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17 **UNITED STATES DISTRICT COURT**
 18 **DISTRICT OF NEVADA**

19	FEDERAL TRADE COMMISSION,
20	Plaintiff,
21	v.
22	AMG Services, Inc., et al.,
23	Defendants, and
24	Park 269 LLC, et al.,
25	
26	Relief Defendants.

Case No. 2:12-cv-536

PLAINTIFF'S
 MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF MOTION FOR
 PRELIMINARY INJUNCTION
 AND OTHER EQUITABLE
 RELIEF

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1 **I. INTRODUCTION**

2 Plaintiff Federal Trade Commission (“Commission” or “FTC”) brings this action
3 to halt a web of Internet-based payday lenders¹ that deceive consumers about the costs of
4 their loans and engage in unlawful debt collection practices. Plaintiff respectfully seeks
5 an order of this Court preliminarily enjoining Defendants’ ongoing violations of the
6 Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and the
7 Electronic Fund Transfer Act (“EFTA”).

8 Defendants constitute a common enterprise of payday lenders and associated
9 persons who provide consumers false information about the cost of the loans they issue,
10 in violation of the FTC Act and TILA. On their websites and in their loan documents,
11 Defendants represent to the consumer that the total amount required to repay his loans
12 will be the amount borrowed plus a specified, one-time finance charge, to be withdrawn
13 automatically via electronic fund transfer on a single date. But contrary to those
14 representations, Defendants initiate multiple withdrawals from the consumer’s bank
15 account, assessing a new finance charge each time. As a result of this practice, the loan
16 costs the consumer significantly more than the sum Defendants initially represent. In a
17 typical example discussed below, Defendants represented to a consumer that a \$300 loan
18 would be repaid with a single \$390 withdrawal, but instead initiated a series of automatic
19 withdrawals that would have resulted in \$975 in repayments had the consumer not closed
20 her account after Defendants made seven withdrawals totaling \$735.

21 Further, in violation of EFTA, Defendants include in their loan contracts a
22 provision requiring consumers to preauthorize electronic transfers from their bank
23
24

25 ¹ A “payday loan” is a short-term, high-interest, unsecured loan. These loans are called “payday loans”
26 because they are often due on the consumer’s first payday after receiving the loan.

1 accounts in order to obtain payday loans. This provision allows Defendants to prey on
2 vulnerable consumers by making automatic withdrawals from their bank accounts.

3 When consumers learn of Defendants' ruse and attempt to stop Defendants'
4 automatic withdrawals from their bank accounts, Defendants begin a barrage of deceptive
5 collection tactics prohibited by the FTC Act. Specifically, Defendants threaten
6 consumers with criminal prosecution, when in fact Defendants cannot expose consumers
7 to criminal sanctions for failure to pay alleged private debts. Defendants also represent
8 that they will sue consumers, when in fact they have no intent to do so.

9 **II. JURISDICTION AND VENUE**

10 This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and
11 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345. Venue in this district is proper pursuant
12 to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c). Each defendant resides in or has
13 transacted business in the District of Nevada.

14 **III. THE PARTIES**

15 **A. Federal Trade Commission**

16 The FTC is an independent agency of the United States Government created by
17 statute. 15 U.S.C. § 41, *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15
18 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
19 commerce. The FTC also enforces TILA, 15 U.S.C. §§ 1601-1666j, which establishes,
20 *inter alia*, disclosure and calculation requirements for consumer credit transactions and
21 advertisements, and EFTA, 15 U.S.C. §§ 1693-1693r, which regulates the rights,
22 liabilities, and responsibilities of participants in electronic fund transfer systems.

23 The FTC is authorized to initiate federal district court proceedings, by its own
24 attorneys, to enjoin violations of the FTC Act, TILA, and EFTA, and to secure such
25 equitable relief as may be appropriate in each case, including rescission or reformation of
26 contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten

1 monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 1607(c), 1693o(c); *see also*
2 *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1110-13 (9th Cir. 1982).

3 **B. Defendants**

4 Defendants constitute a common enterprise of entities that operate and facilitate
5 the lending and collections operations, as well as individuals who have authority to
6 control and directly participate in the unlawful activities. In addition, two relief
7 defendants unjustly reap significant financial benefits from Defendants' unlawful
8 practices.

9 **1. Lending Defendants in the Common Enterprise**

10 Defendants AMG Services, Inc., Red Cedar Services, Inc., SFS, Inc., and Tribal
11 Financial Services Corporation (collectively, "Lending Defendants") offer and extend
12 consumer payday loans through at least substantially similar five websites ultimately
13 operated and controlled by AMG Services, Inc. The Lending Defendants are primarily
14 controlled by two brothers, Defendant Scott Tucker and Defendant Blaine Tucker.

15 Defendant **AMG Services, Inc.** ("AMG") is a corporation chartered under the
16 laws of the Miami Tribe of Oklahoma² with its principal place of business at 10895
17 Lowell Avenue, Overland Park, Kansas.³ AMG's predecessor, CLK Management, LLC
18 ("CLK"),⁴ was the original owner of the trademarks for OneClickCash,
19 UnitedCashLoans, USFastCash, and Ameriloan, and offered and extended payday loans

20
21 ² PX22 at 909. There are 22 declarations submitted as exhibits in support of this motion, numbered
PX01 to PX22. Attachments to the declarations are consecutively numbered.

22 ³ PX22 at 1094-97. The city for 10895 Lowell Avenue is sometimes listed as "Shawnee Mission" or
23 "Overland Park" throughout the documents reviewed by the FTC, but in either case the zip code and
state for the 10895 Lowell Avenue address is the same.

24 ⁴ AMG is the surviving entity of a June 2008 merger with CLK, which was formerly known as BAT
25 Services, Inc. PX22 at 893-95, 906, 909. As a result of AMG's merger with CLK, AMG is
26 responsible for the pre-merger liabilities of CLK. *See* K.S.A. § 17-7681(f); *see also* 15 Fletcher
Cyclopedia of the Law of Corporations § 7121.

1 under those trade names.⁵ CLK transferred the trademark OneClickCash to Defendant
2 SFS, Inc., and the trademarks UnitedCashLoans, USFastCash, and Ameriloan to
3 Defendant Tribal Financial Services Corporation, on September 25, 2006.⁶
4 Notwithstanding the transfer of those trademarks, AMG operates the Lending
5 Defendants' payday lending and collections enterprise with a centralized workforce on its
6 payroll.⁷ AMG maintains the telephone numbers associated with all of the other Lending
7 Defendants.⁸ At the direction of Scott Tucker and Blaine Tucker, AMG, Black Creek
8 Capital, Level 5 Motorsports, LLC, and other associated entities under the Tuckers'
9 control collect nearly all of the revenue generated from the Lending Defendants.⁹ AMG
10 is purportedly wholly owned by the Miami Tribe of Oklahoma.¹⁰

11 Defendant **Red Cedar Services, Inc.** ("Red Cedar Services"), also doing business
12 as 500FastCash, is a corporation chartered under the laws of the Modoc Tribe of
13 Oklahoma and is registered to do business at 515 G Street Southeast, Miami,
14 Oklahoma.¹¹ Red Cedar Services nominally offers and extends payday loans via
15 www.500fastcash.com.¹² MTE Financial Enterprises ("MTE") also claims to do business

16
17 ⁵ PX22 at 627-28 ¶¶ 93-95; 1963, 2036, 2136, 2153.

18 ⁶ PX22 at 627-28 ¶ 95; *see also* PX22 at 1982, 2065, 2149, 2180.

19 ⁷ PX22 at 922-23 ¶¶ 3, 4, 7; PX22 at 601-02 ¶¶ 48-51.

20 ⁸ PX22 at 605-06 ¶¶ 59-60.

21 ⁹ PX22 at 606-10 ¶¶ 61-68; 616-20 ¶¶ 81-85.

22 ¹⁰ PX22 at 897 ¶ 3. Certain Defendants have argued in various state proceedings that their affiliations
23 with Indian tribes immunize them from state law enforcement actions. As discussed in Part V.D.4
24 *infra*, however, no such argument as to any Defendant applies in this federal proceeding. In any event,
as described in this memorandum and the accompanying volume of exhibits, the overwhelming
majority of Defendants' operations do not take place on tribal land, and the overwhelming majority of
the profits derived from the enterprise does not go to tribes or tribal members.

25 ¹¹ PX22 at 911-920.

26 ¹² PX22 at 1109.

1 as 500FastCash.¹³ Red Cedar Services and MTE share an address and both are
2 purportedly owned by the Modoc Tribe of Oklahoma.¹⁴

3 Defendant **SFS, Inc.**, also doing business as OneClickCash, is a corporation
4 chartered under the laws of the Santee Sioux Nation with an address at 52946 Highway
5 12, Suite 3, Niobrara, Nebraska.¹⁵ It nominally offers and extends payday loans via
6 www.oneclickcash.com.¹⁶ SFS, Inc. claims to be wholly owned by the Santee Sioux
7 Nation.¹⁷

8 Defendant **Tribal Financial Services Corporation** (“TFS Corp.”), also known as
9 Miami Nation Enterprises (“MNE”) and also doing business as UnitedCashLoans,
10 USFastCash, and Ameriloan, is a corporation chartered under the laws of the Miami
11 Tribe of Oklahoma.¹⁸ TFS Corp. has an address at 3531 P Street, NW, Miami,
12 Oklahoma.¹⁹ It offers and extends payday loans via www.unitedcashloans.com,
13 www.usfastcash.com, and www.ameriloan.com.²⁰ TFS Corp. claims to be wholly owned
14 by the Miami Tribe of Oklahoma.²¹

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17
18 ¹³ PX22 at 1688.

19 ¹⁴ PX22 at 1688; PX22 at 1109; PX22 at 1050 ¶ 2.

20 ¹⁵ PX22 at 1012 ¶ 3; PX22 at 1217; PX22 at 1693.

21 ¹⁶ PX22 at 1217.

22 ¹⁷ PX22 at 1012 ¶ 4; PX22 at 1217.

