

IN THE COUNTY COURT FOR VOLUSIA COUNTY, FLORIDA

**JASMINE REYES,
Plaintiff,**

CASE NO.: 2020 16482 CODL

v.

DIVISION: 73

**MOBILAONS LLC, MARSHALL
PIERITE, KIM WALTON PALERMO,
AND CHARLOTTE HOLMES,
Defendant(s).**

ORDER OF DISMISSAL

This matter is before the court on the *Defendants' Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration*. The court has reviewed Defendants' Motion, the various responses and replies of the parties, conducted a hearing on the matter, and considered the evidence, arguments and authorities presented by the parties. For the reasons expressed below, the court grants Defendants' Motion¹.

Defendants ask the court to dismiss this case based upon a claim of sovereign immunity, which if proven, would deprive the court of subject matter jurisdiction. Plaintiff responds that Defendant is not entitled to sovereign immunity because they are not an "arm of the [Tunica-Biloxi Indian] tribe." The court examines this claim and the Plaintiff's responses below.

Sovereign Immunity

"Under Florida law, it is well settled that the Indian tribes are independent sovereign governments that are not subject to the civil jurisdiction of the courts of this state." *Miccosukee Tribe of Indians v. Napoleoni*, 890 So. 2d 1152, 1153 (Fla. 1st DCA 2004). "As such, the Tribe and its agents are immune from suit in federal or state court without (1) a clear, explicit, and

¹ Due to the court's finding of sovereign immunity as to all Defendants, it does not reach the arbitration issues.

unmistakable waiver of tribal sovereign immunity, or (2) a congressional abrogation of that immunity.” *Id.* Plaintiff does not argue waiver or congressional abrogation, but rather that Defendants are not entitled to the sovereign immunity as they are not an “arm of the tribe.”

On this issue, the United States Supreme Court has noted,

Lower courts have held that tribal immunity shields not only Indian tribes themselves, but also entities deemed “arms of the tribe.” See, e.g., *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1191–1195 (C.A.10 2010) (casino and economic development authority were arms of the Tribe); *Memphis Biofuels, LLC v. Chickasaw Nation Industries, Inc.*, 585 F.3d 917, 921 (C.A.6 2009) (tribal conglomerate was an arm of the Tribe). In addition, tribal immunity has been interpreted to cover tribal employees and officials acting within the scope of their employment. See, e.g., *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 726–727 (C.A.9 2008); *Native American Distributing v. Seneca–Cayuga Tobacco Co.*, 546 F.3d 1288, 1296 (C.A.10 2008); *Chayoon v. Chao*, 355 F.3d 141, 143 (C.A.2 2004) (*per curiam*); *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1225–1226 (C.A.11 1999).

Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 825 (2014)

In determining whether an entity is an “arm of the tribe,” many courts will apply the factors used in the *Breakthrough* case, namely: (1) the method of the entity’s creation; (2) its purpose; (3) its structure, ownership, and management, including the amount of control the Tribe has over the entity; (4) whether the Tribe intended for it to have tribal sovereign immunity; (5) the financial relationship between the Tribe and the entity; and (6) whether the purposes of tribal sovereign immunity are served by granting it immunity. *Breakthrough*, 629 F.3d at 1191.

1. The Method of Mobiloans’ Creation

Mobiloans is chartered as a Limited Liability Company pursuant to Tunica-Biloxi Tribal law. Decl. Pierite ¶ 6, Sept. 14, 2020. It was created by the Tribal Council of the Tunica-Biloxi Tribe of Louisiana pursuant to Tribal Council Resolution 24-11 as “an arm of the Tribe for business

purposes, in the form of a limited liability company of which the Tribe is the sole Member.” *Id.* at Ex. 2.

Plaintiff submitted cases discussing Mobiloans’ historical affiliation with other non-Tribal entities and its creation, but no admissible evidence² that contradicted Defendants’ affidavits regarding its creation. The court finds this factor weighs in favor of immunity.

