

JUDGE SULLIVAN

CIVIL COVER SHEET

13 CV 5930

This civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

AUG 21 2013

PLAINTIFFS

The Otoe-Missouria Tribe, et. al.

DEFENDANTS

N.Y. State Department of Financial Services and Benjamin M. Lawsly

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David Bernick, 575 Lexington Avenue, 7th Floor, New York, NY 10022

ATTORNEYS (IF KNOWN)

N.Y. Attorney General
Eric T. Schneiderman
The Capitol, Albany, NY 12224-0341

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Federal Constitutional Rights and Common Law Arising From Interference with Tribal Sovereign Immunity.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

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- ☐ 130 MILLER ACT
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- ☐ 160 STOCKHOLDERS SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
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- ☐ 340 MARINE
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- ☐ 444 WELFARE
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- ☐ 871 IRS-THIRD PARTY 26 USC 7609

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- ☐ 480 CONSUMER CREDIT
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- ☐ 810 SELECTIVE SERVICE
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- ☐ 894 ENERGY ALLOCATION ACT
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? No
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☐ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

All Plaintiffs reside in either Red Ruck or Edmond, Oklahoma or Watersmeet, Michigan

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

N.Y.S. Department of Financial Services
1 State Street
New York, N.Y 10004

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 08/22/2013 SIGNATURE OF ATTORNEY OF RECORD

David Bernick

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
☒ YES (DATE ADMITTED Mo. _____ Yr. 2007)
Attorney Bar Code # DB1234

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ MAG. JUDGE NETBURN is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE SULLIVAN

13 CV 5930
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE OTOE-MISSOURIA TRIBE, a federally-recognized Indian Tribe; **GREAT PLAINS LENDING, LLC**, a wholly-owned tribal limited liability company; **AMERICAN WEB LOAN, INC.**, a wholly-owned tribal corporation; **OTOE-MISSOURIA CONSUMER FINANCE SERVICES REGULATORY COMMISSION**, a tribal regulatory agency; **LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**, a federally-recognized Indian Tribe; **RED ROCK TRIBAL LENDING, LLC**, a wholly-owned tribal limited liability company; **DUCK CREEK TRIBAL FINANCE**, a wholly-owned tribal corporation; and **LAC VIEUX DESERT TRIBAL FINANCIAL SERVICES REGULATORY AUTHORITY**, a tribal regulatory agency,

Case No.



Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES; and **BENJAMIN M. LAWSKY**, in his official capacity as Superintendent of the New York State Department of Financial Services,

Defendants.

CORPORATE DISCLOSURE STATEMENT

Plaintiffs Great Plains Lending, LLC, American Web Loan, Inc., Red Rock Tribal Lending LLC and Duck Creek Tribal Finance, by their undersigned counsel, provide this

Disclosure Statement in accordance with Federal Rule of Civil Procedure 7.1(a). Plaintiffs hereby certify that no parent corporation or publicly held corporation owns 10% or more of the stock of any of the Plaintiff LLCs or corporations.

Dated: August 21, 2013

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

13 CV 5930

THE OTOE-MISSOURIA TRIBE OF INDIANS, a federally-recognized Indian Tribe; **GREAT PLAINS LENDING, LLC**, a wholly-owned tribal limited liability company; **AMERICAN WEB LOAN, INC.**, a wholly-owned tribal corporation, and **OTOE-MISSOURIA CONSUMER FINANCE SERVICES REGULATORY COMMISSION**, a tribal regulatory agency; **LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**, a federally-recognized Indian Tribe; **RED ROCK TRIBAL LENDING, LLC**, a wholly-owned tribal limited liability company; **LAC VIEUX DESERT TRIBAL FINANCIAL SERVICES REGULATORY AUTHORITY**, a tribal regulatory agency,

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES; BENJAMIN M. LAWSKY, in his official capacity as Superintendent of the New York State Department of Financial Services,

Defendants.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

CASE NO.

INTRODUCTION

Through a campaign of misrepresentations, threats, and coercion, the State of New York has launched an attack on the plaintiff Tribal Nations' inherent sovereignty. At the core of this campaign is the State's threat to impose its laws upon online lending businesses owned, operated, and regulated by Tribal Nations, in brazen disregard to the inherent sovereignty that these nations have had since before the founding of the United States and which Supreme Court has over the course of nearly two centuries upheld. The objective of the State's campaign is, in

the State's own words, to "choke off" the Tribal businesses, no matter if that means crippling a vital economic engine for the sovereign Tribal Nations.

