



Habematolel Pomo of Upper Lake

375 E. Hwy 20, Suite I Upper Lake, CA 95485

Toll Free: 1-877-543-5102 - Fax: 707-275-0757

United States House of Representatives Committee on Financial Services

Short-Term, Small Dollar Lending: The CFPB's Assault on Access to Credit and Trampling of State and Tribal Sovereignty

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Statement of Sherry Treppa Chairperson, Habematolel Pomo of Upper Lake

Chairman Neugebauer, Ranking Member Clay, and Honorable Members of the committee, thank you for the opportunity to testify at this important hearing on short term lending and tribal sovereignty. My name is Sherry Treppa and I am the chairperson of the Habematolel Pomo of Upper Lake, a federally-recognized Indian Tribe located in rural Upper Lake, California. I have represented the Tribe's interests as an elected leader for the past eleven years, and held the position of chairperson for the last seven. I also serve as the Vice-Chairperson of the Native American Financial Services Association (NAFSA), an intertribal organization formed in 2012 to advocate for tribal sovereignty and responsible business practices in e-commerce.

As a vital part of our economic development strategy, our Tribe owns and operates several online small-dollar lending businesses that operate on our Trust lands. I am here today to provide you with information on how our Tribe regulates and supervises these businesses and the considerable tools we have available to protect consumers. I would also like to share my thoughts and feedback on the efforts the Consumer Financial Protection Bureau (CFPB) has taken to restrict the short-term, small dollar credit marketplace and preempt State and Tribal rights, and what that will mean to American consumers and Indian tribes.

To first understand these critical issues, it is important to understand our tribe's people, our long and arduous history, and the sovereign authority that we have worked so hard to safeguard.

Our ancestors have called the Clear Lake region of California home from as early as 6,000 BC. Our people flourished until significant migration and settlement brought conflict and disease that, in one generation, decimated our numbers by 95%. The flawed federal policies that ensued subjected Pomo Indian tribes to enslavement, internment, horrific abuse, and slaughter. Notably, the U.S. Cavalry in 1850 nearly eradicated my Tribe's ancestors, predominantly elderly, women and children, in an aggressive military operation known as the "Bloody Island Massacre." The only survivor of that attack was a 6-year old girl who survived by hiding underwater and breathing through a tule reed.

Our Tribe and our lands were first federally recognized in 1907 eventually amassing over 560 acres through piecemeal acquisitions. In 1956 the federal government passed the California Rancheria Act, which terminated the Tribe's federal recognition.¹ We lost not only our recognition, but also our land, which is fundamental to our way of being. Despite efforts to destroy our tribe and our identity, we persevered. In 1975, the Tribe began the arduous task of reestablishing its identity and restoring its dignity by filing a court action alleging that the Tribe's termination was illegal. Although the suit took nearly 10 years to litigate, we prevailed. After restoration in 1983, the Bureau of Indian Affairs (BIA) refused to recognize our Tribe's 1941 Constitution which required the Tribe to reorganize under federal law, and impeding our efforts to restore our land-base. In 1998, we began reorganization, working with the BIA to reestablish our government, finally succeeding in 2004 in adopting our current Constitution. After this long and onerous process, the Department of the Interior accepted into trust a small, 11.24 acres tract of land for the benefit of our Tribe. These achievements, gained through years of effort and raw human will, are our legacy.

As elected leaders of our Tribe, I and other members of our Tribal Council honor that legacy through our unrelenting efforts to improve the general welfare of our citizens through self-development, education and other opportunities for advancement. E-commerce and lending provides those opportunities.

Before I go into the specifics of our Tribe's lending practices and the strong regulatory framework that undergirds them, I believe it is important that I provide an overview of tribal sovereignty and the rights that Tribes have to legislate and regulate business activities occurring within their jurisdictions.

Tribal Sovereignty and Self-Regulation

The inherent sovereign power of Indian Tribes predates the United States Constitution. Indian Nations appears twice in the Constitution, each time in Article I, treated as separate and existing sovereign nations. Nearly every piece of modern legislation dealing with Indian tribes explicitly affirms the protective trust relationship between tribes and the federal government. The federal trust responsibility to Indian tribes underlies both the "government-to-government relationship" with Indian tribes and the imperative that federal agencies not actively impede the economic development and self-determination of Indian tribes, and that they engage in meaningful consultation when any federal undertaking might impact tribes in a significant way. The sole power to diminish tribal sovereignty rests with Congress. Whatever Congress has not expressly diminished by legislation remains for the exercise of tribal governments like the Habematolel Pomo of Upper Lake.

