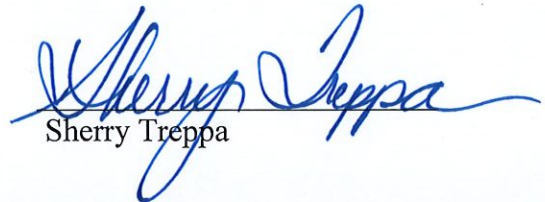
275. By comparison, our 2019 Tribal administrative budget projects that the Tribe will spend \$2,949,774.51, 100% of which will come from the same annual TEO distribution. *See* Ex. 111 (2019 Tribal Admin Budget vs. Expenditure). Our Tribe has thus reached a point where it could not function effectively without the income it receives from our lending portfolios.
276. Other than servicing one remaining debt obligation related to Majestic Lake (discussed above at paragraphs 187 and 188), all the revenues from the lending operations are used to ensure the sustainability of the business and to provide opportunities to Tribal citizens. Revenues have increased steadily over the history of the Tribe's lending business and have made possible the creation and expansion of numerous tribal welfare programs.
277. The progress of these portfolios and their distribution to the Tribal budget in just a few short years is remarkable, and the Tribal programs we have created over that time were made possible by the success of our lending portfolios. Knowing how important this business was to the future of the Tribe, I and the rest of the Tribal Executive Council did everything we could to make our dream of this progress a reality.
278. It takes time to re-build a Nation, overturning a century of decisions that created a dependent, uneducated, and unskilled society left in abject poverty with little hope that those conditions would ever change. It has been especially challenging given the many false starts we had based on negative interactions with the federal government. We are fortunate that e-commerce has allowed us to take substantial steps towards self-sufficiency

and self-determination. Forcing us to stop the progress we have made would be a crippling blow that would prevent our People from fully realizing their potential.

XXVI. Conclusion.

In this affidavit, I have endeavored to explain in detail the process by which our Tribe has built for itself a successful online lending business. We entered this industry in 2012 with no money, experience, or expertise. We will close out 2019 with an almost debt-free, successful online lending operation that has always been completely Tribally controlled and that has made an immeasurable impact on the lives of every single member of our Tribe. I have personally learned the industry and personally guide all aspects of our business with the cooperation and blessing of our Boards. Our success illustrates our desire to determine our own future through financial independence and self-sufficiency.

I declare under penalty of perjury that the foregoing is true and correct. I also declare under penalty of perjury that each exhibit attached to this affidavit is a true and correct copy of that document.


Sherry Treppa

See Attached
Notarial Document



6/20/2019

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

On June 20, 2019 before me, Adan Rocha, Notary Public personally appeared

Sherry Trepp

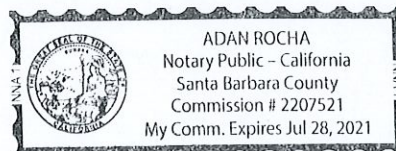
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Adan Rocha

Commission Expires: 07/28/2021



OPTIONAL

Description of Attached Document: Affidavit page 87

Number of Pages: _____

Document Date: _____

Capacity of Signer(s):

Trustee

Power of Attorney

CEO/CFO/COO

President/ Vice-President/ Secretary/ Treasurer

Other: _____

EXHIBIT B

Tribal Lending Regulatory Ordinance (2011)

HABEMATOLEL POMO OF UPPER LAKE

TRIBAL LENDING REGULATORY ORDINANCE

SECTION 1. FINDINGS, INTENT AND POLICY

1.1. Findings. The Executive Council of the Habematoel Pomo of Upper Lake, the governing body of the Tribe, finds that:

- (a) The Tribe desires to expedite the development of the economy of the Tribe 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.
- (b) Tribal operation and licensing of one or more consumer lending businesses is a legitimate means of generating revenue to address the aforementioned needs and pursuing the Tribe's goal of self-sufficiency and self-determination.
- (c) The Tribe has the legal authority to license and regulate consumer lending businesses within its jurisdiction.
- (d) Properly licensed and regulated Lending is consistent with announced federal policy promoting tribal self-government and economic self-sufficiency.
- (e) Tribal regulation and control of consumer lending businesses within the jurisdiction of the Tribe is essential for the protection of the public welfare.
- (f) It is essential that the Executive Council regulate Lending in a manner commensurate with Tribal law and policy and applicable federal law.
- (g) It is essential that public confidence in lending that takes place within the Tribe's jurisdiction is maintained.
- (h) Adoption of a Tribal Lending Regulatory Ordinance by the Executive Council is a necessary condition for the legal operation of consumer lending on the Trust Land and is in the best interest of the Tribe.
- (i) Establishment of a Tribal Lending Regulatory Authority to implement the purpose and intent of the Tribal Lending Regulatory Ordinance on the Tribe's Trust Land is in the best interest of the Tribe.

1.2. Intent. The Executive Council, on behalf of the Tribe, declares that the intent of this Ordinance is to:

- (a) Diversify and expedite the development of the economy of the Tribe for the purposes described in section 1.1(a) above.

- (b) Define general regulatory powers to be exercised by a Tribal Lending Regulatory Authority in relation to the regulation, control, and oversight of consumer lending businesses and their vendors.
- (c) Ensure that all Lending revenues are used for the benefit of the Tribe and the Tribe's community.
- (d) Ensure that Lending is conducted appropriately by Licensees and borrowers and that it remains free from corrupt, incompetent, unconscionable and dishonest practices.
- (e) Protect the interests of the public in the offering of Lending services.
- (f) Ensure the maintenance of public confidence in Tribal Lending practices.
- (g) Ensure that the Tribe provides a fair and impartial forum for the resolution of Lending disputes.
- (h) Ensure that Tribal Lending laws are strictly and fairly enforced upon Persons involved in Tribal Lending.

1.3. Policy.

- (a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Revenues from Lending shall be utilized and expended only for the following purposes:
 - (1) To fund the Tribe's government operations or programs.
 - (2) To provide for the public health and general welfare of the Tribe and its members and visitors to the Tribal community.
 - (3) To promote Tribal economic development and self-sufficiency.
 - (4) To donate to charitable organizations.
- (b) Tribal Lending Policy. The establishment, promotion and operation of Lending is necessary, provided that such Lending is regulated and controlled by the Tribe pursuant to this Ordinance and the revenues of such Lending are used exclusively for the benefit of the Tribe.
- (c) Responsibility for Regulation. The Tribe shall have sole proprietary interest in and responsibility for the conduct of Lending authorized by this Ordinance.
- (d) Lending Authorized. Lending is authorized and permitted only as described in this Ordinance and its implementing regulations.

SECTION 2. DEFINITIONS In this Ordinance, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the

following meanings:

- 2.1.** "Applicant" means any Person who has applied for a License under the provisions of this Ordinance.
- 2.2.** "Application" means a request for the issuance of a License under the provisions of this Ordinance.
- 2.3.** "Electronic Debit Guarantee" means a draft or agreement for an electronic debit authorized by a borrower and made payable to a Lender.
- 2.4.** "Employee Licensee" means a person that is licensed by the Authority to be employed by a Lender Licensee.
- 2.5.** "Gross Revenues" means all Lending revenues collected or received by a Lender Licensee.
- 2.6.** "Lender Licensee" or "Lender" means a Person that is licensed by the Authority to engage in Lending.
- 2.7.** "Lending" or "Tribal Lending" means the business of extending credit to borrowers in exchange for interest, fees, or some other form of consideration on the Tribe's Trust Land or within the Tribe's jurisdiction.
- 2.8.** "License" means the official, legal and revocable Lending License, Vender License or Employee License granting permission from the Tribal Lending Regulatory Authority to an Applicant to conduct Lending, provide services or funding to aid in the making of loans by a Lender Licensee, or be employed by a Lender. A License relating to Lending is a revocable privilege.
- 2.9.** "Licensee" means a Person that is licensed as a Lender Licensee, Vendor Licensee or Employee Licensee by the Authority.
- 2.10.** "Ordinance" means this Tribal Lending Regulatory Authority Ordinance.
- 2.11.** "Person" means any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Tribe, any governmental entity of the Tribe or any of the above listed forms of business entities that are wholly owned or operated by the Tribe, or any other entity whatsoever, who engages or seeks to engage in the business of Lending pursuant to this Ordinance; provided, that the term does not include the Federal Government and any agency thereof.
- 2.12.** "Executive Council" means the Habematolel Pomo of Upper Lake Executive Council, the governing body of the Tribe as defined and described in the Tribe's Constitution.

- 2.13. "Tribal Lending Regulatory Authority" or "Authority" means the regulatory authority established and described in Section 4 of this Ordinance.
- 2.14. "Tribe" means the Habematolel Pomo of Upper Lake.
- 2.15. "Trust Land" means land held in trust for the benefit of the Tribe.
- 2.16. "Vendor Licensee" means a Person or entity that is licensed by the Authority to provide services or funding to aid in the making of loans by a Lender Licensee.

SECTION 3. GENERAL PROVISIONS

- 3.1. **Authority.** This Ordinance is enacted pursuant to the inherent sovereign powers of the Habematolel Pomo of Upper Lake and in accordance with the Tribe's Constitution.
- 3.2. **Construction.** In construing the provisions of this Ordinance, the following shall apply:
 - (a) The provisions of this Ordinance, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.
 - (b) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Ordinance, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Ordinance required for any determination or action by the Authority.
 - (c) No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.
 - (d) Words of the masculine gender or neuter include masculine and feminine genders and are the neuter.
 - (e) Words in the present tense include the future and past tenses.
 - (f) Words in the singular number include the plural, and words in the plural number include the singular.
- 3.3. **Severability.** If any section of this Ordinance is invalidated by a court of

competent jurisdiction, the remaining sections shall not be affected thereby.

- 3.4. Effective Date.** This Ordinance shall take effect and be in full force and effect from and after the date of its final passage and approval by the Executive Council.

SECTION 4. TRIBAL LENDING REGULATORY AUTHORITY

- 4.1. Establishment and Purpose.** The Executive Council hereby charters, creates and establishes the Tribal Lending Regulatory Authority as a governmental subdivision of the Tribe. The Authority has charge of the implementation of the ordinances and regulations of the Tribe relating to Lending activities and associated licensing requirements.

- 4.2. Location and Place of Business.** The Authority may maintain its headquarters, principal place of business and office within the Tribal offices. The Authority may, however, with a majority vote from the Executive Council, establish other places of business in such other locations as the Authority may from time to time determine to be in the best interest of the Tribe.

- 4.3. Duration.** The Authority shall have perpetual existence and succession in its own name, unless dissolved by the Executive Council pursuant to Tribal law.

- 4.4. Attributes.** As a governmental subdivision of the Tribe, the Authority is under the direction and control of the Executive Council, and it is the purpose and intent of the Executive Council that the operations of the Authority be conducted on behalf of the Tribe for the sole benefit and interests of the Tribe, its members and residents of and visitors to the Tribe's Trust Land.

- (a) Arm of Tribe. In carrying out its purposes under this Ordinance, the Authority shall function as an arm of the Tribe.

- (b) Tribal Actions. Notwithstanding any authority delegated to the Authority under this Ordinance, the Tribe reserves to itself the right to bring suit against any Person or entity in its own right, on behalf of the Tribe or on behalf of the Authority whenever the Tribe deems it necessary to protect the sovereignty, rights and interests of the Tribe or the Authority.

- 4.5. Sovereign Immunity of the Authority.**

- (a) Immunity from Suit. The Authority is cloaked by Tribal and federal law with all the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in any tribal, federal or state court.

- (b) No Waiver. Nothing in this Ordinance shall be deemed or construed to be a waiver of sovereign immunity of the Authority from suit, which shall only be waived pursuant to subsection 4.6.4.

- (c) No Consent to Jurisdiction. Nothing in this Ordinance shall be deemed or

construed to be a consent of the Authority to the jurisdiction of the United States or of any state or of any other tribe with regard to the business or affairs of the Authority.

(d) Waiver of Sovereign Immunity of the Authority. Sovereign immunity of the Authority may be waived upon the recommendation of the Authority and only by express resolution of the Executive Council.

(1) Resolution Effecting Waiver. All waivers of sovereign immunity must be preserved with resolutions of continuing force and effect issued by the Executive Council.

(2) Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Authority or the Tribe.

(3) Limited Nature to Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Authority subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

(4) Limited Effect of Waiver. Neither the power to sue and be sued provided in subsection 4.15 herein, nor any express waiver of sovereign immunity by resolution of the Executive Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Authority other than property specifically pledged or assigned, a consent to suit with respect to any land within the exterior boundaries of the Tribe's Trust Land, or a consent to the alienation, attachment or encumbrance of any such land.

4.6. Sovereign Immunity of the Tribe. With respect to the existence and activities of the Authority, all inherent sovereign rights of the Tribe as a Federally-recognized Indian Tribe are hereby expressly reserved, including sovereign immunity from suit in any state, Federal or Tribal court. Nothing in this Ordinance nor any action of the Authority shall be deemed or construed to be a waiver of sovereign immunity from suit or counterclaim of the Tribe, a consent of the Tribe to the jurisdiction of the United States, any state or other tribe with regard to the business or affairs of the Authority or the Tribe, a consent of the Tribe to any cause of action, counterclaim, case or controversy, or to the levy of any judgment, lien or attachment upon any property of the Tribe, a consent to suit or counterclaim in respect to any land within the exterior boundaries of the Tribe's Trust Land, or to be a consent to the alienation, attachment or encumbrance of any such land.

4.7. Assets of the Authority. The Authority shall have only those assets specifically assigned to it by the Executive Council, acquired in its name by the Tribe,

or acquired by the Authority on its own behalf. No activity of the Authority or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Tribe not assigned in writing to the Authority.

4.8. Regulatory Agent; Compensation, Duties.

(a) Regulatory Agent. The Authority shall initially be governed by one (1) Agent appointed by the Executive Council. The Executive Council may increase the number of Agents by Resolution as it deems necessary to conduct the governmental operations of the Authority.

(b) Compensation. The compensation of the Agent shall be established from time to time by the Executive Council.

(c) Duties. The Agent shall have the following responsibilities:

- (1) Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;
- (2) Serve as the agent for service of process,
- (3) Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Ordinance or further directive of the Executive Council.

