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

20
 21 FEDERAL TRADE COMMISSION,

22 Plaintiff,

23 v.

24 AMG SERVICES, INC., an Oklahoma Tribal Entity; RED CEDAR
 25 SERVICES, INC., an Oklahoma Tribal Entity, also dba
 500FastCash; SFS, INC., a Nebraska Tribal Entity, also dba
 26 OneClickCash; MNE SERVICES, INC., an Oklahoma Tribal
 Entity, also dba Ameriloan, UnitedCashLoans, USFastCash, and
 27

Case No. 2:12-cv-536

**FIRST AMENDED
 COMPLAINT FOR
 INJUNCTION AND
 OTHER
 EQUITABLE
 RELIEF**

1 Tribal Financial Services; AMG CAPITAL MANAGEMENT,
2 LLC, a Nevada Limited Liability Company; LEVEL 5
3 MOTORSPORTS, LLC, a Nevada Limited Liability Company;
4 LEADFLASH CONSULTING, LLC, a Nevada Limited Liability
5 Company; BLACK CREEK CAPITAL CORPORATION, a
6 Nevada Corporation; BROADMOOR CAPITAL PARTNERS,
7 LLC, a Nevada Limited Liability Company; THE MUIR LAW
8 FIRM, LLC, a Kansas Limited Liability Company; SCOTT A.
9 TUCKER, in his individual and corporate capacity; BLAINE A.
10 TUCKER, in his individual and corporate capacity; TIMOTHY J.
11 MUIR, in his individual and corporate capacity; DON E. BRADY,
12 in his individual and corporate capacity; ROBERT D. CAMPBELL,
13 in his individual and corporate capacity; and TROY L.
14 LITTLEAXE, in his individual and corporate capacity,

15 Defendants, and

16 PARK 269 LLC, a Kansas Limited Liability Company; and KIM C.
17 TUCKER, in her individual and corporate capacity,

18 Relief Defendants.

19 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its
20 Complaint alleges:

21 1. The FTC brings this action under Section 13(b) of the Federal Trade
22 Commission Act (“FTC Act”), 15 U.S.C. § 53(b); the Truth in Lending Act (“TILA”), 15
23 U.S.C. §§ 1601-1666j; and the Electronic Fund Transfer Act (“EFTA”),
24 15 U.S.C. §§ 1693-1693r; to obtain preliminary and permanent injunctive relief,
25 rescission or reformation of contracts, restitution, the refund of monies paid,
26 disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or
27 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); TILA and its
implementing Regulation Z, 12 C.F.R. § 1026; and EFTA and its implementing
Regulation E, 12 C.F.R. § 1005.10; in connection with the offering and extension of
credit in the form of high-fee, short-term “payday” loans and the collection of those
loans.¹

¹ Regulation Z and Regulation E were recently renumbered in the CFR pursuant to the Consumer Financial Protection Bureau’s assumption of responsibility for enforcement of TILA and EFTA.

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
3 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1607(c).

4 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c), and 15
5 U.S.C. §§ 53(a) and (b).

6 **PLAINTIFF**

7 4. The FTC is an independent agency of the United States Government
8 created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the
9 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
10 affecting commerce. The FTC also enforces TILA, 15 U.S.C. §§ 1601-1666j, which
11 establishes, *inter alia*, disclosure and calculation requirements for consumer credit
12 transactions and advertisements, and EFTA, 15 U.S.C. §§ 1693-1693r, which provides
13 individual consumer rights to participants in electronic fund transfer systems.

14 5. The FTC is authorized to initiate federal district court proceedings by its
15 own attorneys to enjoin violations of the FTC Act, TILA, and EFTA, and to secure such
16 equitable relief as may be appropriate in each case, including injunctive relief, rescission
17 or reformation of contracts, restitution, the refund of monies paid, and the disgorgement
18 of ill-gotten monies. 15 U.S.C. §§ 53(b), 1607(c); 1693o(c).

