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 26 (\*Motion to permit appearance pending)

27 *Attorneys for Plaintiff Federal Trade Commission*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMG SERVICES, INC., an Oklahoma Tribal Entity; RED CEDAR SERVICES, INC., an Oklahoma Tribal Entity, also dba 500FastCash; SFS, INC., a Nebraska Tribal Entity, also dba OneClickCash; TRIBAL FINANCIAL SERVICES, an Oklahoma Tribal Entity, also dba Ameriloan, UnitedCashLoans, USFastCash, and Miami Nation Enterprises; AMG CAPITAL MANAGEMENT,

Case No.

**COMPLAINT FOR  
INJUNCTION AND  
OTHER  
EQUITABLE  
RELIEF**

1 LLC, a Nevada Limited Liability Company; LEVEL 5  
2 MOTORSPORTS, LLC, a Nevada Limited Liability Company;  
3 LEADFLASH CONSULTING, LLC, a Nevada Limited Liability  
4 Company; PARTNER WEEKLY, 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.<sup>1</sup>

<sup>1</sup> 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

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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 **Tribal Financial Services (“TFS”)**, also doing business as  
23 UnitedCashLoans, USFastCash, Ameriloan, and Miami Nation Enterprises, 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. TFS transacts or has transacted business in this  
26 district and throughout the United States. At all times material to this complaint, acting  
27 alone or in concert with others, TFS advertised, marketed, distributed, or sold the

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

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

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

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

27

1           13. Defendant **Partner Weekly, LLC** is a Nevada limited liability company  
2 with an address at 325 East Warm Springs Road, Suite 200, Las Vegas, Nevada, and its  
3 principal place of business at an as-yet undetermined address. Partner Weekly, LLC  
4 transacts or has transacted business in this district and throughout the United States. At  
5 all times material to this complaint, acting alone or in concert with others, Partner  
6 Weekly, LLC advertised, marketed, distributed, or sold the extension of credit in the form  
7 of high-fee, short-term “payday” loans to consumers throughout the United States and  
8 participated in the collection of those loans.

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

17           15. Defendant **Broadmoor Capital Partners, LLC** is a Nevada limited  
18 liability company with addresses at 10895 Lowell Avenue, Overland Park, Kansas and  
19 871 Coronado Center Drive, Suite 200, Henderson, Nevada, and its principal place of  
20 business at an as-yet undetermined address. Broadmoor Capital Partners, LLC transacts  
21 or has transacted business in this district and throughout the United States. At all times  
22 material to this complaint, acting alone or in concert with others, Broadmoor Capital  
23 Partners, LLC advertised, marketed, distributed, or sold the extension of credit in the  
24 form of high-fee, short-term “payday” loans to consumers throughout the United States  
25 and participated in the collection of those loans.

26           16. Defendant **The Muir Law Firm, LLC** is a Kansas limited liability  
27 company with its principal place of business at 10895 Lowell Avenue, Overland Park,

1 Kansas. At all times material to this complaint, acting alone or in concert with others,  
2 The Muir Law Firm, LLC advertised, marketed, distributed, or sold the extension of  
3 credit in the form of high-fee, short-term “payday” loans to consumers throughout the  
4 United States and participated in the collection of those loans.

5 17. Defendant **Scott A. Tucker** is a signatory on the accounts of every  
6 corporate defendant (except The Muir Law Firm, LLC and LeadFlash Consulting, Inc.)  
7 and an employee of AMG Services, Inc. He is the secretary/manager of Broadmoor  
8 Capital Partners, LLC and was the manager of Level 5 Motorsports, LLC on its  
9 formation. At all times material to this complaint, acting alone or in concert with others,  
10 he has formulated, directed, controlled, had the authority to control, or participated in the  
11 acts and practices of all the corporate defendants including the acts and practices set forth  
12 in this complaint. Scott Tucker resides in the State of Kansas and, in connection with the  
13 matters alleged herein, transacts or has transacted business in this district and throughout  
14 the United States.