(d) Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

- (1) The Agent shall be an enrolled member of the Tribe.
- (2) The Agent shall have expertise, experience, education or a combination thereof in the following areas: lending, finance, management, business, governmental regulation, law, and/or Tribal policy.
- (3) The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.
- (4) No person shall serve as Regulatory Agent if:
 - A. His/her prior activities, criminal record, if any, or reputation, habits or associations:
 1. Pose a threat to the public interest; or
 2. Threaten the effective regulation and control of Lending; or
 3. Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of

Lending.

- B. He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or
- C. He/she, or any member of his or her Immediate Family has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Lender Licensee, Vendor Licensee or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. Ownership of a Lender by virtue of membership in the Tribe is not a per se monetary or financial interest in the conduct of any Licensee

4.9. Meetings. The Authority shall hold or participate in such meetings with the Executive Council.

4.10. Prohibited Acts. The Agent and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

(a) Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. Notwithstanding the foregoing, an employee of the Authority other than a Commissioner may become so indebted; provided that, while the debt is outstanding, the borrower shall not participate in any examination of any Licensee conducted by the Authority and the indebtedness is:

- (1) Incurred on terms no more favorable than those available to the general public, and
- (2) Fully disclosed to and approved by the Chairperson before funding, including the following information:
 - A. The date of the indebtedness
 - B. The amount
 - C. The interest rate
 - D. Security

- (b) Be an officer, director, or employee of any Licensee.
- (c) Own or deal in, directly or indirectly, the shares or obligations of any Vendor Licensee.
- (d) Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Lender and is distributed among all eligible Tribal members by virtue of membership in the Tribe.

4.11. Removal of Regulatory Agent / Vacancy.

- (a) Removal. The Agent may be removed by the Executive Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of Lending or the Authority or violates the letter or intent of this Ordinance. The decision of the Executive Council concerning removal of a Regulatory Agent shall be final.
- (b) Vacancy. If the Regulatory Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Executive Council shall declare his or her position vacant and shall appoint another qualified Tribal member to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace the Agent shall be for the balance of the unexpired term for the position.

4.12. Powers of the Authority. The Authority has the authority and responsibility for the discharge of all duties imposed by law and this Ordinance on the Authority. In furtherance, but not in limitation of, the Authority's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Ordinance:

- (a) To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Ordinance; provided that such regulations shall take effect only upon approval of the Executive Council.
- (b) To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Authority considers it necessary.
- (c) To make or cause to be made reasonable investigations of any Licensee or Person as it deems necessary to ensure compliance with this Ordinance or any order of the Authority, to determine whether any Licensee or Person has

engaged, is engaging or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Ordinance or any order of the Authority; or to aid in adopting rules or regulations pursuant to this Ordinance.

- (d) To establish procedures designed to permit detection of any irregularities, fraud, or the like.
- (e) Upon prior explicit resolution and approval of the Executive Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and Lending professionals.
- (f) To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of all Applicants.
- (g) To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee or Person, or agent, officer or employee of any Licensee or Person, or any other witness with respect to any matters related to this Ordinance and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Authority may apply to a court of competent jurisdiction to compel appearance or production.
- (h) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee or Person engaging or participating in, or suspected to be engaging or participating in, Lending.
- (i) To discipline any Licensee or Person engaging or participating in Lending in violation of this Ordinance by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section 4.17 of this Ordinance.
- (j) To sue or be sued in courts of competent jurisdiction within the United States and Canada, subject to Section 4.6 herein; provided, that no suit shall be brought by the Authority without the prior explicit written approval of the Executive Council.
- (k) To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Authority's authorized activities, subject to any approval of the Executive Council that may be required by the Executive Council.
- (l) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting

background checks; for reasonable examinations of Licensees; and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records and to impose the forgoing fees as applicable.

- (m) To establish and maintain such bank accounts as may be necessary or convenient.
- (n) To make such findings as may be necessary to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

4.13. Investigations, Right of Entrance.

- (a) Investigations. The Authority, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or Person engaging or suspected to be engaging in Lending within its jurisdiction.
 - (1) In undertaking such investigations, the Authority may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.
 - (2) In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section 4.17 of this Ordinance.
 - (3) This power to investigate does not authorize the Authority to manage the day-to-day operations of a Lending Licensee or Vendor Licensee.
- (b) Right of Entrance. The Authority and duly authorized employees or agents of the Authority, during regular business hours, may reasonably enter upon any premises of any Lending Licensee or Person engaging in or suspected to be engaging in Lending for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee or Person.
- (c) Aid to Entry. The staff of the Licensee or Person engaging in or suspected to be engaging in Lending shall facilitate such inspection or examinations by giving every reasonable aid to the Authority and to any properly authorized officer or employee.

4.14. Annual Budget. The Authority shall prepare an annual operating budget for all Authority activities and present it to the Executive Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

4.15. Authority Regulations.

(a) Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

- (1) The making of findings or other information required by or necessary to implement this Ordinance; and
- (2) Interpretation and application of this Ordinance, as may be necessary to enforce the Authority's duties and exercise its powers;
- (3) A regulatory system for overseeing Lending, including accounting, contracting, management and supervision;
- (4) The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Ordinance.
- (5) Specification of the amount and the schedule of applicable Licensing and examination fees that shall be imposed by the Authority.

(b) No regulation of the Authority shall be of any force or effect unless it is adopted by the Authority by written resolution and subsequently approved by a resolution of the Executive Council.

4.16. Quarterly Report to the Executive Council. The Authority shall file a quarterly report with the Executive Council summarizing reports received from each Licensee and make such comments as it deems necessary to keep the Executive Council fully informed as to the status of the Authority's activities. The Authority shall define by regulation, subject to the approval of the Executive Council, the schedule for the submission of such reports.

4.17. Due Process; Notice; Hearings; Examiner. The Authority shall provide notice and the opportunity for a hearing comporting with notions of due process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder.

(a) No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.

(b) Notice of Hearing. The Authority shall, within five (5) days after learning of the event giving rise to the concern, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.

- (c) Hearing. The hearing shall be scheduled to take place no less than five (5) days and no more than thirty (30) days business days after the notice of hearing is delivered. At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.
- (d) Examiner. The Authority's Agent / Commissioner shall act as examiner for the purpose of holding any hearing, or the Agent / Commissioner may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Ordinance with respect to any such hearing.
- (e) Decision. The Authority shall issue a written decision to all affected parties within thirty days after the hearing.
- (f) Appeals. Affected parties may appeal an Authority determination by filing a written appeal to the Executive Council within twenty (20) days of receiving the Authority's final written decision. The Executive Council shall place the matter on the agenda of its next regularly scheduled meeting. Any decision of the Executive Council on appeal shall be final and not subject to further appeal.

SECTION 5. LICENSES

- 5.1. Applicability.** Any Person seeking to engage in Lending or, when applicable, to provide services to a Lender Licensee or be employed by a Lender Licensee shall apply for and receive all required licenses prior to engaging in Lending, providing services to a Lender Licensee or being employed by a Lender Licensee.
- (a) Every Person that aids, participates or is related to Lending is required to have a current and valid Lender License as issued by the Authority.
 - (b) Every Vendor that provides or receives, or is likely to provide or receive at least Twenty-Five Thousand Dollars in any twelve (12) month period from a Lender Licensee in exchange for services or aid in the making of loans is required to have a current and valid Vendor License as issued by the Authority.
 - (c) Every Person extending financing, directly or indirectly, to any Lender Licensee is required to have a current and valid Vendor License issued by the Authority.
 - (d) Every Person employed by a Lender Licensee in a position that routinely has substantive interaction with the Lending public, is required to have a current and valid Employee License issued by the Authority.
 - (e) If the Applicant is a person other than a natural person, the qualifications required by this Section 5 are also required of any executive officer, director

or partner of the firm, partnership, association or other form of entity.

- (f) A person who engages in Lending without charging or collecting interest or other consideration for a loan or charges or collects nominal or incidental consideration is not required to obtain a Licensee to engage in Lending but is required to otherwise comply with the provisions of the Ordinance.
- (g) A License is a revocable privilege to do business within the jurisdiction of the Habematolel Pomo of Upper Lake.

5.2. Application Procedure.

- (a) Submission to Authority. An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require.
- (b) Application Contents. At a minimum, the Application shall contain the following information:
 - (1) For Applicants that are other than natural persons, each of the Applicant's owners, officers and/or directors; and principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; and
 - (2) Each of its owners or partners, if an unincorporated business; and
 - (3) Each of its shareholders who own more than 10 percent of the shares of the corporation; and
 - (4) For each person listed in sub-Sections (A) to (C) above, and for all Applicants that are natural persons, an Application for a Lender License or Employee License shall include each person's criminal and civil record, if any, and an explanation of any crimes for which he has been convicted or civil suits in which a judgment has been entered against him or to which he has entered a plea of no contest in any jurisdiction and a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant. The Applicant shall provide written permission giving the Authority or its designees the right to the Applicant's background, including his criminal record;
 - (5) An Applicant for an Employee License shall provide all necessary information and written permission for the Authority or its designee to obtain the Applicant's credit history and/or credit score.
 - (6) A list of all Lending-related licenses the Applicant has ever applied to the Authority for, whether or not such licenses were issued; and
 - (7) The disclosure of whether there is a previous contractual

relationship with an Indian tribe; and

- (8) A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Tribe; the Applicant will abide by all applicable Tribal and Federal laws, regulations and policies; and the information contained in the Application is true and correct to the best of Applicant's knowledge.
- (c) Each Application shall be accompanied by an application fee, the amount of which shall be set by the Authority.

5.3 Review, Issuance and Denial, Term.

- (a) Lending License. A Lending License shall automatically issue if the following criteria are met:
 - (1) The Applicant complied with the provisions of Section 5.2; and
 - (2) No owner, partner, officer and/or director; or principal management employee of the Applicant or a shareholder who owns more than ten percent (10%) of the shares of Applicant has been, in any jurisdiction, charged with a felony or any other crime involving breach of trust or dishonesty; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation; and
 - (3) The Lending is authorized pursuant to this Ordinance; and
 - (4) The Lending is authorized by a Executive Council Resolution; and
 - (5) The Tribe has the sole proprietary interest in the Lending.
- (b) Vendor License, Employee License. Upon compliance with Section 5.2, the Authority shall review the qualifications of the Applicant sufficient to make a determination of eligibility as required under this Ordinance.
- (c) Issuance. Upon completion of any necessary background investigation, the Authority may issue a License on a conditional or unconditional basis. The Authority shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License.
- (d) Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing, provide the basis for the denial of the License, and otherwise comply with the procedural requirements of section 4.17 of this Ordinance.
- (e) Term. Any License issued pursuant to this section shall be effective for a

period of two (2) years from the date of issuance.

- (f) License Substance. The License shall bear on its face the name of the Licensee, the Tribal Logo, the issue date, and the license number.
- (g) Record Retention. The Authority shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of employment.

5.4. License Denial, Suspension or Revocation of License.

- (a) Denial; Temporary Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority shall deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.17 herein, if the Authority finds that an Applicant or Licensee:
 - (1) Failed to pay initial Application or renewal fees;
 - (2) Made a material misstatement or omission on the Application or on any document required to be filed with the Authority;
 - (3) Withheld or provided incomplete or insufficient pertinent information;
 - (4) Is not a Person of honesty, truthfulness or good character;
 - (5) Violated or aided, abetted, or conspired with another Licensee or Person or knowingly or knowingly caused any Licensee or Person to or otherwise participated in violate this Ordinance or the rules and regulations of the Authority;
 - (6) Participated in Lending that was not authorized by this Ordinance;
 - (7) Knowingly falsified books or records that relate to a transaction connected with the operation of Lending;
 - (8) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Lender Licensee authorized pursuant to this Ordinance or to substantiate, by the Authority, compliance with this Ordinance;
 - (9) Failed to take reasonable measures to ensure that an agreement with a borrower is not breached

- (10) Is insolvent;
 - (11) Is charged in any jurisdiction with a felony or any other crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
 - (12) Has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;
 - (13) Has had an order entered against it by an administrative agency of any jurisdiction and the order is based on conduct that involved fraud, deceit or misrepresentation by the Applicant or Licensee and it entered after notice and an opportunity to be heard;
 - (14) When the Licensee is a Lender Licensee or Lender Licensee Applicant, has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
 - (15) Employed any Person in a consumer lending business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;
 - (16) Refused to comply with any lawful order, inquiry or directive of the Authority or the Executive Council;
 - (17) Attempted to bribe or offer something of value to any Person, Executive Council member, or a Commissioner in an attempt to avoid or circumvent Tribal law;
 - (18) Stole or attempted to steal funds or other items of value from the Authority or the Tribe;
 - (19) Poses a threat to the public interest or the effective regulation of Lending; or
 - (20) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Lending.
 - (21) Was a former licensee pursuant to this Ordinance whose License was suspended or revoked and not subsequently reinstated.
 - (22) Has demonstrated an inability to manage the Applicant's personal or business finances or demonstrates a sufficient indebtedness in relation to income so as to cause concern for the Applicant's ability to fulfill their responsibilities under this Ordinance.
- (b) Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a license if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if

the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, "controlling person" means a person who owns more than twenty-five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant

(c) Procedure for Suspension or Revocation

- (1) Upon reasonable basis for belief that a violation of the Ordinance has occurred, the Authority or its designee may either undertake an investigation of the Licensee, or serve upon such Licensee an order to show cause why the Licensee's License should not be suspended or revoked, or why the Licensee should not be enjoined from conducting Lending.
- (2) Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Authority pursuant to Section 4.17 herein.
- (3) The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a suspension, revocation order or injunction should not be issued.
- (4) The hearing shall be governed in all respects in accordance with Tribal law and Authority regulations. Any suspension or revocation decision of the Authority after hearing may be appealed in accordance with the provisions of Section 4.17.

5.5. Renewal.

- (a) Renewals. A Licensee shall petition to have the License renewed by applying to the Authority for a renewal before the License expires. Applicants may be required to provide updated material as requested.
- (b) Non-renewal. The Authority may deny renewal of a License or suspend or revoke a license if the Authority finds the existence of any circumstance listed in section 5.4.1 above, or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Authority to refuse to issue the License.

5.6. Voluntary Surrender of License. Any Licensee registered pursuant to this Ordinance may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority.

5.7. Assignment or Transfer. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Authority. The

Authority shall not give consent if the Authority finds that the acquiring Person does not meet the qualifications described in this Ordinance. For the purposes of this Subsection, "control means the power to vote more than twenty-five percent (25%) of the outstanding voting shares of a licensed corporation, partnership, association or trust.