Tribal Regulation of Consumer Lending Activity

From our sovereign power springs the right to legislate and regulate the operations of business activities within our jurisdiction. Consistent with our commitment to improve our members' economic prospects, in 2010, the Tribe began to explore e-commerce and online small dollar lending as a viable economic opportunity. After a thorough review of the industry and related opportunities, our tribal

¹ See, the California Rancheria Termination Act of 1958, Public Law 85-671 (72 Stat. 619) found at <http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg619.pdf>.

council, consistent with our inherent power, constructed a regulatory framework using the model that has proven successful in the tribal gaming industry.

We enacted a lending ordinance that sets forth the parameters of legal operation of consumer lending from our Trust land. This lending ordinance prohibits tribal licensees from engaging in unfair, deceptive, or fraudulent practices, or engaging in any consumer financial services other than those expressly permitted under that ordinance.² Tribal lending entities that issue loans within our trust land must comply with that legislation.

We created a regulatory commission and charged it with oversight of the tribal lending businesses, and gave it the power to enforce our laws. This regulatory commission is a separate division of the Tribe's government, which means that it operates independently of our tribal government. The commission has the autonomy to exercise its enforcement authority should a lending business violate the consumer protection laws that we established.

Sovereignty at Work: Collaborating to Protect Consumers

My 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 coordinate the exercise of authority in this area and promote a collaborative government-to-government regulatory environment. By way of example, our Tribe successfully entered into a Memorandum of Understanding 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 Trust land, adheres to best practices, and does not violate federal or tribal law.

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, along with other tribal members of NAFSA, collaborated with the Department of Business Oversight to explore opportunities to develop a framework that facilitates information exchanges between regulatory authorities. The experience was positive and we continue to pursue open dialogues and additional Memoranda of Understanding with other states, ever eager to work cooperatively and communicate openly with states as co-regulators to achieve shared goals of consumer fairness and protection. Indeed, these efforts are consistent with the regular practice of many Tribes throughout the country to collaborate with state authorities on tribal-state relations in areas as wide-ranging as law enforcement, environmental protection, hunting and fishing, public lands management, and education.

Another enforcement power available to Tribes in regulating financial services businesses, as the CFPB itself admits, is the ability to bring legal actions under the Dodd-Frank Act, just as States can. Indeed, the Navajo Nation and the CFPB brought an enforcement action together against a tax refund business in mid-2015 under this authority. While we have not seen the need to rely upon anything more

² See, Ordinance at §7.3.

than our own laws and regulatory commission to handle consumer complaints and other regulatory issues, my Tribe (and others operating small dollar lending businesses) are aware of this significant power, and are certainly prepared to exercise it should the need to do so arise. This Committee should make no mistake – ample power already exists for Tribes to protect consumers and regulate businesses within its jurisdiction.

What Tribal E-Commerce Offers Consumers

To fully illustrate what my Tribe has developed to meet the needs of consumers and our tribal members, I would like to go into more detail regarding my Tribe's lending operations and their obligations under Tribal law.

The Tribe's lending businesses must be licensed by our Tribal regulatory commission before they may engage in lending. They may not charge consumers an application fee or penalize them for early payment of their loans. Tribal lending entities must maintain a compliance management system to ensure compliance with Tribal law, promulgated regulations and applicable federal law.³ This system must include a full suite of written policies that cover all aspects of lending. Each lender must also have internal controls and processes that allow it to monitor its operations to ensure that its procedures follow those policies.⁴ As an additional control, our regulatory commission audits these businesses regularly. If deficiencies are identified during an audit, or if a lender fails in any way to satisfy their compliance obligations, then the commission is empowered to take corrective action. This includes imposing fines and penalties, as well as suspending and revoking the lender's license, which would terminate the lender's ability to extend credit. This regulatory framework is what our tribal lending entities operate under, and it ensures that their practices are responsible and based on principles of consumer protection.