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

25 19. Defendant **Timothy J. Muir** founded The Muir Law Firm, LLC, is the  
26 President of Black Creek Capital Corporation, and, through The Muir Law Firm, LLC,  
27 pays for the domain name registrations and other fees of multiple websites used by the

1 Defendants to market payday loans (including [www.500fastcash.com](http://www.500fastcash.com),  
2 [www.ameriloan.com](http://www.ameriloan.com), [www.oneclickcash.com](http://www.oneclickcash.com), [www.unitedcashloans.com](http://www.unitedcashloans.com), and  
3 [www.usfastcash.com](http://www.usfastcash.com)). At all times material to this complaint, acting alone or in concert  
4 with others, he has formulated, directed, controlled, had the authority to control, or  
5 participated in the acts and practices of all the corporate defendants including the acts and  
6 practices set forth in this complaint. Timothy Muir resides in the State of Kansas and, in  
7 connection with the matters alleged herein, transacts or has transacted business in this  
8 district and throughout the United States.

9           20. Defendant **Don E. Brady** is the administrator of websites used by TFS,  
10 including [www.ameriloan.com](http://www.ameriloan.com), [www.unitedcashloans.com](http://www.unitedcashloans.com), and [www.usfastcash.com](http://www.usfastcash.com).  
11 He is a signatory on all TFS accounts and the chief executive officer of AMG Services,  
12 Inc. At all times material to this complaint, acting alone or in concert with others, he has  
13 formulated, directed, controlled, had the authority to control, or participated in the acts  
14 and practices of all the corporate defendants including the acts and practices set forth in  
15 this complaint. Don Brady, in connection with the matters alleged herein, transacts or  
16 has transacted business in this district and throughout the United States.

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

25           22. Defendant **Troy L. LittleAxe** is the registered agent of Red Cedar  
26 Services, Inc., and the administrator of the website [www.500fastcash.com](http://www.500fastcash.com). He is a  
27 signatory on the Red Cedar Services bank account. At all times material to this



1 complaint, acting alone or in concert with others, he has formulated, directed, controlled,  
2 had the authority to control, or participated in the acts and practices of all the corporate  
3 defendants including the acts and practices set forth in this complaint. Troy LittleAxe, in  
4 connection with the matters alleged herein, transacts or has transacted business in this  
5 district and throughout the United States.

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

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

#### 14 **COMMON ENTERPRISE**

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

25 Defendants Scott A. Tucker, Blaine A. Tucker, Timothy J. Muir, Don E. Brady, Robert  
26 D. Campbell, and Troy L. LittleAxe have formulated, directed, controlled, had the  
27

1 authority to control, had knowledge of, or participated in the acts and practices of the  
2 Corporate Defendants that constitute the common enterprise.

3 **COMMERCE**

4 26. At all times relevant to this Complaint, Defendants have maintained a  
5 substantial course of trade in or affecting commerce, as “commerce” is defined in Section  
6 4 of the FTC Act, 15 U.S.C. § 44.

7 **DEFENDANTS’ BUSINESS PRACTICES**

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

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

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

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

25 31. In addition to making the foregoing representations in Defendants’  
26 websites and loan documents, Defendants condition their extension of credit to a  
27 consumer upon a consumer’s pre-authorization of electronic fund transfers on successive

1 paydates. This allows Defendants to automatically initiate fund withdrawals from the  
2 consumer's bank account.

3 32. Defendants also engage in debt collection activities. In numerous cases,  
4 Defendants threaten consumers with arrest or legal action if consumers' alleged debts are  
5 not paid.

#### 6 **Defendants' Representations Regarding the Cost of their Loans**

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

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

19 35. For example, Defendants told a consumer who borrowed \$300 from  
20 Defendants on or about September 7, 2010 that her loan would be due on September 24,  
21 2010, her finance charge would be \$90, her APR would be 684.38%, and her "Total of  
22 Payments" would be \$390 (the amount borrowed plus the finance charge). In that  
23 instance, the Loan Disclosure prominently stated:  
24  
25  
26  
27

<b>ANNUAL PERCENTAGE RATE</b>	<b>FINANCE CHARGE</b>	<b>Amount Financed</b>	<b>Total of Payments</b>
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.
<b>684.38%</b>	<b>\$90.00</b>	<b>\$300.00</b>	<b>\$390.00</b>

(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:

Your **Payment Schedule** will be: 1 payment of **\$390.00** due on **2010-09-24**, if you decline\* [t]he option of renewing your loan. If your pay date falls on a weekend or holiday and you have direct deposit, your account will be debited on [t]he business day prior to your normal pay date. If renewal is accepted you will pay the finance charge of \$90.00 only, on 2010-09-24[.] You will accrue new finance charges with every renewal of your loan. On the due date resulting from a four[t]h renewal and every 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.

