UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI ex rel. CHRIS KOSTER, Attorney General, Plaintiff, v. MARTIN A. WEBB, aka BUTCH WEBB, PAYDAY FINANCIAL, L.L.C., d/b/a LAKOTA CASH, d/b/a BIG SKY CASH, 24-7 CASH DIRECT, L.L.C., GREAT SKY FINANCE, L.L.C., FINANCIAL SOLUTIONS, L.L.C., d/b/a LAKOTA CASH, HIGH COUNTRY VENTURES, L.L.C., MANAGEMENT SYSTEMS, L.L.C., d/b/a GSKY, RED RIVER VENTURES, L.L.C., RED STONE FINANCIAL, L.L.C., WESTERN CAPITAL, L.L.C., and WESTERN SKY FINANCIAL, L.L.C., Defendants.	)	No. 4:11-cv-01237-AGF

MOTION TO DISMISS

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION:

Defendants Martin A. Webb, PayDay Financial, L.L.C., 24-7 Cash Direct, L.L.C., Great Sky Finance, L.L.C., Financial Solutions, L.L.C., High Country Ventures, L.L.C., Management Systems, L.L.C., Red River Ventures, L.L.C., Red Stone Financial, L.L.C., Western Capital, L.L.C., and Western Sky Financial, L.L.C. ("Defendants"), through their attorneys of record,

hereby move for the dismissal of the State of Missouri's Application for Temporary Restraining Order and Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and Other Court Orders. Defendants so move pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12 (b)(6) and in accordance with the Memorandum of Law that accompanies this Motion.

DATED this 25th day of July 2011.

Respectfully submitted,

HUSCH BLACKWELL LLP

By: */s/ John T. Richmond, Jr.*

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ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI ex rel. CHRIS KOSTER, Attorney General,	)	
Plaintiff,	)	
v.	)	No. 4:11-cv-01237-AGF
MARTIN A. WEBB, aka BUTCH WEBB, PAYDAY FINANCIAL, L.L.C., d/b/a LAKOTA CASH, d/b/a BIG SKY CASH, 24-7 CASH DIRECT, L.L.C., GREAT SKY FINANCE, L.L.C., FINANCIAL SOLUTIONS, L.L.C., d/b/a LAKOTA CASH, HIGH COUNTRY VENTURES, L.L.C., MANAGEMENT SYSTEMS, L.L.C., d/b/a GSKY, RED RIVER VENTURES, L.L.C., RED STONE FINANCIAL, L.L.C., WESTERN CAPITAL, L.L.C., and WESTERN SKY FINANCIAL, L.L.C.,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

INTRODUCTION

"The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 168 (1973), *quoting Rice v. Olson*, 324 U.S. 786, 789 (1945). By bringing this case and attempting to regulate the activity of Indians on an Indian reservation and supersede the jurisdiction of Tribal courts, the Missouri Attorney General (the "State") has violated this fundamental principle.

Defendant Martin A. Webb ("Webb") is a member of the Cheyenne River Sioux Tribe (the "Tribe"), and is the owner and operator of the entity Defendants. Some of the entity Defendants enter into loan agreements that provide for the exclusive application of Tribal law, under the authority of the Indian Commerce Clause of the United States Constitution, and for the exclusive jurisdiction in the Tribal Court.[1] Nonetheless, the State alleges that Defendants violated various Missouri laws by entering into and enforcing these loan agreements with Missouri residents. The State claims that Missouri law not only applies on the Cheyenne River Sioux Reservation (the "Reservation"), but also supersedes the Tribe's legislative and judicial jurisdiction regarding lending activity there.

Federal law prohibits and preempts the State's attempt to reach into the Reservation and regulate commercial activity. Because Tribal immunity, and the federal law that underpins it, extend to Tribal members and their businesses, the State's claims fail as a matter of law. Furthermore, pervasive federal law and policy pre-empt the State's attempt to supersede Tribal regulation of economic activity on the Reservation by Tribal members.