As part of this campaign, the State has not only threatened the businesses owned and operated by Tribal Nations to "cease and desist" from offering their online credit products to "New York consumers," but has used the big stick of government power to threaten and coerce third parties, such as banks and clearing houses, which provide services to the Tribal businesses. Not satisfied with driving these third-parties away, the State has also demonized the Tribal business to the consumer market by misusing its bully pulpit to carry out a publicity campaign falsely accusing the Tribal Nations of being criminal usurers that "swoop in and prey on struggling families when they are at their most vulnerable." If not stopped, the State's bare-knuckle attack on the Tribal Nations' sovereignty will continue to cause them irreparable harm, ultimately destroying the Tribal businesses and devastating the economies of the Tribal Nations.

At bottom, the State has no authority to impose its laws on, or to otherwise regulate the activities of, the Tribal businesses, which operate their consumer lending activities from their Tribal territories, under Tribal law, and under the regulation of Tribal regulatory agencies. In any event, contrary to the State's disparagement, the Tribal Businesses do not prey on consumers, instead providing much needed access to financial services for those who cannot access credit through traditional lenders. The State's attack on the inherent sovereignty of the Tribal Nations must come to an immediate stop, before it causes them further devastating irreparable harm.

Plaintiffs the Otoe-Missouria Tribe of Indians and the Lac Vieux Desert Band of Lake Superior Chippewa Indians (collectively, "Tribal Governments"); their wholly owned corporate entities, Great Plains Lending, LLC, American Web Loan, Inc., and Red Rock Tribal Lending, LLC (collectively, "Tribal Corporations"); and their respective regulatory agencies established pursuant to tribal law and charged with the responsibility and oversight over the relevant activities of the Tribal Corporate Plaintiffs, Otoe Missouri Consumer Finance Services Regulatory Commission, and Lac Vieux Desert Tribal Financial Services Regulatory Authority,

(collectively, “Tribal Regulatory Agencies” and, together with the Tribal Governments and the Tribal Corporations, “Plaintiffs” or “Tribal Nations”), sue defendants New York State Department of Financial Services and Benjamin M. Lawskey, in his official capacity as the Superintendent of the New York State Department of Financial Services (collectively, “New York” or the “State”) and allege:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this action pursuant to 28 U.S.C. § 1331 and § 1362.

2. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Defendant resides in this District and he has committed a substantial part of the acts alleged in this District.

PARTIES

3. Plaintiff Otoe-Missouria Tribe of Indians (“Otoe-Missouria”) is a federally-recognized Indian tribe with its tribal government offices located in Red Rock, Oklahoma.

4. Plaintiff Great Plains Lending, LLC (“Great Plains”) is a limited liability company wholly-owned and operated and formed under the laws of the Otoe-Missouria, with its principal place of business in Red Rock, Oklahoma. Great Plains is engaged in online small dollar lending pursuant to tribal law and subject to tribal regulation. Great Plains voluntarily complies with all applicable federal consumer protection laws.

5. Plaintiff American Web Loan, Inc. (“AWL”) is a corporation wholly-owned and operated and formed under the laws of the Otoe-Missouria, with its principal place of business in Red Rock, Oklahoma. AWL is engaged in online small dollar lending pursuant to tribal law and subject to tribal regulation. AWL voluntarily complies with all applicable federal consumer protection laws.

6. Plaintiff the Otoe-Missouria Consumer Finance Services Regulatory Commission is a regulatory agency formed pursuant to Tribal law and functioning as a governmental arm and instrumentality of the Otoe-Missouria, with its principal place of governmental business located

in Red Rock, Oklahoma and is tasked with regulating all consumer financial services provided by both Great Plains and AWL

7. Plaintiff Lac Viex Desert Band of Lake Superior Chippewa Indians (“LVD”) is a federally-recognized Indian tribe with its tribal governmental offices located in Watersmeet, Michigan.

8. Plaintiff Red Rock Lending, LLC (“Red Rock”) is a limited liability company wholly-owned and operated and formed under the laws of LVD, with its principal place of business in Watersmeet, Michigan. Red Rock is engaged in online small dollar lending pursuant to tribal law and subject to tribal regulation. Red Rock voluntarily complies with all applicable federal consumer protection laws.