(emphasis in original.)

#### **The Actual Cost of Defendants' Loans**

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

38. Defendants, in numerous instances, withdraw only the finance charge from a consumer's bank account on the specified due date for the loan (usually, the first payday after the loan) and upon each of the consumer's next three paydays. The consumer's outstanding principal does not decrease during this time. On the fifth payday, Defendants withdraw a fifth finance charge and, for the first time, an additional

1 \$50 sum to be applied toward principal. On successive paydays thereafter, Defendants  
 2 continue to withdraw principal in \$50 increments, along with additional finance charges,  
 3 until the principal is paid in full. The result of this process is that Defendants withdraw  
 4 from the consumer significantly more than they represent on their website and in the  
 5 prominent terms in their Loan Disclosure, and do so automatically via electronic fund  
 6 transfers.

7 39. In the example referenced above, in which the consumer borrowed \$300,  
 8 Defendants did not disclose the complete payment schedule to the consumer.  
 9 Nevertheless, the complete payment schedule for this consumer would have been the  
 10 following:

11 <b>Payday</b>	12 <b>Payment</b>	13 <b>Finance Charge (30% of remaining principal balance)</b>	14 <b>Amount Applied To Principal</b>	15 <b>Remaining Principal Balance</b>	16 <b>Total Paid To Date</b>
17 1	\$90	\$90	\$0	\$300	\$90
18 2	\$90	\$90	\$0	\$300	\$180
19 3	\$90	\$90	\$0	\$300	\$270
20 4	\$90	\$90	\$0	\$300	\$360
21 5	\$140	\$90	\$50	\$250	\$500
22 6	\$125	\$75	\$50	\$200	\$625
23 7	\$110	\$60	\$50	\$150	\$735
24 8	\$95	\$45	\$50	\$100	\$830
25 9	\$80	\$30	\$50	\$50	\$910
26 10	\$65	\$15	\$50	\$0	\$975
27 <b>TOTAL</b>	<b>\$975</b>	<b>\$675</b>	<b>\$300</b>		<b>\$975</b>

40. In this example, Defendants' Loan Disclosure represented to the consumer  
 borrowing \$300 that her "**FINANCE CHARGE**" would be "**\$90.00,**" and that her  
 "**Total of Payments**" would be "**\$390.00.**" In fact, the consumer borrowing \$300 with a

1 stated \$90 finance charge would have to pay a total finance charge of \$675 and a total of  
2 payments of \$975 to satisfy the loan under Defendants' multi-part payment plan. In  
3 addition, the consumer in the example above would make payments on 10 successive  
4 paydays, contrary to Defendants' initial representation that there would be a single  
5 repayment.

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

9 **Defendants' Requirement That Consumers Authorize**  
10 **Repayment Via Electronic Fund Transfers**

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

17 **Defendants' Collection Practices**

18 43. Defendants engage in debt collection efforts to obtain payments from  
19 consumers.

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

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

27

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

2 46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair and  
3 deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of  
4 material facts necessary to prevent misleading consumers constitute deceptive acts or  
5 practices prohibited by Section 5(a) of the FTC Act.

6 **COUNT ONE**

7 **(Deceptive Acts and Practices)**

8 47. In numerous instances in connection with the marketing or offering of  
9 payday loans, Defendants have represented, directly or indirectly, expressly or by  
10 implication, that:

- 11 a. Defendants will automatically withdraw the full amount owed,  
12 including applicable fees, from a consumer's bank account on a  
13 single date; and  
14 b. A consumer's total of payments will be equal to the amount  
15 financed plus a stated finance charge.

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

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

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

**COUNT TWO**

**(Deceptive Collection Practices)**

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2  
3 50. In numerous instances, in connection with collecting loans from  
4 consumers, Defendants have represented to consumers, expressly or by implication, that:

- 5 a. Consumers can be arrested, prosecuted, or imprisoned for failing to  
6 pay Defendants; and  
7 b. If consumers do not pay Defendants, Defendants will file lawsuits  
8 against consumers.

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

- 11 a. Consumers could not be arrested, prosecuted, or imprisoned for  
12 failing to pay Defendants; and  
13 b. Defendants do not file lawsuits against consumers who do not pay  
14 Defendants.