2. *The Purpose of Mobiloans*

Mobiloans was created to generate and contribute revenues to the Tunica-Biloxi Indian Tribe’s general fund, which are then used for the “economic development and benefit of the Tribe.” Decl. Pierite ¶ 8, Sept. 14, 2020. More specifically, Mobiloans’ purpose is to “engage in lending and related activities that will generate additional revenues for the Tribe.” *Id.* at ¶ 9. The revenues are used to fund schools, social services and Tribal government. *Id.* Examples of programs funded by revenues generated by Mobiloans are a “Juvenile Teen Court Program, the Avoyelles Parish School Board, the Avoyelles Parish Justice Center, and the Avoyelles Court Appointed Special Advocates (“CASA”) program.” *Id.* The funds are even used to assist Tribal citizens with relief from Hurricane Laura, COVID-19 and to provide “housing, healthcare, and basic services to Tribal citizens.” *Id.*

Again, Plaintiff submitted various caselaw and other filings discussing Mobiloans’ alleged true purposes – profit generation for non-Tribal entities. Some of the Plaintiff’s filings contain very thorough, detailed information. *See, e.g.,* Pltf’s Notice of Filing, Dec. 1, 2021, *Stmt. Undisputed Facts, Commw. of Pa v. Think Finance, Inc. et al.,* and *Hengle et al., v. Treppa et al.,*

² In *Seminole Tribe of Florida v. McCor*, the Second District Court of Appeal held that a trial court could properly consider *affidavits* in ruling upon a motion to dismiss for lack of subject matter jurisdiction. 903 So.2d 353, 357 (Fla. 2d DCA 2005). *See also*, section 2, *infra*.

20-1062 (4th Cir. Nov. 16, 2021). Neither party asked the court to take judicial notice of these documents. However, even had such a request been made, they are not admissible as *evidence*. See *Rubrecht v. Cone Distributing, Inc.*, 95 So.3d 950, 959 (Fla. 5th DCA 2012) (holding “a statement of fact made in an appellate opinion³ in one case cannot substitute for the presentation of evidence in another case.”)

Plaintiff’s primary evidentiary basis for these allegations are Mobiloans’ discovery responses indicating it paid relatively small percentages of its gross revenues to the Tunica-Biloxi Tribe from 2018 until 2020. See *Def. Obj. and Resp. Pltf’s First Set Interrog.* ⁴, ¶ 8, Mar. 29, 2021. However, similarly to the discussion in section 5 below, the court does not possess any factual context surrounding these percentages that could make them more meaningful. Unlike in *Solomon*, Plaintiff here has presented no evidence proving that large sums of revenue from Mobiloans’ revenues were distributed to non-Tribal entities. *Solomon*, 375 F. Supp. 3d at 654 (recounting testimony of the disparate distribution of \$110 million to a non-Tribal entity compared to \$8 million received by the Tribe). Accordingly, this factor weighs in favor of immunity.

3. Structure, Ownership, And Management, Including the Amount of Control the Tribe Has Over Mobiloans

a. Mobiloans’ Structure

The Tunica-Biloxi Tribe created Mobiloans as a limited liability company. *Charter of Mobiloans*, Art. II. It is also operated by the Tribe. Decl. Pierite ¶ 6, Sept. 14, 2020. The affairs of the company are overseen by a four-person Board of Managers, all of which must be enrolled

³ This court sees no meaningful distinction between statements of fact in an appellate opinion and those made in trial court opinions or the filings by parties in unrelated cases. None are admissible as evidence in a separate case.

⁴ Apparently, Plaintiff sent two sets of interrogatories to Defendant Mobiloans labeled as “first.” For clarity, the court will refer to the two responses by their date of execution.

members of the Tribe, and two of which must be sitting members of the Tribal Council. *Second Amend. Restated LLC Oper. Agmt. Mobiloans, LLC*, Art. III, s. 3.2.