- 5.8. Deposits of Fees and Assessments.** Application fees, renewal fees, late payment penalties, civil penalties, administrative fines and other fees or penalties provided for in this Ordinance shall in all cases be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Executive Council.

SECTION 6. LICENSEES

- 6.1. Compliance.** Licensees shall at all times comply with the provisions of this Ordinance, rules and regulations promulgated pursuant to this Ordinance, and all other applicable Tribal and federal laws.

6.2. Prohibited Acts by Licensees.

(a) A Licensee shall not engage in the business of Lending without first obtaining a License pursuant to this Ordinance. A separate License is required for each Location that the Lender Licensee operates. The Licensee shall post its License issued pursuant to this Ordinance at the location for which it is issued or, if the location is a website, said License shall be posted electronically on such website.

(b) A Licensee shall not:

- (1) Engage in any Lending other than that allowed under this Ordinance
- (2) Assess any interest and/or fee that is greater than the amount prescribed in this Ordinance.
- (3) Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.
- (4) Engage in unfair, deceptive or fraudulent practices.
- (5) Tie or otherwise condition the offering of Lending to the sale of any good or service.

- 6.3. Minimum Internal Control Systems.** Each Lender Licensee shall maintain a system of minimum internal controls systems as specified by regulation promulgated by the Authority.

6.4. Books, Accounts and Records, Examinations, Costs.

(a) A Lender Licensee shall maintain at each location at which it conducts

business all books, accounts and records that the Authority reasonably requires. The Lender Licensee shall:

- (1) Ensure that the books, accounts and records are sufficiently detailed to comply with the Ordinance and all applicable Tribal and federal laws.
 - (2) Maintain the books, accounts and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least three years.
- (b) The Authority shall examine or cause to be examined each Lender Licensee annually and more frequently if the Authority considers it necessary. In conducting such examination, the Authority or its agent may examine the books, accounts and records to determine if the Licensee has complied with this Ordinance and any implementing regulations adopted pursuant to this Ordinance. The Lender Licensee shall pay the cost of the examination as may be required by the Authority in accordance with its regulations.

6.5. Reports.

- (a) Annual Reports. Every Vendor Licensee shall file an annual report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Ordinance including, at a minimum, the following:
- (1) The name, address and telephone number of the Licensee;
 - (2) The names, addresses and titles of all of the current managers of the Licensee;
 - (3) A sworn statement that the Licensee has complied and will continue to comply with all Tribal and federal laws applicable to Lending; and
 - (4) The name, address and signature of the agent who will accept service of process on behalf of the Licensee.
- (b) Monthly Reports. Every Lender Licensee shall file a monthly report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Ordinance. The report shall include, at a minimum, the following information:
- (1) The name, address and telephone number of the Licensee;
 - (2) The names, addresses and titles of all of the current managers of

the Licensee;

- (3) A description of the Lending conducted, its Gross Revenue from the Lending operation, the number of borrowers served, a detailed description of any borrower complaints and other problems experienced by the Licensee, and a description of any substantive changes in management personnel or practices related to the Lending;
- (4) The number of full-time equivalent people, on an annualized basis, employed by the operation during the past twelve (12) months, together with a projection of the number of full-time equivalent people who are expected to be employed during the next license period;
- (5) A sworn statement that the Licensee has complied and will continue to comply with all Tribal and federal laws applicable to Lending; and
- (6) The name, address and signature of the agent who will accept service of process on behalf of the Licensee.
- (7) The name, address, and signature of the Person engaged by the Lender Licensee to perform the Lender Licensee's compliance function.

6.6. Audit requirements. A Lender Licensee shall provide to the Authority annually a copy of an independent audit, including such information and in a format required by the Authority.

6.7. Public Notice. Each Licensee shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any person at each authorized Lending site.

SECTION 7. LENDING TRANSACTIONS PERMITTED

7.1. Internet-based short term lending, amounts, fees, requirements.

- (a) A Lender may issue internet-based short term loans in an amount of at least fifty dollars (\$50.00) but not more than five thousand dollars (\$5,000.00), excluding the interest and fees permitted in this Section 7.
- (b) A Lender shall not charge a rate of interest greater than thirty-six percent (36%) simple interest per annum for any internet-based short term loan.
- (c) In making an internet-based short term loan, a Lender may accept an Electronic Debit Guarantee from the borrower.
- (d) A Lender shall not directly or indirectly charge any fee or other consideration for accepting a check for deferred presentment or deposit that is more than

thirty percent (30%) of the face amount of the Electronic Debit Guarantee for any initial transaction or any extension. The fee charged is not interest for purposes of Section 7.1(b).

- (e) For each Electronic Debit Guarantee that the Lender accepts, the Lender shall require the borrower to electronically sign a written agreement that contains the name or trade name of the Lender Licensee, the transaction date, the amount of the Electronic Debit Guarantee, the amount to be paid by the borrower, and a statement of the total amount of the fees charged, expressed as both a dollar amount and as an effective annual percentage rate, a disclosure statement that complies with federal truth in lending laws and a notice to the borrower as prescribed in Subsection 7.1(g) of this Section. The written agreement shall expressly require the Lender to defer presentment of the Electronic Debit Guarantee until a specified date that is no less than 3 days nor more than 30 days from the date of the transaction, subject to extension as provided below.
- (f) A Lender may enter into no more than three transactions secured by an Electronic Debit Guarantee with any borrower at any time.
- (g) The Lender shall provide a prominent notice on each written agreement specifying that no borrower may have outstanding more than three Electronic Debit Guarantees at one time and that the face amount, exclusive of any fees, cannot be more than five thousand dollars.
 - (1) A Lender shall ask every potential borrower whether that potential borrower has any outstanding Electronic Debit Guarantee to any other lenders.
 - (2) A Lender may rely on the borrower's representation of whether the borrower has any outstanding Electronic Debit Guarantee held by any other lenders.
- (h) A Lender must give each borrower the right to redeem the Electronic Debit Guarantee from the Lender before the agreed date of electronic debit if the borrower pays the Lender the amount of the Electronic Debit Guarantee.
- (i) A Lender may give each borrower the opportunity to extend the presentment of an Electronic Debit Guarantee not more than five consecutive periods of up to 30 days each. For each extension, the borrower and Lender Licensee shall terminate the previous agreement and electronically sign a separate agreement. The Lender may charge a fee as prescribed in Subsection 7.1(c) for each extension. During an extension, the Lender shall not advance any additional sums to the borrower.

- (j) If a borrower has completed a transaction with the Lender, the Lender may offer the borrower an opportunity to enter into a new agreement with the Lender. A transaction shall be deemed completed when the borrower's Electronic Debit Guarantee is presented for debit or is redeemed by the borrower.
- (k) If an Electronic Debit Guarantee is returned to the Lender from a payer financial institution due to insufficient funds, a closed account or a stop payment order the Lender may use all available civil remedies to collect on the check, including the imposition of a dishonored instrument service fee of no more than \$50 and/or a delinquent loan fee of up to three times the face value of the instrument.
- (l) In addition to the penalties described in Section 8, a Person may be subject to the following penalties for the violations described below:
 - (1) Except as the result of an accidental or bona fide error, if a Lender charges or contracts for an interest rate in excess of the rate specified in Subsection 7.1(b), the internet-based short term loan is voidable and the Lender has no right to collect or receive any interest or fees in connection with the transaction.
 - (2) Any internet-based short term loan that is made by a Person who is required to be licensed pursuant to this Ordinance, but who is not licensed, is void and the Person has no right to collect, receive or retain any principal, interest or fees in connection with that internet-based short term loan.
- (m) Additional Prohibited Acts. In addition to the acts described in Subsection 6.2(b) of this Ordinance, a Lender shall not:
 - (1) Advance monies on the security of an Electronic Debit Guarantee without first obtaining reasonable evidence that indicates the account on which the Electronic Debit Guarantee is to be drawn is an open and active account;
 - (2) Take possession of an undated Electronic Debit Guarantee or an Electronic Debit Guarantee dated on a date other than the date on which the Lender takes possession of the Electronic Debit Guarantee;
 - (3) Alter or delete the date on an Electronic Debit Guarantee accepted by the Lender unless authorized in writing by the borrower;
 - (4) Require a borrower to provide security on the transaction other than the Electronic Debit Guarantee or require the customer to provide a guaranty from another person; or

- (5) Offered internet-based short-term loans for a term of less than three days (3).
- (n) Location. For purposes of this Section 7.1, the term "location" or "a location" includes a website maintained for the purpose of participating in Lending pursuant to this Ordinance. Each website maintained by a Lender shall be considered a separate location.

7.2. Reserved.

SECTION 8. ENFORCEMENT

- 8.1. Jurisdiction.** Except as provided otherwise in this Ordinance, the Authority shall have jurisdiction over all violations of this Ordinance.
- 8.2. Guidelines.** In imposing any administrative remedy or civil penalty provided for in this Ordinance, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Person or Licensee charged, the gravity of the violation, the history or previous violations, and such other matters as justice may require.
- 8.3. Civil Violations.** Any Licensee or Person who violates or fails to comply with any provision of this Ordinance or who fails or neglects to comply with any final order of the Authority shall be charged with a violation and given due process pursuant to Section 4.17 herein. If the Licensee or Person is found to have committed a violation, he/it may be required to pay a civil fine not to exceed Five Thousand Dollars (\$5,000) for each violation. Each day during which any such violation or failure to comply continues shall constitute a separate violation of this Ordinance. The amount of any such civil fine may be recovered in a court of competent jurisdiction.
 - (a) An officer or agent of a business entity who participates in a violation of this Ordinance is subject to the penalties prescribed in this Section.
 - (b) A Licensee found responsible for a violation pursuant to this Section is subject to revocation of the Licensee's License.
- 8.4. Cumulative Fines.** All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.
- 8.5. Purpose of Civil Penalties.** The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe and the Tribe's Trust Land, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this

Ordinance are also intended to coerce all people into complying with this Ordinance and Authority regulations and not to punish such people for violation of such laws and regulations.

8.6. Civil Action for Penalties. In enforcing the civil infraction provisions of this Ordinance, the Authority may proceed, in the name of the Tribe against a Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Ordinance.

8.7. Seizure and Forfeiture of Property. Property utilized in violation of this Ordinance shall be subject to seizure and forfeiture by order of the Authority pursuant to such implementing regulations as the Authority shall promulgate.

SECTION 9. RESOLVING BORROWER DISPUTES

9.1. General Principles. The Tribe values its customers and intends, at all times, to see that questions, concerns, issues, and/or disputes raised by consumer borrowers are addressed in a fair and orderly manner. However, nothing in this Section shall be construed as a waiver of the Tribe's sovereign immunity or any of the rights and privileges attendant thereto.

9.2. Initial Dispute Resolution Procedure.

- (a) Consumer borrowers who, in the course of their otherwise lawful and proper use of a Lender's business, have concerns about the operation of any part of the Lender's operation that pertain to the borrower or who otherwise believe themselves to be aggrieved by some aspect of the operation of any part of the Lender's business shall direct their concerns or dispute in the first instance to the management of the Lender, either orally or in writing.
- (b) Upon learning about a dispute, a Lender shall notify the borrower of his or her right to contact the Authority about the dispute and his or her rights to pursue formal dispute resolution under Section 9.3. The Lender shall also expediently gather sufficient facts to make a determination about the dispute, the Lender shall inform the complainant, either orally or in writing, about its initial determination as soon as is reasonably practicable.

9.3. Formal Dispute Resolution Procedure.

- (a) In the event of a borrower dispute, complainants who have followed the initial dispute resolution procedure described in Section 9.2 and who are dissatisfied with a Lender's initial determination may request review of the initial determination by the Authority by submitting a request in writing no later than five (5) days after being informed about the initial determination.
- (b) The Authority may investigate the dispute in any manner it chooses. The Authority shall offer the complainant a fair opportunity to be heard in person or through counsel about the dispute, either before or after the Authority makes its own inquiries. The complainant's opportunity to be heard, if granted, shall

take place no less than five (5) days and no more than thirty (30) days after the Authority receives the complainant's written request.

- (c) After reviewing and/or investigating (if the Authority chooses), and within thirty (30) days after affording the complainant an opportunity to be heard (if the complainant chooses), the Authority shall issue a written opinion on the complainant's written request for review, and shall mail a copy of the opinion to the complainant at his/her last known address. The opinion shall inform the complainant that he or she may appeal the Authority's decision to the Executive Council pursuant to Section 4.17.

EXHIBIT C

Tribal Lending Regulatory Ordinance (2015)

**THE HABEMATOLEL POMO OF UPPER LAKE
TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY
ORDINANCE**

(As amended and enacted on December 29, 2015)

Section 1. FINDINGS, INTENT AND POLICY

1.1 Findings. The Executive Council of the Habematolel Pomo of Upper Lake, the primary governing body of the Tribe, finds that:

(a) The Tribe desires to expedite the development of the economy of the Tribe 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.

(b) The United States Congress has recognized and enacted legislation such as the Native American Business Development, Trade Promotion and Tourism Act (25 U.S.C. §§ 4301 et seq.) and other legislation which recognizes the federal policy and Congressional intent "to promote economic self-sufficiency and political self-determination for Indian tribes" through offering services from Indian Country.

(c) Due to its remote location, the Tribe has determined that it can best meet its members' needs through offering goods and services by participating in the world of electronic commerce. Electronic commerce (or e-commerce) is defined by the Tribe as the purchase of goods and services located on Tribal Trust Land through internet.

(d) Specifically, the Tribe has determined that it can offer Consumer Financial Services from its Trust Land which will constitute a legitimate means of generating revenue to address the aforementioned pressing needs of Tribal members and furthering the Tribe's goal of self-sufficiency and self-determination as endorsed by the United States Congress.

(e) The Tribe wishes to 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 jurisdiction.

(f) Through offering services to customers visiting the Tribe's jurisdiction through electronic commerce, the Tribe has identified that certain data (Personal Information and other Consumer Data as defined in Section 2) is provided by prospective customers to Tribal Entities headquartered within the Tribe's Indian Country directly by the customer or through Third Party Data Providers. The Tribe recognizes the need to insure adequate protections and regulation of Consumer Data within the Tribe's jurisdiction.

(g) 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.