23 ¹⁸ PX22 at 1984, 2151, 2182; PX22 at 939 ¶¶ 7-8.

24 ¹⁹ PX22 at 1982, 2149, 2180.

25 ²⁰ PX22 at 1186, 1285, 1318.

26 ²¹ PX22 at 1186, 1285, 1318.

2. Collaborating Defendants in the Common Enterprise

Defendants Level 5 Motorsports, LLC, LeadFlash Consulting, LLC, PartnerWeekly, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Partner Weekly, LLC, AMG Capital Management, LLC, and The Muir Law Firm, LLC (collectively, “Supporting Defendants”) participate in the Lending Defendants’ payday loan operations by providing management and consulting services, paying the Lending Defendants’ expenses, and distributing the earnings from the Lending Defendants to various individuals and entities associated with the Lending Defendants and the Supporting Defendants.

Defendant **Level 5 Motorsports, LLC** (“Level 5”) is a Nevada limited liability company with management and a registered agent at 871 Coronado Center Drive, Suite 200, Henderson, Nevada.²² Scott Tucker is the owner of Level 5,²³ and, along with Blaine Tucker, one of the only two people authorized to write checks on its behalf.²⁴ Scott Tucker was the Manager of Level 5 upon its founding.²⁵ The Lending Defendants regularly transfer millions of dollars to Level 5 (tens of millions of dollars in the aggregate), ostensibly for “sponsorship” fees that benefit Scott Tucker’s automobile various racing endeavors.²⁶

Defendant **LeadFlash Consulting, LLC** (“LeadFlash”) is a Nevada limited liability company with management and a registered agent at 871 Coronado Center Drive, Suite 200, Henderson, Nevada.²⁷ From June 2010 to May 2011, the Lending

²² PX22 at 687.

²³ PX22 at 1409.

²⁴ PX22 at 1612-13.

²⁵ PX22 at 680.

²⁶ PX22 at 619-20 ¶¶ 84-85.

²⁷ PX22 at 676.

1 Defendants transferred more than \$3,000,000 to LeadFlash, ostensibly for “consulting”
2 fees.²⁸ Blaine Tucker is the only signatory on LeadFlash’s bank account.²⁹

3 Defendant **Broadmoor Capital Partners, LLC** is a Nevada limited liability
4 company with management and a registered agent at 871 Coronado Center Drive,
5 Henderson, Nevada.³⁰ Its checks are labeled with the same address,³¹ and it has a place
6 of business at 10895 Lowell Avenue, Overland Park, Kansas.³² Broadmoor Capital
7 Partners, LLC covers payroll expenses for AMG.³³

8 Defendant **Black Creek Capital Corporation** (“Black Creek Capital”), is a
9 Nevada corporation with management and a registered agent at 289 Manzanita Ranch
10 Lane, Henderson, Nevada.³⁴ Lending Defendants TFS Corp., SFS, Inc., and Red Cedar
11 Services routinely make substantial payments to Black Creek Capital.³⁵ Black Creek
12 Capital, in turn, has made regular payroll payments on behalf of AMG (and CLK as
13 AMG’s predecessor) since 2008 and routinely transfers extraordinary sums of money (at
14 least \$40 million in the aggregate) to and from the Corporate Defendants, Individual
15 Defendants, Relief Defendants, and other associated persons.³⁶

17
18 ²⁸ PX22 at 618-19 ¶ 83.

19 ²⁹ PX22 at 1609-1610.

20 ³⁰ PX22 at 673.

21 ³¹ PX22 at 1700.

22 ³² PX22 at 1436.

23 ³³ PX22 at 590 ¶ 9; 1700.

24 ³⁴ PX22 at 651.

25 ³⁵ PX22 at 616-17 ¶ 81.

26 ³⁶ PX22 at 616-17 ¶ 81; 589-90 ¶ 8; 1696.

1 Defendant **PartnerWeekly, LLC** is a Nevada limited liability company with
2 management at 325 East Warm Springs Road, Suite 200, Las Vegas, Nevada.³⁷ Black
3 Creek Capital owns fifty percent of PartnerWeekly, LLC.³⁸ Partner Weekly, LLC
4 receives payday loan revenue directly from the Lending Defendants' payday lending
5 accounts and from Black Creek Capital.³⁹

6 Defendant **AMG Capital Management, LLC** is a Nevada limited liability
7 company with management and a registered agent at 871 Coronado Center Drive, Suite
8 200, Henderson, Nevada and an address at 10895 Lowell Avenue, Overland Park,
9 Kansas.⁴⁰ AMG Capital Management, LLC uses its bank accounts to transfer money
10 between Defendants.⁴¹

11 Defendant **The Muir Law Firm, LLC** ("The Muir Firm") is a Kansas limited
12 liability company with its place of business at 10895 Lowell Avenue, Overland Park,
13 Kansas.⁴² The Muir Firm pays the website registration costs and other fees for each of
14 the Lending Defendants.⁴³

15 3. Individual Defendants in the Common Enterprise

16 Defendants Scott A. Tucker, Blaine A. Tucker, Timothy J. Muir, Don E. Brady,
17 Robert D. Campbell, and Troy L. LittleAxe ("Individual Defendants") participate directly
18

19
20 ³⁷ PX22 at 702.

21 ³⁸ PX22 at 691.

22 ³⁹ PX22 at 590-91 ¶ 11; 616-17 ¶ 81; 1565.

23 ⁴⁰ PX22 at 592 ¶ 15; 797, 881.

24 ⁴¹ PX22 at 616-17 ¶ 81.

25 ⁴² PX22 at 883.

26 ⁴³ PX22 at 604-05 ¶ 58.

1 in and have knowledge of the unlawful activity discussed herein, and have authority to
2 control the companies involved in those practices.

3 Defendants **Scott Tucker** and **Blaine Tucker** are the individuals who primarily
4 control each of the Lending Defendants. From AMG's Overland Park, Kansas office
5 (shared with several other defendants), the Tuckers are actively involved in monitoring
6 the lending and collections activities of the payday operations discussed herein.⁴⁴
7 Moreover, they are designated signatories on the bank accounts of each of the Corporate
8 Defendants⁴⁵ (except The Muir Law Firm) and are the only individuals observed signing
9 *approximately 10,000 checks* for at least 46 of the Corporate Defendants' 57 known bank
10 accounts.⁴⁶

11 Scott Tucker⁴⁷ was the sole member and President of CLK, which later merged
12 into AMG.⁴⁸ He is the Secretary of Broadmoor Capital Partners, LLC.⁴⁹ He is the owner
13 of Level 5, as well as its Secretary, and was its Manager upon its formation.⁵⁰ Scott
14 Tucker directed CLK's application for, and assignment of, the trademarks
15 "OneClickCash," "UnitedCashLoans," "USFastCash," and "Ameriloan."⁵¹ AMG, Black
16 Creek Capital, Level 5, and other entities under Scott Tucker's control pay many of Scott

17
18 ⁴⁴ PX22 at 922-24 ¶¶ 3, 4, 8-10.

19 ⁴⁵ PX22 at 607-08 ¶¶ 63-64.

20 ⁴⁶ PX22 at 608 ¶ 64.

21 ⁴⁷ PX22 at 598-99 ¶¶ 34-35; 1080 (graphic showing various Scott Tucker affiliations).

22 ⁴⁸ PX22 at 897 ¶ 1; 909, 1955-56, 1984.

23 ⁴⁹ PX22 at 1586.

24 ⁵⁰ PX22 at 680, 682, 1409, 1612.

25 ⁵¹ In fact, Scott Tucker personally signed the relevant trademark documents. PX22 at 627-28 ¶ 95; *see*
26 *also* PX22 at 1953, 1956, 1959, 1965, 1968, 1970, 1973, 1975-76, 1984, 2056, 2059, 2062, 2067,
2140, 2143, 2146, 2151, 2156, 2159, 2162, 2182.

1 Tucker's personal expenses, such as: luxury automobiles; private jets; and the mortgage
2 for and maintenance of a luxury home in Aspen, Colorado.⁵² In addition to the payment
3 of personal expenses and the millions of dollars transferred to the entities that directly
4 benefit him, Scott Tucker has received at least \$806,000 in payroll from CLK and AMG
5 from 2007 through the third quarter of 2011.⁵³ Scott Tucker further directed a Black
6 Creek Capital bank account to transfer \$4,133,599.00 to himself and his wife, Relief
7 Defendant Kim Tucker.⁵⁴

8 Blaine Tucker⁵⁵ is an officer of AMG and TFS Corp and a member of LeadFlash
9 Consulting.⁵⁶ Blaine Tucker was also the manager of AMG Capital Management, LLC
10 upon its formation.⁵⁷ Along with Scott Tucker, Blaine Tucker orchestrates the movement
11 of funds from the Lending Defendants to the other Defendants and associated entities.⁵⁸
12 In addition to the payment of personal expenses and the millions of dollars transferred to
13 his company LeadFlash, Blaine Tucker has received at least \$1,295,600.79 in payroll
14 from CLK and AMG from 2007 through the third quarter of 2011.⁵⁹

15 Defendant **Timothy Muir**⁶⁰ is the sole member of The Muir Law Firm, LLC,⁶¹
16 and was the "resident agent" of Level 5 upon its formation.⁶² He is also the President,

17
18 ⁵² PX22 at 610-16 ¶¶ 68-80.

19 ⁵³ PX22 at 1107.

20 ⁵⁴ PX22 at 617 ¶ 81.

21 ⁵⁵ PX22 at 599 ¶¶ 36-37; 1082 (graphic showing various Blaine Tucker affiliations).

22 ⁵⁶ PX22 at 1569, 1609-10, 1664-65.

23 ⁵⁷ PX22 at 789-82.

24 ⁵⁸ PX22 at 607-08 ¶¶ 63-64.

25 ⁵⁹ PX22 at 618 ¶ 83; 1107.

26 ⁶⁰ PX22 at 599-600 ¶¶ 38-39; 1084 (graphic showing various Timothy Muir affiliations).