19 **DEFENDANTS**

20 6. Defendant **AMG Services, Inc.** is a corporation chartered under the laws
21 of the Miami Tribe of Oklahoma with its principal place of business at 10895 Lowell
22 Avenue, Overland Park, Kansas. Pursuant to a court order, AMG Services, Inc. is the
23 surviving entity resulting from its merger with CLK Management, LLC, a Kansas limited
24 liability company, as of June 24, 2008. AMG Services, Inc. transacts or has transacted
25 business in this district and throughout the United States. At all times material to this

26 *See* Truth in Lending, 76 Fed. Reg. 79768 (Dec. 22, 2011); Electronic Fund Transfers, 76 Fed.
27 Reg. 81020 (Dec. 27, 2011). The current citations are used here although Defendants' violations
for the most part predate the renumbering.

1 complaint, acting alone or in concert with others, AMG Services, Inc. advertised,
2 marketed, distributed, or sold the extension of credit in the form of high-fee, short-term
3 “payday” loans to consumers throughout the United States and participated in the
4 collection of those loans.

5 7. Defendant **Red Cedar Services, Inc.**, also doing business as 500FastCash,
6 is a corporation chartered under the laws of the Modoc Tribe of Oklahoma with an
7 address at 515 G Street SE, Miami, Oklahoma and with an as-yet undetermined principal
8 place of business. Red Cedar Services, Inc. transacts or has transacted business in this
9 district and throughout the United States. At all times material to this complaint, acting
10 alone or in concert with others, Red Cedar Services, Inc. advertised, marketed,
11 distributed, or sold the extension of credit in the form of high-fee, short-term “payday”
12 loans to consumers throughout the United States and participated in the collection of
13 those loans.

14 8. Defendant **SFS, Inc.**, also doing business as OneClickCash, is a
15 corporation chartered under the laws of the Santee Sioux Nation of Nebraska with an
16 address at 52946 Highway 12, Suite 3, Niobrara, Nebraska, and its principal place of
17 business at an as-yet undetermined address. SFS, Inc. transacts or has transacted business
18 in this district and throughout the United States. At all times material to this complaint,
19 acting alone or in concert with others, SFS, Inc. advertised, marketed, distributed, or sold
20 the extension of credit in the form of high-fee, short-term “payday” loans to consumers
21 throughout the United States and participated in the collection of those loans.

22 9. Defendant **MNE Services, Inc.**, an Oklahoma Tribal Entity, also dba
23 Ameriloan, UnitedCashLoans, USFastCash, and Tribal Financial Services, is a
24 corporation chartered under the laws of the Miami Tribe of Oklahoma with an address at
25 3531 P Street NW, Miami, Oklahoma. MNE Services, Inc. transacts or has transacted
26 business in this district and throughout the United States. At all times material to this
27 complaint, acting alone or in concert with others, MNE Services, Inc. advertised,

1 marketed, distributed, or sold the extension of credit in the form of high-fee, short-term
2 “payday” loans to consumers throughout the United States and participated in the
3 collection of those loans.

4 10. Defendant **AMG Capital Management, LLC** is a Nevada limited
5 liability company with an address at 871 Coronado Center Drive, Suite 200, Henderson,
6 Nevada, and its principal place of business at an as-yet undetermined address. AMG
7 Capital Management, LLC transacts or has transacted business in this district and
8 throughout the United States. At all times material to this complaint, acting alone or in
9 concert with others, AMG Capital Management, LLC advertised, marketed, distributed,
10 or sold the extension of credit in the form of high-fee, short-term “payday” loans to
11 consumers throughout the United States and participated in the collection of those loans.

12 11. Defendant **Level 5 Motorsports, LLC** is a Nevada limited liability
13 company with an address at 871 Coronado Center Drive, Suite 200, Henderson, Nevada,
14 and its principal place of business at an as-yet undetermined address. Level 5
15 Motorsports, LLC transacts or has transacted business in this district and throughout the
16 United States. At all times material to this complaint, acting alone or in concert with
17 others, Level 5 Motorsports, LLC advertised, marketed, distributed, or sold the extension
18 of credit in the form of high-fee, short-term “payday” loans to consumers throughout the
19 United States and participated in the collection of those loans.