Mobiloans operates out of its sole office located on the Tribe's reservation in Marksville, Louisiana. Decl. Pierite ¶ 14, Sept. 14, 2020. Tribal citizens work for Mobiloans, such as Richelle Malveaux who acts as a Communications Liaison between the company and the Tribal Chairman and Tribal Council. *Id.* at ¶¶ 12, 13. Defendant Charlotte Holmes is another Tribal citizen that works for Mobiloans as its Administration Manager. *Id.* at 13.

Plaintiff argues this sub-factor should weigh against immunity for four reasons: (1) the risk of loss is not borne by the Tribe, (2) it obtains funding for the loans from a non-Tribal source, (3) Defendant's server is located off reservation, and (4) the day-to-day operations are largely delegated to outside third-party contractors. The court will address each argument in sequence below.

i. Risk of loss

The risk of loss argument is discussed in more detail in section 5 below, as the court finds that section (financial relationship with the Tribe) is more appropriate for this argument.

ii. Outside funding

Plaintiff cites Defendant's interrogatory answer admitting it receives capital funding from the Circle of Nations. Accordingly, Plaintiff contends the Circle of Nations is the entity that actually "bears the brunt of the risk" if the loans fail. *See Pltf's Supp. Resp.*, pg. 11, Dec. 11, 2021. As this is an offshoot of "risk of loss" argument, the court's analysis from section 5 applies here as well. More importantly, Plaintiff has failed to present any evidence demonstrating which party

agreed to bear the risk of loss in their financial relationship. It may be the case that Mobiloans guaranteed to pay back the Circle of Nations any funding it provided, regardless of whether the loans generated by Mobiloans were repaid by the consumers. Alternatively, it could be just as Plaintiff assumes that some entity other than Mobiloans assumed that obligation, possibly including Circle of Nations. The obvious point here is that unlike the Plaintiff, the court is not at liberty to speculate on these issues.

iii. Server location

Exhibit B to Plaintiff's Complaint appears to be a screenshot showing Defendant Mobiloans' website "mobiloans.com" is hosted on a server located in San Jose, California, many thousands of miles away from the Tribe's reservation in Louisiana. Plaintiff argues this is evidence that Mobiloans' day-to-day business is run by non-Tribal members. Beyond any questions of authentication and accuracy, the court fails to appreciate the probative value of a website's server's location and what that shows about the employees running the business. Moreover, important contextual information is lacking. For example, is this a shared or dedicated IP address? Was a proxy server or a virtual private network (VPN) used? Both tools are commonly used by companies and individuals to protect their IP addresses for cybersecurity reasons. *See* <https://www.kaspersky.com/resource-center/definitions/what-is-an-ip-address> (last accessed on April 4, 2022). Ultimately, even if the server for Mobiloans' website were in California, this is not mutually exclusive with the evidence presented by the Defendant that it has a number⁵ of Tribal citizens working as employees at its office on the Tribal reservation. Furthermore, it is also possible that the server hosting Mobiloans' website is different from the server utilized for

⁵ Plaintiff also cites the Clarity inspection report describing *only* 10 employees working at Mobiloans' office. Again, without context, this figure lacks any probative value for or against immunity. Moreover, Defendant's interrogatory responses indicate Mobiloans employed or contracted with over 61 individuals to process its lines of credit from January 1, 2017, to present. *See Def. Obj. and Resp. Pltf's First Set Interrog.* ¶ 2, July 29, 2021.

processing of loan applications and other business functions. In fact, in a site inspection report prepared by third party vendor Clarity Services, Inc., it noted that a server was observed in a locked closet next to the call center within Mobiloans' office on the reservation. *See Docket No. 59*, Bates Stamp 88, 89.

iv. Third party contractors

On this point, Plaintiff argues that Defendant further outsources much of the day-to-day operational activity to third party contractors. In support, she submitted a series of confidential Agency Addendum agreements and Defendant's discovery responses. The series of Agency Addendum agreements show Mobiloans entered service contracts with Cortex Sovereign, LLC⁶, MaxDecisions⁷, and TC Decision Sciences, LLC⁸ to provide "credit information processing services" based upon proprietary credit information provided to them by Clarity. *See Docket No. 59*.

