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2014 MAR 31 PM 3:20

CLERK U.S. DISTRICT COURT
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1 Jason S. Hartley (CA Bar. No. 192514)
2 STUEVE SIEGEL HANSON LLP
3 550 West C Street, Suite 1750
4 San Diego, CA 92101
5 Phone: (619) 400-5822
6 Fax: (619) 400-5832
7 hartley@stuevesiegel.com

8 Norman E. Siegel
9 (pro hac vice forthcoming)
10 Steve Six
11 (pro hac vice forthcoming)
12 J. Austin Moore
13 (pro hac vice forthcoming)
14 STUEVE SIEGEL HANSON LLP
15 460 Nichols Road, Suite 200
16 Kansas City, Missouri 64112
17 Phone: (816) 714-7100
18 Fax: (816) 714-7101
19 siegel@stuevesiegel.com

20 Attorneys for Plaintiffs

21
22 IN THE UNITED STATES DISTRICT COURT
23 FOR THE CENTRAL DISTRICT OF CALIFORNIA
24 EASTERN DIVISION

25 CHRISTINA and JOHN LABADIE
26 on behalf of themselves and all others
27 similarly situated,

28 Plaintiffs,

v.

FIRST INTERNATIONAL BANK &
TRUST, and MUTUAL OF OMAHA
BANK,

Defendants.

EDCV 14-00627

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

JFW (CW)

1 5. Certain payday lenders—many based offshore or purportedly on Indian
2 reservations—make use of the Internet to circumvent these prohibitions and offer
3 payday loans to consumers residing in California (the “Illegal Payday Lenders”).
4 These loans (“Illegal Payday Loans”) feature interest rates of 400%, 500%, and
5 higher.

6 6. Illegal Payday Lenders’ loan agreements with the consumers often
7 include an authorization allowing the illegal lender to “initiate” ACH transactions
8 on the consumer’s behalf. This authorization to “initiate” only allows a lender to
9 *make a request* to an ACH Network member bank to be allowed entry to the ACH
10 Network. The lender cannot “initiate” an entry into the secure ACH Network on its
11 own.

12 7. The rules and regulations governing the ACH Network require that an
13 ACH Network member bank enter into a written agreement with merchants, like the
14 Illegal Payday Lenders, who seek to initiate credits and debits electronically. This
15 agreement describes in detail the scope of the relationship between the parties and
16 has very specific requirements about what each party can and cannot do, as
17 discussed further below.

18 8. Because the lenders cannot introduce credit and debit entries into the
19 network on their own, Illegal Payday Lenders’ ability to defy California state law
20 rests on the cooperation of financial institutions like Defendants that knowingly
21 enter into these written contracts with Illegal Payday Lenders and then “originate”
22 debits and credits from consumers’ bank accounts on the ACH Network. These
23 banks, known as Originating Depository Financial Institutions (“ODFIs”) are the
24 Illegal Payday Lenders’ sole access point to the ACH Network—without this small
25 group of banks willing to work with the Illegal Payday Lenders, the lenders’ credit
26 and debit entries cannot enter the secure ACH Network.

1 domain name of www.oneclickcash.com for the purpose of making Illegal
 2 Payday Loans. At all times relevant hereto, SFS engaged in the practice of
 3 making and did make illegal payday loans to persons residing in California.
 4 SFS is in the business of making and collecting "unlawful debts" under 18
 5 U.S.C. § 1961(6) in that the loans that it makes and collects from borrowers
 6 are:

- 7 i. unenforceable under State or Federal law in whole or in part as to
- 8 principal or interest because of the laws relating to usury;
- 9 ii. incurred in connection with the business of lending money at a
- 10 rate usurious under State or Federal law; and
- 11 iii. the usurious rate was at least twice the enforceable rate.
- 12 c. Sandpoint Capital, LLC ("Sandpoint"), is an entity purportedly
- 13 based in Charleton, Nevis, West Indies that makes Illegal Payday Loans. At
- 14 all times relevant hereto, Sandpoint engaged in the practice of making and did
- 15 make illegal payday loans by making such loans to persons residing in
- 16 California. Sandpoint is in the business of making and collecting "unlawful
- 17 debts" under 18 U.S.C. § 1961(6) in that the loans that it makes and collects
- 18 from borrowers are:

- 19 i. unenforceable under State or Federal law in whole or in part as to
- 20 principal or interest because of the laws relating to usury;
- 21 ii. incurred in connection with the business of lending money at a
- 22 rate usurious under State or Federal law; and
- 23 iii. the usurious rate was at least twice the enforceable rate.