9. Plaintiff Lac Vieux Desert Tribal Financial Services Regulatory Authority is a regulatory agency formed pursuant to tribal law and functioning as a governmental arm and instrumentality of LVD, with its principal place of governmental business located in Watersmeet, Michigan and is tasked with regulating all consumer financial services provided by Red Rock.

10. Defendant New York State Department of Financial Services is an executive branch agency of the State of New York, whose principal place of business is located at 1 State Street, Manhattan, New York.

11. Defendant Benjamin M. Lawskey, sued in his official capacity, is the Superintendent of the New York Department of Financial Services, whose principal place of business is located at 1 State Street, Manhattan, New York.

FACTUAL ALLEGATIONS

A. The Inherent Sovereignty of Indian Tribes.

12. By the time Christopher Columbus and other European adventurers landed in what is now known as North America, millions of Native Americans were living in the area that would become the United States. Those Native Americans were part of Tribal Nations that were self-governing, exerting control over land and other natural resources. For that reason, exploring

foreign powers treated the tribes as sovereign nations and, accordingly, entered into treaties with the tribes.

13. For thousands of years, Native Americans have governed themselves through tribal laws, cultural traditions, and religious customs. This “inherent sovereignty” predates the founding of the United States and the ratification of the Constitution. Article 1, Section 8 of the Constitution vested Congress with the authority to engage in relations with the tribes. Until 1871, the United States’ relations with Native American tribes were defined and conducted through treaties, as befitted relations between sovereign nations. Indeed, it is not subject to dispute that the relationship between the United States and the Tribal Nations is “one between sovereigns, *i.e.*, between a government and a government.” (U.S. Dep’t. of the Interior, Indian Affairs, <http://www.bia.gov/FAQs/>.)

14. Accordingly, when the sovereignty of Indian tribes was first challenged, the Supreme Court, through Chief Justice Marshall, “articulated the fundamental principle that has guided the evolution of federal Indian law to the present: *That tribes possess a nationhood status and retain inherent powers of self-government.*” (*Id.*) Almost two centuries ago, in *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831), the Court found that the Cherokee Tribe was “a distinct political society separated from others, capable of managing its own affairs and governing itself.” Consistent with this principle of sovereignty, one year later the Supreme Court in *Worcester v. Georgia*, 31 U.S. 515 (1832), again writing through Chief Justice Marshall, held that Indian tribes are generally immune from state laws.

15. Only Congress, pursuant to the power over Indian affairs conferred by the Constitution, has the power to invade and diminish the tribes’ inherent sovereignty. *U.S. v. Kagama*, 118 U.S. 375 (1886). Because the tribes’ sovereignty pre-dates contact with western European settlers and does not arise from the Constitution, it is limited only to the extent it has been relinquished through treaty with the United States or extinguished by Congress. Absent express authorization from Congress, a tribe’s sovereignty is not subject to invasion or

extinguishment by a state, which can no more “regulate” the affairs of a Tribal Nation than it can the affairs of any other sovereign state.

16. The fact that states cannot invade the tribes’ sovereignty absent explicit Congressional authority is further demonstrated by the fact the federal government is deemed to be in a fiduciary, or trust, relationship with the tribes, which obligates the federal government to act in the tribes’ best interests, including by protecting the tribes’ sovereignty. This is a “legal obligation under which the United States ‘has charged itself with moral obligations of the highest responsibility and trust’ toward Indian tribes.” (U.S. Dep’t. of the Interior, Indian Affairs, <http://www.bia.gov/FAQs/>; quoting *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).) A state cannot under the guise of “regulation” circumvent the power of Congress or the federal trust responsibility and violate the Tribe’s sovereign rights by supplanting tribal regulations and laws over activities rooted on tribal land.

B. Congress Has Neither Extinguished the Tribal Nations’ Sovereignty Over Their Lending Businesses Nor Authorized the State to Regulate the Businesses.

17. Congress has not authorized New York (or any other state) to regulate or otherwise apply its laws to the Tribal Businesses. On the contrary, rather than extinguish the Tribal Nations’ sovereignty to operate and regulate their online lending businesses, in enacting the Dodd-Frank Reform Act, Congress recently reinforced the fact that the State has no authority to invade the Tribal Governments’ inherent sovereignty.