Although it appears Mobiloans does contract with third parties for certain "credit information processing services," no evidence has been presented establishing what exactly those services entail, and more importantly, the role those services play in Mobiloans' overall business model. For example, if the "credit information processing services" is merely the furnishing of credit scores and credit reports to Tribal citizen/employees, and then those Tribal citizen/employees are responsible for the rest of the loan processing workload, that would severely weaken Plaintiff's claim that most daily operations are performed by non-Tribal entities. However, if the "credit information processing services" also includes generating loan

⁶ Delaware LLC based in Irving, Texas

⁷ Delaware corporation based in Plano, Texas

⁸ Texas LLC based in Fort Worth, Texas

applications, processing the applications, and making lending decisions, that would be significantly more probative of Plaintiff's claim. Again, the court cannot speculate, it must base its decision on the evidence (or lack thereof) presented.

b. Mobiloans' Ownership

"Mobiloans is wholly owned and operated by the Tribe." Decl. Pierite ¶ 6, Sept. 14, 2020. The Tribe "retains control over the company's activities." *Id.* at ¶ 8. In fact, the Tunica-Biloxi Fairness in Lending Code requires that Tribal lending entities be owned by the Tribe. *Id.* at ¶ 16.

Plaintiff has presented no probative evidence to the contrary.

c. Mobiloans' Management

It also appears that the Tribe is heavily involved in Mobiloans' business affairs. For example, Mobiloans is required to obtain the Tribal Council's approval for its budget, business plan, appointment of an executive director, the sale or transfer of any asset, waiver of its immunity, the commitment or burden of any tribal resource, any amendment to its Charter or Operating Agreement, and to participate in any other business. *Id.* at ¶ 10. Mobiloans also provides monthly financial reports and meets quarterly with the Tribal Council. *Id.* at ¶ 11. It also meets at least once per year with the general Tribal citizenship. *Id.* As previously noted, Tribal citizens Richelle Malveaux and Defendant Charlotte Holmes are employed in executive level positions with Mobiloans. *Id.* at ¶¶ 12-13.

Except as discussed in section 3(a) above, Plaintiff did not present any direct evidence refuting Defendant's affidavits regarding the management of Mobiloans' by the Tribe. The court finds this factor weighs in favor of sovereign immunity.

d. Amount of Control Tribe Has over Mobiloans

The preceding discussion of Mobiloans' management is also indicative of the amount of control the Tribe has over Mobiloans. In addition, "The Tribal Council has the right to remove and appoint members of [Mobiloans'] Board." *Id. at* ¶ 10. Moreover, the Tribe's previously mentioned Lending Code is a regulatory scheme that applies to lending companies such as Mobiloans. The Lending Code established a regulatory commission "charged with licensing each lending operation and loan product, engaging in rolling regulatory compliance examinations of each lending operation, and conducting background investigations of each key employee or officer, among other things." *Id. at* ¶ 15. Thus, it appears from the evidence before the court that the Tribe retains a high degree of control over Mobiloans' operation.

Except as discussed in section 3(a) above, Plaintiff did not present any direct evidence refuting Defendant's affidavits regarding the amount of control the Tribe exercises over Mobiloans. The court finds this factor weighs in favor of sovereign immunity.

4. Whether the Tribe Intended for Mobiloans to Have Tribal Sovereign Immunity

The Tribe "explicitly vested Mobiloans with all of the 'privileges and immunities' of the Tribe itself, including its immunity from suit, from taxation, and from regulation." Decl. Pierite ¶ 7, Sept. 14, 2020. Defendant's Charter and Operating Agreement similarly reflect this intention. *Id. at* Ex. 1 (Charter of Mobiloans, LLC, Art. X Privileges and Immunities providing, "The LLC shall be vested with all of the privileges and immunities of the Tribe, including, without limitation, the immunity from suit by any person or entity in any forum...") *and* Ex. 2 (Second Amendment and Restated Limited Liability Company Operating Agreement of Mobiloans, LLC, Art. VI, s. 6.1 Status of Tribal Entity providing, "As an arm of the Tribe, an entity wholly-owned by the Tribe

and as a Tribally-chartered entity, the Company is clothed by tribal and federal law with all the privileges and immunities of the Tribe, except as may be specifically limited by the Charter, including sovereign immunity of the Company from suit, consent to suit, or consent of the Company or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the Company or to any cause of action, case or controversy, except as provided herein.”). The originating documents for Defendant Mobiloans explicitly indicate the Tribe intended for Mobiloans to have the benefits of its tribal sovereign immunity.