20 12. Defendant **LeadFlash Consulting, LLC** is a Nevada limited liability
21 company with an address at 871 Coronado Center Drive, Suite 200, Henderson, Nevada,
22 and its principal place of business at an as-yet undetermined address. LeadFlash
23 Consulting, LLC transacts or has transacted business in this district and throughout the
24 United States. At all times material to this complaint, acting alone or in concert with
25 others, LeadFlash Consulting, LLC advertised, marketed, distributed, or sold the
26 extension of credit in the form of high-fee, short-term “payday” loans to consumers
27 throughout the United States and participated in the collection of those loans.

1 13. *(Intentionally left blank)*

2 14. Defendant **Black Creek Capital Corporation** is a Nevada corporation
3 with an address at 289 Manzanita Ranch Lane, Henderson, Nevada, and its principal
4 place of business at an as-yet undetermined address. Black Creek Capital Corporation
5 transacts or has transacted business in this district and throughout the United States. At
6 all times material to this complaint, acting alone or in concert with others, Black Creek
7 Capital Corporation advertised, marketed, distributed, or sold the extension of credit in
8 the form of high-fee, short-term “payday” loans to consumers throughout the United
9 States and participated in the collection of those loans.

10 15. Defendant **Broadmoor Capital Partners, LLC** is a Nevada limited
11 liability company with addresses at 10895 Lowell Avenue, Overland Park, Kansas and
12 871 Coronado Center Drive, Suite 200, Henderson, Nevada, and its principal place of
13 business at an as-yet undetermined address. Broadmoor Capital Partners, LLC transacts
14 or has transacted business in this district and throughout the United States. At all times
15 material to this complaint, acting alone or in concert with others, Broadmoor Capital
16 Partners, LLC advertised, marketed, distributed, or sold the extension of credit in the
17 form of high-fee, short-term “payday” loans to consumers throughout the United States
18 and participated in the collection of those loans.

19 16. Defendant **The Muir Law Firm, LLC** is a Kansas limited liability
20 company with its principal place of business at 10895 Lowell Avenue, Overland Park,
21 Kansas. At all times material to this complaint, acting alone or in concert with others,
22 The Muir Law Firm, LLC advertised, marketed, distributed, or sold the extension of
23 credit in the form of high-fee, short-term “payday” loans to consumers throughout the
24 United States and participated in the collection of those loans.

25 17. Defendant **Scott A. Tucker** is a signatory on the accounts of every
26 corporate defendant (except The Muir Law Firm, LLC and LeadFlash Consulting, Inc.)
27 and an employee of AMG Services, Inc. He is the secretary/manager of Broadmoor

1 Capital Partners, LLC and was the manager of Level 5 Motorsports, LLC on its
2 formation. At all times material to this complaint, acting alone or in concert with others,
3 he has formulated, directed, controlled, had the authority to control, or participated in the
4 acts and practices of all the corporate defendants including the acts and practices set forth
5 in this complaint. Scott Tucker resides in the State of Kansas and, in connection with the
6 matters alleged herein, transacts or has transacted business in this district and throughout
7 the United States.

8 18. Defendant **Blaine A. Tucker** is a signatory on the accounts of every
9 corporate defendant (except The Muir Law Firm, LLC) and an employee of AMG
10 Services, Inc. He is the secretary/manager of AMG Services, Inc., MNE Services, Inc,
11 d/b/a Tribal Financial Services, and Black Creek Capital Corporation, and a member of
12 LeadFlash Consulting, LLC. At all times material to this complaint, acting alone or in
13 concert with others, he has formulated, directed, controlled, had the authority to control,
14 or participated in the acts and practices of all the corporate defendants including the acts
15 and practices set forth in this complaint. Blaine Tucker resides in the State of Kansas
16 and, in connection with the matters alleged herein, transacts or has transacted business in
17 this district and throughout the United States.

18 19. Defendant **Timothy J. Muir** founded The Muir Law Firm, LLC, is the
19 President of Black Creek Capital Corporation, and, through The Muir Law Firm, LLC,
20 pays for the domain name registrations and other fees of multiple websites used by the
21 Defendants to market payday loans (including www.500fastcash.com,
22 www.ameriloan.com, www.oneclickcash.com, www.unitedcashloans.com, and
23 www.usfastcash.com). At all times material to this complaint, acting alone or in concert
24 with others, he has formulated, directed, controlled, had the authority to control, or
25 participated in the acts and practices of all the corporate defendants including the acts and
26 practices set forth in this complaint. Timothy Muir resides in the State of Kansas and, in
27

1 connection with the matters alleged herein, transacts or has transacted business in this
2 district and throughout the United States.