18. Recognizing that more than one in four households in the United States conduct some or all of their financial transactions outside of the mainstream banking system, Congress debated nonbank lending during its consideration of the Act and decided to place federal regulatory authority over nonbank lending with the newly-created Consumer Financial Protection Bureau “CFPB”) rather than outlawing the activity.

19. Congress’ drafting of the Dodd-Frank Act is important in one respect particularly relevant to this action. The Act makes clear Congress’ intention to *include Tribal Nations*

among the sovereigns which regulate, and not among the regulated, including the Act's definition of "State": "any State, territory, or possession of the United States ... *or any federally recognized Indian tribe....*" (Emphasis added.) Accordingly, under the Act, tribes are treated as a sovereign state, just as is New York, a Congressional act that is flatly contrary to the notion that New York can regulate, or otherwise apply its laws to, the lending business operated by the Tribal Nations.

20. Indeed, rather than subjugating Tribal Nations to the regulation of states, the Act requires the CFPB "consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate," further reinforcing the notion that Congress intended States (and, thus, Tribal Nations) act as co-regulators with the CFPB. The Department of the Treasury supported this principle when it stated that the Dodd-Frank Act "[e]mpower[s] tribal government ... to enforce the [CFPB]'s rules in areas under their jurisdiction, the same way that states will be permitted to enforce those rules." The Act thus makes clear that when Congress addressed the matter of regulating online consumer lending it made a considered decision not to exercise its power to extinguish the Tribal Nations' inherent sovereignty in this area of commerce.

C. The Critical Role of Inherent Sovereignty in the Survival of Tribes.

21. The tribes' inherent sovereignty is not a historical relic. It existed before the State and all other relevant governmental powers came into being and it has never been extinguished. Beyond a political concept, it is the fuel for engine of economic development and prosperity for Tribal Nations in the modern world. Without their economic sovereignty, the societal and economic advances made by Tribal Nations in the recent past will be reversed, leaving them to deal with the socioeconomic ills they had finally started to remediate and overcome through commercial endeavors made possible by the Tribal Nations' inherent sovereignty.

22. Until these recent commercial endeavors, what passed for economic development in Tribal Nations, which were mired in deep poverty and severe unemployment, was federal aid. Although well-intentioned, a patchwork of federal economic development policies dating back to

the late 19th century succeeded only in creating an economy fueled almost exclusively by federal projects and federal grants. This “projects and grants economy,” where tribal economic development was often at the mercy of the federal government’s funding priorities rather than the Tribal Nations’ economic self-determination, failed to create meaningful economic development.

23. Tribal nations emerged from these failed policies in dire straits, with many communities still struggling to recover to this date. Many Tribal Nations exist on a fraction of the lands promised to them in treaties and regulations, isolated from the basic infrastructure necessary for traditional economic development and without the capital necessary for significant development projects.

24. As a consequence, tribal nations continue to face high unemployment rates, a shortage of housing, insufficient healthcare, struggling schools, and high rates of alcoholism and suicide. For example, in 1990 per capita income for Indians on reservations was less than one-third the U.S. average. College attainment was less than half the U.S. level. Unemployment stood at three times the U.S. level. The proportion of Native American homes on reservations lacking hot and cold running water, a flush toilet, or a shower was many times greater than the national average. Life expectancy in some Tribal Nations is at or near the rate for third-world countries. To add to these problems, tribal governments today are faced with the reality of reduced federal funding for essential services such as education, health care, law enforcement, and infrastructure.

25. The ability of Tribal Nations to exercise their sovereignty in the modern economic arena is critical to their survival. Tribal Nations have succeeded in sustainable economic development when they have exercised their sovereignty to identify opportunities, control execution, select partners, and engage tribal members in the success of tribally-owned operations. Decades of research conducted by the Harvard Project on American Indian Economic Development has confirmed that economic development is more likely to occur and be sustained when Tribal Nations make their own decisions about what approaches to take in economic

development and what resources to utilize in that development; in other words, when Tribal Nations exercise their inherent sovereignty.

i. **The Advent of Gaming: an Economic Resurgence for Some Tribes.**

26. Most notable among these tribally-driven economic opportunities is the growth of Tribal Nation-owned and operated gaming enterprises. Economic development had been nearly non-existent among Tribal Nations until the 1970s, when gaming emerged as a way to develop tribal economies. After successfully establishing through the courts their sovereign right to operate the gaming enterprises, some Tribal Nations developed a robust gaming industry, which has resulted in the creation of thousands of jobs, along with revenues used to rebuild the Tribal Nations and revitalize their culture. The most successful of these gaming operations occurred in a few key states, including Florida, Minnesota and California.

