



GARNISHMENT ORDINANCE

SECTION I -TITLE

This Ordinance shall be cited as the Habematolel Pomo of Upper Lake Garnishment Ordinance (“Garnishment Ordinance” or “Ordinance”).

SECTION II – AUTHORITY

The authority for this Ordinance is Article X, Section 1(A), (H), and (N) of the Constitution of the Habematolel Pomo of Upper Lake.

SECTION III – PURPOSE

This Ordinance is established to provide a procedure whereby creditors and the Tribe may garnish wages and monetary Tribal Benefits from an employee or member of the Habematolel Pomo of Upper Lake (“Tribe”) or a Tribal entity pursuant to orders of the Habematolel Pomo of Upper Lake Tribal Court (“Tribal Court”). The goal is to provide a mechanism for recognizing foreign judgment of creditors in a fair, equal, and fiscally responsible manner and provide an opportunity for the Tribe to promote the welfare of its Tribal Members. This Ordinance shall also establish a systematic and uniform procedure for garnishment of wages of employees of the Tribe or Tribal entities and its Tribal Members pursuant to orders of the Tribal Court.

SECTION IV – DEFINITIONS

For purposes of this Ordinance, the terms below are defined as follows:

A. *Caretaker* shall mean a person who, either voluntarily or by law, provides care in their home to Tribal Member Children whom are temporarily or permanently living with them but are not their biological or adopted children.

B. *Child or Children* means an individual who is under the age of 18 years old and is a Tribal Member or eligible for membership in the Tribe.

C. *Conservator* shall mean an individual that acts as guardian or protector appointed by the Tribal Court to handle the financial affairs of a Tribal Member.

D. *Creditor* shall mean a person, company or organization to whom money is owed.



E. *Days* shall mean calendar days unless otherwise expressly provided.

F. *Debtor* shall mean a person that owes a sum of money.

G. *Disabled* shall mean a person who has a physical or mental impairment that substantially limits one or more major life activities.

H. *Disposable Weekly Wage* shall mean the amount of an employee's wage per week after legally required state, federal or tribal deductions. The Disposable Weekly Wage shall not be reduced by voluntary participation in other Tribal programs, such as the automobile loan.

I. *Employee* means an individual employed by the Tribe and/or its entities.

J. *Executive Council* shall mean the duly elected governing body of the Tribe pursuant to the Habematolel Pomo of Upper Lake Constitution.

K. *Family Member* shall mean parents, grandparents, children, siblings, aunts, uncles, and cousins over the age of eighteen (18) that may or may not be Tribal Members.

L. *Garnishment* shall mean a court order directing that money be seized to satisfy a debt or help provide for the care of children in Out-of-Home Care or a Legally Incompetent or Disabled Tribal Member.

M. *Garnishment Hearing* shall mean a hearing in Tribal Court whereby the Tribal Court determines whether a party's claim seeking a Garnishment of another's wages or Tribal Benefit, is valid and if so, the terms of the Garnishment.

N. *Garnishment Request* shall mean the Garnishment Request form that a Creditor, Tribal Administration, or Family Member may file with the Tribal Court if they wish to request a Garnishment under this Ordinance.

O. *Habematolel Pomo of Upper Lake Tribal Court, or Tribal Court*, shall mean the court established by the Habematolel Pomo of Upper Lake. If no such court exists in operation, then the Executive Council of the Habematolel Pomo of Upper Lake shall act as at the Tribal Court with the members of the Executive Council, or designee(s), acting as the Judge and the Tribe's Executive Secretary acting as the Court Clerk.



P. *Judgment* shall mean a valid decision of a court of law.

Q. *Legally Incompetent* shall mean a Tribal Member, or one that is eligible for enrollment in the Tribe, that is eighteen years old who is temporarily or permanently incapable of managing his/her financial affairs due to mental deficiency or physical disability, as evidenced by a Medical Doctor's recommendation or order of the Tribal Court in proper exercise of its jurisdiction.

R. *Medical Doctor* shall mean an individual who is licensed to practice medicine, in the state they are practicing or at a Tribal Health Facility.

S. *Modification Request* shall mean the Modification Request form that an individual may file with the Tribal Court if they have had a change in life circumstances and would like to request a modification to the amount of his/her Garnishment.

T. *Ordinance* shall mean this Garnishment Ordinance.

U. *Out-of-Home Care* shall mean care provided by a Caretaker for Tribal Member children or children eligible for enrollment in the Tribe that is not provided in the home of either of the children's biological or adopted parent.

V. *Protected Subsistence Allowance* shall mean the amount of an individual's wage or Tribal Benefit that is protected from Garnishment in order for use by the individual to maintain or support oneself.