BACKGROUND

The State filed an Application for Temporary Restraining Order and Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties, and Other Court Orders [Docket No. 2] (the "Complaint") in the Circuit Court for St. Louis County. Defendants timely removed the case to this Court.

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[1] The other Defendants either are not currently or never were involved in consumer lending activities.

In the Complaint, the State alleges that "Defendant Martin A. Webb may be a tribal member." Complaint ¶ 56. The State is correct. Mr. Webb is an enrolled Member of the Tribe. *See* Certificate of Indian Blood, attached as Exhibit A.[2]

The Complaint also avers that "Defendants claim . . . that they are entitled to tribal sovereignty as an 'Indian owned business operating within the external boundaries of the Cheyenne River Sioux Tribe.'" Complaint ¶ 54. The entities' websites, screen shots of which are attached as exhibits to the Complaint, communicate this to potential and actual customers:

> PayDay Financial, LLC is owned wholly by an individual Tribal Member of the Cheyenne River Sioux Tribe . . . . PayDay Financial, LLC, is a privately owned Native American business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.
>
> Great Sky Cash is a Native American owned business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.
>
> Western Sky Financial, LLC, is a Native American-owned business operating within the boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.
>
> Red Stone Financial, LLC is a 100% Native American owned business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.

Complaint, Ex. B at 1, 2, 9, 12.

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[2] The Court "may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are necessarily embraced by the pleadings" without converting the present Rule 12 motion into a Rule 56 motion. *Little Gem Life Sciences, LLC v. Orphan Med., Inc.*, 537 F.3d 913, 916 (8th Cir. 2008).

The alleged and judicially noticeable facts bear out the claims regarding the location and ownership of the Defendant entities. The Complaint alleges that the facility located at 612 E. Street, Timber Lake, South Dakota – which is on the Reservation – is the principal place of business and is occupied by the entity Defendants. *See* Complaint ¶¶ 62, 63. The documents surrounding the State's attempted service on Defendants – which are included with Defendants' Notice of Removal – demonstrate that all of the Defendants are located on the Reservation, in either Isabel or Timber Lake, South Dakota. Several of the website screen shots attached to the Complaint display addresses for the entity Defendants which are similarly on the Reservation. *See* Complaint, Ex. B at 2, 7, 11, 13, 14; *cf.* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *Little Gem Life Sciences*, 537 F.3d at 916.

The Complaint also aptly demonstrates that the Defendant entities are Indian-owned: "Webb controls the majority of membership votes for each of the defendant companies or Webb controls one hundred percent (100%) of the membership votes for each of the defendant companies."[3] Complaint ¶ 68. The Complaint also alleges that "all the companies are managed by Martin A. Webb" and that "Defendant Martin A. Webb is, or has at all times relevant, directed, controlled, managed, participated in, supervised, was responsible for, or authorized the activities of the Defendant companies herein." Complaint ¶¶ 69, 70; *see also* Complaint ¶¶ 2, 4, 5, 12, 15, 17, 18, 22, 28, 34, 37, 40, 43 (describing Defendant Webb's connection to the entity

[3] As a point of reference, elsewhere in federal law, "[t]he term 'Indian-owned business' means an entity organized for the conduct of trade or commerce with respect to which at least 50 percent of the property interests of the entity are owned by Indians or Indian tribes (or a combination thereof)." 25 U.S.C. § 4302(5) (2006).

Defendants variously as organizer, president, chief executive officer, manager, and registered agent).

Finally, Cheyenne River Sioux Tribal law governs any loans at issue, and the Cheyenne River Sioux Tribal Court has exclusive jurisdiction over any dispute relating to the loans. The sample loan agreement, attached as Exhibit C to the Complaint, says exactly this:

> This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Contract, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Contract, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Contract, its enforcement or interpretation.
>
> * * * *
>
> This Loan Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. This Loan Agreement is not consummated until your loan is funded by us from our bank account on the Cheyenne River Indian Reservation, and your loan is repayable to that same account on the Cheyenne River Indian Reservation in SD. We do not have a presence in the State of South Dakota or any other State. None of this loan, the Loan Agreement, nor Lender, is subject to the laws of any State of the United States of America.