1 Secretary, Treasurer, and Director of Black Creek Capital.⁶³ He has received hundreds of
 2 thousands of dollars in compensation and payments from the common enterprise, in
 3 addition to at least \$220,203.48 paid to his firm, of which he is the only member or
 4 employee.⁶⁴

5 Defendant **Don Brady**⁶⁵ is the chief executive officer of AMG, chief executive
 6 officer of MNE, and administrator for www.unitedcashloans.com, www.usfastcash.com,
 7 and www.ameriloan.com.⁶⁶ He is a signatory on the TFS Corp. bank accounts.⁶⁷ Brady
 8 has stated that he manages the “day-to-day operation[s]” of MNE, is “ultimately
 9 responsible for [its] marketing [and] strategy,” and supervises its lending operations.⁶⁸
 10 Brady has also stated that UnitedCashLoans, USFastCash, and Ameriloan are “strictly
 11 regulated by ... all federal laws.”⁶⁹ Brady directly participates in the defense of the
 12 Lending Defendants in state law enforcement proceedings.⁷⁰

13 Defendant **Robert Campbell**⁷¹ is an officer of SFS, Inc. and the administrator for
 14 www.oneclickcash.com.⁷² He is a signatory on the SFS, Inc. bank account.⁷³ Campbell

15
 16 ⁶¹ PX22 at 596 ¶ 29; 886-88.

17 ⁶² PX22 at 679-82.

18 ⁶³ PX22 at 648-51.

19 ⁶⁴ PX22 at 610 ¶ 68; 617-19 ¶¶ 81-84; 886, 1107.

20 ⁶⁵ PX22 at 600 ¶¶ 40-41; 1086 (graphic showing various Don Brady affiliations).

21 ⁶⁶ PX22 at 604-05 ¶ 58; 927-29 ¶ 2; 936-33 ¶ 3; 937-42 ¶ 2; 1097.

22 ⁶⁷ PX22 at 1664-65.

23 ⁶⁸ PX22 at 927-29 ¶ 2; 931-33 ¶ 6; 937-42 ¶¶ 2, 7.

24 ⁶⁹ PX22 at 937-42 ¶ 9.

25 ⁷⁰ *See generally* PX22 at 927-1005.

26 ⁷¹ PX22 at 600 ¶¶ 42-43; 1088 (graphic showing various Robert Campbell affiliations).

1 has stated that he is knowledgeable regarding the “day-to-day operations” of SFS, Inc., its
 2 lending, and its marketing and strategy.⁷⁴ Campbell directly participates in the defense of
 3 the Lending Defendants in state law enforcement proceedings.⁷⁵

4 Defendant **Troy LittleAxe**⁷⁶ is the secretary and registered agent of Red Cedar
 5 Services and the administrator for www.500fastcash.com.⁷⁷ He is a signatory on the Red
 6 Cedar Services bank account.⁷⁸ LittleAxe is also chief executive officer of MTE, and has
 7 stated that he manages its day-to-day operations.⁷⁹ He participates in the defense of the
 8 Lending Defendants in state law enforcement proceedings and is in regular contact with
 9 co-defendants Scott Tucker and Timothy Muir regarding confidential legal advice, trade
 10 secrets, and financial information pertaining to the common enterprise.⁸⁰

11 4. Relief Defendants

12 Relief Defendant **Park 269 LLC** (“Park 269”) is a Kansas limited liability
 13 company with a registered office at 5600 West 97th Street, Overland Park, Kansas⁸¹ that
 14 was organized by Relief Defendant Kim Tucker on April 30, 2009.⁸² Park 269 owns a

15
 16 ⁷² PX22 at 604-05 ¶ 58; 1656-57.

17 ⁷³ PX22 at 1656-57.

18 ⁷⁴ PX22 at 1007-09 ¶ 3; 1011-13 ¶ 5; 1015-19 ¶¶ 4, 8.

19 ⁷⁵ *See generally* PX22 at 1007-19.

20 ⁷⁶ PX22 at 601 ¶¶ 44-45; 1090 (graphic showing various Troy LittleAxe affiliations).

21 ⁷⁷ PX22 at 604-05 ¶ 58; 911, 913, 917, 1653-54.

22 ⁷⁸ PX22 at 1653-54.

23 ⁷⁹ PX22 at 1045-47 ¶¶ 2-3; 1055-56 ¶ 2; 1060-62 ¶¶ 2-3; 1064-66 ¶¶ 2-3.

24 ⁸⁰ PX22 at 1037-43; *see also* PX22 at 1045-62.

25 ⁸¹ PX22 at 819-24.

26 ⁸² PX22 at 819-20.

1 property located at 269 Park Avenue, Aspen, Colorado that it purchased on May 8, 2009
 2 for \$8,000,000.⁸³ At Scott Tucker's direction, AMG has spent at least \$1,519,793.78 on
 3 the purchase, renovation, and maintenance of the property at 269 Park Avenue, Aspen,
 4 Colorado.⁸⁴ AMG also directly paid the property taxes due on this property for 2009 and
 5 2010.⁸⁵ As discussed in Part V.D.3, *infra*, Park 269 has no legitimate claim to these
 6 assets and expenditures, which are traceable to funds obtained from consumers through
 7 Defendants' unlawful practices.

8 Relief Defendant **Kim C. Tucker**⁸⁶ is the wife of Scott Tucker. Between January
 9 2008 and March 2011, she received at least \$844,263.00 in payments from Black Creek
 10 Capital and, as discussed above, the \$4,133,599.00 single payment made jointly to her
 11 and Scott Tucker.⁸⁷ As discussed in Part V.D.3, *infra*, she has no legitimate claim to
 12 these assets, which are traceable to funds obtained from consumers through Defendants'
 13 unlawful practices.

14 **IV. DEFENDANTS' UNLAWFUL BUSINESS PRACTICES**

15 Defendants offer and extend payday loans to consumers throughout the U.S.,
 16 including in states in which Defendants' fees are unlawfully high or in which Defendants
 17 are not licensed to lend.⁸⁸ Defendants offer their loans through a variety of websites,

18 ⁸³ PX22 at 829-30.

19 ⁸⁴ PX22 at 612-16 ¶¶ 73-80.

20 ⁸⁵ PX22 at 832-34.

21 ⁸⁶ PX22 at 601 ¶¶ 46-47; 1092 (graphic showing various Kim Tucker affiliations).

22 ⁸⁷ PX22 at 616-17 ¶ 81.

23 ⁸⁸ Several states have brought proceedings against one or more Defendants, alleging that their loans
 24 violate state licensing and/or usury laws. *See, e.g.*
 25 http://www.ndbf.ne.gov/searches/Orders/20070824_SFS_Inc_dba_One_Click_Cash.pdf (Neb.);
 26 <http://www.corp.ca.gov/ENF/list/a/ameriloan.asp> (Cal.);
<http://www.nh.gov/banking/orders/enforcement/documents/order10-081Sfs-cd-otsc.pdf> (N.H.);
<http://www.wvago.gov/press.cfm?fx=more&ID=447> (W. Va.)

1 including www.500fastcash.com, www.ameriloan.com, www.oneclickcash.com,
2 www.unitedcashloans.com, and www.usfastcash.com, to consumers who “[n]eed cash
3 quick but [are] caught between paydays.”⁸⁹ Defendants’ websites, and the loan contracts
4 they generate, are nearly identical.⁹⁰

5 Defendants’ lending practices violate federal law in two respects. First,
6 Defendants misstate the terms of the loans, including by charging consumers well in
7 excess of the costs they initially represent, in violation of the FTC Act and TILA.
8 Second, Defendants condition the extension of credit on consumers’ preauthorizing
9 repayment by electronic fund transfer, in violation of EFTA.

10 Finally, Defendants’ collections violate federal law because Defendants threaten
11 criminal sanctions and civil litigation against nonpaying consumers, even though
12 Defendants have no intention (and in many cases no ability) to initiate such actions.

13 **A. Defendants Misrepresent the Terms of the Loans**

14 Defendants’ various websites use nearly identical language to advertise and
15 describe their loans to consumers. Significantly, they all state, “When your loan is due,
16 we automatically deduct your scheduled payment from your bank account along with any
17 applicable fees.”⁹¹ After the consumer completes a loan application on the website,
18 Defendants provide a Loan Note and Disclosure document (“Loan Disclosure”),
19 containing a prominent box that, among other things, represents that the “Total of
20 Payments” will equal the amount financed plus a stated finance charge.⁹² The box also
21 equates the “Total of Payments” with the “scheduled payment” by stating that the “Total

22
23 ⁸⁹ PX22 at 1113, 1190, 1222, 1289, 1322.

24 ⁹⁰ PX02 at 14-15 ¶¶ 5-6, 8-9; PX22 at 602-03 ¶¶ 52-53.

25 ⁹¹ PX22 at 1113, 1190, 1222, 1289, 1322.

26 ⁹² PX10 at 343.

1 of Payments” is “[t]he amount you will have paid after you have made the scheduled
2 payment.”⁹³

3 One representative consumer took out a \$300 loan from Defendants with a stated
4 finance charge of \$90. Defendants then delivered to the consumer a Loan Disclosure
5 prominently stating that the consumer would repay a total of \$390 to satisfy the loan:⁹⁴

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made the scheduled payment.
684.38%	\$90.00	\$300.00	\$390.00

6
7
8
9
10
11 Following that box, Defendants present confusing, buried terms that contradict the
12 earlier, straightforward representations regarding the loan’s cost and duration:⁹⁵

13 Your **Payment Schedule** will be: 1 payment of **\$390.00** due on **2010-09-**
14 **24**, if you decline* [t]he option of renewing your loan. If your pay date
15 falls on a weekend or holiday and you have direct deposit, your account
16 will be debited on [t]he business day prior to your normal pay date. If
17 renewal is accepted you will pay the finance charge of \$90.00 only, on
18 2010-09-24[.] You will accrue new finance charges with every renewal of
19 your loan. On the due date resulting from a four[t]h renewal and every
20 renewal due date thereafter, your loan must be paid down by \$50.00. This
means your Account will be debited the finance charge plus \$50.00 on the
due date. This will continue until your loan is paid in full. *To decline
the option of renewal, you must select your payment options using the
Account Summary link sent to your email at least three business days
before your loan is due.