W. *Rancheria* shall refer to all land, air, and water located within the borders of the land owned in fee or trust by the Habematolel Pomo of Upper Lake.

X. *Tribal Administration* shall mean the group of people responsible for administering the operations and programs of the Tribe, including employees of the Tribe. In this Ordinance, Tribal Administration excludes the Executive Council.

Y. *Tribal Benefit* shall mean any monetary payment(s) or benefit(s) that Tribal Members are eligible to receive through the Tribe.

Z. *Tribal Garnishment* shall mean a Garnishment requested by the Tribal Administration to seize money of an individual to pay a debt, for the care of a Tribal Member's Children whom are placed in Out-of-Home Care, or a Legally Incompetent or Disabled Tribal Member.



AA. *Tribal Members* shall mean individuals whom are duly enrolled in the Habematolel Pomo of Upper Lake Tribe pursuant to The Habematolel Pomo of Upper Lake Tribe's then-existing Enrollment Ordinance.

BB. *Tribe* shall mean the Habematolel Pomo of Upper Lake, a federally recognized Indian Tribe.

CC. *Tribe's ICWA Program* shall mean the Tribe's program designed to operate or provide support in state child custody proceedings under the Indian Child Welfare Act .

SECTION V – JURISDICTION

The Tribal Court shall have jurisdiction over Garnishments under the following circumstances:

A. Creditor Garnishment: A Creditor may bring a Garnishment action under this Ordinance if the Creditor has:

1. Already obtained a valid final Judgment from a court of competent jurisdiction and can show proof of such Judgement to the Court Clerk; and
2. The Debtor has failed to pay the Creditor the agreed upon amount within 40 days of the Judgment.

B. Tribal Garnishment: The Tribal Administration may bring a Garnishment action under this Ordinance if the Tribal Administration has evidence of one of the following:

1. That an individual owes the Tribe money and the Debtor has failed to pay the Tribe the agreed upon amount within 30 days of a request to pay and the debt is not already subject to an automatic garnishment obtained by agreement;
2. That a Tribal Member's Children have been placed in Out-of-Home Care in conjunction with the Tribe's ICWA Program; or
3. That a Tribal Member is found to be declared Disabled or Legally Incompetent, by a medical doctor or court of competent jurisdiction, as a result of the actions of another Tribal Member and needs additional care and support.

SECTION VI – CREDITOR GARNISHMENTS



A. A Creditor may bring a Garnishment action under this Ordinance if the Creditor has:

1. Already obtained a valid final Judgment and can show proof of such judgement to the Court Clerk; and
2. The Debtor has failed to pay the Creditor the agreed upon amount within 40 days of the Judgment.

SECTION V – TRIBAL GARNISHMENTS

The Tribal Administration may bring a Garnishment action under this Ordinance if the Tribal Administration has tangible evidence of a Tribal Member or employee that has a debt owed to the Tribe, a Tribal Member whose Children are in Out-of-Home Care, or a Tribal Member who is Disabled or Legally incompetent as outlined in more detail below.

A. Types of Tribal Garnishments.

1. Tribal Debt. The Tribal Administration may bring a claim for Tribal Garnishment if an employee or Tribal Member owes the Tribe money and the Debtor has failed to pay the Tribe the agreed upon amount within 30 days of a written request to pay and the debt is not already subject to an automatic garnishment obtained by agreement;

2. Children in Out-of-Home Care. The Tribal Administration may bring a claim for Tribal Garnishment if a Tribal Member's Children have been placed in Out-of-Home Care in conjunction with the Tribe's ICWA Program .

a. It is the policy of the Tribe that parents have a duty to care for their Children whether the Children live in their home or not, including financially providing for them. As such, if a Tribal Member Child is removed from their Tribal Member parent in conjunction with the Tribe's ICWA Program for more than 30 days, it will be automatically assumed by the Tribal Court that a Garnishment is appropriate unless it meets the exception listed in Section V(A)(2)(b) below. Hearings shall not be utilized to challenge the validity of the out-of-home placement or the necessity to garnish Tribal Benefits.

b. If the Tribal Member parent's wages are already garnished by the state for child support, and the garnished wages are going to the Out-of-Home caretaker



in support of the children, then the Tribal Member parent's wages may not be further garnished in support of their children in Out-of-Home care, at the discretion of the Tribal Court.

c. If multiple children of the same Tribal Member parent are in Out-of-Home Care, then the withholding shall be evenly distributed to each Child.

d. The Garnishment shall be directly given to the Caretaker(s) of the Children.