Complaint, Ex. C at 1; *see* Complaint ¶ 53 (alleging Exhibit C to be sample loan document).

ARGUMENT

1. The Legal Standard for a Motion to Dismiss.

Because issues of tribal immunity are jurisdictional in nature, *see Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 684 (8th Cir. 2011) ("tribal sovereign immunity is a threshold jurisdictional question"), the present motion highlights a somewhat unique combination of jurisdictional and pleading deficiencies in the State's Complaint.

"A motion to dismiss must be granted if the Complaint does not contain 'enough facts to state a claim to relief that is plausible on its face.'" *Kaminsky v. Missouri*, 2007 WL 2492410 at * 2 (E.D. Mo., Aug. 29, 2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. --, 127 S. Ct. 1955, 1974 (2007)). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 127 S. Ct. at 1964-65 (quoting Fed. R. Civ. P. 8(a)(2)); *Kaminsky*, 2007 WL 2492410 at * 2. *Twombly* abrogated the former "no set of facts" standard for a motion to dismiss. *See Twombly*, 127 S. Ct. at 1969; *Kaminsky*, 2007 WL 2492410 at * 2.

As stated above, in the context of a motion to dismiss, the court "may consider some materials that are part of the public record or do not contradict the complaint, as well as materials that are necessarily embraced by the pleadings." *Little Gem Life Sciences, LLC v. Orphan Med., Inc.*, 537 F.3d 913, 916 (8th Cir. 2008).

2. Defendants Are Entitled To Tribal Immunity.

Tribal immunity prevents the State from pursuing a state law enforcement action against the Tribe. *See Puyallup Tribe, Inc. v. Washington Game Dep't*, 433 U.S. 165, 172-73 (1977). "[I]n the absence of federal authorization, tribal immunity, like all aspects of tribal sovereignty, is privileged from diminution by the States." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 891 (1986). Defendants are entitled to rely on this immunity because the actions about which the State complains took place on the Reservation, Webb is an enrolled member of the Tribe, and the loan agreements at issue provide for the

exclusive application of Tribal law and the exclusive jurisdiction of the Tribal Court. Accordingly, the Defendants are not subject to Missouri law or its enforcement by the State.

The Tribe's sovereignty is derived from its aboriginal status as a Native American Tribe, and was recognized by the Fort Laramie Treaty of 1868 (15 Stat. 635), which established the Great Sioux reservation, and an act of Congress in 1889 (25 Stat. 888), which established the Cheyenne River Sioux Reservation. *South Dakota v. Bourland*, 508 U.S. 679, 682 (1993); *Solem v. Bartlett*, 465 U.S. 463, 466-69 (1984).

The Complaint and its exhibits demonstrate that:

- The defendants are located on the Reservation;
- The loan agreements are subject solely to the exclusive laws and regulations of the Tribe;
- Borrowers consent to the exclusive jurisdiction of the Tribal Court;
- The agreement is governed by the Indian Commerce Clause of the United States Constitution and the laws of the Tribe; and
- The lender is not subject to the laws of any state.

See discussion *supra* under "Background."

Under the terms of the loan agreements and the structure of Defendants' business, as pled in the Complaint, any agreement with a Missouri resident would have been entered into on the Reservation and would be governed solely by Tribal law.[4] Therefore, the State has no

[4] Federal law "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State." *Healy v. Beer Institute*, 491 U.S. 324, 336 (1989) (quotation and alteration marks omitted). Under federal law, the location of a contract is the place it is formed. *See Dean Foods Co. v. Brancel*, 187 F.3d 609, 617-18 (7th Cir. 1999); *see also* Restatement (First) Contracts § 74 (1932). Therefore, "an element of the actual contract formation must

(continued...)

jurisdiction over Defendants. "Congress has . . . acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." *Williams v. Lee*, 358 U.S. 217, 220 (1959). In *Williams*, a non-Indian who operated a general store on the Navajo Indian Reservation filed suit against Navajo Indians (Mr. and Mrs. Williams) in state court in Arizona to recover for goods sold in the store on credit. Judgment was entered against Mr. and Mrs. Williams in the state trial court, and the Supreme Court of Arizona affirmed the judgment. The United States Supreme Court reversed, holding that, unless Congress expressly grants power to a state,[5] the state has no authority to govern the affairs of Indians on a reservation. *Id.* at 220-223. The *Williams* court concluded its opinion by stating:

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent [i.e. the store owner bringing suit] is not an Indian.