24 JURISDICTION AND VENUE

25 18. Plaintiffs bring this action pursuant to the Racketeer Influenced and
 26 Corrupt Organizations Act, 18 U.S.C. §§ 1964(c) and (d), which confers jurisdiction
 27 upon this Court over the subject matter of this action. This Court also has subject
 28

1 matter jurisdiction under 28 U.S.C. § 1332, as amended by the Class Action
2 Fairness Act of 2005, because this lawsuit has been brought as a class action, the
3 aggregate claims of the putative Class members exceed \$5 million, exclusive of
4 interest and costs, and one or more of the members of the putative Class is a resident
5 of a different state than Defendants.

6 19. This Court has personal jurisdiction over every Defendant pursuant to
7 the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1965.

8 20. Alternatively, this Court has personal jurisdiction over First
9 International pursuant to California Code of Civil Procedure § 410.10 in that
10 Plaintiffs' claims arise out of or have a substantial connection with activities
11 undertaken by First International that were purposefully directed toward residents of
12 the State of California and from which First International purposefully derived a
13 benefit, such that the exercise of jurisdiction is fair and reasonable. For example,
14 First International, *inter alia*, personally or through an agent committed torts outside
15 the State, causing injury to persons within the State, and should have reasonably
16 expected its tortious acts to have consequences in the State and also derives
17 substantial revenue from services rendered in the State or derives substantial
18 revenue from interstate or international commerce.

19 21. Alternatively, this Court has personal jurisdiction over Mutual of
20 Omaha pursuant to California Code of Civil Procedure § 410.10 in that Mutual of
21 Omaha has engaged in a continuous and systematic course of doing business in the
22 state by, *inter alia*, maintaining permanent offices at 3580 Carmel Mountain Rd.,
23 San Diego, CA and 11930 Foothills Blvd., Rancho Cucamonga, CA.

24 22. Alternatively, this Court also has personal jurisdiction over Mutual of
25 Omaha pursuant to California Code of Civil Procedure § 410.10 in that Plaintiffs'
26 claims arise out of or have a substantial connection with activities undertaken by
27 Mutual of Omaha that were purposefully directed toward residents of the State of
28

1 California and from which Mutual of Omaha purposefully derived a benefit, such
2 that the exercise of jurisdiction is fair and reasonable. For example, Mutual of
3 Omaha, *inter alia*, personally or through an agent committed torts outside the State,
4 causing injury to persons within the State, and should have reasonably expected its
5 tortious acts to have consequences in the State and also derives substantial revenue
6 from services rendered in the State or derives substantial revenue from interstate or
7 international commerce.

8 23. Venue is proper in the Central District of California pursuant to 28
9 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to
10 the claim occurred here and because First International and Mutual of Omaha are
11 subject to personal jurisdiction here.

12
13 **BACKGROUND FACTS**
14 **Payday Loans**

15 24. A payday loan is a short-term (typically a matter of weeks) high fee,
16 closed-end loan, traditionally made to consumers to provide funds in anticipation of
17 an upcoming paycheck. A borrower obtaining an online payday loan to be repaid by
18 ACH transfer enters into an "Authorization to Initiate ACH Transactions" with the
19 lender that permits the lender to try and find an ODFI Bank that will enter into a
20 written contractual relationship with that lender and accept the lender's requests to
21 "initiate" credit and debit entries on the loan. If the ODFI bank agrees that the
22 initiated entries are in full compliance with the ACH Network rules and state and
23 federal law, the ODFI bank may then "originate" them into the secure ACH
24 Network where the funds are electronically credited or deposited in the consumer's
25 bank account. The ODFI banks serve as the bridge that connects the lender to the
26 ACH Network and allows the lender, working through its specific ODFI bank(s), to
27 electronically debit the borrower's deposit account for the loan payment amounts
28 and associated fees. Without an ODFI Bank's active participation to grant the

1 lender's request to "initiate" debit entries and "originate" those entries into the ACH
2 Network—the lender cannot reach the consumers' account via the ACH Network.