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

18 **VIOLATIONS OF TILA AND REGULATION Z**

19 53. Under TILA, 15 U.S.C. §§ 1601-1666j, and its implementing Regulation  
20 Z, 12 C.F.R. § 1026, creditors who extend "closed-end credit," as defined in  
21 12 C.F.R. § 1026.2(a)(10), must comply with the applicable disclosure provisions of  
22 TILA and Regulation Z, including, but not limited to, Sections 1026.17 and 1026.18 of  
23 Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

24 54. "Creditor" means a person who regularly extends consumer credit that is  
25 subject to a finance charge or is payable by written agreement in more than four  
26 installments (not including a down payment), and to whom the obligation is initially  
27 payable, either on the face of the note or contract, or by agreement when there is no



1 contract. 12 C.F.R. §1026.2 (a)(17). Defendants are creditors under TILA and  
2 Regulation Z because they extend consumer credit subject to a finance charge and the  
3 obligation is initially payable to them.

4 55. “Closed-end credit” means consumer credit other than open-end credit,  
5 and “[o]pen-end credit” is defined as “consumer credit extended by a creditor under a  
6 plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the  
7 creditor may impose a finance charge from time to time on an outstanding unpaid  
8 balance; and (iii) the amount of credit that may be extended to the consumer during the  
9 term of the plan (up to any limit set by the creditor) is generally made available to the  
10 extent that any outstanding balance is repaid.” 12 C.F.R. §§ 1026.2(a)(10) and (a)(20).  
11 Defendants extend closed-end credit (as opposed to open-end credit) to consumers under  
12 TILA and Regulation Z because the loans do not meet all three criteria for open-end  
13 credit.

14 56. Sections 121(a) and 128(b)(1) of TILA, 15 U.S.C. §§ 1631(a) and  
15 1638(b), and Sections 1026.17(a) and (b) and Section 1026.18 of Regulation Z,  
16 12 C.F.R. §§ 1026.17(a) and (b) and 1026.18, require creditors of closed-end consumer  
17 credit transactions to disclose, before the credit is extended, *inter alia*, the following with  
18 respect to the loan: finance charge; annual percentage rate; number, amount, and due  
19 dates or period of payments scheduled to repay the total of payments (*i.e.*, the “scheduled  
20 payment(s)"); and total of payments. These disclosures must reflect the terms of the legal  
21 obligation between the parties. 12 C.F.R. § 1026.17(c).

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

### 24 **COUNT THREE**

#### 25 **(Violations of TILA and Regulation Z)**

26 58. In numerous instances, Defendants have violated the requirements of  
27 TILA and Regulation Z by failing to disclose in writing before extending credit the

1 following information in a manner reflecting the terms of the legal obligation between the  
2 parties:

- 3 a. the finance charge;
- 4 b. the annual percentage rate;
- 5 c. the payment schedule; and
- 6 d. the total of payments.

7 59. Therefore, Defendants' practices set forth in Paragraph 58 of this  
8 complaint violate Sections 121 and 128 of TILA, 15 U.S.C. §§ 1631, 1638, and Sections  
9 1026.17 and 1026.18 of Regulation Z, 12 C.F.R. §§ 1026.17 and 1026.18.

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

12 **VIOLATIONS OF EFTA AND REGULATION E**

13 61. Defendants are "persons" as this term is defined in Section 1005.2(j) of  
14 Regulation E, 12 C.F.R. § 1005.2(j).

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

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

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

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

1 **COUNT FOUR**

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

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

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

9 **COUNT FIVE**

10 **(Relief Defendants)**

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

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

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

21 **CONSUMER INJURY**

22 71. Consumers have suffered and will continue to suffer substantial injury as a  
23 result of Defendants' violations of the FTC Act, TILA and Regulation Z, and EFTA and  
24 Regulation E. In addition, Defendants have been unjustly enriched as a result of their  
25 unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to  
26 continue to injure consumers, reap unjust enrichment, and harm the public interest.  
27



1 Dated: April 2, 2012

Respectfully submitted,

2 WILLARD K. TOM  
3 General Counsel

4 /s/ Nikhil Singhvi  
5 Nikhil Singhvi  
6 Julie G. Bush  
Jason D. Schall

7 *Attorneys for Plaintiff*  
8 **FEDERAL TRADE COMMISSION**

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