21 In the typical case, rather than withdrawing the consumer’s “scheduled payment”
22 or “Total of Payments” on a single date as represented on Defendants’ websites and Loan
23

24 ⁹³ PX10 at 343.

25 ⁹⁴ PX10 at 343 (emphasis in original, footnote regarding APR calculation omitted).

26 ⁹⁵ PX10 at 343 (emphasis in original).

1 Disclosure, Defendants withdraw only an amount equal to the finance charge from the
2 consumer's bank account, leaving the entire principal balance outstanding. Defendants
3 repeat this process three more times, each time withdrawing only the finance charge
4 amount and applying none of the withdrawn funds to the consumer's principal. Only on
5 the fifth payday and each subsequent payday do Defendants withdraw \$50 sums from the
6 consumer's bank account to repay principal, while continuing to assess additional finance
7 charges until the entire principal is repaid.

8 The result of Defendants' multi-payment loan structure is that Defendants charge
9 the consumer numerous finance charges instead of one, and thus withdraw from the
10 consumer a total repayment amount well in excess of the "Total of Payments"
11 conspicuously stated in the Loan Disclosure. And because Defendants initiate
12 withdrawals from consumers automatically via electronic fund transfers, consumers are
13 frequently surprised to learn subsequently that many of their repayments were applied
14 only to repeated finance charges and did not at all reduce their outstanding principal.⁹⁶

15 In the example of the aforementioned \$300 loan, Defendants withdrew a \$90
16 finance charge from the consumer's account on the date her loan was "due" and a \$90
17 finance charge on each of her next three paydays, for a total of \$360 withdrawn and
18 applied solely to multiple finance charges. On the consumer's fifth payday following the
19 loan, Defendants withdrew \$140 (a fifth \$90 finance charge plus \$50 for the first
20 payment toward principal). Eventually, Defendants made withdrawals from the
21 consumer's account on seven successive paydays, totaling \$735, before she closed her
22 bank account to prevent further withdrawals.⁹⁷

24 ⁹⁶ PX07 at 240 ¶¶ 3-4, 7-8; PX12 at 438-39 ¶¶ 7-13; PX11 at 416-18 ¶¶ 3, 6, 11, 16.

25 ⁹⁷ PX10 at 321-22 ¶¶ 10-13.

1 Defendants provide some information about the loan structure at the end of an
 2 email sent after the consumer has already agreed to the loan.⁹⁸ Importantly, however,
 3 Defendants nowhere disclose the finance charge, APR, payment schedule, and total of
 4 payments that a consumer must pay under the actual, multi-part loan Defendants have
 5 configured. In the case of a \$300 loan, the actual loan repayment schedule and
 6 application of withdrawn funds to finance charges and principal would be as follows:

7 Payday	8 Payment	9 Finance Charge (30% of remaining principal balance)	10 Applied To Principal	11 Remaining Principal Balance	12 Total Paid To Date
13 1	\$90	\$90	\$0	\$300	\$90
14 2	\$90	\$90	\$0	\$300	\$180
15 3	\$90	\$90	\$0	\$300	\$270
16 4	\$90	\$90	\$0	\$300	\$360
17 5	\$140	\$90	\$50	\$250	\$500
18 6	\$125	\$75	\$50	\$200	\$625
19 7	\$110	\$60	\$50	\$150	\$735
20 8	\$95	\$45	\$50	\$100	\$830
21 9	\$80	\$30	\$50	\$50	\$910
22 10	\$65	\$15	\$50	\$0	\$975
23 TOTAL	\$975	\$675	\$300		\$975

24 This \$300 loan would be paid back over 10 payments, yield an accumulated
 25 finance charge of \$675, and result in a total of payments of \$975, a marked difference
 26 from the single repayment date, \$90 finance charge, and \$390 total of payments that
 Defendants represented to the consumer. The APR for the loan, if paid back in

⁹⁸ PX10 at 348-49.

1 accordance with the above payment schedule, would be 727.3669%,⁹⁹ but Defendants
2 represented to the consumer that the loan's APR would be 684.38%.¹⁰⁰

3 **B. Defendants Require Preauthorized Electronic Fund Transfers**

4 As a condition of extending credit, Defendants require that borrowers authorize
5 them to withdraw loan payments by electronic fund transfer. The Loan Disclosure states,
6 "Any payment due on the Note shall be made by us effecting one or more ACH debit
7 entries to your Account at the Bank. You authorize us to effect this payment by these
8 ACH debit entries."¹⁰¹ Defendants further require consumers to sign a document entitled
9 "Privacy Policy and Authorization Agreement" that authorizes the Defendant to "initiate
10 one or more ACH debit entries . . . to [the consumer's] Deposit Account . . . for the
11 payments that come due each pay period"¹⁰²

12 In addition to imposing these requirements at the outset of the loan, Defendants
13 have generally refused later attempts by consumers to repay their loans by other means
14 (including by wire transfer or cashier's check) and insisted that consumers only pay via
15 electronic fund transfers or debit card payments.¹⁰³

16 **C. Defendants Issue False Threats to Coerce Consumers into Repaying
17 their Alleged Debts**

18 In their debt collection activities, Defendants frequently issue threats to
19 consumers that they cannot and do not carry out. Specifically, Defendants on numerous
20 occasions tell consumers that they will be arrested or imprisoned if they do not continue

21
22 ⁹⁹ PX22 at 2184.

23 ¹⁰⁰ PX10 at 343.

24 ¹⁰¹ PX10 at 344. Automatic Clearinghouse, or ACH, debit entries are a form of electronic fund transfer.

25 ¹⁰² PX10 at 345.

26 ¹⁰³ PX4 at 216 ¶ 22; PX5 at 227 ¶ 21; PX6 at 236-37 ¶¶ 13, 17-18.

1 making payments to the lenders.¹⁰⁴ In fact, Defendants take no steps to initiate law
2 enforcement action against consumers, and in any event consumers cannot be arrested or
3 imprisoned for failing to pay the types of private debts claimed by Defendants.
4 Defendants also tell consumers in numerous instances that they will sue consumers if
5 they do not continue repaying their alleged debts.¹⁰⁵ In fact, Defendants do not sue
6 consumers for debt collection.

7 **V. ARGUMENT**

8 The FTC requests that the Court enter the proposed preliminary injunction to
9 prevent further harm to consumers by halting Defendants' deceptive and unlawful
10 practices. As set forth below: (A) this Court has authority to grant the requested relief;
11 (B) the FTC is likely to succeed on the merits of all its claims; (C) the equities favor entry
12 of an injunction; (D) Defendants are jointly and severally liable for injunctive and
13 monetary relief, and Relief Defendants are liable for monetary disgorgement; and (E) an
14 injunction is necessary to preserve effective final relief.

15 **A. The FTC Act Authorizes this Court to Grant the Requested Relief**

16 This Court has authority to grant preliminary and permanent relief pursuant to the
17 second proviso of Section 13(b) of the FTC Act,¹⁰⁶ which provides that "in proper cases

19 ¹⁰⁴ PX6 at 236 ¶ 15; PX14 at 448 ¶ 19.

20 ¹⁰⁵ PX4 at 215-16 ¶ 19; PX6 at 236 ¶ 15; PX14 at 448 ¶ 19; PX17 at 522 ¶ 13; PX18 at 531 ¶ 7.

21 ¹⁰⁶ This action is not brought pursuant to the first proviso of Section 13(b), which addresses the
22 circumstances under which the FTC can seek preliminary injunctive relief before or during the
23 pendency of an administrative proceeding. Because the FTC brings this case under the second proviso
24 of Section 13(b), its complaint is not subject to the procedural and notice requirements in the first
25 proviso. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (Congress did not limit
26 the Court's powers under the second and final proviso of § 13(b) and as a result this Court's inherent
equitable powers may be employed to issue a preliminary injunction during the pendency of an action
for permanent injunctive relief); *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982)
(holding that routine fraud cases may be brought under the second proviso, without being conditioned
on the first proviso requirement that the FTC initiate an administrative proceeding).

1 the FTC may seek, and, after proper proof, the court may issue, a permanent
2 injunction”¹⁰⁷ against violations of “any provision of law enforced by the Federal Trade
3 Commission.” 15 U.S.C. § 53(b). Section 13(b) confers the full breadth of the Court’s
4 inherent equitable authority not only to grant a permanent injunction but also to grant all
5 preliminary relief necessary to accomplish complete justice and effectuate ultimate relief.
6 *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir. 1989) (affirming
7 district court’s power to freeze assets); *H.N. Singer*, 668 F.2d at 1113 (affirming
8 preliminary injunction and personal and corporate asset freeze). The exercise of this
9 broad, equitable authority is particularly appropriate where, as here, the public interest is
10 at stake. *United States v. Laerdal Mfg.*, 73 F.3d 852, 857 (9th Cir. 1995). Indeed, in
11 numerous cases brought by the FTC, courts in this Circuit have granted such preliminary
12 equitable relief.¹⁰⁸

13 To obtain a preliminary injunction, the FTC must show a likelihood of success on
14 the merits and that the equities weigh in favor of granting the relief requested. *FTC v.*
15 *Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999); *World Wide Factors*, 882
16 F.2d at 346. Harm to the public is presumed when a statute has been violated. *United*
17 *States v. W.T. Grant Co.*, 345 U.S. 629, 632 n.5 (1953); *see also United States v. Odessa*

19 ¹⁰⁷ A case involving ongoing deceptive or unfair and unlawful practices, such as this one, qualifies as a
20 “proper case” under Section 13(b). *H.N. Singer*, 668 F.2d at 1111, 1113; *see also FTC v. Evans Prods.*
21 *Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985).