3 20. Defendant **Don E. Brady** is the administrator of websites used by MNE
4 Services, Inc., including www.ameriloan.com, www.unitedcashloans.com, and
5 www.usfastcash.com. He is a signatory on all MNE Services, Inc. accounts and the chief
6 executive officer of AMG Services, Inc. At all times material to this complaint, acting
7 alone or in concert with others, he has formulated, directed, controlled, had the authority
8 to control, or participated in the acts and practices of all the corporate defendants
9 including the acts and practices set forth in this complaint. Don Brady, in connection
10 with the matters alleged herein, transacts or has transacted business in this district and
11 throughout the United States.

12 21. Defendant **Robert D. Campbell** is an officer of SFS, Inc. and the
13 administrator of the website www.oneclickcash.com. He is a signatory on the SFS, Inc.
14 bank account. At all times material to this complaint, acting alone or in concert with
15 others, he has formulated, directed, controlled, had the authority to control, or
16 participated in the acts and practices of all the corporate defendants including the acts and
17 practices set forth in this complaint. Robert Campbell, in connection with the matters
18 alleged herein, transacts or has transacted business in this district and throughout the
19 United States.

20 22. Defendant **Troy L. LittleAxe** is the registered agent of Red Cedar
21 Services, Inc., and the administrator of the website www.500fastcash.com. He is a
22 signatory on the Red Cedar Services bank account. At all times material to this
23 complaint, acting alone or in concert with others, he has formulated, directed, controlled,
24 had the authority to control, or participated in the acts and practices of all the corporate
25 defendants including the acts and practices set forth in this complaint. Troy LittleAxe, in
26 connection with the matters alleged herein, transacts or has transacted business in this
27 district and throughout the United States.

1 23. Relief Defendant **Park 269 LLC** is a Kansas limited liability company
2 with a registered office at 5600 West 97th Street, Overland Park, Kansas. Park 269 LLC
3 has received funds that can be traced directly to Defendants’ unlawful acts or practices
4 alleged below, and it has no legitimate claim to those funds.

5 24. Relief Defendant **Kim C. Tucker** is an individual who has received funds
6 that can be traced directly to Defendants’ unlawful acts or practices alleged below, and
7 she has no legitimate claim to those funds. Kim Tucker is a member of Park 269 LLC.
8 She resides in the State of Kansas.

9 **COMMON ENTERPRISE**

10 25. Defendants AMG Services, Inc., Red Cedar Services, Inc., SFS, Inc.,
11 MNE Services, Inc., AMG Capital Management, LLC, Level 5 Motorsports, LLC,
12 LeadFlash Consulting, LLC, Black Creek Capital Corporation, Broadmoor Capital
13 Partners, LLC, and The Muir Law Firm, LLC (collectively, “Corporate Defendants”)
14 have operated as a common enterprise while engaging in the deceptive acts and practices
15 and other violations of law alleged below. Corporate Defendants have conducted the
16 business practices described below through an interrelated network of companies that
17 have common ownership, business functions, and employees and have commingled
18 funds. Because these Corporate Defendants have operated as a common enterprise, each
19 of them is jointly and severally liable for the acts and practices alleged below.

20 Defendants Scott A. Tucker, Blaine A. Tucker, Timothy J. Muir, Don E. Brady, Robert
21 D. Campbell, and Troy L. LittleAxe have formulated, directed, controlled, had the
22 authority to control, had knowledge of, or participated in the acts and practices of the
23 Corporate Defendants that constitute the common enterprise.

24 **COMMERCE**

25 26. At all times relevant to this Complaint, Defendants have maintained a
26 substantial course of trade in or affecting commerce, as “commerce” is defined in Section
27 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

1
2 27. Since at least 2002, Defendants have offered consumers payday loans.
3 “Payday loan” is the common name for a short-term, high-fee, unsecured loan, often
4 made to consumers to provide funds in anticipation of an upcoming paycheck.