3. Disabled or Legally Incompetent. The Tribal Administration or a Family Member of the Tribal Member in question may bring a claim for Tribal Garnishment if a Tribal Member is found to be declared Disabled or Legally Incompetent by a medical doctor as a result of the actions of another Tribal Member and needs additional care and support.

a. It is the goal of the Tribe to assist its Tribal Members in their efforts to be self-sufficient. Unfortunately, some Tribal Members, because of disability or legal incompetence, need additional help, especially if their disability or legal incompetence is the result of a specific action taken by another Tribal Member. As such, if the Tribal Administration or a Family Member has proof that a Tribal Member is declared Disabled or Legally Incompetent, as defined in this Ordinance, by a medical doctor or court of competent jurisdiction, and the reason for such a declaration is the result of an action or inaction by another Tribal Member, it may petition the Tribal Court for a Garnishment to directly assist the Tribal Member in his/her additional needs for care and support.

b. Evidence required to prove that a Tribal Member should be declared Disabled or Legally Incompetent may be by a written certification or statement from a court of competent jurisdiction or a Medical Doctor clearly stating that in their professional opinion the Tribal Member is considered Disabled or meets the requirements for Legal Incompetence as defined in this Ordinance. Hearings shall not be utilized to challenge the validity of the medical certification except to determine its authenticity.

i. If the Tribal Court declares a Tribal Member Disabled or Legally Incompetent, the Conservator shall submit evidence yearly to the Court Clerk of the continued disability or that the Tribal Member meets the requirements for Legal Incompetence by the anniversary of the initial Garnishment notice. The Tribal Court shall review the evidence



submitted and shall hold a Modification Hearing if it deems a change in circumstances has occurred and such a garnishment may no longer be needed.

c. Evidence required to prove that a Tribal Member committed an action against another Tribal Member may include written documentation of a court conviction or legal citation indicating that a Tribal Member either engaged in some activity, or failed to engage in an activity, involving the Disabled or Legally Incompetent Tribal Member that caused (either directly or indirectly) the Disability or Legal Incompetence status. Tribal Administration or the Family Member requesting the Garnishment shall have the burden of proof to show it is more likely than not that the action taken against the Disabled or Legally Incompetent by the Tribal Member caused in whole or in part his/her Disability or Legal Incompetence. Hearings shall not be utilized to challenge the validity of the legal document(s) except to determine authenticity.

d. The Garnishment shall not be directly given to the Disabled or Legally Incompetent Tribal Member. Instead, the Tribal Court shall appoint a Conservator for the Disabled or Legally Incompetent Tribal Member, if one is not already appointed, for the sole purpose of managing the Garnishment. The Tribal Court's order shall specifically state that the Garnishment will be processed and made directly to the Conservator. Additionally, the Tribal Court may, if it deems appropriate, place any Tribal Benefit received by the Tribal Member children of the Disabled or Legally Incompetent Tribal Member in a trust to be managed by the same Conservator for the benefit of the children.

e. In order to serve as a Conservator, the individual must disclose his/her age, occupation, relationship to the Disabled or Legally Incompetent Tribal Member, and criminal history of fraud, theft, or embezzlement. The Tribal Court may remove or replace the Conservator when it is deemed necessary or at the request of Tribal Administration or a Family Member upon a showing that such request is in the best interest of the Tribe or the Tribal Member at issue. In order to remove or replace the Conservator, the Tribal Court will hold a hearing to hear why the change should occur, results of any investigations into the allegations, and hear directly from the Conservator and Disabled or Legally Incompetent Tribal Member, and other persons with relevant information as determined by the Tribal Court. The decision of the Tribal Court shall be final.



B. Mandatory Opportunity to Voluntarily Agree to Garnishment. Before the Tribal Court process may begin for a Garnishment under this Section, the employee or Tribal Member shall be given a formal opportunity by Tribal Administration to voluntarily agree to a Garnishment for the items listed above. The formal opportunity must be given in writing on a standardized form used for this purpose, and the Tribal Member or employee shall have ten (10) days to respond to the opportunity. If the employee or Tribal Member chooses to voluntarily agree to have his/her wage or Tribal Benefit garnished, he/she shall evidence such intent by entering into a written agreement to pay with the appropriate fiscal department, on a standardized form used for this purpose.

SECTION VI – TRIBAL COURT PROCESS

A. Filing. The Creditor, Tribal Administration, or Family Member shall be required to file a Garnishment Request with the Court Clerk of the Tribal Court.

B. Garnishment Hearing. The Tribal Court shall establish a designated date, time, and place to hear evidence in order to render a determination as to the validity of a Garnishment claim by the party seeking corrective measures in a Garnishment action and the amount of the Garnishment order to be entered. Hearings shall not be utilized to challenge the validity of the final Judgment in a Creditor Garnishment, other than the authenticity of the document. The time may be used to resolve one or more deduction claims of one or more employees. However, each claim shall be heard and determined separately.