Id. at 223; *see also Puyallup,* 433 U.S. at 172-73; *Three Affiliated Tribes*, 476 U.S. at 891.

The Supreme Court reaffirmed this holding in *Montana v. United States*, 450 U.S. 544 (1981), where it further emphasized that state law does ***not*** govern contracts between Indians and non-Indians:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or

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(...continued)

> occur within a state for that contract to come within the purview of the state's laws." *Midwest Title Loans, Inc. v. Ripley*, 616 F. Supp. 2d 897, 904 (S.D. Ind. 2009) (citing *Dean Foods*, 187 F.3d at 620). Because any loans made by Defendants were formed on the Reservation, Missouri may not regulate them.

[5] Defendants are not aware of any such authority granted by Congress to Missouri.

> other means, the activities of nonmembers who enter ***consensual relationships with the tribe or its members, through commercial dealing, contracts***, leases, or other arrangements.

Id. at 565 (emphasis added).

The holdings in *Williams* and *Montana* are dispositive here. The loan transactions took place on the Reservation and are explicitly governed by Tribal law. Defendant Webb – the person who owns and operates the entity Defendants – is a member of the Tribe. The Supreme Court has held that its decisions and federal law confer rights on ***individual*** Indians, as well as Tribes. "[W]hen Congress has legislated on Indian matters, it has, most often, dealt with the tribes as collective entities. ***But those entities are, after all, composed of individual Indians, and the legislation confers individual rights.*** This Court has therefore held that 'the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.'" *McClanahan*, 411 U.S. at 181 (*quoting Williams*, 358 U.S. at 220) (emphasis added).[6]

Likewise, there is no requirement that entity Defendants be owned by the Tribe or be incorporated under Tribal law to be entitled to the protection of Tribal law. Webb is a member of the Tribe and he owns and controls the entity Defendants, which are located on the Reservation. *See* discussion *supra* under "Background." Congress has recognized the special nature of Indian-owned corporations, regardless of where they are incorporated, by enacting the Indian Business Development Program to "establish and expand profit-making Indian-owned economic enterprises." 25 U.S.C. § 1521 (2006). The regulations to that statute restrict

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[6] *Williams* and *Montana* involved individual Indians. *McClanahan* expressly recognizes that ***individual*** Indians are free of unwarranted state jurisdiction.

participation to "Indians, Indian Tribes, Indian Partnerships, corporations, or cooperative associations ***authorized to do business under State, Federal or Tribal Law***." 25 C.F.R. § 286.3 (emphasis added). Therefore, the State's attempt to enforce Missouri law against Defendants here is no less an infringement of Indian rights than the conduct of the Arizona courts in *Williams* or *McClanahan*.

Similarly, federal courts have recognized that a corporation may acquire the racial attributes of its owner and may invoke the race-based protections provided to others under federal law. *See Guides, Ltd. v. Yarmouth Group Property Management, Inc.*, 295 F.3d 1065, 1072 & n.2 (10th Cir. 2002) (holding that a corporation had standing to sue under Civil Rights statutes where it suffered harm as a result of discrimination against an owner and employee); *Gersman v. Group Health Ass'n, Inc.*, 931 F.2d 1565 (D.C. Cir.1991), *vacated on other grounds*, 502 U.S. 1068 (1992); *Hudson Valley Freedom Theater, Inc. v. Heimbach*, 671 F.2d 702, 706 (2d Cir. 1982); *Howard Security Services v. Johns Hopkins Hospital*, 516 F. Supp. 508 (D. Md. 1981). These courts essentially hold that the entities take on the racial identity of the owner or other person. The Eighth Circuit, in *Oti Kaga, Inc. v. South Dakota Housing Development Authority*, allowed a corporation to invoke and vindicate the federal Civil Rights protections of its Native American owners. 342 F.3d 871, 880-82 (8th Cir. 2003). The court explained that such a position was important in order to effectuate the purpose of the federal laws at issue.