22 ¹⁰⁸ Courts in this Circuit have issued preliminary injunctions and temporary restraining orders with
23 injunctive and other ancillary relief in circumstances similar to those found here. *See, e.g., FTC v.*
24 *Moneymaker*, 2:11-cv-00461-R-LH-RJJ (D. Nev. Mar. 25, 2011); *FTC v. Ivy Capital, Inc.*, 2:11-cv-
25 00283-JCM-GWF (D. Nev. Mar. 25, 2011); *FTC v. Immigration Ctr.*, 3:11-cv-00055-LRH-VPC (D.
26 Nev. Jan. 26, 2011); *FTC v. Grant Connect, LLC*, 2:09-cv-01349-PMP-RJJ (D. Nev. Aug. 18, 2009);
FTC v. Rincon Mgmt. Servs., LLC, 5:11-cv-01623-VAP-SP (C.D. Cal. Nov. 10, 2011); *FTC v.*
Forensic Case Mgmt. Servs., Inc., Case No. LACV11-7484-RGK (C.D. Cal. Sep. 27, 2011); *FTC v.*
Inc21.Com Corp., CV-10-0022-WHA (N.D. Cal. Feb. 19, 2010); *FTC v. Nat’l Awards Serv. Advisory*,
cv-10-5418 (N.D. Cal. Dec. 15, 2010); *FTC v. J.K. Publ’ns*, Civ. No. 99-00044 (C.D. Cal. Mar. 16,
1999).

1 *Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987) (where injunction is
2 authorized by statute, enforcing agency need not show irreparable injury). In weighing
3 the equities in such an action, public equities should receive greater weight. *World Wide*
4 *Factors*, 882 F.2d at 347; *see also Affordable Media*, 179 F.3d at 1236.

5 **B. The Evidence Demonstrates a Likelihood of Success in Proving**
6 **Violations of the FTC Act, TILA, and EFTA**

7 **1. FTC Act Violations**

8 Defendants falsely represent the duration and cost of their loans, and use
9 deceptive practices to collect or attempt to collect on them, all in violation of the FTC
10 Act.

11 An act or practice is “deceptive” under Section 5(a) of the FTC Act,
12 15 U.S.C. § 45(a), if it involves a material representation or omission that is likely to
13 mislead consumers, acting reasonably under the circumstances, to their detriment. *FTC*
14 *v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009); *FTC v. Cyberspace.com, LLC*, 453 F.3d
15 1196, 1199 (9th Cir. 2006); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir.
16 1994). A representation, omission, or practice is material if it “involves information that
17 is important to consumers and, hence, likely to affect their choice of, or conduct
18 regarding, a product.” *Cyberspace.com*, 453 F.3d at 1201 (internal citations omitted).
19 Terms relating to the price of a product are material. *See FTC v. Figgie Int’l, Inc.*, 994
20 F.2d 595, 608 (9th Cir. 1993). The Court may also presume express claims to be
21 material. *Pantron I Corp.*, 33 F.3d at 1095-96.

22 Defendants may not lure consumers with deceptive statements and then provide
23 truthful information elsewhere in the solicitation or later in the transaction. *See, e.g.*,
24 *Cyberspace.com*, 453 F.3d at 1200-01; *FTC v. Direct Mkt’g. Concepts, Inc.*, 624 F.3d 1,
25 12 (1st Cir. 2010) (“[D]isclaimers or qualifications . . . are not adequate to avoid liability
26 unless they are sufficiently prominent and unambiguous to change the apparent meaning

1 of the claims and to leave an accurate impression” rather than “creating contradictory
2 double meanings.”) (citing *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir.
3 1989)); *Am. Home Products*, 98 F.T.C. 136, 370 (1981), *aff’d*, 695 F.2d 681, 688 (3d Cir.
4 1982) (“[W]hen the first contact between a seller and buyer occurs through a deceptive
5 advertisement, the law is violated even if the truth is subsequently made known to the
6 purchaser.”). In determining what messages may reasonably be ascribed by a consumer
7 to a statement or set of statements, the “net impression” of all representations made is
8 considered. *See, e.g., Cyberspace.com*, 453 F.3d at 1200; *FTC v. Brown & Williamson*
9 *Tobacco Corp.*, 778 F.2d 35, 41-43 (D.C. Cir. 1985) (overall description of cigarette tar
10 content in advertisement was deceptive even though fine print accurately explained how
11 cigarette tar content was measured, because consumers were unlikely to read the fine
12 print).

13 Here, Defendants deceptively represent that they will withdraw a specified
14 amount on a single date, and that the funds withdrawn from the consumer’s bank account
15 will equal the amount financed plus a one-time, stated finance charge. Likewise, in their
16 collection practices, Defendants deceptively represent that consumers may be arrested,
17 prosecuted, or imprisoned for failing to pay Defendants, and that Defendants will file
18 lawsuits against consumers who fail to pay them.

19 **a) Lending Violations**

20 **(1) Defendants Falsely Represent that They Will**
21 **Withdraw the Repayment Amount on a Single**
22 **Date**

23 Defendants represent to consumers that they will automatically withdraw from
24 consumers’ bank accounts the full amount owed on a single scheduled payment date.
25 (*See* Part IV.A, pp. 13-18, *supra*.) On their website, Defendants state, “When your loan
26 is due, we automatically deduct your scheduled payment from your bank account along

1 with any applicable fees.” Nowhere do Defendants state that the “scheduled payment” is
2 anything less than the full amount owed. In fact, Defendants’ Loan Disclosure includes a
3 TILA box conspicuously stating that “[t]he amount you will have paid after you have
4 made the scheduled payment” is the “**Total of Payments**” (\$390.00 in the above
5 example).

6 Defendants do not withdraw the repayment amount on a single date as stated; they
7 instead withdraw loan payments over a series of consumer paydays and assess an
8 additional finance charge at each payday. (*See* Part IV.A, pp. 16-18, *supra*.) The result
9 is that Defendants withdraw significantly more from consumers’ bank accounts than they
10 represent. Defendants’ misrepresentation as to the cost of their loans is material, *Figgie*
11 *Int’l, Inc.*, 994 F.2d at 608, and if consumers knew that the loans would be drawn out
12 longer than Defendants represent (with a higher cost resulting), they might choose not to
13 take out a loan with Defendants. *Cyberspace.com*, 453 F.3d at 1201.

14 (2) **Defendants Falsely Represent that the Total of**
15 **Payments Will Equal the Amount Financed Plus**
16 **a One-Time, Stated Finance Charge**

17 Defendants represent to consumers that the cost of repaying the payday loans they
18 issue will be the amount financed plus a stated, fixed finance charge. (*See* Part IV.A, pp.
19 14-18, *supra*.) For example, when a consumer takes out a loan for \$300, Defendants
20 represent that the finance charge will be \$90 and the total of payments will be \$390. In
21 fact, Defendants’ default payment schedule results in a \$300 loan costing a consumer
22 \$675 in finance charges, with payments totaling \$975.

23 Defendants vaguely describe the multi-step repayment process in confusing text
24 buried in the Loan Disclosure and at the end of a subsequent email, both of which
25 contradict the prominent “**FINANCE CHARGE**” and “**Total of Payments**” amounts
26 stated to consumers in the conspicuous TILA box. (*See* Part IV.A, pp. 16-17, *supra*.)
Even assuming those statements did articulate the multiple payment timeline and

1 associated cost in a comprehensible manner, they are not sufficient to undo the “net
2 impression” of Defendants’ more prominent disclosures as to payment schedule and loan
3 cost, namely that Defendants will automatically effectuate repayment of the loan via a
4 single payment in the amount of the stated “Total of Payments” (\$390 in the above
5 example.) *See Cyberspace.com*, 453 F.3d at 1200; *Brown & Williamson*, 778 F.2d at 42-
6 43. As with Defendants’ misrepresentation regarding the duration of the loans, the dollar
7 differential between Defendants’ fee disclosures and the amount of fees they actually
8 charge to consumers (\$585 in the above example) is clearly material and would influence
9 reasonable consumers’ choices and conduct regarding Defendants’ loans.

10 **b) Debt Collection Violations**

11 **(1) Defendants Falsely Represent that Consumers**
12 **May Be Arrested, Prosecuted, or Imprisoned for**
13 **Failing To Pay**

14 When attempting to collect the sums that consumers allegedly owe, on numerous
15 occasions Defendants represent to consumers that consumers who do not pay will be
16 arrested, prosecuted, or imprisoned. (*See* Part IV.C, p. 19, *supra*.) After reviewing
17 thousands of consumer complaints filed against Defendants with Better Business
18 Bureaus, the Commission, and numerous law enforcement agencies, the FTC has not
19 found any complaints indicating that Defendants tried to have any borrowers arrested,
20 prosecuted, or imprisoned. *See FTC v. Check Investors, Inc.*, 502 F.3d 159, 163-64 (3d
21 Cir. 2007) (Defendant’s “threats of prosecution were all false. It never notified law
22 enforcement authorities...”). In any event, Defendants could not have taken such action
23 because, absent contempt of court or other very unusual circumstances, the failure to pay
24 legally cannot result in arrest, prosecution, or imprisonment. *See Goldyn v. Hayes*, 444
25 F.3d 1062, 1069 (9th Cir. 2006) (“Failure to repay a loan, however, is not a crime; the
26

1 days of imprisoning insolvent debtors are long gone.”) (citing United States and Nevada
2 constitutions).¹⁰⁹

3 Because Defendants do not and cannot cause consumers to be arrested,
4 prosecuted, or imprisoned for failing to pay their loans, their representations to
5 consumers are deceptive and violate Section 5(a) of the FTC Act. In previous contested
6 FTC matters, courts have found such verbal threats to violate the FTC Act and enjoined
7 them. *See* Prelim. Inj. at 1, 5, *FTC v. Rincon Mgmt. Servs., LLC*, Case No. ED-cv-11-
8 1623-VAP (C.D. Cal. Oct. 11, 2011); Prelim. Inj. at 2, 7, 9, *FTC v. Forensic Case Mgmt.*
9 *Servs., Inc.*, Case No. LACV11-7484-RGK (C.D. Cal. Sep. 12, 2011); Prelim. Inj. at 2, 6-
10 7, *FTC v. Rawlins & Rivera*, No. 07-CV-146 (M.D. Fla. Apr. 6, 2007); *cf.* 15 U.S.C. §
11 1692e(4) (unlawful for third-party debt collectors to threaten arrest or imprisonment
12 unless such action is lawful and the debt collector or creditor intends to take such
13 action).¹¹⁰

14 **(2) Defendants Falsely Represent that they Will File**
15 **Lawsuits Against Nonpaying Consumers**

16 When attempting to collect the sums that consumers allegedly owe, Defendants
17 also represent to consumers in numerous instances that they will file suits against
18 consumers who do not pay their alleged debts. (*See* Part IV.C, p. 19, *supra.*) After
19 searching federal and state court dockets in addition to reviewing the volumes of
20 consumer complaints against Defendants (the same as those discussed in the subsection
21

22 ¹⁰⁹ *See also* 16A C.J.S. *Const.* § 710 (2011) (“As a general rule, a person cannot be imprisoned for debt.”);
23 5 Am. Jur. 2d *Arrest* § 54 (2007) (“Most state constitutions contain provisions which . . . generally
prohibit imprisonment for debt.”).