Plaintiff again cites Mobiloans’ answers to interrogatories to argue that the true purpose of Mobiloans is to generate revenue for non-Tribal entities. *See Pltf’s Suppl. Resp.* pg. 11-12. As a result, Plaintiff contends, Defendants’ true intent is to extend its sovereign immunity to non-Tribal entities in order to shield their illegal activities, and Defendants can have no legitimate interest in doing so. *Id.* Plaintiff cites for support the holding and analysis of the court in *Solomon v. Am. Web Loan*, 375 F.Supp. 3d 638 (E.D. Va. 2019). However, as stated above, this court cannot use the factual findings and other statements in another court’s opinion as evidence in the case at bar. *See Rubrecht, supra.*

The court finds that this factor weighs in favor of immunity.

5. The Financial Relationship between the Tribe and Mobiloans

According to Defendant’s affidavits, Defendant Mobiloans is “one of the business enterprises that helps fund the Tribe and its government.” Decl. Pierite ¶ 6, Sept. 14, 2020. “[Mobiloans] provides for the economic development and benefit of the Tribe.” *Id. at* ¶ 8. Defendant Mobiloans has contributed more than \$23.5 million to the Tribe since its creation in 2011. *Id. at* ¶ 9. “These revenues flow only to the Tribe,” the affidavit continues, “and have been

used to fund Tribal educational and social services, as well as general government expenses.” *Id.* The various Tribal programs and services supported by the revenue have been described above. *Supra*, section 2. It is further alleged that “If the revenue stream generated by Mobiloans’ business operations was lost or reduced, that would have a direct and negative effect on the Tribe’s ability to provide such services.” *Id. at* ¶ 17.

Plaintiff does not dispute much of the Defendant’s evidence on this point. However, Plaintiff’s evidence (the answers to interrogatories) focuses on the money she alleges is flowing from Mobiloans to other, non-Tribal entities. For example, in Defendant Mobiloans’ interrogatory responses, it indicated its gross revenues for the years 2018 through 2020 were \$65,857,272 (2018), \$64,082,028 (2019), and \$56,968,046 (2020). *See Def. Obj. and Resp. Pltf’s First Set Interrog.* ¶ 5, Mar. 29, 2021. Yet the same discovery responses indicate that Defendant Mobiloans paid only 2% (2018), 4% (2019), and 7% (2020) of its gross revenues to the Tribe in the respective years.

Plaintiff invites the court to conclude that Defendants’ discovery responses prove most of Defendants’ revenues are distributed to non-Tribal entities. One such entity that many of Plaintiff’s materials reference is Think Finance, LLC. Defendants admit they previously contracted with Think Finance, LLC to “assist[] the Tribe in administering MobiLoans’ loans because the Tribe lacked the relevant experience in the financial services industry.” Decl. Pierite ¶ 3, Jan. 25, 2022. However, Defendant Mobiloans ended its relationship with Think Finance after restructuring in 2017. *Id.* Defendant Mobiloans’ discovery response further indicates that no money from its general revenue has been paid to Think Finance since before 2018. *See Def. Obj. and Resp. Pltf’s First Set Interrog.* ¶ 9, Mar. 29, 2021.

As previously stated in section 2 above, the court is missing some vital context to determine the full impact of the financial data. For example, what were Defendant Mobiloans' operating expenses for the years 2017-2020? What were its net profits? What are the typical operating expenses and net profit ratios of similar businesses? Answers to these questions would be very helpful for determining the probative value of the percentages Plaintiff claims as proof of Defendants' financial relationships with third parties. Without this contextual information, the court must make assumptions that large sums of money are being sent to non-Tribal entities. Obviously, the court cannot base its conclusions on unproven assumptions.