(h) Tribal regulation and control of Consumer Data within the jurisdiction of the Tribe is essential for the protection of the public welfare and the integrity of Tribal entities offering services from the Tribe's Indian Country.

(i) It is essential that the Tribal government regulate Consumer Financial Services in a manner commensurate with Tribal law and policy, and applicable federal law.

(j) It is essential that the Tribal government monitor and regulate Consumer Data and those parties who provide such data within Tribal jurisdiction to insure that data collection, data distribution, data integrity, data privacy, and data security meet all Tribal laws and applicable federal laws.

(k) It is essential that public confidence in Consumer Financial Services that take place within the Tribe's jurisdiction be cultivated and maintained.

(l) Adoption of a Tribal Consumer Financial Services Regulatory Ordinance by the Executive Council is a necessary condition for the legal operation of Consumer Financial Services within the Tribe's Trust Land and is in the best interest of the Tribe.

(m) Establishment of a Tribal Consumer Financial Services Regulatory Commission (the "Commission") to implement the purpose and intent of the Tribal Consumer Financial Services Regulatory Ordinance within the Tribe's Trust Land is in the best interest of the Tribe.

1.2 Intent. The Executive Council, on behalf of the Tribe, declares that the intent of this Ordinance is to:

(a) Diversify and expedite the development of the economy of the Tribe's Trust Land for the purposes described in Section 1.1(a) above.

(b) Define general regulatory powers to be exercised by the Commission in relation to the regulation, control, and oversight of Consumer Financial Services offered from the Tribe's Trust Land and the regulation and protection of Consumer Data within the Tribe's jurisdiction as part of the Tribe's initiative to diversify and enhance the Tribe's economy and the Tribe's government as described in Section 1.1 above.

(c) Ensure that all tribal net revenues from Processing and from Consumer Financial Services are used for the benefit of the Tribe and the Tribe's community.

(d) Ensure that Consumer Data within the Tribe's jurisdiction is handled appropriately by Licensees owned by the Tribal government and Tribal economic arms and remain free from corrupt, incompetent, unconscionable and dishonest practices.

(e) Ensure that Consumer Financial Services are conducted appropriately by Licensees owned by the Tribal government and remain free from corrupt, incompetent, unconscionable and dishonest practices.

(f) Protect the interests of the public in the offering of Consumer Financial Services and in the Processing of Consumer Data.

(g) Ensure the maintenance of public confidence in Tribal treatment of Personal Information and in Consumer Financial Services practices.

(h) Ensure that the Tribe provides a Tribal-based forum for the fair and orderly resolution of Consumer Data disputes and Consumer Financial Services disputes consistent with the Tribe's preservation of sovereign immunity.

(i) Ensure that laws and regulations regarding Consumer Data are fairly enforced by the Tribe upon Licensees dealing with Consumer Data.

(j) Ensure that laws and regulations regarding Consumer Financial Services are fairly enforced by the Tribe upon Consumer Financial Services Licensees involved in Tribal Consumer Financial Services.

1.3 Policy.

(a) Tribal Policy of Self-Government. The Tribe is firmly committed to the principle of Tribal self-government. Revenues from Processing of Consumer Data and Consumer Financial Services shall be utilized and expended only for the benefit of the Tribe with the following purposes:

- (1) To fund the Tribe's government operations or programs.
- (2) To provide for the public health and general welfare of the Tribe and its members and visitors to the Tribal community.
- (3) To promote Tribal economic development and self-sufficiency.
- (4) To donate to charitable organizations.

(b) Tribal Consumer Financial Services Policy. The establishment, promotion and operation of Consumer Financial Services are necessary, provided that such Consumer Financial Services are regulated and controlled by the Tribe pursuant to this Ordinance and the tribal net revenues of such Consumer Financial Services are used exclusively for the benefit of the Tribe.

(c) Tribal Consumer Data Processing Policy. The Tribe shall license and monitor all Tribal entities engaging in Processing within the Tribe's jurisdiction, provide a forum for any complaints, and consider regulations from time to time.

(d) Responsibility for Regulation of Consumer Financial Services. The Tribe shall have the sole responsibility for the regulation of Consumer Financial Services authorized by this Ordinance.

(e) Responsibility for Regulation of Processing. The Tribe shall have the sole responsibility for the regulation of Processing within Tribal jurisdiction.

(f) Consumer Financial Services Authorized. Consumer Financial Services that are subject to licensing under this Ordinance are authorized and permitted only as described in this Ordinance and any implementing regulations promulgated by the Commission.

(g) Processing Authorized. Processing by Tribal entities is subject to registration and licensing under this Ordinance, and are authorized and permitted only as described in this Ordinance and any implementing regulations promulgated by the Commission.

Section 2. DEFINITIONS

In this Ordinance, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

2.1 “Aggregated Data” means Consumer Data that describes groups of individuals by general characteristics, is not Personal Information and which, within individual Records, or taken as a whole, does not reveal the identity of any Consumer Data Subject.

2.2 “Applicant” means any Tribal Entity who has applied for a License under the provisions of this Ordinance.

2.3 “Application” means a request for the issuance of a License under the provisions of this Ordinance.

2.4 “Business Day” means all calendar days except Sundays and legal public holidays.

2.5 “Closed end credit” means the extension of credit by a Consumer Financial Services Licensee to a consumer pursuant to an arrangement or agreement which is not a revolving credit plan.

2.6 “Collect” means to conduct the initial gathering and recording of Consumer Data regarding Consumer Data Subjects, whether or not the Consumer Data constitutes Personal Information.

2.7 “Commission” means the Tribal Consumer Financial Services Regulatory Commission.

2.8 “Commissioner” means a natural Person appointed by the Executive Council of the Tribe pursuant to Section 4.5 of this Ordinance to perform the duties of the Commission.

2.9 “Consumer” means an individual who acquires goods, services, or credit primarily for personal, family or household purposes. The term does not include an individual who acquires goods, services, or credit primarily for business, commercial, gaming, or investment purposes.

2.10 "Consumer Financial Services" means the business of providing credit related services to a Consumer in exchange for consideration.

2.11 "Consumer Data" means all data regarding a potential Consumer Collected or obtained by a Licensee or received pursuant to a Transfer, whether Personal Information, Aggregated Data, or additional incidental data.

2.12 "Consumer Data Licensee" means a Tribal Entity that is Licensed to engage in Processing within Tribal jurisdiction.

2.13 "Consumer Data Subject" means an individual to whom Personal Information relates.

2.14 "Consumer Financial Services Licensee" means an Eligible Lender that is Licensed by the Commission to provide Consumer Financial Services.

2.15 "Conversion" means the permanent conversion of Personal Information to produce Records from which a Consumer Data Subject can no longer be individually identified.

2.16 "Eligible Lender" means any Tribal Entity that is eligible for a License to provide Consumer Financial Services.

2.17 "Eligible Data Purchaser" means (a) any Third Party offering Consumer Financial Services that certifies to a Licensee that it follows either NAFSA or OLA best practices, or (b) another Third Party offering services outside Consumer Financial Services that agree to meet, at a minimum, all applicable federal consumer protection and data privacy laws.

2.18 "Executive Council" means the Habematolel Pomo of Upper Lake Executive Council, the primary governing body of the Tribe as defined and described in Articles IV and X of the Tribe's Constitution.

2.19 "License" means the official, legal and revocable License issued by the Commission. A License granted by the Commission is a revocable privilege subject to revocation in accordance with this Ordinance.

2.20 "Licensee" means either a Consumer Financial Services Licensee, a Tribal Entity, or Consumer Data Licensee.

2.21 "Loan" means any extension of closed end credit in connection with a Consumer Financial Services transaction.

2.22 "Ordinance" means this Tribal Consumer Financial Services Regulatory Ordinance.

2.23 "Person" will mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust, limited liability company, or other entity.

2.24 "Personal Information" means any information by which the identity of a Person could be revealed. Examples of Personal Information include, but are not limited to name, address, and telephone number, date of birth, social security number, email address, financial account information, or any combination thereof.

2.25 "Processing" means any operation or set of operations by a Licensee that is performed on Personal Information, whether or not by automatic means, including, without limitation, any Collection, Transfer, recording, organization, storage, adaptation, alteration, retrieval, consultation, use, disclosure, sale, transmission, dissemination, combination, blocking, erasure or destruction thereof.

2.26 "Record" means information that held by a Licensee and is inscribed on a tangible medium or is stored in an electronic or other medium and which is retrievable in perceivable form.

2.27 "Right of Rescission" means the right to return any amount borrowed, in full, on or before the close of business of the Business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

2.28 "Rollover" means, with respect to any Short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

2.29 "Security Controls" means any controls that are used to regulate access to, or prevent the alteration, loss, or destruction of, any Consumer Data

2.30 "Short-term consumer loan" means a loan of \$2,000 or less made to an individual consumer that charges interest and/or fees for which the stated repayment period is less than 365 days and is not secured by title to a motor vehicle.

2.31 "Third Party" for the purposes of this Ordinance, means any Person that is not a Tribal Entity, and in the case of a natural individual, means one who is not an enrolled member of the Tribe.

2.32 "Third Party Data Provider" means a Third Party that owns or controls Consumer Data that has certified in writing to a Licensee that it has met all applicable federal and state laws required for Processing of the Consumer Data.

2.33 "Transfer" means a transfer or group of transfers of any Consumer Data, whether by electronic or other means.

2.34 "Transferor" means the party who initiates the Transfer.

2.35 "Tribal Consumer Financial Services Regulatory Commission" or "Commission" means the regulatory authority established and described in Section 4 of this Ordinance.

2.36 "Tribal Data Portal" means the point of entry to Tribal Entities operating within Tribal jurisdiction Tribal Entity.

2.37 "Tribal Entity" means any Person wholly owned and controlled by the Tribe.

2.38 "Tribe" means the Habematolel Pomo of Upper Lake.

2.39 "Trust Land" means that land within the Tribe's jurisdiction that is held in trust by the federal government for the benefit of the Tribe.

2.40 "Workout Agreement" means an agreement with respect to a short-term consumer loan between an individual consumer and a Consumer Financial Services Licensee for the repayment of an outstanding and unpaid indebtedness which requires a net reduction of not less than 10% of such indebtedness per payment period.

Section 3. GENERAL PROVISIONS

3.1 Legislative Authority and Parameters. This Ordinance is enacted pursuant to the inherent sovereign powers of the Habematolel Pomo of Upper Lake and in accordance with the Tribe's Constitution and the interstate and Indian commerce clauses of the United States Constitution. All Consumer Data is considered to be in interstate commerce before it enters Tribal jurisdiction, and the Tribe, in keeping with United States Constitutional parameters does not assert jurisdiction over Consumer Data until it enters Tribal jurisdiction pursuant to Section 9 of this Ordinance and is considered Indian commerce at that time.

3.2 Construction. In construing the provisions of this Ordinance, the following shall apply:

(a) The provisions of this Ordinance, being necessary for the benefit of the Tribe and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice and protection of Consumers.

(b) The Findings, Intentions, and Policies stated in Section 1 constitute the standards to be observed by the Commission in the exercise of its discretionary powers under the Ordinance, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Ordinance required for any determination or action by the Commission.

(c) No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Commission shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

(d) Words of the masculine gender or neuter include masculine and feminine genders and are the neuter.

(e) Words in the present tense include the future and past tenses.

(f) Words in the singular number include the plural, and words in the plural number include the singular.

3.3 Severability. If any section of this Ordinance is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

3.4 Effective Date. This Ordinance shall take effect and be in full force and effect from and after the date of its final passage and approval by the Executive Council.

Section 4. TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY COMMISSION

4.1 Establishment and Purpose. The Executive Council hereby creates and establishes the Tribal Consumer Financial Services Regulatory Commission, a division of the Tribe's government. The Commission has charge of the implementation of the Ordinances and regulations of the Tribe relating to the Tribe's Consumer Financial Services business activities and the treatment of Consumer Data and associated licensing requirements.

4.2 Location and Place of Business. The Commission will maintain its headquarters, principal place of business and office within the Tribal government offices or such other location as may be dictated by the Executive Council.

4.3 Attributes. The Commission is a governmental subdivision of the Tribe. The Commission shall operate to protect Consumers independently of the Executive Council regarding Consumer Financial Services and Processing conducted from within the Tribe's jurisdiction.

4.4 Sovereign Immunity of the Commission.

(a) Immunity from Suit. As part of the Tribe's government, the Commission possesses all the privileges and immunities of Tribal sovereignty as established by Tribal law and recognized by federal law.

(b) No Waiver. Nothing in this Ordinance nor any action of the Commission shall be deemed or construed to be a waiver of sovereign immunity of the Tribe from suit or counterclaim or a consent of the Tribe to the jurisdiction of any court.

4.5 Commissioners.

(a) Appointment. The Executive Council shall appoint at least one (1) and as many as three (3) Commissioners. The Executive Council may, by resolution, increase the number of Commissioners as it deems necessary to conduct the governmental operations of the Commission. Any Commissioner shall serve a term of three (3) years unless otherwise replaced or removed by the Executive Council. A Commissioner may serve consecutive terms at the discretion of the Executive Council. At least one-half of the Commissioners must be enrolled members of the Tribe.

(b) Compensation. The compensation of the Commissioners shall be established from time to time by the Executive Council.

(c) Duties. The Commissioners shall have the following responsibilities:

- (1) Oversee and have responsibility for the day-to-day operations of the Commission, including supervision of Commission employees and any experts hired by the Commission;
- (2) Conduct or oversee the conduct of any meetings or hearings held by the Commission in accordance with this Ordinance or further directive of the Executive Council.
- (3) Exercise the powers enumerated in Section 4.9 herein as needed and at its discretion.

(d) Commissioner Qualifications. Any person appointed as a Commissioner shall be at least twenty-one (21) years of age; show proof of high school diploma or equivalent; possess expertise, experience, education or a combination thereof in lending, finance, management, business, governmental regulation, law, and/or Tribal policy; and, in the Executive Council's sole opinion, the organizational abilities to effectively manage the business of the Commission and make decisions on behalf of the Commission. No person shall serve as a Commissioner if that person has a criminal record; has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction; or, in the Executive Council's sole discretion, has reputation, habits or associations that could undermine the integrity of the Commission or its role in protecting Consumers.