24 ¹¹⁰ The Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, may not apply here
25 because, based on information currently known to the FTC, Defendants are not “debt collectors”
26 within the meaning of the statute. Nevertheless, the above-cited provision is instructive to show
Congressional intent to forbid the false and misleading practice of threatening consumers with criminal
consequences for failure to pay private debts.

1 above), the FTC has not found any indication that Defendants have initiated any civil
 2 litigation to recover on their borrowers' purported debts.¹¹¹ *See Check Investors, Inc.*,
 3 502 F.3d at 163 (Defendant's "threats of prosecution were all false ... it [did not] take
 4 steps to initiate civil suit against any consumer").

5 Because Defendants do not initiate lawsuits against consumers for failing to pay
 6 their loans, their representations to consumers are deceptive and violate Section 5(a) of
 7 the FTC Act. As with Defendants' threats regarding criminal sanctions, courts have
 8 found such threats of civil litigation to violate the FTC Act and enjoined them. *See*
 9 *Rincon Mgmt., supra; Forensic Case Mgmt. Servs., supra; Rawlins & Rivera, supra; cf.*
 10 15 U.S.C. § 1692e(5) (unlawful for third-party debt collectors to threaten action unless
 11 such action is lawful and the debt collector or creditor intends to take such action).¹¹²

12 2. TILA Violations

13 Defendants violate TILA and its implementing Regulation Z by providing
 14 inaccurate information when extending credit to consumers.

15 Under TILA and Regulation Z, creditors of closed-end credit must accurately
 16 disclose, before the credit is extended, the following terms of the loan: the finance
 17 charge; the annual percentage rate; the payment schedule; and the total of payments.¹¹³

19 ¹¹¹ Pacer and Lexis CourtLink searches show no such actions filed by Defendants against consumers. *See*
 20 PX21 at 586 ¶ 5. In any event, in many states Defendants could not successfully sue consumers
 21 because Defendants are unlicensed lenders or because their loans violate the states' usury laws. *See*
 22 *supra* note 88 and accompanying text; *see* 53 C.J.S. *Licenses* § 115 (2011) ("Generally, a contract
 23 entered into by a person . . . without taking out a license as required by law is void, illegal and
 24 unenforceable."); 9 Richard A. Lord, *A Treatise on the Law of Contracts* § 20:38 (1998) ("Several
 25 states give the borrower in a usurious transaction varying degrees of relief. Some require him to pay
 26 the amount of the loan plus legal interest . . . [o]thers require him to pay only the amount actually
 loaned with no interest. A few do not require that the borrower repay anything . . .").

¹¹² Although the FDCPA may not apply to this matter, *see supra* note 110, the above-cited provision is
 instructive to show Congressional intent to forbid the false and misleading practice of threatening
 consumers with lawsuits when in fact the debt collector or creditor has no intent to sue.

¹¹³ *See* TILA sections 121(a) and 128(b)(1), 15 U.S.C. §§ 1631(a) and 1638(b)(1); Regulation Z sections
 1026.17(a), 1026.17(b), and 1026.18, 12 C.F.R. §§ 1026.17(a), 1026.17(b), and 1026.18. Every

1 Defendants are “creditors” under TILA and Regulation Z because Defendants extend
2 consumer credit payable to Defendants and subject to a finance charge. 12 C.F.R. §
3 1026.2(a)(17).¹¹⁴ Defendants extend “closed-end credit” under the TILA regulations
4 because Defendants do not make additional credit available to consumers as they repay
5 their outstanding balances. 12 C.F.R. §§ 1026.2(a)(10) and (a)(20).¹¹⁵

6 In connection with their payday lending, Defendants violate TILA on numerous
7 occasions by inaccurately disclosing: (a) the finance charge; (b) the annual percentage
8 rate; (c) the payment schedule; and (d) the total of payments. (*See supra* Part IV.A, pp.
9 14-18.) Those terms are inaccurate in Defendants’ loan disclosures because they are
10 presented as if Defendants will withdraw the repayment amount on a single date and the
11 the consumer’s total payment will equal the amount borrowed plus a one-time finance
12 charge. In fact, the loan is repaid over multiple installments and Defendants thereby
13 assess multiple finance charges. This practice results in Defendants assessing an actual
14 finance charge, payment schedule, and total of payments that differ from those stated in
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17 violation of TILA or Regulation Z constitutes a violation of the FTC Act. TILA section 108(c), 15
18 U.S.C. § 1607(c).

19 ¹¹⁴ Regulation Z and Regulation E were recently renumbered in the CFR pursuant to the Consumer
20 Financial Protection Bureau’s assumption of responsibility for enforcement of TILA and EFTA. *See*
21 *Truth in Lending*, 76 Fed. Reg. 79768 (Dec. 22, 2011); *Electronic Fund Transfers*, 76 Fed. Reg. 81020
(Dec. 27, 2011). The current citations are used here although Defendants’ violations for the most part
predate the renumbering.

22 ¹¹⁵ TILA distinguishes between open-end and closed-end transactions. 12 C.F.R. §§ 1026.2(a)(10),
23 (a)(20). A loan is considered open-end only if three conditions are met: the creditor reasonably
24 contemplates repeated transactions; the creditor may impose a finance charge from time to time on an
25 outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the
26 term of the plan is generally made available to the consumer as the consumer repays the outstanding
balance. Otherwise, the loan is closed-end. Here, Defendants’ loans are closed-end because,
regardless of the first two conditions, the third requirement for an open-end loan is not met.
Specifically, Defendants’ Loan Disclosure sets forth a fixed loan amount – \$300 in the above example
– and does not provide for an increase in the credit extended as the consumer repays the loan.

1 Defendants' TILA disclosures.¹¹⁶ In numerous cases, the Defendants likewise misstate
2 the APR.¹¹⁷ Significantly, Defendants never disclose to the consumer the actual finance
3 charge, payment schedule, total of payments, and APR that apply if the loan is
4 administered as it is deceptively designed, *i.e.*, over the multiple repayment period.¹¹⁸ As
5 a result, Defendants violate TILA.

6 3. EFTA Violations

7 Defendants violate EFTA and its implementing Regulation E by requiring
8 consumers to agree to preauthorized fund transfers from their bank accounts.

9 Under EFTA regulations, “[n]o ... person may condition an extension of credit to
10 a consumer on the consumer’s repayment by preauthorized electronic fund transfers.” 12
11 C.F.R. § 1005.10(e).¹¹⁹ Defendants, who include natural persons and corporations, are
12 “persons” within the meaning of EFTA regulations. *Id.* § 1005.2(j) (defining “person” as
13 a natural person or an organization, including a corporation).

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17 ¹¹⁶ In the example discussed in Part IV.A, the finance charge is \$675, the payment schedule occurs over
18 ten pay periods, and the total of payments is \$975, but Defendants present the finance charge as \$90, to
be paid on a single date, resulting in a total of payments of \$390.

19 ¹¹⁷ In the example discussed in Part IV.A, the true APR is 727.3669, but Defendants state it is 684.38.
20 This discrepancy is sufficiently large to be considered an inaccurate report under TILA (*i.e.*, beyond
1/8 of a percentage point). *See* 15 U.S.C. § 1606(c); 12 C.F.R. § 1026.22(a)(2). In numerous other
21 cases, Defendants likewise understate the APR for their payday loans.

22 ¹¹⁸ Although Defendants purport to give consumers the option of repaying their loans sooner by making
23 special arrangements, the “legal obligation” created by the consumer in the contract is to repay the loan
24 in multiple payments. *See* 12 C.F.R. § 226.17(c) (disclosures must reflect “the terms of the legal
obligation between the parties”). The TILA disclosures must correspond to the finance charge,
25 payment schedule, and total of payments associated with the terms of the loan, not the terms that
26 would result if the consumer opts to repay earlier than required. *Id.*

¹¹⁹ *See also* 15 U.S.C. § 1693k(1); and 12 C.F.R. § 1005.10(e)(1), Supp. 1, 76 Fed. Reg. at 81046. As
with the TILA provisions cited above, every violation of EFTA or Regulation E constitutes a violation
of the FTC Act. 15 U.S.C. § 1693o(c).

1 Under EFTA regulations, “credit” is defined as the right “to incur debt and defer
2 its payment.” *Id.* § 1005.2(f). Here, Defendants extend “credit” to consumers by
3 offering payday loans that permit consumers to “defer” payment of the balance.

4 Further, the regulations define a “preauthorized electronic fund transfer” as “an
5 electronic fund transfer authorized in advance to recur at substantially regular intervals.”
6 *Id.* § 1005.2(k). Defendants’ offer of credit is conditioned on “preauthorized electronic
7 fund transfers” because their financing contracts require consumers to agree to periodic
8 (usually biweekly) electronic debit entries from consumers’ bank accounts. (*See* Part
9 IV.B, pp. 18-19, *supra.*) Thus, Defendants’ financing contracts extend credit conditioned
10 on preauthorized electronic fund transfers in plain violation of EFTA.

11 C. The Balance of Equities Favors Granting Injunctive Relief

12 In addition to showing a likelihood of success on the merits, the FTC can readily
13 show that the equities weigh in favor of granting its request for a preliminary injunction.
14 In weighing the equities, the public interest should receive greater weight than private
15 interests. *Affordable Media*, 179 F.3d at 1236; *World Wide Factors*, 882 F.2d at 347.