3 25. Payday loans target the most vulnerable and desperate of borrowers,
4 who might not qualify for a conventional unsecured loan or who are in such
5 desperate need of cash that they cannot wait for the formal approval process that a
6 conventional unsecured loan requires.

7 26. Payday loans feature exorbitant annual percentage rates (sometimes
8 misleadingly referred to as "fees") and require "balloon" repayments shortly after
9 the loan is made.

10 27. If a borrower is unable to repay the full amount of the loan on the due
11 date, the lender typically gives the borrower the option to "roll over" the loan
12 balance by paying another "fee," usually equal to the initial fee at the time of loan
13 funding. The cycle then continues until such time as the borrower is either able to
14 pay off the loan in full or the borrower defaults on the loan.

15 28. Many borrowers repeatedly roll over or take out additional payday
16 loans, often on the same day as a previous one is repaid. Over 75 percent of payday
17 loan volume is the result of "churn"—borrowers having to take out additional loans
18 to pay off the original debt.

19 29. For these and other reasons, California severely restricts payday loans.

20 30. Only licensed payday lenders may make payday loans. The Illegal
21 Payday Lenders were at no time licensed by the Department of Corporations.

22 31. The Illegal Payday Lenders are subject to the California Constitution's
23 maximum annual interest rate of 10% for loans used "primarily for personal, family,
24 or household purposes." Cal. Const. art. XV, § 1.

25 32. In addition, the Illegal Payday Lenders are subject to California
26 statutory provisions providing that parties may: "... contract for the payment and
27 receipt of a rate of interest not exceeding twelve dollars on the one hundred dollars
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1 for one year and not exceeding that rate for a greater or less sum or for a longer or
 2 shorter time, in which case such rate exceeding seven dollars on one hundred dollars
 3 shall be clearly expressed in writing.” Cal. Civ. Code § 1916-1.

4 33. Under California law, a contract to pay interest in excess of the lawful
 5 maximum is void and the lender may not recover interest on the loan. Furthermore,
 6 if the borrower actually pays interest at a usurious rate he may recover the amount
 7 so paid in an action brought for that purpose.

8 34. Illegal Payday Lenders, while not permitted to operate in California,
 9 have simply moved to the Internet in order to solicit desperate borrowers into Illegal
 10 Payday Loans using an online application process. This scheme could not have
 11 been accomplished without the complicity of Defendants who provide Illegal
 12 Payday Lenders with access to the ACH Network.

13 The ACH Network

14 35. The ACH Network is a processing system in which financial
 15 institutions accumulate ACH transactions throughout the day for later batch
 16 processing. Instead of using paper to carry necessary transaction information, such
 17 as with checks, ACH Network transactions are transmitted electronically, allowing
 18 for faster processing times and cost savings.

19 36. The rules and regulations that govern the ACH network are established
 20 by NACHA (formerly the National Automated Clearing House Association) and the
 21 Federal Reserve. NACHA manages the development, administration, and
 22 governance of the ACH Network.

23 37. The *NACHA Operating Rules* are an extensive set of rules and
 24 regulations that govern and provide ACH Network participants with the legal
 25 framework for the ACH Network. The *NACHA Operating Guidelines* provide
 26 guidance on implementing the Operating Rules (the NACHA Operating Rules &
 27 Guidelines collectively referred to herein as “NACHA Rules”). The introduction
 28

1 states that the NACHA Rules “serve[] as the definitive source of information
2 governing the exchange and settlement of electronic fund transfers through the ACH
3 Network.”

4 38. An ACH transaction takes place in many steps and, under the NACHA
5 Rules, entries may be rejected at any point if they are not in compliance with the
6 NACHA Rules or are illegal under federal or state law. The first step is having a
7 merchant, in this case the Illegal Payday Lenders, receive authorization from a party
8 (in this case the borrower) to initiate credits or debits on the ACH Network—
9 typically called an “Authorization to Initiate ACH Transactions.” This authorization
10 allows the merchant to take the next step in the process, which is to find an ODFI
11 bank participating in the ACH Network that is willing to enter into a separate
12 written contract with the merchant to “originate” the lender’s request to “initiate”
13 credit or debit entries into the network. Although it is the party “initiating” entries,
14 merchants like Illegal Payday Lenders are known as “Originators” under the
15 NACHA Rules (and are referred to as “Originators” herein). This is so even though
16 the ODFI banks are the parties tasked with “originating” the credit or debit entries
17 “initiated” by the Originators.