5 28. Defendants offer payday loans through a series of websites owned,
6 operated, and controlled by entities that are part of the common enterprise. Among the
7 websites through which Defendants offer payday loans are 500fastcash.com,
8 ameriloan.com, oneclickcash.com, unitedcashloans.com, and usfastcash.com.

9 29. On their websites, Defendants represent that they will withdraw the
10 consumer’s scheduled payment from the consumer’s bank account when the consumer’s
11 loan is due. In Defendants’ loan contracts, they state that the total payment for satisfying
12 the payday loan is the sum of the principal borrowed plus a stated finance charge.

13 30. Defendants’ actual practice, however, contradicts those representations.
14 Rather than withdraw the scheduled payment on one specific date, Defendants typically
15 initiate withdrawals on multiple occasions, assessing multiple finance charges to the
16 consumer. Thus, in numerous instances a consumer ends up paying significantly more to
17 satisfy his loan than the “Total of Payments” that Defendants conspicuously represent
18 and in their loan disclosures.

19 31. In addition to making the foregoing representations in Defendants’
20 websites and loan documents, Defendants condition their extension of credit to a
21 consumer upon a consumer’s pre-authorization of electronic fund transfers on successive
22 paydates. This allows Defendants to automatically initiate fund withdrawals from the
23 consumer’s bank account.

24 32. Defendants also engage in debt collection activities. In numerous cases,
25 Defendants threaten consumers with arrest or legal action if consumers’ alleged debts are
26 not paid.
27

Defendants' Representations Regarding the Cost of their Loans

33. Through various websites, Defendants offer payday loans in amounts up to \$1,500. On their websites, Defendants inform potential borrowers that “When your loan is due, we automatically deduct your scheduled payment from your bank account along with any applicable fees.”

34. After a consumer applies for a loan from Defendants, Defendants typically provide the consumer a document entitled “Loan Note and Disclosure” (“Loan Disclosure”). The Loan Disclosure states that the consumer’s “**Total of Payments**” will be “[t]he amount you will have paid after you have made the scheduled payment,” and constitutes the sum of a stated “**FINANCE CHARGE**” and the “**Amount Financed.**” It also states the “**ANNUAL PERCENTAGE RATE**” (“APR”) for the loan. These statements appear in bold and prominent text in a box set apart from the rest of the text of the Loan Disclosure.

35. For example, Defendants told a consumer who borrowed \$300 from Defendants on or about September 7, 2010 that her loan would be due on September 24, 2010, her finance charge would be \$90, her APR would be 684.38%, and her “Total of Payments” would be \$390 (the amount borrowed plus the finance charge). In that instance, the Loan Disclosure prominently stated:

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

(emphasis in original, footnote regarding APR omitted.)

36. The box reprinted above was followed by a statement of the loan’s due date and additional, less prominent, and confusing terms:

1 Your **Payment Schedule** will be: 1 payment of **\$390.00** due on
2 **2010-09-24**, if you decline* [t]he option of renewing your loan. If
3 your pay date falls on a weekend or holiday and you have direct
4 deposit, your account will be debited on [t]he business day prior to
5 your normal pay date. If renewal is accepted you will pay the
6 finance charge of \$90.00 only, on 2010-09-24[.] You will accrue
7 new finance charges with every renewal of your loan. On the due
8 date resulting from a four[t]h renewal and every renewal due date
9 thereafter, your loan must be paid down by \$50.00. This means
10 your Account will be debited the finance charge plus \$50.00 on
11 the due date. This will continue until your loan is paid in full. *To
12 decline the option of renewal, you must select your payment
13 options using the Account Summary link sent to your email at
14 least three business days before your loan is due.

15 (emphasis in original.)

16 The Actual Cost of Defendants' Loans

17 37. Rather than withdrawing the "Total of Payments" from the consumer on
18 one specific date and charging one finance charge, Defendants typically withdraw partial
19 payments on multiple days, assessing a finance charge each time.