The loans that our Tribe's businesses offer are not payday loans; they are unsecured loans that are repaid in installments, which means our lenders have no real remedies if a customer defaults. Consequently, a robust underwriting process is an operational imperative. Our Tribe's lending businesses use computer algorithmic waterfalls and data analytic tools to assess a consumer's application. The amount of a customer's credit request is compared against their income and existing credit obligations because it is a strong factor in determining their *ability to repay*. An applicant's repayment history is checked because it is the strongest factor in assessing their *willingness* to repay. If a customer's ability to repay or willingness to repay do not meet the lending company's underwriting requirements, or if the identity verification portion fails, then the application will be denied. Data from the Tribe's lending businesses illustrate the rigor and effectiveness of our underwriting. From all of the applications received in 2015, 4 only 3.1% were accepted. Of those accepted for review, less than 2% were approved and funded. Put another way: **98.3% of new customers are rejected in underwriting**. This commitment to responsible lending helps to prevent customers from taking loans they are unable to repay.

³ See, Ordinance at 7.4. Federal laws that our Tribal businesses adhere to include, as applicable, the Truth in Lending Act, Equal Credit Opportunity Act, Electronic Fund Transfer Act, Fair Credit Reporting Act, Gramm-Leach-Bliley Act, Fair Debt Collection Practices Act, Telephone Consumer Protection Act, the Telephone Sales Rule, and Section 5 of the Federal Trade Commission Act which prohibits unfair, deceptive or abusive acts or practices.

⁴ See, the Habematolel Pomo of Upper Lake Tribal Consumer Financial Services Regulatory Ordinance, §7.1

The typical customer that our tribal lenders approve for credit is approximately 45 years old with a median income of \$45,000. The typical customer rarely reports public assistance or other benefits as an income source. The median loan amount is \$700, 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. We have significant data that shows customers frequently repay their loans in less than four months. Data also shows that our customers have moderate borrowing patterns: when measured over two years, our customers have an average of 1.6 loans.

The Benefits of Tribal Lending for Us and Our Consumers

The decision to enter into the small-dollar credit marketplace has been transformative for our Tribe in that **all** net revenue derived from consumer lending is used to fund essential Tribal governmental services such as: cultural programs to promote the Tribe's language, heritage, and community; an Honored Elders Assistance Program, which provides monthly stipends for members 65 and older; a school clothing allowance for K-12 children, and scholarship programs to help with the costs of higher education; and a Community Care Program for members to receive violence and suicide prevention counseling, and other vital social services. Without tribal lending, these programs would be impossible.

For American consumers, our credit products offer options for meeting financial obligations without fear of defaulting on an obligation, failing to pay a bill, or overdrawing their checking account. The CFPB may consider small dollar lending to be a scourge of the credit industry; our customers tell a different story. In 2015, our total complaint rate was only 1.6%. This number likely drops to 1% when considering that some of those complaints are likely due to loan applications we denied. That number is significant and it illustrates the quality and the legitimacy of our operations.

My tribe agrees that consumer protection should be a primary concern of this industry, because responding to consumer demand in a regulated, compliant, and helpful manner is the essence of consumer protection – and that is what we do. Much of the reason we have been successful is the strong commitment we have made to ensure that tribal lending businesses adhere to fair and responsible lending practices that protect consumers. That is why we question the need for new CFPB rules. Efforts to impose additional regulations would significantly obstruct access to credit and reduce or eliminate consumer choices for meeting unexpected financial obligations.

Before the CFPB seeks to impose new regulations, I would first like them first to acknowledge the robust regulatory framework that our Tribe, and other tribes, have created, and that our lending businesses are operating within. In contrast to our experience working with other federal agencies as well as state and local governments, the CFPB has refused to engage in a meaningful dialogue about our shared interests and so far has shown little interest to work together, where necessary, as co-regulators.

The CFPB's refusal to work with tribes in a government-to-government manner is not consistent with the federal government's trust responsibility to tribal governments nor does it respect the inherent sovereignty of Indian tribes. I remain concerned that the CFPB is developing its proposed action in a vacuum without consulting with tribes to learn about the innumerable tools that we have developed to ensure that we conduct business in a manner that is fair, responsible, compliant and benefits our tribal members and the American consumer.

We respectfully urge Congress to take an approach that respects the historic government-to-government relationships of federal entities and sovereign tribes, and one that takes account of both consumer need and the robust self-regulation that sovereign Tribes such as the Habematolel Pomo of Upper Lake have established.