C. Final Decision. The Tribal Court will make the final written decision of all Garnishment actions.

D. Modifications. If an individual's life circumstances change, such that a modification of the Garnishment amount is needed, he or she may request a Garnishment Hearing, by filing a Modification Request, for the sole purpose of discussing a modification to the Garnishment amount. A hearing to discuss modifications shall not discuss the validity of the claim and shall be in accordance with Section VII(D) below.

SECTION VII – ADMINISTRATION OF GARNISHMENT

A. Notice of Garnishment. The Tribal Court will notify the appropriate Tribal Department or entity should a decision to garnish an employee's compensation or Tribal Member's Benefits be



issued. The notice shall contain the amount and source to be garnished, how long the Garnishment will take place, or the number of Garnishments, any related fees authorized under this Ordinance, and a reminder, if any, of any recertification due dates.

B. Garnishment Action. The Tribe or its entity shall begin Garnishment(s) within twenty (20) days of notification of the Judgment. The Department shall then: send to the Creditor the allowable amount garnished from the wage or Tribal Benefit following each payroll or Tribal Benefit distribution and notify the employee or Tribal Member, Creditor and Tribe when the Garnishment(s) are terminated.

C. Administrative Fee. An administrative fee of \$5.00 shall be deducted monthly along with the ordered Garnishment(s) until the amount claimed is paid in full. This fee is to cover the cost of garnishing as expected by the appropriate fiscal department.

D. Amount of Garnishment. The Tribal Court may order an Employee's or Tribal Member's compensation or Tribal Benefits to be subject to a Garnishment of up to twenty-five percent (25%) of the employee's Disposable Weekly Wage, or one-half (1/2) of the Tribal Member's Tribal Benefit as applicable ("Full Deduction"), the remainder to be identified as a Protected Subsistence Allowance. Provided that, in calculating the amounts, the Tribal Court shall not include amounts garnished regarding child support orders. The Employee or Tribal Member may voluntarily request more to be deducted. The request shall be made directly to the appropriate fiscal department. It shall be presumed that the beginning amount to be deducted in any Garnishment Hearing is the Full Deduction. The Employee or Tribal Member at issue in the hearing shall have the burden to present evidence that it is unreasonable to require the Full Deduction to be taken. The Tribal Court shall also have the authority to determine how frequently Modification Requests for each Garnishment may be requested and heard by the Tribal Court.

E. Taxation of Garnishment. Employees and Tribal Members shall be taxed as if they received the withheld amount, unless eligible for a legal exemption.

F. Priority of Garnishment. The Garnishment shall have first priority of all encumbrances or be the first payee upon issuance of the wage or Tribal Benefits, excluding standard payroll deductions and child support orders.



SECTION VIII – GARNISHMENTS BY THE STATE FOR EMPLOYEES AT THE TRIBE’S GAMING OPERATION

The Tribe and Tribal Court will honor all Garnishments by the State of California for employees at the Tribe’s Gaming Operation as described in the Tribal-State Compact, then in effect and shall not require such Garnishments to go through the process outlined in this Ordinance.

SECTION XI – MISCELLANEOUS

A. Severability. If any part of this Ordinance is found void and without legal effect, the remainder of the Ordinance shall continue to remain in full force and effect, as though such part had not been contained therein.

B. Sovereign Immunity. The sovereign immunity of the Tribe is in no manner waived by this Ordinance or any action by the Tribal Court, Tribal Administration, Executive Council, Tribe or entity of the Tribe acting pursuant to this Ordinance.

C. Amendments. This Ordinance may be amended by the Executive Council at any duly called regular or special meeting.

D. Effective Date. This Ordinance shall become effective upon adoption by the Executive Council of the Habematolel Pomo of Upper Lake.

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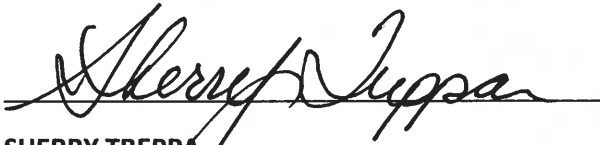


CERTIFICATION

The undersigned Officer of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a *monthly* meeting thereof, duly called, noticed and conducted on this day of JUNE 7, 2019 and that this Ordinance was adopted by way of Resolution and an affirmative vote of 4 YEAS, 2 NAYS, and 1 ABSTENTION. We further certify that since its adoption this Ordinance has not been rescinded, amended, or modified in any way.

DATED SIGNED: June 7th, 2019

ATTEST:


SHERRY TREPPA,
Executive Council (EC) Chairperson