27. While gaming continues to serve as an economic palliative (albeit one that has plateaued) for some Tribal Nations, it has provided little or no net revenue to others. For example, data from the National Indian Gaming Commission (NIGC), the federal agency that co-regulates tribal gaming with tribal governments, reveals that as recently as 2010 22% of tribal gaming operations earned more than 52% of the revenues. Indeed, fewer than half of the nation's 564 federally-recognized Tribal Nations are located in a geographic area that can support a land-based tribal gaming facility. For those Tribal Nations in less-populated or remote areas, land-based gaming is not a viable economic enterprise.

28. While economic growth on reservations as a whole outpaced that in the United States during the recent recession, the income gap between Tribal Nations and the rest of the United States remains large, with the real per capita income for American Indians on reservations at \$10,963 compared to \$26,648 for the United States as a whole. American Indian poverty remains at 28% on reservations (compared to 10% for the United States) and the unemployment rate on reservations is twice the United States average, 16% in Indian Country versus 8% for the United States. In short, while Tribally-owned and operated gaming has proven

to be an enormous success for some Tribal Nations, only a small number of tribes can depend upon gaming as the primary or sole source of revenues for “nation building” initiatives.

ii. **Online Lending: Tribal Nations Forced to Pursue Other Economic Opportunities.**

29. Economic development opportunities have slowly diversified for a number of Tribal Nations, with opportunities emerging in government contracting, light manufacturing, tourism, forestry, agriculture, construction, and retail operations. However, many tribes with fewer resources and advantages—whether natural, geographic, or monetary—remain physically isolated and without meaningful financial capital for large-scale economic enterprises. These Tribal Nations do not have natural resources to mine, harvest, or cultivate; they are remotely located and are thus poor candidates for manufacturing and tourism ventures.

30. In order to secure their economic and social survival, Tribal Nations smartly identified emerging economic opportunities, including in e-commerce activities, and created successful business models to develop them. Because e-commerce requires limited capital and infrastructure investment, it has allowed many Tribal Governments with little or no gaming capacity to build their economies and realize the job creation and revenue generation that has eluded them for so many years but which is vital for tribal self-government and autonomy.

31. As the business of consumer finance entered the electronic marketplace, advances in technology, data, and analytics have allowed for the underwriting of more sophisticated consumer lending products, nonbank consumer lending began to migrate to an online environment. Responding to this development, a number of Tribal Nations entered the e-commerce marketplace for nonbank consumer lending, capitalizing upon a shift in enterprise model that provides a unique opportunity for isolated tribes with few to no significant economic development resources.

32. The Tribal Governments are among those that entered the business of online lending. In order to efficiently, properly, and legally operate these businesses, each Tribal Government created a Tribal Corporation to operate the business (with contracting third-parties,

as necessary) and formed a Tribal Regulatory Agency to regulate, monitor, and oversee the business. All of these actions were taken pursuant to the inherent sovereignty of the Tribal Governments.

33. Contrary to the State's portrayal of nonbank lending, the products offered by Tribal Governments through the Tribal Corporations are needed by—and benefit—a significant portion of the United States population that does not have access to lending products traditionally offered by banks. For example, according to the National Survey of Unbanked and Underbanked Households, an estimated 8.2% of United States households (approximately 17 million adults) do not have a checking or savings account, or are “unbanked.” In addition, an estimated 20.1% (51 million adults) are “underbanked,” which is defined as “those that have a checking and/or savings account and had used non-bank money orders, non-bank check cashing services, non-bank remittances payday loans, rent-to-own services, pawn shops, or refund anticipation loans (RAL's) in the past 12 months.” The Tribal Businesses fill this gap in consumer lending services by making products available to those who otherwise may not have access to the credit market. To the extent New York residents, for example, have access to the bank credit market, they can exercise that option. The Tribal Governments' operation of online lending businesses is a quintessential example of sovereignty-driven economic development. Like their gaming facilities, these online lending enterprises are run by the tribes and for the economic benefit of the Tribal Nations.

iii. The Online Lending Operations are Regulated by the Tribes and are Conducted from their Reservations.