Similarly, the entity Defendants in the present case should be permitted to invoke the federally-provided immunity protections to which Defendant Webb is entitled. Defendant Webb's immunity derives from the Tribe's interests in self-reliance and self-governance on the

Reservation. These same interests apply to the entities which Defendant Webb formed in order to conduct business there.

In *Pourier v. South Dakota Dept. of Revenue*, 658 N.W.2d 395 (S.D. 2003), *aff'd in part and vacated in part on other grounds*, 674 N.W.2d 314 (2004), *cert. denied*, 541 U.S. 1064 (2004), the South Dakota Supreme Court relied on some of the foregoing authority to hold that a corporation incorporated under South Dakota law, rather than Tribal law, was an enrolled member of the tribe for purposes of tax immunity because it was owned by an enrolled member of the tribe and operated on the reservation. *Id*. at 403-405; *see also Giedosh v. Little Wound Sch. Bd.*, 995 F. Supp. 1052, 1059 (D.S.D. 1997) (fact that school board was incorporated under South Dakota law did "not affect its status as an 'Indian tribe'").

In *Pourier*, the South Dakota Supreme Court held that the State of South Dakota had no power to impose a fuel tax on a business operated on a reservation by an enrolled member of the Oglala Sioux tribe. 658 N.W. 2d at 397, 402-403. In holding that the State of South Dakota could not impose the tax on an Indian operating on a reservation – as contrasted to a non-Indian on a reservation – the *Pourier* court relied on the holding in *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 458 (1995):

> [W]hen a State attempts to levy a tax directly on an Indian tribe ***or its members inside Indian country***, rather than on non-Indians, we have employed, instead of a balancing inquiry, a more categorical approach: ***Absent cession of jurisdiction or other federal statutes permitting it***, we have held, a State is without power to tax reservation lands and reservation Indians.

Pourier, 658 N.W.2d at 400 (emphasis added). Here, the Tribe has not ceded jurisdiction to the State, and there is no federal statute permitting the State to act. Therefore, the State has no

authority to regulate the activities of the entity Defendants, which have the same rights and immunities enjoyed by Webb, an enrolled Tribal member.

3. Missouri Law Is Preempted.

The Supreme Court has identified "two independent but related barriers" to a state's assertion of regulatory authority over tribal lands and members: federal preemption of state law, and the danger that states will "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.'" *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) (citations omitted). "'The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members.'" *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of N.M.*, 458 U.S. 832, 837-38 (1982) (quoting *White Mountain Apache*, 448 U.S. at 143).

The State's Complaint seeks to nullify the choice-of-law and forum-selection provisions in the sample loan agreement. These provisions, on their face, are enforceable and should not be disregarded, even without consideration of the special status of Defendants as Tribal members. Under federal law, forum-selection clauses are presumed valid and should be enforced unless enforcement would be unreasonable under the circumstances. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 589, 591 (1991) (citing *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12-13, 15 (1972)).

The fact that the forum-selection and choice-of-law provisions call for application of Tribal law in Tribal Court over Tribal members causes the State's Complaint also to run squarely into the preemption barrier discussed in *White Mountain Apache.* Congress has "broad power to regulate tribal affairs under the Indian Commerce Clause, Art. 1, § 8, cl. 3." *White Mountain*