18 39. Under the NACHA Rules, Originators like the Illegal Payday Lenders
19 do not have the ability to introduce a debit entry into the ACH Network on their
20 own. Originators can only make a request to “initiate” a debit entry to the specific
21 ACH member ODFI bank or banks with which it has entered into a contractual
22 relationship to grant them access to the ACH Network. Because ODFI banks are
23 tasked with this important “gatekeeping” function, however, the ODFI banks are
24 required to fully audit and vet the Originator’s business to ensure it complies with
25 NACHA Rules and state and federal laws before entering into a contractual
26 arrangement with that Originator.

1 40. If the ODFI is satisfied that the Originator (here the Illegal Payday
2 Lender) is in compliance, it may, pursuant to its agreement with the Originator,
3 transmit (“originate”) the ACH debit or credit to a pass-through clearing house
4 known as an “ACH Operator.” Under the NACHA Rules, the ACH Operator
5 processes entries between the ODFI and the accountholder’s bank, known as the
6 Receiving Depository Financial Institution (“RDFI”). The RDFI is also a member
7 of the ACH Network, and is the entity that actually makes the credit or debit on its
8 customer’s checking or savings account.

9 41. Also active on the ACH Network are “Third Party Service Providers”
10 which are entities other than the Originator, ODFI, or RDFI that perform any
11 function on behalf of the Originator, ODFI, or RDFI with respect to the processing
12 of ACH entries. A “Third-Party Sender” is a type of Third Party Service Provider
13 that has an ACH agreement with the Originator, and the ODFI’s ACH agreement is
14 with the Third-Party Sender and not the Originator. An ODFI’s obligations are the
15 same whether it originates for an Originator directly, or for a Third-Party Sender
16 acting on behalf of an Originator.

17 42. The NACHA Rules specifically require all parties involved in the
18 processing of ACH transactions to adhere to all state and federal laws in the United
19 States. These requirements are meant to keep illicit and unlawful transactions out of
20 the ACH Network.

21 43. The NACHA Rules require all participants in the ACH Network to
22 perform risk-based due diligence and monitoring for unlawful transactions and
23 merchants. The following Policy Statement was adopted by the NACHA Board of
24 Directors on August 22, 2002:

25 Fraud and various forms of financial abuse have found
26 their way into every facet of the U.S. payment systems.
27 The NACHA Board believes that the Automated Clearing
28 House Network must maintain the highest standards of
fraud prevention to retain the integrity of the payment

1 mechanism and the trust and confidence of its users.
 2 Therefore, the NACHA Board resolves and strongly urges
 3 that all participants implement adequate control systems to
 4 detect and prevent fraud and abusive financial
 transactions.

5 44. The NACHA Rules apply to and govern every member that chooses to
 6 participate in the ACH Network, and are admittedly structured around the
 7 significant obligations of ODFIs and RDFIs: “The [NACHA] *Rules* are organized
 8 around the types of participants in the ACH Network and acknowledge the major
 9 roles played by originating and receiving financial institutions [and] therefore
 10 dedicate[e] large sections to each of these roles. The [NACHA] *Rules* explicitly
 11 recognize that originating financial institutions are the entry points into the
 12 ACH Network for corporate users and Third Parties, and that these financial
 13 institutions are responsible for those parties’ compliance with the [NACHA]
 14 *Rules*.” NACHA 2013 Operating Rules, Introduction (emphasis added). The
 15 specific responsibilities of ODFIs are discussed in detail below.

16 ODFIs Have Special Duties under NACHA 17 Operating Rules and Guidelines

18 45. NACHA characterizes ODFIs as “the gatekeepers of the ACH
 19 Network.” As the party that enables an Originator—such as Illegal Payday
 20 Lenders—to originate debit entries on the ACH Network, NACHA Rules require an
 21 ODFI to enter into written agreement, known as an “Origination Agreement” with
 22 each Originator (or Third-Party Sender initiating entries on the Originator’s behalf)
 23 for which it will originate entries on the ACH Network. ODFI banks are typically
 24 paid a flat, per-transaction “origination fee” by the Originator at a negotiated rate
 25 between the ODFI and Originator or Third-Party Sender. *See* NACHA 2013
 26 Operating Rules, Section 2.2, Subsection 2.2.1.
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1 46. An ODFI undertakes critical responsibilities under the NACHA Rules
2 that reflect the reliance of the ACH Network on appropriate underwriting and
3 monitoring of Originators by ODFIs.