4.6 Meetings, Quorum and Decision Making. The Commission shall meet as needed or upon the request of the Executive Council. At least half of the Commissioners present shall represent a quorum and all decisions must be made by simple majority vote.

4.7 Prohibited Acts. The Commissioners, Commission employees and consultants to the Commission shall not do any of the following with respect to any Licensee under the jurisdiction of the Commission:

(a) Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Commission and is fully disclosed to the Commission.

(b) Be an officer, director, or employee of any Licensee.

(c) Own, directly or indirectly, the shares or obligations of any entity which provides goods or services to a Licensee.

(d) Receive from any Licensee or any officer, director, or employee of any Licensee any salary, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise (excluding any item with a *de minimis* dollar value

that is less than \$100); except that a Commissioner or Commission employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Licensee and is distributed among all eligible Tribal members by virtue of membership in the Tribe.

4.8 Removal of Commissioner / Vacancy.

(a) **Removal.** A Commissioner may be removed by the Executive Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of the Commission or violates the letter or intent of this Ordinance. The decision of the Executive Council concerning removal of a Commissioner shall be final.

(b) **Vacancy.** If a Commissioner dies, resigns, is removed or for any reason is unable to serve as a Commissioner, then the Executive Council shall declare his or her position vacant and shall appoint another qualified person to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace a Commissioner shall be for the balance of the unexpired term for the position.

4.9 Powers of the Commission. The Commission has the authority and responsibility for the discharge of all duties imposed on the Commission by law and this Ordinance. In furtherance, but not in limitation of, the Commission's purposes and responsibilities, and subject to any restrictions contained in this Ordinance or other applicable law, the Commission shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Ordinance:

(a) 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.

(b) To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Commission considers it necessary.

(c) To make or cause to be made reasonable investigations of any Licensee or any employee of a Licensee as it deems necessary to ensure compliance with this Ordinance or any order of the Commission; to determine whether any Licensee has engaged, is engaging or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Ordinance or any order of the Commission; and to aid in adopting rules or regulations pursuant to this Ordinance.

(d) To establish procedures designed to permit detection of any irregularities, fraud, or the like.

(e) To employ support personnel, and professional advisors and employees to perform roles or responsibilities as it may deem necessary. Professional advisors and employees may include, but are not limited to, lawyers, accountants, law enforcement specialists and financial services professionals, and regulatory examiners.

(f) To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of any and all Applicants.

(g) To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee, agent, officer or employee of any Licensee, or any other witness with respect to any matters related to this Ordinance and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Commission may apply to a court of competent jurisdiction to compel appearance or production.

(h) To grant confidentiality protection for any information obtained from any Licensee under the power of the Commission.

(i) To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee engaging or participating in, or suspected to be engaging or participating in, activities regulated by this Ordinance.

(j) To discipline any Licensee or Person engaging or participating in activities that are in violation of this Ordinance by ordering immediate compliance, issuing fines and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section 4.13 of this Ordinance.

(k) To arbitrate, compromise, negotiate or settle any dispute relating to the Commission's authorized activities, subject to any approval of the Executive Council that may be required by the Executive Council.

(l) To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records; and to impose the foregoing fees as applicable.

(m) To make such findings and issue such orders as may be necessary to implement the Commission's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

(n) To provide for the fair disposition of Consumer complaints.

4.10 Investigations, Right of Entrance.

(a) Investigations. The Commission, upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or any Person engaging or suspected to be engaging in Consumer Financial Services or Processing of Consumer Data within the Tribe's jurisdiction.

(1) In undertaking such investigations, the Commission may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.

(2) In conducting such investigation, the Commission shall make no order or final decisions without affording any affected Person notice and a hearing pursuant to Section 4.13 of this Ordinance.

(b) Right of Entrance. The Commission and duly authorized employees or agents of the Commission, during regular business hours, may reasonably enter upon any premises of any Licensee or Person engaging in or suspected to be engaging in Consumer Financial Services or Processing of Consumer Data within Tribal jurisdiction for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee or Person.

(c) Aid to Entry. The staff of the Licensee or Person engaging in or suspected to be engaging in Consumer Financial Services or Processing of Consumer Data shall facilitate such inspection or examinations by giving every reasonable aid to the Commission and to any properly authorized officer or employee.

4.11 Annual Budget. The Commission shall prepare an annual operating budget for all Commission activities and present it to the Executive Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

4.12 Reports to the Executive Council. Upon request of the Executive Council, the Commission shall file a report with the Executive Council summarizing reports received from each Licensee and make such comments as it deems necessary to keep the Executive Council fully informed as to the status of the Commission's activities. The Commission may provide such reports to Executive Council at any time. All such reports shall be marked "Proprietary and Confidential Information", and the Commission and the Executive Council shall take necessary precautions to preserve the confidentiality of such reports.

4.13 Notice of Violation, Opportunity to Cure; Due Process; Hearings; Examiner. The Commission may issue a Notice of Violation to any Licensee or Applicant upon reasonable evidence that the Licensee or Applicant is not in compliance with this Ordinance or an order of the Commission. The Notice of Violation will explain the noncompliance and either (i) provide the Licensee or Applicant a reasonable timeframe to cure the violation, (ii) suspend the Licensee's license and allow an opportunity for the Licensee to request a hearing to dispute the violation and suspension, or (iii) deny an application. If the violation is not cured within the given time period, the Commission may issue an order suspending the Licensee's license or denying the Applicant's application. The Licensee or Applicant may request a hearing to dispute the violation, suspension, or order.

(a) Voluntary Resolution. Whenever the Commission is satisfied that a violation has been cured by agreement of all the interested parties, the Commission may dismiss any violation or rescind any order and approve the resolution of the issue, as appropriate, without a hearing.

(b) Request for Hearing. A Licensee or Applicant may request a hearing in writing within 21 days after an order is entered. The request must include the specific reasons the Licensee or Applicant contests the violation or order. The Licensee or Applicant must specifically respond to the Commission's description of circumstances surrounding the violation as explained in the Notice of Violation. A Licensee's request for hearing will delay enforcement of the Licensee's suspension or other enforcement action taken by the Commission until the Commission issues a decision and order after a hearing.

(c) Notice of Hearing. Either on its own or by request, the Commission may issue a Notice of Hearing that sets forth, with specificity, the issues to be resolved. The Notice of Hearing will specify the date, time, and location for the hearing. Unless exigent circumstances exist or unless waived by the Licensee or Applicant, notice must be served to the Licensee or Applicant at least 10 days before a hearing is scheduled.

(d) Hearing. The full Commission will preside over all hearings. At the hearing, the affected parties have the opportunity to make opening and closing statements, to present oral and written evidence, to challenge evidence presented by other parties, and to request relief. The Commission may promulgate additional rules to govern hearings. The Commission must conduct a hearing within six (6) months after a Notice of Violation is issued or the violation is abrogated.

(e) Examiner. The Commissioners shall act as examiner for the purpose of holding any hearing, or the Commissioners may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Commission under this Ordinance with respect to any such hearing. An appointed examiner may not participate in the Commission's decision on the matter.

(f) Decision. The Commission shall issue a written decision to all affected parties within a reasonable time after the hearing.

(g) Appeals. A Licensee or Applicant may appeal a Commission's final decision by filing a written appeal with the Executive Council within twenty (20) days after the Commission issued the final written decision. Within ten (10) days of receipt of such appeal, the Executive Council may preside over the appeal or refer the appeal to a third party independent arbitrator for a final decision. The Commission may promulgate rules to govern an independent arbitrator's review of a final decision.

4.14 Promulgation of Regulations. The Commission may promulgate regulations as follows:

(a) The Tribe, Commission, or Licensee may propose a regulation by submitting a written draft to the Commission;

(b) The Commission will review the proposal to ensure it does not conflict with this Ordinance or any applicable law;

(c) The Commission will notify the Tribe and any Licensee that may be affected by the proposed regulation by means reasonably calculated to inform the Tribe and Licensees of the proposed regulation;

(d) For thirty days after notice of the proposed regulation, the Tribe and Licensees may submit written comments on the proposed regulation that either support, oppose, or suggest amendments.

(e) After thirty days:

(1) if the proposed regulation is unopposed, it will be promulgated and implemented as required by Section 4.9(a);

(2) if the proposed regulation is opposed, the Commission may abandon the proposed regulation, amend the proposed regulation and re-notify the Tribe and Licensees, conduct a hearing on the proposed regulation for additional input, or present the proposed regulation to the Executive Council, along with all comments, for Executive Council approval or rejection.

(f) The Executive Council may promulgate a regulation at any time regardless of this promulgation procedure.

Section 5. CONSUMER FINANCIAL SERVICES LICENSES

5.1 Applicability. 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. Any entity or Person who engages in Consumer Financial Services without charging or collecting interest or other consideration for a transaction or charges or collects nominal or incidental consideration is not required to obtain a Consumer Financial Services License to engage in Consumer Financial Services, but is required to otherwise comply with any applicable provisions of the Ordinance. This Section does not apply to exempt Persons identified by Section 6.

5.2 Application Procedure.

(a) Submission to Commission. An Applicant seeking a Consumer Financial Services License shall submit an Application to the Commission on such form as the Commission may require.

(b) Application Contents. At a minimum, the Application shall contain the following information:

(1) The Applicant's officers and/or directors, senior management employees, and executive staff;

(2) For each Person disclosed on the Application pursuant to Sections 5.1(b) above, an Applicant shall include (i) each Person's

criminal and civil record, if any, (ii) an explanation of any crimes for which he has been convicted or civil suits in which a judgment has been entered against him or to which he has entered a plea of no contest in any jurisdiction, and (iii) a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant within the last ten (10) years (provided for that for any crime involving financial fraud the reporting ten-year time limit does not apply). The Applicant shall provide written permission giving the Commission or its designees the right to conduct a criminal and background check on the Applicant; and

- (3) A sworn statement that if the Applicant is issued a Consumer Financial Services License, then the Applicant will submit to the jurisdiction of the Tribe; the Applicant will abide by all applicable Tribal and Federal laws, regulations and policies; and the information submitted by the Applicant in the Application is true and correct to the best of the Applicant's knowledge.
- (4) Each Application shall be accompanied by an application fee, the amount of which shall be set by the Commission.

5.3 License Review, Issuance and Denial, Term.

(a) Issuance. Upon completion of any necessary background investigation, the Commission may issue a License on a conditional or unconditional basis. Subject to section (d), the Commission shall have the final word on whether to issue a License to an Applicant. Unless exigent circumstances exist, the Commission shall issue a License when the following criteria are met, or issue a denial as to why the Applicant does not meet the criteria:

- (1) The Applicant complied with the provisions of Section 5.2;
- (2) No officer and/or director; senior management employee, or executive of the Applicant has been, in any jurisdiction, charged with a felony or any other crime involving breach of trust or dishonesty; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
- (3) The Consumer Financial Services or Processing contemplated by the Applicant are authorized pursuant to this Ordinance;
- (4) The Consumer Financial Services or Processing contemplated by the Applicant are authorized by an Executive Council Resolution; and

- (5) The Applicant for a Consumer Financial Services License is an Eligible Lender; and the Applicant for a Consumer Data License is a Tribal Entity.

(b) Temporary Consumer Financial Services License. The Commission may, in its discretion, grant a Temporary Consumer Financial Services License after submission of a completed application and a preliminary determination of suitability by the Commission. A Temporary Consumer Financial Services License is valid for 60 days. The Commission may grant a 60-day extension.

(c) No Property Rights Created. Nothing herein creates a property right in any License. Any License issued under this Ordinance is revocable without compensation of any kind as provided by this Ordinance. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Commission.

(d) Denial. When the Commission does not license an Applicant, it shall notify the Applicant in writing, provide the basis for the denial, inform the Applicant of the right to a hearing to contest the denial, and otherwise comply with the procedural requirements of Section 4.13 of this Ordinance.

(e) Term. Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance.

(f) License Substance and Classification. The Consumer Financial Services License shall bear on its face the name of the Licensee, the Tribal logo, the issue date, the license number, and the applicable classification of the License. Subject to this Ordinance, the Commission may issue Licenses that authorize a Licensee to provide all types of Consumer Financial Services under this Ordinance or a limited-purpose License that only authorizes certain types of Consumer Financial Services under this Ordinance. Each Consumer Financial Services License shall specify its scope.

(g) Records Retention. The Commission shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of employment.

5.4 License Denial, Suspension or Revocation of License.

(a) Denial; Suspension or Revocation. The Commission shall not unreasonably withhold issuance or renewal of a License. The Commission may deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section 4.13, if the Commission finds that an Applicant or Licensee:

- (1) Fails to correct a violation or request a hearing within the time allowed by a Notice of Violation;
- (2) Failed to pay initial Application or other applicable fees;

- (3) Made a material misstatement or omission on the Application or on any document required to be filed with the Commission;
- (4) Withheld or provided incomplete or insufficient pertinent information other than on an Application;
- (5) Employs officers or director or other key employees that are not a person of honesty, truthfulness or good character;
- (6) Violated or aided, abetted, or conspired in any way or knowingly or knowingly caused any Licensee or person to violate this Ordinance or the rules and regulations of the Commission;
- (7) Participated in any activity that is not authorized by the License, or this Ordinance;
- (8) Knowingly falsified books or records that relate to a transaction connected with the operation of Consumer Financial Services or Processing of Consumer Data;
- (9) Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Ordinance or to substantiate, by the Commission, compliance with this Ordinance;
- (10) Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;
- (11) Is insolvent;
- (12) Any officer of a Licensee is charged in any jurisdiction with a crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
- (13) Any officer of a Licensee has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;
- (14) Employed any person in a Consumer Financial Services business (or, in the case of Processing of sensitive Personal Information) whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;
- (15) Refused to comply with any lawful order, inquiry or directive of the Commission or the Executive Council;

- (16) Attempted to bribe or offer something of value to any person, Executive Council member, or a Commissioner in an attempt to avoid or circumvent Tribal law;
- (17) Stole or attempted to steal funds or other items of value from the Commission or the Tribe;
- (18) Poses a threat to the public interest or the effective regulation of Tribal Consumer Financial Services or Processing of Consumer Data; or
- (19) Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Tribal Consumer Financial Services or Processing of Consumer Data.

5.5 Renewal & Fees.

(a) Renewals. A Licensee may submit a renewal application to have the License renewed by the Commission before the License expires. The Commission may require Applicants to provide updated material and pay an annual renewal fee.