16 Here, the public interest in protecting consumers from Defendants’ deceptive and
17 otherwise unlawful payday lending and collection activities is exceedingly strong, and far
18 outweighs any private interest Defendants may have in continuing to engage in unlawful
19 practices. There is no valid public interest in permitting Defendants to make loans to
20 consumers that lack truthful and accurate disclosures of material loan terms and costs, to
21 engage in deceptive debt collection practices, and to violate EFTA by conditioning loans
22 upon permitting Defendants to make automatic withdrawals from consumers’ bank
23 accounts. Compliance with the law is hardly an unreasonable burden. *See World Wide*
24 *Factors*, 882 F.2d at 347; *FTC v. City West Advantage, Inc.*, No. 08-609, 2008 WL
25 2844696 at *6 (D. Nev. July 22, 2008). Indeed, Defendants “can have no vested interest
26

1 in a business activity found to be illegal.” *See United States v. Diapulse Corp. of Am.*,
2 457 F.2d 25, 29 (2d Cir. 1972) (internal quotations and citations omitted).

3 **D. Defendants Are Liable for Monetary and Injunctive Relief**

4 All of the Corporate Defendants, as members of a common enterprise, are jointly
5 and severally liable for injunctive and equitable monetary relief for their unlawful acts.
6 Likewise, the six Individual Defendants are each liable for injunctive and monetary relief
7 for their knowledge of and ability to control or participate in the entities’ acts and
8 practices. The Relief Defendants obtained money and property acquired through
9 Defendants’ unlawful acts and practices to which they have no legitimate claim. Finally,
10 none of the Defendants can avoid application of federal law by claiming tribal affiliation.

11 **1. Corporate Defendants**

12 Where corporate entities operate together and act as a common enterprise, each
13 may be held liable for the deceptive acts and practices of the others. *FTC v. Network*
14 *Servs. Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010); *FTC v. Think Achievement*
15 *Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff’d* 312 F.3d 259 (7th Cir. 2002);
16 *see also FTC v. John Beck Amazing Profits, LLC*, 2009 U.S. Dist. LEXIS 130923, at *40
17 (C.D. Cal. Nov. 17, 2009) (citing same; other citations omitted); *FTC v. J.K. Publ’ns,*
18 *Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000).

19 “[E]ntities constitute a common enterprise when they exhibit either vertical or
20 horizontal commonality—qualities that may be demonstrated by a showing of strongly
21 interdependent economic interests or the pooling of assets and revenues.” *Network Servs.*
22 *Depot, Inc.*, 617 F.3d at 1142-43. Courts consider the following factors when
23 determining whether a common enterprise exists: “common control; the sharing of office
24 space and officers; whether business is transacted through a maze of interrelated
25 companies; the commingling of corporate funds and failure to maintain separation of
26 companies; unified advertising; and evidence that reveals that no real distinction exists

1 between the corporate defendants.” *FTC v. Grant Connect, LLC*, 2011 U.S. Dist. LEXIS
2 123702, *36-37 (D. Nev. Oct. 25, 2011) (citations omitted).

3 Here, the Corporate Defendants exhibit the hallmark characteristics of a common
4 enterprise. (*See* Part III.B, pp. 3-13, *supra*.) The entities are commonly controlled by the
5 Individual Defendants, most notably Scott Tucker and Blaine Tucker, who write
6 thousands of checks for and control the bank accounts of each, and by Timothy Muir,
7 who acts as registered agent and pays for multiple domain name registrations and other
8 entity fees. (*See* pp. 9-11, *supra*.) Subsets of the companies share identical places of
9 business and management addresses at locations in Kansas, Oklahoma, and Nevada. (*See*
10 pp. 3-9, *supra*.) Reflective of a “maze of interrelated companies,” the entities share
11 phone numbers, routinely make payments to one another, commingle funds, and share
12 common lending and collection employees on AMG’s payroll. (*Id.*) Because their
13 lending and collection websites are virtually identical, and because they share AMG’s
14 centralized workforce, the payday lenders use common advertising language, loan
15 applications, consumer communications, privacy policies, and contract language. (*See*
16 pp. 13-15, *supra*.) Through their control of the Lending Defendants’ bank accounts,
17 Scott Tucker and Blaine Tucker cause Red Cedar Services, SFS, Inc., and TFS to pay
18 nearly all of their payday lending revenues to AMG, Black Creek Capital, Level 5, and
19 associated entities under their control; the recipients of those funds then further distribute
20 those funds in a complex and intertwined manner to, *inter alia*, pay for compensation and
21 personal expenditures of the common control persons. (*See* pp. 8-13, *supra*; *see also*
22 PX22 at 1565 (graphic showing common regular payments from Red Cedar Services,
23 SFS, Inc., and TFS to associated entities.)

24 2. Individual Defendants

25 Individuals may be held liable for injunctive relief based on corporate entities’
26 violations if (1) the corporation committed misrepresentations of a kind usually relied on

1 by a reasonably prudent person and resulting in consumer injury and (2) individuals
2 participated directly in the violations or had authority to control the entities and had some
3 knowledge of the deceptive acts or practices. *Affordable Media*, 179 F.3d at 1234; *see*
4 *also FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997). The
5 first element of this test as to the corporations' conduct has been met as discussed in Parts
6 V.B.1.a and V.B.1.b, *supra*.

7 Requisite knowledge for individuals is defined as actual knowledge of material
8 misrepresentations, reckless indifference to the truth or falsity of a representation, or an
9 awareness of a high probability of fraud along with an intentional avoidance of the truth.
10 *Affordable Media*, 179 F.3d at 1234 n.4; *see also Publ'g Clearing House*, 104 F.3d at
11 1171 (citations omitted). The FTC need not show that the individual defendant intended
12 to defraud consumers. *Affordable Media*, 179 F.3d at 1234. Where a common enterprise
13 is present, an individual defendant's liability for monetary relief is joint and several with
14 all entities participating in the enterprise. *See FTC v. Nat'l Urological Group, Inc.*, 645
15 F.Supp. 2d 1167, 1213-14 (N.D. Ga. 2008). Here, the conduct of each of the Individual
16 Defendants satisfies the standard for individual liability, particularly the likelihood of
17 success standard warranting a preliminary injunction. *Affordable Media*, 179 F.3d at
18 1236.

19 As a preliminary matter, each of the Individual Defendants has a position of
20 authority with one or more entities and the authority sign documents on their behalf (*see*
21 Part III.B.3, pp. 8-13, *supra*); this demonstrates "requisite control." *Publ'g Clearing*
22 *House*, 104 F.3d at 1170. As discussed below, additional facts regarding the Individual
23 Defendants further demonstrate control and knowledge.

24 Scott Tucker and Blaine Tucker have served as officers for numerous Corporate
25 Defendants in the common enterprise, including AMG (and its predecessor, CLK
26 Management), Black Creek Capital, Inc., Broadmoor Capital Partners, LLC, LeadFlash

1 Consulting, LLC, Level 5 Motorsports, LLC, and TFS Corp. (*See* Part III.B.3, pp. 9-11,
2 *supra.*) They are visible figures personally monitoring and directing the lending and
3 collections operations from AMG's centralized office. (*Id.*) In addition, their prolific
4 check writing and systematic siphoning of funds from the Lending Defendants – the FTC
5 has identified approximately 10,000 checks signed by Scott Tucker and Blain Tucker for
6 dozens of different bank accounts registered to the Corporate Defendants and related
7 persons – further demonstrates their extraordinary control over the entities engaged in the
8 unlawful conduct at issue here. (*Id.*)

9 Similarly, Timothy Muir controls the finances of the each of the payday lenders
10 and serves as their resident agent. (*See* Part III.B.3, p. 11, *supra.*) Muir is a substantial
11 beneficiary of funds from the common enterprise, and oversees Black Creek Capital – a
12 pivotal hub for the Corporate Defendants' financial dealings involved in the transfers of
13 approximately \$44 million. And through his firm, The Muir Law Firm, LLC, Muir also
14 pays for the domain registrations and other fees of the five websites at issue.

15 Don Brady is the CEO of AMG, the director of TFS Corp., a signatory on TFS
16 Corp.'s bank account, and the administrator of the websites used by UnitedCashLoans,
17 USFastCash, and Ameriloan. (*See* Part III.B.3, pp. 11-12, *supra.*) Robert Campbell is
18 the director of SFS, Inc., a signatory on its OneClickCash bank account, and the
19 administrator of the website used by OneClickCash. (*See* Part III.B.3, p. 12, *supra.*)
20 Troy LittleAxe is the director of Red Cedar Services, a signatory on its bank account, and
21 the administrator for the website used by 500FastCash. (*See* Part III.B.3, pp. 12-13,
22 *supra.*) Each of these individuals has the authority and ability to control the actions and
23 finances of the principal lending members of the common enterprise. (*See* Part III.B.3,
24 pp. 11-13, *supra.*) They each *admit* to having knowledge of the relevant entities' day-to-
25 day operations. (*Id.*) And, as website administrators, they are responsible for the
26

1 misrepresentations contained in Defendants’ websites and loan disclosures generated
2 therefrom. (*Id.*)

3 In addition to the foregoing, the Corporate Defendants under the Individual
4 Defendants’ control have been the subject of a number of private lawsuits, along with
5 numerous complaints and inquiries from consumers, Better Business Bureaus (“BBBs”),
6 and state consumer protection agencies, generally addressing conduct similar to that
7 alleged in the complaint.¹²⁰ The Individual Defendants have been involved in responding
8 to such matters including by responding to media and participating in the defense of
9 litigation brought by state law enforcement.¹²¹ As a result, the Individual Defendants
10 would necessarily have been aware of the entities’ lending and collection practices at
11 issue here. *See FTC v. MacGregor*, No. 08–55838, 2009 WL 5184070 at *3 (9th Cir.
12 Dec. 30, 2009) (individual defendant possessed requisite knowledge for purposes of
13 injunctive and monetary relief in light of numerous customer complaints and
14 investigations by Better Business Bureau and state attorneys general); *see also Think*
15 *Achievement*, 144 F. Supp.2d at 1011 (individual “defendants who know of government
16 inquiries or investigations into their own or their associates’ behavior may be charged
17 with knowledge for purposes of imposing monetary liability under the FTC Act.”) (*citing*
18 *FTC v. NCH, Inc.*, No. Civ. A. No. CV–94–138–LDG, 1995 WL 623190 at *3 (D. Nev.
19 Sept. 5, 1995)).