34. As part of their entry into online lending, the Tribal Governments formed the Tribal Corporations to engage in the business, and they created the Tribal Regulatory Authorities to regulate the activities of the businesses.

35. The Tribal Nations' offer their credit products from their reservations, where their lending operations are physically located and where they employ tribal members, conduct

business operations, and make business decisions—which are made by tribal business executives and reviewed and supervised by tribal regulators.

36. For example, the loan application process takes place through a website owned and controlled by the Tribal Nation. The website explicitly informs customers that loans are subject to the exclusive laws and jurisdiction of the Tribal Nation. Potential consumers fill out an application; the application is reviewed and assessed by the Tribal Nation’s loan underwriting system. The ultimate authority to decide whether or not to fund a loan lies with the Tribal Nation. Upon approval of a loan application, the Tribal Nation notifies the borrower of the acceptance of his or her loan application and the loan agreement is made available for electronic signature. The loans are funded by bank accounts owned by the Tribal Nation.

37. The credit products offered by the Tribal Corporations are governed by tribal law and jurisdiction. Consumers are given clear notice of this aspect of the credit products and as part of the transaction agree to them. The Tribal Corporations ensure safe and compliant operations by instituting internal compliance procedures, while also contracting with third party vendors that can strengthen operational integrity. These contracts are executed and supervised by the Tribal Corporations and ensure that Tribal Corporations are positioned to be market leaders in this legal business. All net revenue generated by the online lending business is devoted entirely to the general welfare of the tribal community.

38. Tribal Nations that own and operate tribally-regulated, online lending companies, have experienced life-changing increases in tribal funds available for health care, education, elder care, and infrastructure programs. For example, lending revenues account for close to half of plaintiff Otoe-Missouria Tribe’s non-federal budget and support tribal advancement in infrastructure, education, child care, natural resource development, housing, healthcare and employment training, among other fundamental services. For virtually every Tribal Nation involved, online lending has been the most significant economic development opportunity, both in terms of revenue and job creation.

D. The State Threatens to “Regulate” the Tribal Plaintiffs Out of Business.

39. On August 6, 2013, the State undertook a sweeping, public initiative to shut down the Tribal Businesses. The State has targeted nearly a dozen online lending businesses operated by Tribal Nations, including those operated by the Tribal Governments through the Tribal Corporations. The State has demanded that the Tribal Corporations cease their online lending operations and immediately cease offering their credit products to “New York consumers,” or face criminal and civil actions by the State “to protect New York consumers.”

40. The State’s initiative has also included sending threat letters third parties with whom the Tribal Corporations do business, including banks, debt collection entities, and National ACH Association (“NACHA”), the organization that manages the Automatic Clearing House (“ACH”), through which credits and debits relating to the Tribal Businesses’ online lending operations must pass. In its letter to NACHA, the State made clear its intent to interfere with the business contracts and relationships of the Tribal Corporations: it stated that it wants to “choke off” the Tribal Corporations’ access to ACH as a means of destroying the Tribal Businesses.

41. In these letters the State has falsely declared the Tribal Business as “illegal” “payday” lenders. Although the State has acknowledged in the letters that the Tribal Governments, the Tribal Corporations, and the Tribal Regulatory Agencies are “out of state lenders” not located in New York, it has staked its threats and demands on the incorrect premise that it can apply New York law to the Tribal Businesses. In doing so, the State has attempted to invade the Tribal Governments’ inherent sovereignty, resulting in actual and threatened irreparable harm to Plaintiffs.

E. The State’s Actions Have Gravely and Irreparably Harmed the Tribal Nations, Which Harm Will Persist if the State is Permitted to Continue its Vendetta.

42. The State has chosen to attack the Tribal Nations’ sovereignty by using threats and intimidation to cut off their business relationships and by demonizing the Tribal Nations to consumers. Aware of the obvious fact that without necessary business relationships and without customers the Tribal Nations’ consumer lending business will not survive, the State launched its

unilateral plan to “choke off” that business. The actions of the State to date and the civil and criminal actions it has threatened for the future constitute violations of the Tribal Nations’ inherent sovereignty and Constitutional rights. The State’s actions are a blatant challenge to the Tribes’ sovereignty and its all-fronts efforts to isolate the Tribal Nations’ lending enterprises will have accomplished the goal of putting them out of business, rendering academic the question of the Tribal Nations’ sovereignty.