(b) Non-renewal. The Commission may deny renewal of a License if the Commission finds the existence of any circumstance listed in section 5.4(a), or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Commission to refuse to issue the License. A Licensee may request a hearing pursuant to section 4.13 to contest the Commission's non-renewal of a Licensee.

(c) Fees. The Commission may charge an annual renewal fee to all Licensees generating revenue. The aggregate amount of the annual renewal fee assessed to all Licensees shall not exceed the reasonable operating budget of the Commission for that year. Additionally, with thirty (30) days' notice to affected Licensees, the Commission may make a special assessment fee charged to all or one of the Licensees designed to provide for unbudgeted costs to the Commission such as third party assistance with auditing. All fees assessed by the Commission shall be assessed against Licensees in a non-discriminatory manner and may be based on revenue generated and/or volumes.

5.6 Voluntary Surrender or Lapse of License. Any Licensee may voluntarily surrender its License at any time by giving written notice of the surrender to the Commission. A Licensee may allow its License to lapse by not submitting a renewal application.

5.7 Deposits of Fees and Assessments. All fees, late payment penalties, civil penalties, administrative fines, and other fees or penalties provided for in this Ordinance shall in all cases be paid directly to the Commission. The Commission shall deposit such proceeds into an account or fund designated by the Executive Council.

Section 6. EXEMPTIONS

6.1 Applicable Exemptions. The following persons or entities are subject to Section 7.2 but otherwise exempt from any other provision or application of this Regulatory Ordinance:

- (a) Any third-party provider of products or services in support of a Licensee business not provided directly to a Licensee;
- (b) Any national or state chartered bank that is insured by the Federal Deposit Insurance Corporation or any subsidiary thereof;
- (c) Any other federal insured financial institution and any of their subsidiaries;
- (d) Any credit bureau or similar third-party service provider subject to oversight and regulatory control by the federal government;
- (e) Any Person participating in future revenues of Loans issued by a Consumer Financial Services Licensee;
- (f) Any Person providing a funding source or access to a revolving credit line to allow a Consumer Financial Services Licensee to have access to funds to make Loans to Consumers;
- (g) Any Person providing customer service or software support to a Licensee;
- (h) Any employee of the above.

Section 7. LICENSEES

7.1 Compliance in General. Licensees of any type shall at all times comply with the provisions of this Ordinance, rules and regulations promulgated pursuant to this Ordinance, and all other applicable Tribal, and federal laws as applicable.

7.2 Federal Consumer Protection Laws. A Licensee of any type shall conduct business in a manner consistent with principles of federal consumer protection law, including, without limitation, the following, as applicable: Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493; Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and related regulations at 12 C.F.R. Part 226; Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*, and related regulations at 12 C.F.R. Part 213; Fair Credit Billing Act, 15 U.S.C. § 1666a; Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and related regulations at 15 C.F.R. Part 202; Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and related regulations at 12 C.F.R. Part 205; Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and related regulations at 12 C.F.R. Part 222); privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*, and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and related regulations at 16 C.F.R. Part 901; Talent Amendment, 10 U.S.C § 987, and related regulations of the Department of Defense at 32 C.F.R. part 232; the Telephone Consumer Protection Act of 1991 at 47 U.S.C 227, and related

regulations at 47 C.F.R. §64.1200; the Telemarketing Sales Rule at 16 C.F.R. §310; Section 5 of the Federal Trade Commission Act at 15 U.S.C. §45(a); and Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596, provided that for any provision in which a state is mentioned, the Tribe shall be considered the only state applicable for the purposes of that provision.

7.3 Prohibited Acts by Licensees.

(a) An Eligible Lender shall not engage in Consumer Financial Services subject to this Ordinance without first obtaining a Consumer Financial Services License pursuant to this Ordinance.

(b) A Tribal Entity shall not engage in Processing subject to this Ordinance without first obtaining a Consumer Data License pursuant to this Ordinance.

(c) A Consumer Financial Services Licensee shall not:

- (1) Engage in any Consumer Financial Services other than those allowed under this Ordinance.
- (2) Assess any interest, fee, or charge fee that is greater than any applicable limitation, if any, prescribed under regulations issued pursuant to this Ordinance.
- (3) Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.
- (4) Engage in unfair, deceptive or fraudulent practices.
- (5) Tie or otherwise condition the providing of Consumer Financial Services to the sale of any good or service by the Licensee.
- (6) Engage in the sale or transfer of Consumer Data to any Third Party except as permitted by Section 9.7 of the Ordinance.

7.4 Compliance Management System. Each Licensee will maintain a compliance management system, or other appropriate control, to ensure compliance with this Ordinance, promulgated regulations, and applicable federal law.

7.5 Books, Accounts and Records, Examinations, Costs. A Licensee shall maintain at each location at which it conducts business all books, accounts and records that the Commission reasonably requires. Each Licensee shall (i) ensure that the books, accounts and records are sufficiently detailed to comply with the Ordinance and all applicable Tribal and federal laws; (ii) maintain the books, accounts and records separately from any other business in which the Licensee is engaged; and (iii) shall retain the books, accounts and records for at least three years.

7.6 Reports.

(a) Annual Reports. By April 1 of each calendar year after a full year operations, the Licensee shall file a confidential annual report with the Commission in a time and manner specified by the Commission. Each report shall contain information specified by the Commission sufficient for the Commission to determine compliance with this Ordinance including, at a minimum, the following:

- (1) The name, address and telephone number of the Licensee;
- (2) The names, addresses and titles of all of the current managers of the Licensee;
- (3) A sworn statement that the Licensee, to the best of its knowledge, has complied and will continue to comply with all Tribal and federal laws applicable to Consumer Financial Services and/or Processing, as the case may be; and
- (4) The name and address of the agent who will accept service of process on behalf of the Licensee.

7.7 Audit requirements. Each Licensee shall provide the Commission access to a copy of their financial statements which may be audited or unaudited upon the request of the Commission. All such information shall be considered confidential and proprietary.

7.8 Public Notice. Each Licensee of any type shall have a copy of this Ordinance and any implementing regulations readily available for inspection by any person.

Section 8. CONSUMER FINANCIAL SERVICES TRANSACTIONS – CLOSED END CREDIT

8.1 General Authority. Subject to this Ordinance, a Consumer Financial Services Licensee may engage in the business of providing Consumer Financial Services as provided in this Ordinance. This Section 8 applies to Closed End Credit.

8.2 General Terms, Conditions, and Practices.

(a) Consumer Notice. The consumer must be provided a template of a Consumer Financial Services Licensee's consumer loan agreement and related disclosures regarding exclusive tribal jurisdiction and a consumer's limited and exclusive rights to submit complaints to a Tribally approved dispute resolution process in accordance with this Ordinance and regulations of the Commission. The Commission may issue a regulations establishing disclosure language for all Consumer Financial Services Licensees loan agreements.

(b) Extension of credit. Any Consumer Financial Services Licensee may, subject to any limitations on lending authority or otherwise imposed by law and subject to the other provisions of this Section, offer and extend closed end credit to a consumer and, in connection therewith, may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable

to the Consumer Financial Services Licensee. Loans to any one borrower may not exceed \$10,000.

(c) Interest. A Consumer Financial Services Licensee may charge and collect interest in respect of a Loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the Consumer Financial Services Licensee may determine.

(d) Variable rates. If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a Consumer Financial Services Licensee to charge and collect interest in respect of a Loan in the manner and at the rate or rates authorized in any other section of this subchapter. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then-applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the consumer to perform in accordance with the terms of the loan agreement.

(e) Additional charges. In addition to or in lieu of interest at a periodic percentage rate or rates permitted by 8.2(e) and (f) of this title, the Consumer Financial Services Licensee may charge and collect, in respect of a Loan:

- (1) If the agreement governing the Loan so provides, charge and collect any other fees or charges, costs, points, premiums and all other expenses which may be assessed by the Consumer Financial Services Licensee in connection with the Loan.
- (2) If the agreement governing a Loan so provides, a Consumer Financial Services Licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than one (1) such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default. Nothing contained in this subdivision shall limit, restrict or

otherwise affect the right of a Consumer Financial Services Licensee under and pursuant to 8.2(e) of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the Consumer Financial Services Licensee and a consumer upon the occurrence of a delinquency or default or other failure of the consumer to perform in accordance with the terms of the loan agreement;

- (3) Such other charges as are set forth in the Agreement governing the Loan including, but not limited to, costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a loan. No Consumer Financial Services Licensee shall demand, collect or receive from any applicant for a Loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by this subchapter.

(f) Deferred installments. A Consumer Financial Services Licensee may at any time or from time to time permit a consumer to defer payments of a loan and may, in connection with such deferral, charge and collect deferral charges.

(g) Refinancing.

- (1) A consumer may, with the consent of the Consumer Financial Services Licensee, refinance the entire outstanding and unpaid amount of a Loan, and the Consumer Financial Services Licensee may charge and collect a refinancing charge in connection with any such refinancing.

- (2) For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing.

(h) Short-term consumer loans.

- (1) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

- A. No Consumer Financial Services Licensee shall make more than 4 rollovers of an existing short-term consumer loan. A Consumer Financial Services Licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the consumer or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

B. No Consumer Financial Services Licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual consumer.

C. No Consumer Financial Services Licensee shall pursue or threaten to pursue criminal action against an individual consumer in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(2) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No Consumer Financial Services Licensee shall make a short-term consumer loan unless the consumer loan agreement and/or related disclosures for such loan contains a written disclosure, conspicuously displayed, that:

A. The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

B. Additional fees and interest may accrue if the loan is rolled over; and,

C. Credit counseling services are available to consumers who are experiencing financial problems.

(3) Nothing in this section prohibits a Consumer Financial Services Licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(4) Every Consumer Financial Services Licensee must post on any website a prominent statement that: "This loan is not intended to meet long-term financial needs."

(i) Attorney's fees; costs. In the event a consumer defaults under the terms of a Loan, the Consumer Financial Services Licensee may, if the consumer's account is referred to an attorney (not a regularly salaried employee of the Consumer Financial Services Licensee) or to a Third Party for collection and if the agreement governing, or the bond, note or other evidence of, the Loan so provides, charge and collect from the consumer a reasonable attorney's fee. In addition, following a consumer's default, the Consumer Financial Services Licensee may, if the agreement governing, or the bond, note or other evidence of, the Loan so provides, recover from the consumer all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the Consumer Financial Services Licensee.

(j) Application of other laws. Any federal law not applicable to Indian tribes or state law limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit issued in accordance with this subchapter.

(k) No oral agreements. A Consumer Financial Services transaction may provide that it represents the entire agreement of the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

(l) Enforcement of Licensee's rights and remedies. In any proceeding in which a Consumer Financial Services Licensee is a party in interest with respect to any transactions with a consumer, the Consumer Financial Services Licensee's rights and remedies shall be granted based upon prima facie proof and entitlement based upon the terms of the written transaction documents and the payment and business records maintained by the Consumer Financial Services Licensee in the ordinary course of business.

(m) Prepayment.

(1) A borrower may prepay a Loan in full at any time.

(2) If interest charged on a Loan has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the Consumer Financial Services Licensee shall refund to such borrower the unearned portion of the precomputed interest charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower shall not be entitled to a refund which is less than \$5. The unearned portion of the precomputed interest charge is, at the option of the Consumer Financial Services Licensee, either:

- A. That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each such period, or portion thereof, had the Loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The Consumer Financial Services Licensee, at its option, may round this annual percentage rate to the nearest one quarter of 1 percent; or
- B. The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the

total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

Section 9. REGULATION OF CONSUMER DATA

9.1 General Authority & Registration. A Tribal Entity, which is not otherwise a Licensee, that wishes to engage in Processing within the Tribe's jurisdiction must obtain a Consumer Data License by registering with the Commission no less than ten (10) days before the Processing is to occur and must renew such registration on or before January 31 of successive each year. A Consumer Data License is automatically granted upon registration, but may be withdrawn at any time by the Commission.

(a) To register with the Commission, the Tribal Entity shall: (i) state the name of the entity to engage in Processing; and (ii) state the address of the Tribal Entity's principal office. The Tribal Entity must provide notice of changes to this information no later than thirty (30) days before the effective date of any change.

(b) To be eligible for registration, the Tribal Entity must provide the Commission with a copy of: (i) its privacy policy (or policies); (ii) its privacy notice as required by the Gramm-Leach-Bliley Act, if applicable; (iii) its information security policy, and (iv) its data retention plan.

9.2 Consumer Data entering the Tribe's Jurisdiction via a Tribal Data Portal or Communication to a Tribal Entity. All Personal Information that is Collected through a Tribal Portal or from a Consumer by a Tribal Entity, shall be deemed to have entered into jurisdiction of the Tribe and within the regulation of this Commission. Any Tribal Entity responsible for the Transfer of Consumer Data into the Tribe's jurisdiction must insure that any Processing meets the following minimum standards:

(a) the Tribal Entity's Tribal Data Portal or other communication from a Tribal Entity must clearly indicate that (i) the data is being provided within the Tribe's jurisdiction, (ii) whether the entity collecting the Consumer Data does or does not directly offer services of its own (e.g. whether it is a "lender" for purposes of Consumer Financial Services), (iii) that the entity and services are regulated by the Tribal Consumer Financial Services Regulatory Ordinance, and (iv) the contact information for resolving complaints that might be raised by the Consumer. Any Consumer Financial Services Licensee that is directly Processing Consumer Data must follow Section 9.2(a) of this Ordinance. Tribal Entities not directly providing services to Consumers must use a disclosure that notifies consumers that Processing of Consumer Data will occur in Indian country, which is compliant with the Consumer Data notification and disclosure regulations adopted by the Commission:

(b) the Tribal Entity's Tribal Data Portal must clearly display its privacy, data security and terms and conditions to potential Consumers.

(c) the Tribal Entity provides clear notice when the Consumer is leaving its Tribal Data Portal; and the Consumer consents to leaving the Tribal Data Portal.

(d) all Consumer Data must be protected using Security Controls appropriate for the nature of the data and in accordance with Section 9.4 of this Ordinance and all applicable federal laws related to such protection of Consumer Data.

9.3 Consumer Data entering Tribal Jurisdiction via Third Parties.

(a) Tribal Jurisdiction. Consumer Data is within the Tribe's jurisdiction upon a Transfer to a Licensee or other Tribal Entity regulated under this Ordinance.