20 38. Defendants, in numerous instances, withdraw only the finance charge
21 from a consumer's bank account on the specified due date for the loan (usually, the first
22 payday after the loan) and upon each of the consumer's next three paydays. The
23 consumer's outstanding principal does not decrease during this time. On the fifth
24 payday, Defendants withdraw a fifth finance charge and, for the first time, an additional
25 \$50 sum to be applied toward principal. On successive paydays thereafter, Defendants
26 continue to withdraw principal in \$50 increments, along with additional finance charges,
27 until the principal is paid in full. The result of this process is that Defendants withdraw
from the consumer significantly more than they represent on their website and in the
prominent terms in their Loan Disclosure, and do so automatically via electronic fund
transfers.

38. In the example referenced above, in which the consumer borrowed \$300,
Defendants did not disclose the complete payment schedule to the consumer.

1 Nevertheless, the complete payment schedule for this consumer would have been the
 2 following:

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

15
 16 40. In this example, Defendants' Loan Disclosure represented to the consumer
 17 borrowing \$300 that her "**FINANCE CHARGE**" would be "**\$90.00**," and that her
 18 "**Total of Payments**" would be "**\$390.00**." In fact, the consumer borrowing \$300 with a
 19 stated \$90 finance charge would have to pay a total finance charge of \$675 and a total of
 20 payments of \$975 to satisfy the loan under Defendants' multi-part payment plan. In
 21 addition, the consumer in the example above would make payments on 10 successive
 22 paydays, contrary to Defendants' initial representation that there would be a single
 23 repayment.

24 41. Defendants nowhere disclose the APR, finance charge, total of payments,
 25 and payment schedule that result from the multiple payments, *i.e.*, the terms of the loan as
 26 actually structured by Defendants.
 27

1 **Defendants' Requirement That Consumers Authorize**
2 **Repayment Via Electronic Fund Transfers**

3 42. Defendants' loan application also contains a provision that requires the
4 consumer to authorize Defendants to initiate electronic fund transfers for withdrawal of
5 the consumer's recurring loan payments as a condition of obtaining credit from
6 Defendants. Furthermore, in numerous instances, Defendants have refused consumers'
7 attempts to repay their loans by means other than electronic fund transfers, such as by
8 cashier's check, bank check, wire transfer, money order, or credit card.

9 **Defendants' Collection Practices**

10 43. Defendants engage in debt collection efforts to obtain payments from
11 consumers.

12 44. In numerous instances, Defendants represent that they can and will cause
13 consumers to be arrested, criminally prosecuted, or imprisoned for not paying debts
14 claimed by Defendants. In fact, Defendants do not and could not cause consumers to be
15 arrested, criminally prosecuted, or imprisoned for not paying such debts.

16 45. In numerous instances, Defendants threaten to file suit against consumers
17 who fail to pay the debts Defendants attempt to collect. In fact, Defendants do not file
18 lawsuits against consumers.

19 **VIOLATIONS OF SECTION FIVE OF THE FTC ACT**

20 46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair and
21 deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of
22 material facts necessary to prevent misleading consumers constitute deceptive acts or
23 practices prohibited by Section 5(a) of the FTC Act.
24
25
26
27

COUNT ONE

(Deceptive Acts and Practices)

1
2
3 47. In numerous instances in connection with the marketing or offering of
4 payday loans, Defendants have represented, directly or indirectly, expressly or by
5 implication, that:

- 6 a. Defendants will automatically withdraw the full amount owed,
7 including applicable fees, from a consumer's bank account on a
8 single date; and
9 b. A consumer's total of payments will be equal to the amount
10 financed plus a stated finance charge.

11 48. In truth and in fact, in numerous instances where Defendants have made
12 the representations discussed in paragraph 47 above:

- 13 a. Defendants have not automatically withdrawn the full amount
14 owed from the consumer's bank account on a single date; and
15 b. The consumer's total of payments has been greater than the
16 amount financed plus the stated finance charge.

17 49. Therefore, Defendants' representations are false and misleading and
18 constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
19 U.S.C. § 45(a).