Plaintiff also argues that any potential judgments entered against Defendants would not effect the Tribe based upon the terms of its Operating Agreement with the Tribe. For example, in Article VI, Section 6.4, the Agreement states,

Credit of the Tribe and Assets of the Company. Nothing in the Charter of this Agreement, nor any activity of the Company, shall implicate or in any way involve the credit of the Tribe. The Company shall have only those assets formally assigned to it by the Tribal Council, together with those assets it may acquire or generate from other sources and business activities. **No activity of the Company nor any indebtedness incurred by it shall implicate or in any way involve any assets of the Tribe not expressly assigned to the Company in writing.**

(emphasis added) The above language tends to support Plaintiff's argument that Mobiloans is separated from the Tribe because no judgment against Mobiloans will actually effect the Tribe's assets.

Although the evidence on this factor is mixed, the court finds this factor weighs against immunity primarily due to the Tribe's lack of actual financial exposure to any adverse judgments or other financial obligations incurred by Mobiloans.

6. *Whether the Purposes of Tribal Sovereign Immunity Are Served by Granting Mobiloans Immunity*

To determine this factor, the court must first recognize the purposes served by tribal sovereign immunity. Several state and federal decisions have provided the answers in various contexts. For example, in *California v. Cabazon Band of Mission Indians*, the Supreme Court recognized the involved Tribes lacked natural resources that could be exploited. 480 U.S. 202, 218 (1987) *superseded by statute*, Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(1)(C), *as recognized in Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014). As a result, Tribal gaming provided the “sole source of revenues for the operation of the tribal governments and the provision of tribal services.” *Id.* at 218-19. The Court further noted that the Tribal gaming enterprises were major employers on the reservations. *Id.* at 219. Prohibiting application of California’s regulatory scheme thus furthered the Tribes’ interests in self-determination and economic development, the Court found. *Id.*

In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, the Supreme Court addressed whether Oklahoma could tax the sale of cigarettes on Tribal reservation land. 498 U.S. 505 (1991). In appellate arguments, Oklahoma advocated the Court to abandon the doctrine of tribal sovereign immunity entirely. *Id.* at 510. In the Court’s response below, it highlighted the underlying goals of sovereign immunity,

A doctrine of Indian tribal sovereign immunity was originally enunciated by this Court and has been reaffirmed in a number of cases. *Turner v. United States*, 248 U.S. 354, 358, 39 S.Ct. 109, 110, 63 L.Ed. 291 (1919); *Santa Clara Pueblo v. Martinez*, *supra*, 436 U.S., at 58, 98 S.Ct., at 1677. Congress has always been at liberty to dispense with such tribal immunity or to limit it. Although Congress has occasionally authorized limited classes of suits against Indian tribes, it has never authorized suits to enforce tax assessments. Instead, Congress has consistently reiterated its approval of the immunity doctrine. See, *e.g.*, Indian Financing Act of 1974, 88 Stat. 77, 25 U.S.C. § 1451 *et seq.*, and the Indian Self–

Determination and Education Assistance Act, 88 Stat. 2203, 25 U.S.C. § 450 *et seq.* **These Acts reflect Congress' desire to promote the "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development."** *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216, 107 S.Ct. 1083, 1092, 94 L.Ed.2d 244 (1987). Under these circumstances, we are not disposed to modify the long-established principle of tribal sovereign immunity.

Id. (emphasis added). *See also, Dixon v. Picopa Const. Co.*, 772 P.2d 1104, 1111 (Ariz. 1989) (recognizing additional federal policies behind the tribal sovereign immunity doctrine including "Protection of tribal assets, preservation of tribal cultural autonomy, preservation of tribal self-determination, and promotion of commercial dealings between Indians and non-Indians.") Next the court must consider whether application of sovereign immunity to Defendants will further these purposes.