(b) Warranties of Transferors. For all Consumer Data that enters Indian commerce and the jurisdiction of the Tribe, a Transferor Collecting, Transferring or Processing Consumer Data must represent and warrant to the receiving Tribal Entity before such Consumer Data enters Tribal jurisdiction that (i) Transferor has complied with all applicable federal and state laws with respect to the Collection, Transfer and Processing of the data, and (ii) Transferor has obtained all necessary permissions needed to Transfer the Consumer Data, whether from the Consumer Data Subjects or from any Third Party from which the Transferor has acquired the Consumer Data.

9.4 Consumer Data Protection Standards. All Licensees who engage in Processing within Tribal jurisdiction must at a minimum:

(a) limit internal access to Personal Information only to those that are determined to have legitimate business reason to access such Personal Information;

(b) maintain reasonable Security Controls for Personal Information in its custody;

(c) actively manage and provide appropriate oversight of Third Parties that Process or have access to Personal Information to ensure continuing compliance with applicable consumer protection laws;

(d) conduct a security audit annually and provide the results of that audit to the Commission;

(e) provide the Commission with a breach remediation plan acceptable to the Commission within sixty (60) days of obtaining a License;

(f) report all discovered security breaches and unauthorized Transfers to the Commission as soon as possible but not later than forty-eight hours after a breach or unauthorized Transfer was discovered.

9.5 Maximum Retention Time

(a) Recognizing that data retention necessarily presents an inherent security risk to Personal Information, Licensees shall adhere to all applicable federal laws pertaining to Personal Information, but in no case retain data for longer than five years unless otherwise required by federal law or Commission order.

(b) Licensees shall implement data and record retention schedules based on industry-wide security protocols and subject to approval by the Commission.

(c) In the event (i) any Licensee is served with any non-Tribal subpoena or request for documents, (ii) any employee of a Licensee becomes aware of any non-Tribal governmental investigation or audit, (iii) any litigation is commenced against a Licensee, or (iv) a Licensee plans to institute litigation against any third party, the Licensee shall immediately inform the Commission of such event and will release or destroy or delete Records relating to the matter only with Commission approval.

(d) If the retention periods outlined in a Licensee's schedule are modified, the Licensee will submit to the Commission an updated schedule which will specify the modified retention and/or destruction periods and the date such modifications became effective.

(e) The Commission may promulgate rules to further regulate data and record retention.

9.6 Restrictions on Consumer Financial Services Licensees. Consumer Financial Services Licensees may only sell Consumer Data to another Tribal Entity that possesses a License issued by the Commission. Consumer Financial Services Licensees may Transfer Consumer Data to a Third Party for Processing (excluding sale of Personal Information) provided such Transfer or Processing by the Third Party is compatible with the original purposes for which the Consumer Data was Collected or subsequently authorized by the Consumer Data Subject.

Section 10. ENFORCEMENT

10.1 Jurisdiction. Except as provided otherwise in this Ordinance, the Commission shall have jurisdiction over all violations of this Ordinance.

10.2 Guidelines. In imposing any administrative remedy or civil penalty provided for in this Ordinance, the Commission shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Licensee charged, the extent to which the violation was intentional, the gravity of the violation, the history or previous violations, and such other matters as justice may require.

10.3 Civil Violations. Any Licensee who violates or fails to comply with any provision of this Ordinance or who fails or neglects to comply with any final order of the Commission may be charged with a violation and given due process pursuant to Section 4.13 herein. If the Licensee or any employee of a Licensee is found to have committed a violation, he/it may be required to pay a civil fine to the Commission not to exceed Five Thousand Dollars (\$5,000) for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of this Ordinance, but not to exceed \$100,000. A violation or series of violations related to the same act or omission may be treated as one violation.

(a) A Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of the Licensee's License.

(b) An officer or agent of a Licensee who knowingly or recklessly participates in a material violation of this Ordinance may be subject to termination by the Commission.

10.4 Cumulative Fines. All civil fines accruing under this Ordinance shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other person.

10.5 Purpose of Civil Penalties. The civil fines imposed under this Ordinance are intended to be remedial and not punitive and are designed to compensate the Tribe for the damage done to the peace, security, economy and general welfare of the Tribe, and to compensate the Tribe for costs incurred by the Tribe in enforcing this Ordinance. The civil fines under this Ordinance are also intended to coerce all people into complying with this Ordinance and Commission regulations and not to punish such people for violation of such laws and regulations.

10.6 Civil Action for Penalties. In enforcing the civil infraction provisions of this Ordinance, the Commission may proceed, in the name of the Tribe against any Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Ordinance.

10.7 Seizure and Forfeiture of Property. Property utilized in violation of this Ordinance shall be subject to seizure and forfeiture by order of the Commission. The Commission may promulgate rules to govern the seizure of property. The Commission may not exercise any authority under this subsection until promulgated rules are approved by the Executive Council.

Section 11. CONSUMER DISPUTE RESOLUTION PROCESS

11.1 Mandatory Dispute Resolution Procedure. The Tribe wishes to ensure public confidence in its Consumer Financial Services and its Licensees and strives to ensure that its Consumers are protected with a fair and impartial dispute resolution process to address any Consumer issues in a timely manner. Nothing in this Section waives the Tribe, a Licensee, or the Commission's sovereign immunity or any rights or privileges.

11.2 Complaint Procedure.

(a) A Consumer who is aggrieved by an action or inaction of a Licensee may request the Licensee address the complaint. Where the complaint involves a Consumer Financial Services Licensee, the Consumer's request must be made in accordance with the terms of the Consumer's loan agreement. Where the complaint involves services provided by a Consumer Data Licensee, the Consumer's request must be made in accordance with the terms of the agreement governing the applicable service. A Consumer may not consolidate a claim with another Consumer's claim unless expressly authorized by the Commission.

(b) Within 30 days after receiving a Consumer's complaint, the Licensee must expediently gather sufficient facts to make a determination about the complaint and respond to the consumer in writing with its determination. If the Licensee fails to respond to a Consumer's complaint within 30 days, a consumer may choose to initiate the Tribal Consumer Financial Services Regulatory Commission Review Procedure in Section 11.3 and the Licensee may be subject to fines up to the total cancellation of the Consumer's debt and reimbursement of all monies paid.

(c) The Licensee must retain all records of all Consumer complaints in compliance with section 9.6.

11.3 Tribal Consumer Financial Services Regulatory Commission Review Procedure

(a) Consumers that have followed the Complaint Procedure described in Section 1.2 and who are dissatisfied with a Licensee's determination may request and administrative review of the Licensee's determination by the Commission. To request the Commission's review, a Consumer is required to submit a written request to the Commission within ninety (90) days after the Licensee's issues its determination. The Consumer's written request must include the following information:

- (1) The Consumer's full name, the name that appears on the consumer's loan agreement, as well as the Consumer's address, email address, and phone number;
- (2) A copy of the Consumer's agreement with the Licensee, or otherwise identify the agreement;
- (3) A copy of the Licensee's determination;
- (4) A statement requesting a hearing before the Commission. If a hearing is requested, the Consumer must indicate whether he will appear personally or if he would prefer to appear by telephone. The Consumer must also indicate whether he will be represented by an attorney or if he will represent himself;
- (5) Any other information the Consumer feels may be relevant to the complaint or that may assist the Commission to evaluate the complaint.

(b) The Commission may investigate the dispute in any manner it chooses. The Commission may require the Licensee to provide a written response to the complaint. The Commission may require the Consumer and the Licensee to provide additional documentation or information. The Commission may conduct interviews as needed, require sworn statements, or take other action necessary or advisable to make its determination. A failure to respond to a request by the Commission may result in a default pursuant to Section 1.2(h).

(c) After an investigation, the Commission may deny a Consumer's request for a hearing by sending a written explanation for the basis for denying the hearing request and a decision on the merits of the Consumer's request for a review of the Licensee's determination.

11.4 Hearing Procedure.

(a) Within 60 days after the Commission grants a Consumer's request for a hearing, the Commission will schedule and hold a hearing within 120 days after receiving the Consumer's written request. The Commission will send notice of the hearing date and location to the Consumer and Licensee. Upon request, the Commission may conduct a hearing via telephone or other means.

(b) At a hearing, a Consumer may be represented by legal counsel at the Consumer's own expense.

(c) The Commission may schedule a prehearing conference with the Consumer and Licensee(s) to discuss such matters as motions, discovery, witnesses, exhibits, etc. After a prehearing conference, the Commission will issue a case management order. If the parties agree that a prehearing conference is unnecessary, the parties may file a signed stipulated proposed case management order before the scheduled date of a prehearing conference.

(d) Hearing Procedure.

(1) Every hearing will be before the full Commission. The Commission may designate a Presiding Officer, who will conduct the hearing, administer oaths, admit or refuse evidence, and control any other aspect of the hearing the Presiding Officer deems necessary. The Presiding Officer does not need to be a Commissioner; however only Commissioners may participate in the decision on the complaint.

(2) A Licensee must be represented by someone knowledgeable and capable of testifying about the Consumer's complaint and must provide the Licensee's records pertaining to the Consumer.

(3) The parties may make opening and closing statements, call witnesses and provide physical evidence. The Commission will administer an oath to any witness and the witness must confirm that their testimony will be truthful. All physical evidence will be admitted and considered as long as it is the type of evidence a reasonable person would find relevant to the Consumer's complaints. Objections to evidence will be noted on the record. No Commission agent may be called to testify.

(4) The Commission may request the parties submit post-hearing briefs or evidence.

(5) Hearings will be recorded by the Commission. The recording and all physical evidence will constitute the record. The Commission is responsible to preserve all hearing records for two (2) years after the Commission's decision is issued.

(e) Within a reasonable time after a hearing, the Commission will issue a written decision and order that will include its factual findings and conclusions of law. Factual findings may be based on the Commission's investigation as well as the testimony and evidence presented by the parties. The Commission may grant or deny any relief as the Commission determines appropriate provided that total award may not exceed the amount of the Consumer's debt plus reimbursement of payments. The decision and order must inform the Consumer of the opportunity to appeal the Consumer's decision and order pursuant to Section 11.5.

(f) The Commission will mail a copy of the decision and order to all parties.

(g) A Consumer or Licensee may request a rehearing within 30 days after the Commission issues a decision and order. A request for a rehearing must provide justification for a rehearing. The Commission may grant or deny a request for a rehearing at its discretion.

(h) On its own or upon request, the Commission may default any party and issue a default decision. A default decision may not be appealed pursuant to Section 11.3. A default may be issued under any of the following circumstances:

(1) A party fails to comply with the Commission's investigatory requests;

(2) A Licensee fails to answer a Consumer's complaint; or

(3) A party fails to appear at a prehearing conference or hearing.

(i) The Commission may not award attorney fees or costs to either party.

11.5 Arbitration Procedure.

(a) A Consumer may request a review of a Commission decision and order by requesting arbitration by the American Arbitration Association ("AAA"). The AAA's Consumer Arbitration Rules ("CAR") will govern the arbitration subject to the following modifications:

(1) Where this Ordinance and the AAA's CAR differ, this Ordinance controls. To the extent this Ordinance is silent, then the Consumer's agreement may be relied upon to resolve ambiguities;

(2) No state or federal court will have jurisdiction to intervene in an arbitration arising under this Ordinance or any agreement between a Consumer and a Licensee;

(3) A Consumer may request that a dispute be resolved by submission of documents only or by a hearing. The Licensee will pay all AAA fees regardless of the AAA's decision;

(4) Arbitration is only available; mediation is not available;

- (5) A Consumer has 120 days after the Commission issued its decision and order to request arbitration;
- (6) Upon receipt of a Consumer's request for Arbitration, the Licensee will contact the AAA to make payment arrangements and the Licensee will solely be responsible for all of the AAA's fees;
- (7) Upon receipt of a Consumer's request for Arbitration, the Licensee will forward the record from the Complaint Procedure in Section 11.2 and the Review Procedure in Section 11.3;
- (8) The AAA may default either party for failing to respond to an answer;
- (9) There is no small claims court option for either party. By entering the loan agreement, the Consumer has agreed to abide by the Dispute Resolution Procedure within this Ordinance and that arbitration with the AAA is the final opportunity for adjudication of a Consumer's complaints;
- (10) The AAA's jurisdiction is limited to resolution of a Consumer's dispute after the Consumer's full compliance with Sections 11.2 and 11.3 of this Ordinance;
- (11) The Consumer may to choose the arbitrator from the AAA's National Roster without input or influence from the Licensee;
- (12) There will only be one arbitrator for any dispute arising under this Ordinance;
- (13) An arbitrator may default any party for failing to file a required document, failing to appear; or failing to fully participate in the exchange of documents, but the arbitrator's enforcement is limited to any applicable provisions within this Ordinance;
- (14) All proceedings, decisions, and awards made by the arbitrator are strictly confidential and may not be disclosed under any circumstances unless ordered by a court of competent jurisdiction;
- (15) If the complaint involves a Consumer Financial Service provided by a Consumer Financial Services Licensee, then the scope of the arbitrator's award is limited to the maximum value of the Loan at issue and no punitive damages will be awarded, and no equitable relief may be awarded;
- (16) If the complaint involves service provided by a Consumer Data Licensee, then the scope of the arbitrator's award is limited to the maximum value of service provided pursuant to the terms of the

agreement governing the applicable service, and no punitive damages will be awarded, and no equitable relief may be awarded;

(17) The AAA's decision will be the final decision and will resolve the Consumer's complaint.

(18) By allowing arbitration, the Tribe will allow enforcement of an AAA decision only upon the following circumstances:

- A. The person seeking to enforce an AAA decision was a Customer (or a Customer's agent) of a Licensee;
- B. The person seeking to enforce an AAA decision has fully complied with the Mandatory Dispute Resolution process in Sections 11.1 to 11.4.
- C. The person seeking to enforce an AAA decision has not already recovered all actual damages from the Licensee.
- D. The person seeking to enforce an AAA decision was determined by the AAA to be entitled to actual damages.
- E. The person seeking to enforce the AAA decision is only seeking recovery of actual damages and is not seeking punitive damages or equitable relief.
- F. The person seeking to enforce an AAA decision may only do so in a court of competent jurisdiction.
- G. The person seeking to enforce an AAA decision has timely filed an enforcement action.

(b) If AAA refuses to arbitrate a dispute, an alternate arbitration method may be used subject to the limitations within this Section.