4 47. Under the NACHA Rules, “[a]n ODFI is responsible for all Entries
5 originated through the ODFI whether by an Originator or through a Third-Party
6 Sender . . . [a]n ODFI is responsible for its Originators’ and Third-Party Senders’
7 compliance with these Rules.” NACHA 2013 Operating Rules, Section 2.1.

8 48. NACHA Rules require all ODFIs to conduct a risk assessment of their
9 ACH activities, including, *inter alia*, “assessing the nature of risks associated with
10 ACH activity; performing appropriate know-your-customer due diligence; and
11 having adequate management, information and reporting systems to monitor and
12 mitigate risk.” *See* NACHA 2013 Operating Guidelines, Chapter 4 General Rules,
13 p. OG21.

14 49. The NACHA Operating Guidelines caution that “ODFIs that choose to
15 originate ACH entries . . . should be aware that both they and their Originators are
16 subject to the NACHA Operating Rules and applicable U.S. law when transmitting
17 these entries.” NACHA 2013 Operating Guidelines, Chapter 3 OFAC Requirements
18 and Obligations, p. OG17.

19 50. Section 2.4 of the NACHA Rules provides for “General Warranties and
20 Liabilities of Originating Depository Financial Institutions” and holds that [w]hen
21 an ODFI transmits an ACH entry; it is warranting to each RDFI and ACH Operator
22 that, *inter alia*, the entry has been properly authorized. NACHA 2013 Operating
23 Rules Section 2.4, Subsection 2.4.1.1(a), p. OR7.

24 51. With regard to debit entries from consumer accounts (such as those
25 that represent loan repayments to Illegal Payday Lenders), an authorization that is
26 “otherwise invalid under applicable Legal Requirements does not satisfy the
27
28

1 requirements” of an “authorization” under the NACHA Rules. NACHA 2013
2 Operating Rules Section 2.3, Subsection 2.3.2.3(b), p. OR6.

3 52. Further, ODFIs have clear duties to “know your customer” and the
4 NACHA Operating Rules make clear that they are intended to reflect that principle.
5 NACHA 2013 Operating Guidelines, Chapter 3 OFAC Requirements and
6 Obligations, p. OG13.

7 53. On March 14, 2013, NACHA issued an advisory in response to certain
8 negative press reports about collusion of ACH members with payday lenders. In the
9 release, NACHA reiterated the important policing duties of ODFIs: “[E]ach ODFI
10 is responsible for the valid authorization of every ACH debit processed in its name .
11 . . . In the case of authorizations from consumers, the NACHA Rules are explicit that,
12 among other things, the authorization must ‘be readily identifiable as an
13 authorization’; and ‘have clear and readily understandable terms.’ *If a purported*
14 *authorization is invalid under applicable law, it does not meet this standard.*”
15 (Emphasis added).

16 54. NACHA went on to say: “Because of these obligations, as well as
17 associated reputational and other risks, the Federal banking agencies advise that
18 ODFIs, among other things, should (i) exercise appropriate risk-based diligence
19 when bringing on new Originators and Third Party Senders and (ii) perform
20 appropriate monitoring to determine whether excessive returns or other suspicious
21 patterns of activity warrant further review or more aggressive action. For example,
22 in 2006 the Office of the Comptroller of the Currency (OCC) released its risk
23 management guidance for ACH activities by national banks, OCC Bulletin 2006-39,
24 in which it cautioned national banks acting as ODFIs to perform a risk-based
25 evaluation of new Originators, including their historic patterns of unauthorized
26 returns and whether they are engaged in legitimate business activities.”
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1 55. The NACHA Operations Bulletin instructed ACH participants as
2 follows: "ACH participants are strongly encouraged to establish business practices
3 that ensure that ACH transactions do not facilitate illegal activity."

4 56. In August 2013, NACHA sent a letter to banks warning them that
5 authorizing access to customer accounts for Illegal Payday Lenders or their Third-
6 Party Senders could violate NACHA rules. In the letter, NACHA stated that under
7 its rules, "purported authorizations to pay illegal loans that are unenforceable under
8 applicable state law" are not valid.

