RESPONDENT’S MOTION TO DISMISS ARBITRATION HEARING

Respondent WLCC II D/B/A Arrowhead Advance hereby moves for dismissal of the arbitration hearing and in support thereof comes now and states as follows:

1. In her Demand for Arbitration submitted to the AAA, Claimant asserts a single claim stating that her “consumer loan contract violates the laws of the State of Alabama. . .”

2. At the outset of her Loan Agreement with Respondent, Claimant was asked to affirmatively acknowledge by checking a box that she was “agreeing to have the law of the Oglala Sioux Tribe govern this Loan.”

3. The above-referenced acknowledgment appeared immediately beneath a bolded heading stating, “This is our Agreement with you regarding your loan. It contains important terms and conditions. You should read it carefully before you electronically sign it,” which preceded all other content.

4. The acknowledgment language that Claimant affirmed asked her to accept and confirm her understanding that “State laws, regulations, and interest rates are not applicable to Arrowhead Advance or WLCC.”
5. Claimant provided the above-referenced voluntary acknowledgement and proceeded to sign the Loan Agreement.

6. The section of Claimant’s Loan Agreement entitled “Governing Law” stated in its entirety as follows:

   This Agreement is governed by the laws of the Oglala Sioux Nation of the Pine Ridge Reservation, a federally recognized Indian Tribe and the Indian Commerce Clause of the United States Constitution, and the Arbitration Agreement above is additionally governed by the Federal Arbitration Act (FAA) and the decisions of the United States Supreme Court interpreting the FAA. We do not have a presence in South Dakota or any other State of the United States of America. Neither this Agreement nor the Lender is subject to the laws of any State of the United States.

7. Within the sub-portion of Claimant’s Loan Agreement entitled, “Waiver of Jury Trial and Arbitration,” under the sub-heading “Applicable Law and Judicial Review,” Claimant was informed that:

   THIS AGREEMENT TO ARBITRATE IS MADE PURSUANT TO A TRANSACTION INVOLVING THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND SHALL BE GOVERNED BY THE LAW OF THE Oglala SIOUX TRIBE AND THE FEDERAL ARBITRATION ACT. The arbitrator will apply the laws of the Oglala Sioux Tribe and the terms of this Agreement, including the Agreement to Arbitrate. The arbitrator must apply the terms of this Agreement to Arbitrate, including without limitation the waiver of class-wide arbitration. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. The arbitrator will make written findings and the arbitrator's award may be filed with the tribal court. The arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by the tribal court upon judicial review.

8. Section 1.2.11(i) of the Tribal Credit Code of the Wakpamni Lake Community of the Oglala Sioux Tribe provides that “consistent with the principles of inherent tribal sovereignty
and the special relationship between Indian tribes and the United States, Indian tribes retain the right to enter into contracts and agreements to trade freely, and seek enforcement of treaty and trade rights.”

9. Claimant’s assertion that her Loan Agreement “violates the laws of the State of Alabama” both directly contradicts the express terms of that agreement and fails to state a cognizable legal claim under the laws of the Oglala Sioux Tribe.

WHEREFORE, Respondent WLCC II D/B/A Arrowhead Advance respectfully requests that Arbitrator Ian D. Rosenthal dismiss the arbitration hearing with prejudice and find that no arbitration be had on the cause set forth in Claimant’s Demand for Arbitration.

Respectfully submitted,

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