(c) A request for arbitration under this Section is limited to a review of the Licensee and Commission decisions. A request for arbitration is not a cause of action as contemplated in any jurisdiction. As such, participating in arbitration does not constitute a suit against the Tribe, the Commission, or the Licensee, does not challenge the Tribe's sovereignty, and cannot be used as a means to circumvent the Tribe's sovereignty.



TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY ORDINANCE

EXHIBIT A

Initial Application Fee to become a Consumer Financial Services Licensee..... \$250.00.

Initial Registration Fee to become a Consumer Data Licensee..... \$250.00.

EXHIBIT D

Protective Order

**HABEMATOLEL POMO OF UPPER LAKE
TRIBAL CONSUMER FINANCIAL SERVICES REGULATORY COMMISSION**

In the Matter of:

Upper Lake Processing Services, Inc.,
Golden Valley Lending, Inc., Majestic
Lake Lending, Inc., Silver Cloud
Financial, Inc., and Mountain Summit
Financial, Inc.

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)
) **PROTECTIVE ORDER**
) Case No. 2019-0001
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Silver Cloud Financial, Inc. (“Silver Cloud”), Mountain Summit Financial, Inc. (“Mountain Summit”), Golden Valley Lending, Inc. (“Golden Valley”), Majestic Lake Financial, Inc. (“Majestic Lake”), and Upper Lake Processing Services, Inc. (“ULPS” together “tribal lending entities”), all wholly owned and operated enterprises of the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe (“Tribe” and “HPUL”) have notified this HPUL Tribal Consumer Financial Services Regulatory Commission (“the Commission”) that each entity has received a demand to disclose the Tribe’s confidential information and records pursuant to a civil investigative demand (“CID”) issued by the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) to each tribal lending entity.

On careful review, the Commission finds that the CFPB’s demand to produce the Tribe’s and tribal lending entities’ confidential information through a CID would not only violate Tribal and federal law, but would also constitute a severe infringement of the Tribe’s inherent sovereignty. Accordingly, through this Protective Order, the Commission orders the tribal lending entities to file with the Commission — rather than with the CFPB — the confidential information in the tribal lending entities’s possession that is responsive to the CID, as it may be modified. As discussed below, the Commission does not intend to undermine the Bureau’s existing regulatory authority or thwart any investigation in which it may be engaging, but the

Commission cannot ignore the CFPB's attempt to usurp the Tribe's rights and interest in regulating lending activities that occur within its lands and thereby assume authority to which the CFPB is not primarily entitled under law. This Order is issued solely as a precautionary measure to ensure that the Tribe's sovereignty and the co-regulatory authority between the Bureau and the Tribe is respected, maintained, and enabled.

I. The Commission Can Properly Exercise Jurisdiction Over Its Licensees And Material Vendors And Can Act To Protect The Tribe's Proprietary And Confidential Information.

The HPUL is a federally recognized Indian Tribe, possessing the inherent powers of Tribal self-government and self-determination. Pursuant to Article IV of the Tribe's Constitution ("Constitution"), the Executive Council is the governing body of the Tribe and is authorized to charter and regulate enterprises, associations, and corporations formed by the Tribe and by its members for business or charitable purposes. Article X of the Constitution further authorizes the Executive Council's adoption of Ordinances and Codes that adequately regulate all financial services operations occurring within the Tribe's trust land. Indeed, the Tribe enacted its own consumer financial services regulatory ordinance ("TCFS Ordinance" and "Ordinance") and amended it on December 14, 2013 through its duly authorized Resolution No. 12-13-02.

A. The tribal lending entities are licensed and regulated by the Commission pursuant to Tribal law

By way of the TCFS Ordinance, the Tribe established the Commission, which serves as a subdivision of the Tribe's government, charging it with the responsibility of protecting the interests of the public in the offering of consumer financial services and maintaining the public confidence in Tribal consumer financial services practices. See the Ordinance, Sections 1.2(e) and (f). Moreover, the Ordinance declared that the Tribe would have sole proprietary interest in, and responsibility for, the conduct of consumer financial services authorized under the Code. *Id.*

at Section 1.3(c). The Ordinance vested the Commission with the power to investigate any Licensee, Vendor or Person, and to also determine whether such person or entity is engaging in, or is about to engage in, any act, practice, or transaction that constitutes an unsafe or unsound practice or violation of the Code. *Id.* at Sections 4.9(c) and 4.10, generally. Naturally, the Commission then has the responsibility to discipline any Licensee, Vendor, or Person engaging or participating in consumer financial services in violation of the Code. *Id.* at Section 4.10.

It is clear that ULPS, Majestic Lake, Silver Cloud, Golden Valley and Mountain Summit are owned and operated by the Tribe, are Licensees in good standing with the Commission, and engage in consumer financial services within the Tribe's and Commission's jurisdiction. In that status, then, the tribal lending entities are fully subject to the Code and are bound to the enforcement powers of this Commission.

B. The CFPB Civil Investigative Demand does not usurp or displace the Commission's authority

The tribal lending entities received each a Civil Investigative Demand ("CID") from the CFPB dated October 25, 2019 ordering each tribal lending entity to produce documents related to the consumer financial services that tribal lending entity performed, as well as information on certain individuals. They promptly notified their regulator. As described below, while the Dodd—Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act" and "the Act") created and empowered the CFPB, it also made clear that Tribes and the CFPB were co-regulators under the Act. Pub. L. 111-203, 124 Stat. 1376 (2010).

II. Congress Created A Co-Regulatory Framework Pursuant To Which Tribes May Pass Their Own Consumer Finance Laws And Be Governed By Them.

Congress enacted the Dodd Frank Act in July 2010 for the stated purpose of "promot[ing] the financial stability of the United States by improving accountability and transparency in the financial system ... [and] protect[ing] consumers from abusive financial services practices." 12

U.S.C. § 5536. The only reference to Indian tribes in the Act appears in the definition of “State”:

The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or *any federally recognized Indian tribe*, as defined by the Secretary of the Interior under section 479a-1 (a) of title 25.

§ 5481(27). Thus, every reference to “State” in the Act demonstrates Congress’ explicit intent for those provisions to apply equally to federally-recognized Indian tribes, including HPUL. Treating tribes as states falls squarely within the overarching federal policy of encouraging tribal self-determination and promoting economic self-sufficiency. All of the references to “States” throughout the Act highlight the cooperation Congress envisioned between the federal government, states and tribes, and certainly illustrates that the CFPB has no greater power over this Commission than the federal government or any other regulator, nor can the CFPB intrude upon this Commission’s responsibility and right to promote consistent regulatory treatment of Licensees, Vendors, or Persons operating within the Tribe’s jurisdiction while also protecting the interests of the public and consumers in general. For example:

- The Act requires “fair lending efforts of the [federal government] with . . . *State* regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws.” § 5493(c)(2)(B).
- The Act requires the federal government to “coordinate with .. *State* regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.” § 5495.
- The Act gives “*State* agencies” a significant role in collecting and tracking consumer complaints. § 5493(b)(3)(B).
- The Act requires the federal government to share consumer complaint information with “*State* agencies.” § 5493(b)(3)(D).
- The Act requires that, “[i]n developing and implementing registration requirements [for covered persons],” the federal government must “consult with *State* agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.” § 5512(c)(7)(C).

Substituting the word “Tribe” for “State” in each of the above provisions—as is required by § 5481(27) – Congress clearly does not authorize the CFPB, or any other state or federal agency, to override the regulatory oversight of the Commission and the application of HPUL’s Code to those Licensees, Vendors, and Persons operating within its jurisdiction. To suggest otherwise would not only run contrary to the plain language of the Act, but would also run contrary to Congress’s clear intent and would provide to the CFPB authority well beyond that which was actually conferred.

Rather, Congress empowered this Commission and CFPB to work as *co-regulators* but to *never overstep their respective authorities*, because the Act “[e]mpower[s] tribal government . . . to enforce the [federal government’s] rules in areas under their jurisdiction, the same way that states will be permitted to enforce those rules.” Dep’t of the Treasury, *The Dodd—Frank Wall Street Reform and Consumer Protection Act Benefits Native Americans*, October 2010. This co-regulation is further evidenced by the fact that HPUL enacted its own consumer financial services regulatory ordinance, which authorized the responsible conduct of financial service activities within its jurisdiction and established tribal regulatory agencies to oversee such activities, require compliance with their laws, and regulate tribal lenders. There is then no reason for the CFPB to undermine or otherwise disregard the Tribe’s laws.

Moreover, when viewed in light of the trust relationship between the federal government and Indian tribes, it is clear that in including tribes as regulators within the Dodd Frank Act, Congress recognized its own responsibility to safeguard tribal self-governance. Indeed, the Act is just one of many federal laws that indicate Congress’ support for tribal self-determination.

Clearly, therefore, it is easy to conclude that Congress intended for federally-recognized tribes to be the Bureau’s partners in regulation. Indeed, in passing the Act, Congress could have

completely preempted tribal laws in the field of consumer finance — *see South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (“Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights.”) — but Congress chose not to do this. Instead, Congress recognized the tribes’ inherent sovereign authority to establish, and to be governed by, their own consumer finance laws.

As discussed in more detail in Part IV below, acting consistently with congressional intent, the Tribe has enacted its own consumer finance laws authorizing tribal lending entities to engage in consumer finance services for the benefit of the Tribe and creating a comprehensive regulatory scheme to ensure that these businesses operate responsibly.

III. The CFPB’s CIDs Violate the Federal Government’s Trust Responsibility to Federally Recognized Indian Tribes and Fails to Promote and Protect Tribal Sovereignty and Tribal Economic Development as is Required Under Longstanding Federal Policy.

The United States government owes a trust responsibility to Native Americans. *Seminole Nation v. United States*, 316 U.S. 286 (1942) (holding that Congress has “moral obligations of this highest responsibility” to the tribes). In fact, “*any* federal government action is subject to the United States’ fiduciary responsibilities toward the Indian tribes.” *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) (emphasis added). Pursuant to this trust responsibility, the federal government has an obligation to protect tribal sovereignty and promote tribal self-sufficiency. 25 U.S.C. § 4301(a) (“[T]he United States has an obligation to guard and preserve the sovereignty of Indian tribes in order to foster strong tribal governments, Indian self-determination, and economic self-sufficiency among Indian tribes.”).

In passing the Act—just as when it passed the Indian Self-Determination and Education Assistance Act—Congress was acting to fulfill its trust responsibility. By affirmatively recognizing tribes’ *inherent* right to regulate consumer finance matters, Congress encouraged

tribes to become involved in the consumer finance business and to regulate that business pursuant to tribal law. The Tribe has made the decision as a sovereign government to engage in the business for the purpose of its self-determination and has adopted its own tribal laws to regulate the same.

IV. Forced Disclosure of Confidential Information Belonging to the Tribe Would Violate Both Federal and Tribal Law.

- A. The Bureau is required to coordinate with the Commission to the extent that it seeks to obtain information relating to the tribal lending entities*

This Commission finds it imperative to coordinate any potential sharing of confidential Tribe information. Forced disclosure of this information would abrogate the Tribe's "right . . . to make [it's] own laws and be governed by them," thus striking at the very heart of what it means for a tribe to be sovereign. *See Williams v. Lee*, 358 U.S. 217, 220 (1959). When it enacted the Act, Congress took a very specific precaution to ensure that tribal sovereignty in consumer finance matters was not diminished. By including federally-recognized Indian tribes within the definition of "State," Congress intended to restrain the CFPB from treating tribes as second-class sovereigns.

The CIDs issued to the tribal lending entities seeks confidential information relating to the Tribe. For the Commission to fulfill its co-regulatory role under the CFPA, and its mandate pursuant to the Ordinance, it must have the ability to coordinate the sharing of this sensitive and confidential information with the Bureau. This Order is not intended to stonewall the Bureau's pending investigation(s). Rather, in issuing this Order, the Commission reiterates willful intent to provide the Bureau with the information/documentation that it seeks, but only through the proper statutory framework of applicable federal law.

- B. Absent direct coordination with this Commission, the release of confidential information to the CFPB will also violate the Ordinance, rendering tribal law a nullity.*

The very basis and purpose for which this Commission was created is to protect the longevity of any tribal lending entity by ensuring that that entity operates in a responsible manner. This protection includes saying “no” to the CFPB when it demands information and records without first developing and enhancing the co-regulatory authority and relationship required by law. This is not to say that the information will not be provided; the Commission fully intends to release information to the Bureau in a respectful manner outside the context of the CID, but the truth is that the forced disclosure of confidential information relating to the Tribe and the tribal lending entities could jeopardize those entities’ operations and would act in derogation of the CFPB’s duty to act in a cooperative, co-regulatory manner with the Tribe.

WHEREFORE, THE COMMISSION FINDS:

The Commission has the sole jurisdiction and power of oversight and regulation of all commercial financial services conducted by any Licensee, Vendor, or Person. Silver Cloud, Golden Valley, Majestic Lake, Mountain Summit, and ULPS, as Licensees, are all subject to the Commission’s authority. Moreover, pursuant to the Dodd-Frank Act, this Commission and the CFPB are to work as co-regulators and never overstep their respective authorities. The Act empowers and enables this Commission’s regulatory authority over consumer financial services offered within and from the Tribe’s exterior boundaries. The Act therefore requires that the CFPB cooperate and coordinate with the Commission prior to receiving any Tribal records and information.

IT IS ORDERED:

2. All confidential records and information that are related to the Tribe’s consumer financial services are Tribal Records and must not be produced or disclosed without approval from this Commission or the Tribal Council. For the purposes of this Order, Tribal Records

include, but are not limited to, non-public records concerning: Upper Lake Processing Services, Inc., Majestic Lake Financial, Inc., Silver Cloud Financial, Inc., Golden Valley Lending Inc., Mountain Summit Financial, Inc., and its employees.

3. Upper Lake Processing Services, Inc., Majestic Lake Financial, Inc., Silver Cloud Financial, Inc., Golden Valley Lending Inc., and Mountain Summit Financial, Inc. must provide this Commission any and all confidential information that falls within the scope of the Bureau's CID, as it may be modified.

SO ORDERED:

/s/ David Tomas

November 11, 2019

David Tomas, Commissioner
Habematolel Pomo of Upper Lake
Tribal Consumer Financial Services Regulatory Commission.