COUNT TWO

(Deceptive Collection Practices)

20
21
22 50. In numerous instances, in connection with collecting loans from
23 consumers, Defendants have represented to consumers, expressly or by implication, that:

- 24 a. Consumers can be arrested, prosecuted, or imprisoned for failing to
25 pay Defendants; and
26 b. If consumers do not pay Defendants, Defendants will file lawsuits
27 against consumers.

1 51. In truth and in fact, in numerous instances where Defendants have made
2 the representations discussed in paragraph 50 above:

- 3 a. Consumers could not be arrested, prosecuted, or imprisoned for
4 failing to pay Defendants; and
5 b. Defendants do not file lawsuits against consumers who do not pay
6 Defendants.

7 52. Defendants' representations, as described above, are false and misleading
8 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a).

10 **VIOLATIONS OF TILA AND REGULATION Z**

11 53. Under TILA, 15 U.S.C. §§ 1601-1666j, and its implementing Regulation
12 Z, 12 C.F.R. § 1026, creditors who extend "closed-end credit," as defined in
13 12 C.F.R. § 1026.2(a)(10), must comply with the applicable disclosure provisions of
14 TILA and Regulation Z, including, but not limited to, Sections 1026.17 and 1026.18 of
15 Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

16 54. "Creditor" means a person who regularly extends consumer credit that is
17 subject to a finance charge or is payable by written agreement in more than four
18 installments (not including a down payment), and to whom the obligation is initially
19 payable, either on the face of the note or contract, or by agreement when there is no
20 contract. 12 C.F.R. §1026.2 (a)(17). Defendants are creditors under TILA and
21 Regulation Z because they extend consumer credit subject to a finance charge and the
22 obligation is initially payable to them.

23 55. "Closed-end credit" means consumer credit other than open-end credit,
24 and "[o]pen-end credit" is defined as "consumer credit extended by a creditor under a
25 plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the
26 creditor may impose a finance charge from time to time on an outstanding unpaid
27 balance; and (iii) the amount of credit that may be extended to the consumer during the

1 term of the plan (up to any limit set by the creditor) is generally made available to the
2 extent that any outstanding balance is repaid.” 12 C.F.R. §§ 1026.2(a)(10) and (a)(20).
3 Defendants extend closed-end credit (as opposed to open-end credit) to consumers under
4 TILA and Regulation Z because the loans do not meet all three criteria for open-end
5 credit.

6 56. Sections 121(a) and 128(b)(1) of TILA, 15 U.S.C. §§ 1631(a) and
7 1638(b), and Sections 1026.17(a) and (b) and Section 1026.18 of Regulation Z,
8 12 C.F.R. §§ 1026.17(a) and (b) and 1026.18, require creditors of closed-end consumer
9 credit transactions to disclose, before the credit is extended, *inter alia*, the following with
10 respect to the loan: finance charge; annual percentage rate; number, amount, and due
11 dates or period of payments scheduled to repay the total of payments (*i.e.*, the “scheduled
12 payment(s)”; and total of payments. These disclosures must reflect the terms of the legal
13 obligation between the parties. 12 C.F.R. § 1026.17(c).

14 57. Pursuant to Section 108(c) of TILA, 15 U.S.C. § 1607(c), every violation
15 of TILA and Regulation Z constitutes a violation of the FTC Act.

16 **COUNT THREE**

17 **(Violations of TILA and Regulation Z)**

18 58. In numerous instances, Defendants have violated the requirements of
19 TILA and Regulation Z by failing to disclose in writing before extending credit the
20 following information in a manner reflecting the terms of the legal obligation between the
21 parties:

- 22 a. the finance charge;
 - 23 b. the annual percentage rate;
 - 24 c. the payment schedule; and
 - 25 d. the total of payments.
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1 59. Therefore, Defendants’ practices set forth in Paragraph 58 of this
2 complaint violate Sections 121 and 128 of TILA, 15 U.S.C. §§ 1631, 1638, and Sections
3 1026.17 and 1026.18 of Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

4 60. By engaging in the violations of TILA and Regulation Z set forth in
5 Paragraph 59 of this Complaint, Defendants have violated the FTC Act.

6 **VIOLATIONS OF EFTA AND REGULATION E**

7 61. Defendants are “persons” as this term is defined in Section 1005.2(j) of
8 Regulation E, 12 C.F.R. § 1005.2(j).