Apache, 448 U.S. at 142. In exercising this broad power, Congress has "jealous regard for Indian self-governance," so much so that a law that conditioned access to North Dakota state courts on the forfeiture of tribal self-governance was preempted by federal law. *Three Affiliated Tribes*, 476 U.S. at 887-91. Congress has used its broad power under the Indian Commerce Clause to fully occupy the field of regulation of Indian commerce on reservations. *See, e.g.*, 25 U.S.C. §§ 261-264 (2006) (limiting who could trade with Indians); 25 U.S.C. §§ 305, *et seq.* (2006) (economic development promoting Indian arts and crafts); 25 U.S.C. §§ 450, *et seq.* (2006) (Indian Self-Determination and Education Assistance Act of 1975); 25 U.S.C. §§ 461, *et seq.* (2006) (Indian Reorganization Act of 1934); 25 U.S.C. § 1451 *et seq.* (Indian Financing Act of 1974); 25 U.S.C. §§ 2701–2721 (Indian Gaming Regulatory Act); *cf. Mescalero Apache*, 462 U.S. at 327-28 ("We have stressed that Congress' objective of furthering tribal self-government encompasses far more than encouraging tribal management of disputes between members, but includes Congress' overriding goal of encouraging tribal self-sufficiency and economic development." (Quotation and citations omitted.)).

Congressional restriction on state jurisdiction on Indian reservations is similarly strict. *See, e.g.,* 25 U.S.C. § 1322(a) (The Indian Civil Rights Act of 1968); *see generally Three Affiliated Tribes*, 476 U.S. 877 (discussing Congress' control over state jurisdiction on reservations). Because Congress has comprehensively occupied the field of regulation of commercial activity on Indian reservations, Missouri law, as applied to the Defendants and their

activities on the Reservation, is preempted.[7] The State may not nullify or criminalize the choice-of-law and forum-selection provisions in the sample loan agreement.

In addition to being preempted, the State's Complaint is barred because it unlawfully infringes on the right of the Tribe to make its own laws and be ruled by them. *See White Mountain Apache*, 448 U.S. at 142. While there is overlap between this barrier and the preemption barrier, the impact of the State's case on the self-governance of the Tribe and its members deserves special note. If permitted to proceed under its present Complaint, the State effectively would supersede and supplant the Tribe's commercial and consumer laws, by precluding their application any time a Missouri resident is involved in a transaction. Therefore, the State's attempts to regulate the commercial activity of Tribal members on the Reservation, even those that involve citizens of Missouri, must fail as a matter of law.

CONCLUSION

The State's Complaint is barred by Tribal immunity and by the preemption of Missouri law by federal and Tribal law. Because this is a fatal, uncorrectable flaw, Defendants' Motion should be granted and the State's Complaint should be dismissed with prejudice.

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[7] The case for preemption in the present situation is even stronger than in cases such as *Three Affiliated Tribes*, where the reservations at issue were located within the boundaries of the state which was attempting to regulate activity there. Here, Missouri is geographically disconnected from the Reservation and, arguably, infringes on the rights of South Dakota as well.

DATED this 25th day of July 2011.

Respectfully submitted,

HUSCH BLACKWELL LLP

By: */s/ John T. Richmond, Jr.*

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 2011, I served a copy of the foregoing **MOTION TO DISMISS and DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS** by way of email, through the Court's electronic filing system (CM-ECF), on the following:

Debra Kay Lumpkins
Assistant Attorney General
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Attorney for Plaintiff

/s/ John T. Richmond, Jr.

Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625

Friday, April 08, 2011

Certificate of Indian Blood

Name: **Martin Allen Webb**

Date of Birth: **10/08/1956** Enrollment Status: **Enrolled**

Resolution Number: Enrollment Number: **CRU-008357**

Resolution Date:

Ethnic Affiliation/Blood Quantum

Total Quantum This Tribe: **3/32**
Total Quantum All Tribes: **3/32**

Ethnic Group: **Cheyenne River Sioux Tribe - (R)** Blood Quantum: **3/32**
Affiliation: **Sioux**

Charlene Anderson

Charlene Anderson, Enrollment Specialist Authorizing Signature

I certify that the foregoing is a true and correct copy of a document in the official records of the Cheyenne River Sioux Tribe.

Charlene Anderson Enrollment Specialist
Name Title

PENGAD-Bayonne, N. J.
EXHIBIT
A