43. As a result of the State’s actions, the Tribal Nations’ operations and relationships with banks and third party processors have been greatly and irreparably harmed. The State’s campaign has already damaged or led to the termination of existing relationships with banks, third party payment processors and vendors, placing the viability of the Tribal Nations’ operation at serious risk.

44. The State’s illegal intrusion upon tribal sovereignty has already harmed Tribal Businesses in the few days that have elapsed since the release of the State’s August 5, 2013 letters and public announcements in the following ways:

a. Third party payment processors that are essential to the execution of both the funding and repayment of consumer loans have summarily terminated relationships with the Tribal Businesses. One such vendor even moved up the date by which it would cease to honor its contract with the Tribe because of increased pressures from the State;

b. Banking institutions that originated transactions on the ACH network for the Tribal Businesses have given notice that the State has demanded they stop servicing tribal online lenders because they are considered to be presumptively illegal operations;

c. Almost certainly as a result of the State’s threats and coercion, NACHA has corresponded with banks initiating ACH transfers for the Tribal Businesses and suggested that the banks are violating important network rules by processing ACH for the Tribal Businesses, and demanding that the banks explain why such transactions are legal if they intend to continue servicing the Tribal Businesses; and

d. The number of entities available to the Tribal Businesses for necessary

payment system access and day-to-day operations has dwindled to a dangerously low level.

45. Unless the State is enjoined from continuing its campaign of misrepresentations, threats and coercion, the Tribal Businesses will face diminished operations, job elimination or furloughs, reduced revenues for the general welfare of the Tribal Nations and, ultimately, a destruction of their business, and consequent negative impact on the ability of Tribal Nations to provide essential services such as public safety, education, health care, and basic infrastructure.

FIRST CAUSE OF ACTION

(Violations of Federal Law)

46. The Tribal Nations incorporate by reference paragraphs 1 through 45 above as if fully restated herein.

47. The Tribal Nations are Indian tribal entities that enjoy sovereignty, recognized and established by federal law.

48. The Tribal Nations are Indian tribal entities within the meaning of the Indian Commerce Clause ("ICC"), U.S. Const. Art I, § 8, cl. 3, and 25 U.S.C. *et seq.*, and own, operate, and regulate the Tribal Businesses in their sovereign capacity.

49. Only Congress, through express and explicit action, may limit the sovereignty of the Tribal Nations.

50. Congress has not exercised its power to expressly (or otherwise) authorize the State to regulate the Tribal Businesses, or to otherwise limit the Tribal Nations' sovereignty with respect to the ownership, operation, or regulation of the Tribal Businesses

51. The State has violated federal law by invading, infringing upon and otherwise disturbing the sovereign rights of the Tribal Nations by, among other acts:

- a. Threatening to enforce against the Tribal Nations the State's criminal and civil usury laws in connection with the Tribal Nations' operation of Tribal Businesses;
- b. Ordering the Tribal Businesses to cease and desist from offering and originating loans;
- c. Interfering with Tribal Nations contractual and/or business relationships

related their Tribal Businesses by threatening or coercing the Tribal Nations' business partners;
and

d. Making widely-disseminated (and false) public statements to the effect that the Tribal Businesses have violated the State's usury laws, with the purpose and effect of impeding the operations of the Tribal businesses.

52. The State has also violated the ICC by attempting to regulate Tribal activities that Congress has elected not to itself regulate or expressly authorized the states to regulate, and by disregarding or contesting the Tribal Nations' sovereignty with respect to the Tribal Businesses.

53. The State's unlawful campaign against the Tribal Businesses has caused irreparable harm to the Tribal Nations, and threatens continuing and increasing irreparable harm, including the loss of business relations necessary to the Tribal Business, the loss of customers, destruction of the Tribal Businesses, and diminution of tribal sovereignty.

SECOND CAUSE OF ACTION

(Declaratory Relief as to Sovereignty)

54. The Tribal Nations incorporate by reference paragraphs 1 through 45 above as if fully restated herein.

55. An actual controversy has arisen and now exists between the Tribal Nations and the State concerning their respective rights and duties.

56. The State contends that the Tribal Businesses are illegal under New York state law. The State's contention disregards and violates the Tribal Nations' inherent sovereignty under both the common law and the United States Constitution.

57. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to the legality of the Tribal Businesses is necessary and appropriate under the circumstances.

58. The Tribal Nations have no equally plain, speedy, or adequate remedy to prevent the State's actions other than seeking declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, the Tribal Nations request the following relief:

59. An injunction restraining and enjoining the State from purporting to pursue and from actually pursuing any and all state regulatory and enforcement actions over the Tribal Nations and the Tribal Businesses, along with the financial institutions, payment processors, and financial services associations with which the Tribal Nations have contracted or entered into business relationships for the purpose of conducting the Tribal Businesses;

60. The Tribal Businesses seek a declaratory judgment from the Court that the Tribal Businesses are inherently sovereign Indian nations and that the State may not assert its jurisdiction or laws over the Tribal Nations, including by purporting to pursue or actually pursuing the threatened regulatory and/or enforcement actions against the Tribal Nations, the financial institutions or third party entities with which the Tribal Nations contract in conducting the Tribal Businesses;

61. Damages on the Tribal Nations' causes of action pursuant to equitable relief;

62. An order awarding the Tribal Nations their costs, expenses, and reasonable attorneys' fees as provided by law;

63. Such other costs as the Court may deem equitable and just; and

64. Such additional relief as the Court may conclude is equitable and appropriate.

Dated: August 21, 2013

Of counsel:

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(*pro hac vice* application to be filed)

Saba Bazzazieh

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Respectfully submitted,

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE SULLIVAN

THE OTOE-MISSOURIA TRIBE, a federally-recognized Indian Tribe; **GREAT PLAINS LENDING, LLC**, a wholly-owned tribal limited liability company; **AMERICAN WEB LOAN, INC.**, a wholly-owned tribal corporation; **OTOE-MISSOURIA CONSUMER FINANCE SERVICES REGULATORY COMMISSION**, a tribal regulatory agency; **LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**, a federally-recognized Indian Tribe; **RED ROCK TRIBAL LENDING, LLC**, a wholly-owned tribal limited liability company; **DUCK CREEK TRIBAL FINANCE**, a wholly-owned tribal corporation; and **LAC VIEUX DESERT TRIBAL FINANCIAL SERVICES REGULATORY AUTHORITY**, a tribal regulatory agency,

13 CV 5930
Case No.

Plaintiffs,

vs.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES; and **BENJAMIN M. LAWSKY**, in his official capacity as Superintendent of the New York State Department of Financial Services,

Defendants.

SUMMONS

To: Benjamin W. Lawskey
c/o New York State Department of Financial Services
One State Street
New York, NY 1004-1511

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

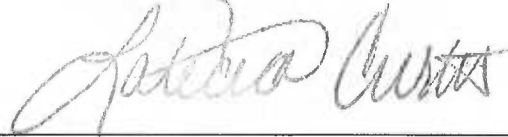
David M. Bernick
Boies, Schiller & Flexner LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

Date: AUG 21 2013



Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE SULLIVAN

THE OTOE-MISSOURIA TRIBE, a federally-recognized Indian Tribe; **GREAT PLAINS LENDING, LLC**, a wholly-owned tribal limited liability company; **AMERICAN WEB LOAN, INC.**, a wholly-owned tribal corporation; **OTOE-MISSOURIA CONSUMER FINANCE SERVICES REGULATORY COMMISSION**, a tribal regulatory agency; **LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**, a federally-recognized Indian Tribe; **RED ROCK TRIBAL LENDING, LLC**, a wholly-owned tribal limited liability company; **DUCK CREEK TRIBAL FINANCE**, a wholly-owned tribal corporation; and **LAC VIEUX DESERT TRIBAL FINANCIAL SERVICES REGULATORY AUTHORITY**, a tribal regulatory agency,

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SUMMONS

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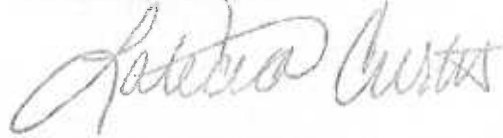
Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David M. Bernick
Boies, Schiller & Flexner LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
Facsimile: (212) 446-2350

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

A handwritten signature in dark ink, appearing to read "Ruby J. Krajick", written over a horizontal line.

Date: AUG 21 2013

Signature of Clerk or Deputy Clerk