9 62. Section 913(1) of EFTA, 15 U.S.C. § 1693k(1), provides that no person
10 may condition the extension of credit to a consumer on such consumer’s repayment by
11 means of preauthorized electronic fund transfers.

12 63. Section 1005.10(e)(1) of Regulation E, 12 C.F.R. § 1005.10(e)(1),
13 provides that “[n]o financial institution or other person may condition an extension of
14 credit to a consumer on the consumer’s repayment by preauthorized electronic fund
15 transfers, except for credit extended under an overdraft credit plan or extended to
16 maintain a specified minimum balance in the consumer’s account.”

17 64. The Official Interpretation of Regulation E, Section 1005.10(e)(1), 12
18 C.F.R § 1005.10(e)(1)-1, Supp. I, provides that creditors may not require repayment of
19 loans by electronic means on a preauthorized recurring basis.

20 65. Under Section 918(c) of EFTA, 15 U.S.C. § 1693o(c), every violation of
21 EFTA and Regulation E constitutes a violation of the FTC Act.

22 **COUNT FOUR**

23 **(Violations of EFTA and Regulation E)**

24 66. In numerous instances, in connection with offering payday loans to
25 consumers, Defendants have conditioned the extension of credit on recurring
26 preauthorized electronic fund transfers, thereby violating Section 913(1) of EFTA, 15
27 U.S.C. § 1693k(1), and Section 1005.10(e)(1) of Regulation E, 12 C.F.R § 1005.10(e)(1).

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67. By engaging in the violations of EFTA and Regulation E set forth in Paragraph 66 of this Complaint, Defendants have violated the FTC Act.

COUNT FIVE

(Relief Defendants)

68. Relief Defendants, Park 269 LLC, and Kim Tucker, have received, directly or indirectly, funds and other assets from Defendants that are traceable to funds obtained from Defendants’ customers through the unlawful acts or practices described herein.

69. Relief Defendants are not bona fide purchasers with legal and equitable title to Defendants’ customers’ funds and other assets, and Relief Defendants will be unjustly enriched if they are not required to disgorge the funds or the value of the benefit they received as a result of Defendants’ unlawful acts or practices.

70. By reason of the foregoing, Relief Defendants hold funds and assets in constructive trust for the benefit of Defendants’ customers.

CONSUMER INJURY

71. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants’ violations of the FTC Act, TILA and Regulation Z, and EFTA and Regulation E. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

72. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of

1 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced
2 by the FTC.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the
5 FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the
6 Court:

- 7 1. Award Plaintiff such preliminary injunctive and ancillary relief as may be
8 necessary to avert the likelihood of consumer injury during the pendency
9 of this action and to preserve the possibility of effective final relief,
10 including, but not limited to, a preliminary injunction;
- 11 2. Enter a permanent injunction to prevent future violations of the FTC Act;
12 TILA and its implementing Regulation Z; and EFTA and its implementing
13 Regulation E by Defendants;
- 14 3. Award such relief as the Court finds necessary and appropriate, including,
15 but not limited to, rescission or reformation of contracts, restitution, the
16 refund of monies paid, and the disgorgement of ill-gotten monies;
- 17 4. Enter an order requiring Relief Defendants to disgorge all funds and
18 assets, or the value of the benefit they received from the funds and assets,
19 which are traceable to Defendants' unlawful acts or practices; and

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1 5. Award Plaintiff the costs of bringing this action, as well as such other and
2 additional relief as the Court may determine to be just and proper.

3 Dated: April 12, 2013

 Respectfully submitted,

4 DAVID C. SHONKA
5 Acting General Counsel

6 */s/ Nikhil Singhvi*

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8 Jason D. Schall
 Helen P. Wong
 Ioana Rusu

9 ***Attorneys for Plaintiff***
10 ***FEDERAL TRADE COMMISSION***

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CERTIFICATE OF SERVICE

I, Nikhil Singhvi, certify that, as indicated below, all parties were served with Plaintiff's **FIRST AMENDED COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF** filed with the Court.

Dated this 12th day of April, 2013

/s/ Nikhil Singhvi

Nikhil Singhvi

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