20 3. Relief Defendants

21 The Relief Defendants, Park 269 LLC and Kim Tucker, should not be permitted
22 to keep the numerous and extremely valuable unearned transfers they received from the
23 unlawful corporate enterprise.

24 _____
25 ¹²⁰ PX22 at 620-27 ¶¶ 86-92.

26 ¹²¹ PX22 at 598 ¶ 33; 620-27 ¶¶ 86-92; 927-1068, 1846, 1855.

1 The FTC may obtain disgorgement from relief defendants, or nominal defendants,
2 who have received ill-gotten gains and do not have a legitimate claim to those assets;
3 knowledge of or participation in the wrongdoing is not required for recovery from such
4 persons. *See FTC v. Ivy Capital, Inc.* No. 2:11-CV-283 JCM GWF, 2011 WL 2118626,
5 at *4 (D. Nev. May 25, 2011).

6 Here, the Relief Defendants were unjustly enriched by, among other things,
7 significant funds from AMG derived from the unlawful practices discussed above and
8 applied to the purchase and maintenance of, taxes for, and improvements to an Aspen,
9 Colorado mansion owned by the Relief Defendants. (*See* Part III.B.4, pp. 13-14, *supra.*)
10 Scott Tucker, Kim Tucker’s husband, authorized checks from AMG for those purposes.
11 (*See* p. 13, *supra.*) Kim Tucker also receives significant distributions from Defendant
12 Black Creek Capital and Broadmoor Capital Partners, LLC, all derived from Defendants’
13 wrongdoing. (*See id.*) These considerable benefits to Park 269 LLC and Kim Tucker
14 originated from the unlawful activities of the common enterprise; the Relief Defendants
15 do not have a legitimate claim to them. For those reasons, the Relief Defendants should
16 be ordered to complete financial disclosures on an expedited basis. (Proposed Order §
17 VI.)

18 **4. Defendants Cannot Avoid Application of Federal Law Based** 19 **on Tribal Affiliation**

20 Although Defendants have contended in various state proceedings that the
21 Lending Defendants are owned by Indian tribes and are therefore immune from state
22 government prosecution, Indian-owned commercial enterprises enjoy no sovereign
23 immunity vis-à-vis the federal government¹²² and are required to comply with generally
24

25 ¹²² *See, e.g., United States v. Red Lake Band Of Chippewa Indians*, 827 F.2d 380, 382 (8th Cir. 1987)
26 (“[I]t is an inherent implication of the superior power exercised by the United States over the Indian
tribes that a tribe may not interpose its sovereign immunity against the United States.”); *United States*

1 applicable federal laws. In *Fed. Power Comm'n. v. Tuscarora Indian Nation*, the
2 Supreme Court noted that it is “well settled . . . that a general statute in terms applying to
3 all persons includes Indians and their property interests.” 362 U.S. 99, 116 (1960); *see*
4 *also NLRB v. Chapa De Indian Health Program, Inc.*, 316 F.3d 995, 998-99 (9th Cir.
5 2003) (following *Tuscarora*); *Donovan v. Coeur d’Alene Tribal Farm*, 751 F.2d 1113,
6 1115 (9th Cir. 1985). The FTC Act, TILA, and EFTA are all federal statues of general
7 applicability; none contains any provision that treats tribal commerce any differently than
8 nontribal commerce.

9 Indeed, Defendants admit that their activities are governed by federal law. Two
10 of the tribes conceded—in a hearing during which the FTC’s pre-complaint investigation
11 of the Defendants was specifically discussed—that they are subject to federal law:
12 “Tribes are subject to all Federal laws, of course, and so that would not immunize the
13 tribes from any sort of federal action.”¹²³ Moreover, Defendants affirmatively invoke
14 federal law in their loan documents and websites.¹²⁴ In short, Defendants can advance no
15 argument in this federal proceeding that they are immune to suit or exempt from the FTC
16 Act, TILA, or EFTA.

17
18
19 *v. Yakima Tribal Court*, 806 F.2d 853, 861 (9th Cir. 1986) (“[T]he United States may sue Indian tribes
and override tribal sovereign immunity.”).

20 ¹²³ *See Colorado v. Cash Advance*, No. 2005-CV-001143 (Colorado Dist. Ct.), Nov. 21, 2011 Tr. at 100;
21 *see also* PX22 at 939-40 ¶ 9 (stating that “all federal laws” apply to Ameriloan, US Fast Cash, and
22 United Cash Loans); PX22 at 1858 (tribal chief stating that AMG’s online tribal lending is subject to
federal law).

23 ¹²⁴ Defendants’ Loan Disclosure states, “this note and your account shall be governed by all applicable
24 federal laws and the laws of the jurisdiction in which the Lender is located . . .” and also contains an
arbitration clause that claims to be “governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16.”
25 PX10 at 344. Defendants’ websites cite, among other statutes, the Gramm-Leach-Bliley Act (PX22 at
1195; PX22 at 1227), Telemarketing Sales Rule (PX02 at 57; PX02 at 86), the CAN-SPAM Act of
2003 (PX02 at 56; PX02 at 85), the Electronic Signatures in Global and National Commerce Act
26 (PX22 at 1208; PX22 at 1241), and “the copyright laws of the United States” (PX22 at 1234).

1 **E. A Preliminary Injunction Is Necessary to Preserve**
2 **Effective Final Relief**

3 In light of Defendants' ongoing deceptive and unlawful conduct in extending and
4 collecting payday loans, this Court's issuance of a preliminary injunction is necessary to
5 preserve effective final relief. The FTC's proposed preliminary injunction would
6 preserve the status quo until the Court can adjudicate whether Defendants' acts and
7 practices violate the FTC Act, TILA, and EFTA as described above. The proposed order
8 principally bars Defendants' wrongful conduct, requires Defendants to provide an
9 accounting on an expedited basis, and requires Defendants to preserve potentially
10 relevant materials. Each of the provisions in the FTC's proposed order is within the
11 authority of the Court and is routine in similar matters. (*See supra* note 108.)

12 The proposed preliminary injunction is tailored to Defendants' unlawful practices
13 as alleged in the Complaint and would require Defendants immediately to cease them.
14 Specifically, Defendants in their lending and collections would be barred from:

- 15 (I) misrepresenting to consumers that they will withdraw the full
16 amount owed by the consumer on a single date, that the total of
17 payments will be the borrowed amount plus a single finance
18 charge, or whether and to what extent a payment will be applied to
19 principal and/or fees;
- 20 (II) misrepresenting to consumers that they can suffer criminal
21 consequences, or that Defendants will sue them, if they fail to
22 repay Defendants;
- 23 (III) failing to accurately disclose to consumers before extending credit
24 the finance charge, annual percentage rate, payment schedule, and
25 total of payments;
- 26 (IV) extending credit conditioned on preauthorized electronic fund
 transfers.

(Proposed Order §§ I-IV.) This requested preliminary injunctive relief is appropriate
because, without it, the unlawful acts will continue or recur. *See FTC v. Freecom
Commc'ns, Inc.*, 401 F.3d 1192, 1204 (10th Cir. 2005).

1 In addition to injunctive relief, the FTC will seek a final order with equitable
2 monetary relief. This is within the Court's broad authority to fashion appropriate
3 remedies for violations of the FTC Act. *See FTC v. Sec. Rare Coin & Bullion Corp.*, 931
4 F.2d 1312, 1314-16 (8th Cir. 1991). To determine the scope of the harm and identify
5 assets to effectuate final relief, the FTC requests that the Court issue an order requiring an
6 immediate accounting of Defendants' and Relief Defendants' profits and losses and
7 assets and liabilities. The FTC therefore requests that the Court order Defendants to
8 complete and return to the FTC the financial disclosure forms attached to the proposed
9 protective order. (Proposed Order § VI.) An accounting and financial statements will
10 increase the likelihood of identifying assets pending final determination of this matter so
11 that appropriate monetary relief can be ordered. *See, e.g., SEC v. Bankers Alliance*
12 *Corp.*, 881 F. Supp. 673, 676 (D.D.C. 1995) (court ordered defendants to file with the
13 Court and serve upon the commission a sworn financial accounting); *SEC v. Parkersburg*
14 *Wireless LLC*, 156 F.R.D. 529, 532 n.3, 537 (D.D.C. 1994).

15 The disclosure of certain information and expedited discovery falls well within
16 the court's broad and flexible authority in equity to grant preliminary relief in cases
17 involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398
18 (1946); *FSLIC v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Fed. Express Corp. v. Fed.*
19 *Expresso, Inc.*, No. 97-CV-1219, 1997 U.S. Dist. LEXIS 19144, at *6 (N.D.N.Y. Nov.
20 24, 1997) (early discovery "will be appropriate in some cases, such as those involving
21 requests for a preliminary injunction") (quoting commentary to FED. R. CIV. P. 26(d));
22 *FTC v. Vocational Guides, Inc.*, No. 01-0170, 2008 WL 4908769, at *6 (M.D. Tenn.
23 Nov. 12, 2008) (finding that financial disclosure and expedited discovery are in the
24 public interest); FED. R. CIV. P. 1, 26(d), 30(a), 33(a), and 34(b) (district courts may
25 depart from normal discovery provisions, including applicable time frames, to meet the
26 discovery needs of particular cases); *see also supra* note 108.

CERTIFICATE OF SERVICE

I, Nikhil Singhvi, certify that plaintiff will cause the following persons to be served with the foregoing memorandum of points and authorities, along with the accompanying exhibits, via hand delivery at the following addresses:

Dated: April 2, 2012

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