Mobiloans is a business. Like almost every other business, it exists to make money. Mobiloans' stated purpose is to generate revenues, portions of which it then gives to the Tunica-Biloxi Indian Tribe to help fund various educational, governmental and societal needs within the Tribal population. Finding that Defendants are not immune from suit would potentially place the assets of Mobiloans at risk, thus impacting its ability to give of its revenues to support the needs of the Tribe. This would defeat the intended purposes of "encouraging tribal self-sufficiency and economic development." *Oklahoma Tax Comm.*, 498 U.S. at 510.

Even though the court found in section 5 that the evidence concerning Mobiloans' financial relationship with the Tribe weighed *against* a finding of immunity, this is not dispositive of the issue. That is only one of the six factors the court considered in resolving this question. Based upon the totality of the evidence presented, the court finds that Mobiloans is an arm of the Tunica-

Biloxi Indian Tribe. Therefore, it is entitled to share in the Tribe's sovereign immunity, and this court lacks subject matter jurisdiction to hear the Plaintiff's claims against it.

Defendants Pierite, Palermo, and Holmes

Plaintiff argues Defendants Pierite, Palermo and Holmes are not entitled to sovereign immunity because Plaintiff sues them in their individual capacities. However, language in Plaintiff's Complaint is fatal to this argument. For example, in paragraphs 140 through 143 of the Complaint, Plaintiff alleges as follows:

140. Pierite, Palermo and Holmes are employed by, and/or associated with MobiLoans.

141. Pierite, Palermo and Holmes directly participated in MobiLoans' collection of the unlawful debt.

142. Pierite, Palermo and Holmes also participated *indirectly* in MobiLoans' collection of the unlawful debt, though their roles as Chairman of the Tribe, Chief Compliance Officer, and Loan Administration Manager, respectively.

143. On information and belief, Pierite, Palermo and Holmes each received proceeds derived directly from MobiLoans' collection of usurious loans, including Ms. Reyes'.

Furthermore, in Count III of her Complaint (the only Count alleged against these Defendants), Plaintiff alleges as follows:

COUNT III
VIOLATIONS OF THE CRCPA — PIERITE, PALERMO, HOLMES

156. Ms. Reyes incorporates paragraphs 1 – 144 as if fully stated herein.

157. Pierite, Palermo and Holmes violated **Section 772.103(3), Florida Statutes**, in that they knowingly participated, both directly and indirectly, in MobiLoans' collection of an unlawful debt from Ms. Reyes and received proceeds therefrom.

158. At all times relevant, Pierite, Palermo and Holmes were employed by or associated with MobiLoans.

159. The conduct of Pierite, Palermo and Holmes renders them jointly and severally liable with MobiLoans for the above-stated violations of Section 772.103, Florida Statutes.

WHEREFORE, Ms. Reyes respectfully requests this Honorable Court enter judgment against Pierite, Palermo and Holmes, jointly and severally, ordering:

- a. Threefold the amount of actual damages of at least \$7,700 (for a total of **\$23,100**), or, in the alternate, the statutory minimum of \$200, pursuant to Section 772.104(1), Florida Statutes.

Based upon these allegations, it is clear to the court that Plaintiff alleges these Defendants committed certain wrongs while acting as employees and officers of Mobiloans, rather than in their individual capacities. Therefore, the real party in interest is Mobiloans, rather than these individually named Defendants. *See Lewis v. Clarke*, 137 S.Ct. 1285, 1294 (2017). Defendants Pierite, Palermo and Holmes are therefore entitled to sovereign immunity as well.

Wherefore, it is **ORDERED AND ADJUDGED**, the Defendants' Motion to Dismiss is hereby **GRANTED**. This matter is hereby **DISMISSED** with prejudice.

DONE AND ORDERED in Chambers in Deland, Volusia County, Florida.

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e-Signed 4/11/2022 1:36 PM 2020 16482 CODL {}

A. CHRISTIAN MILLER
COUNTY JUDGE

Copies to:
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