9 **ODFIs Have Additional Duties With Regard to Debit Authorizations**
10 **Purportedly Made Via the Internet under NACHA Operating Rules and**
11 **Guidelines**

12 57. Each entry into the ACH Network is coded pursuant to a NACHA entry
13 code that identifies the type of activity the entry represents. The ACH Network has
14 at least 23 standard entry codes, and NACHA has identified two specific entry codes
15 that are used by "high risk" Originators such as Illegal Payday Lenders: "ACH
16 WEB" and "ACH TEL."

17 58. For example, under the NACHA Rules, a debit entry to a consumer
18 account originated based on an authorization that is communicated, other than by an
19 oral communication, from the Receiver to the Originator via the Internet is coded as
20 a "WEB" entry on the ACH transaction record. *See, e.g.,* 2013 NACHA Operating
21 Rules Subsection 2.5.17.

22 59. The NACHA Operating Rules require that, "[a]n ODFI must perform,
23 or ensure that its Originator or Third-Party Sender performs, the requirements of
24 Subsection 2.5.17.2 (Authorization of WEB Entries) and Subsection 2.5.17.3 (WEB
25 Annual Audit) [see] below before permitting an Originator or Third-Party Sender to
26 initiate a WEB Entry."

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1 60. With regard to WEB entries, Subsection 2.5.17.4 of the NACHA
2 Operating Rules provides:

3 In addition to the other warranties contained within these
4 Rules, an ODFI originating a WEB Entry warrants to each
5 RDFI and ACH Operator that:

6 (a) *Fraud Detection Systems*. The Originator has
7 established and implemented a commercially reasonable
8 fraudulent transaction detection system to screen the WEB
9 Entry.

10 (b) *Verification of Receiver's Identity*. The Originator has
11 established and implemented commercially reasonable
12 methods of authentication to verify the identity of the
13 Receiver of the WEB Entry.

14 (c) *Verification of Routing Numbers*. The Originator has
15 established and implemented commercially reasonable
16 procedures to verify that the routing number used in the
17 WEB Entry is valid.

18 61. In addition to the NACHA Operating Rules, with regard to Internet
19 initiated entries, NACHA recommends the following as sound business practices in
20 Chapter 48 *Internet Initiated /Mobile Entries (WEB)* of its Operating Guidelines:

21 **RESPONSIBILITIES OF ODFIs**

22 *Agreements with Originators*

23 Each ODFI that chooses to transmit WEB entries on
24 behalf of its Originators should make modifications to its
25 agreements with its Originators to address the origination
26 of these entries. These modifications should address:

- 27 • the allocation of liability between the Originator and
28 ODFI for WEB transactions, and
- any specific processing obligations relating to such
 transactions.

 In addition, these agreements should address the
procedures, practices, and systems Originators are using to
comply with their obligations under the *NACHA
Operating Rules* governing WEB entries. For example,
the agreement may need to address the authentication

1 methods and the fraudulent transaction detection systems
 2 the Originators are using for WEB entry transactions.
 3 ODFIs may also want to see proof of the Originator's
 4 annual data security audit prior to or as a condition of
 transmitting WEB entries for the Originator.

5 Warranties and Liabilities

6 In addition to all other ODFI warranties contained within
 7 the NACHA Operating Rules, each ODFI that chooses to
 8 transmit WEB entries on behalf of its Originators also
 warrants that:

- 9 • Each Originator for which the ODFI transmits WEB
 10 entries has employed a commercially reasonable
 11 fraudulent transaction detection system to screen the
 12 entries;
- 13 • Each Originator of WEB entries has employed
 14 commercially reasonable methods of authentication to
 verify the identity of the Receiver;
- 15 • Each Originator has taken commercially reasonable
 16 steps to verify that routing numbers are valid; and
- 17 • Each Originator has conducted an annual data security
 18 audit to ensure that the financial information that the
 19 Originator obtains from Receivers is protected by
 20 security practices that include adequate levels of:
 - 21 – physical security to protect against theft, tampering,
 22 or damage,
 - 23 – personnel and access controls to protect against
 24 unauthorized access and use, and
 - 25 – network security to ensure secure capture,
 26 transmission, distribution, and storage until
 27 destruction of financial information.

28 ODFIs must know their Originators and monitor WEB
 entries because there are additional risk factors to consider
 with this type of transaction stemming from the inherent
 risk of transactions that are conducted in an Internet and
 non face-toface [sic] environment.

1 All of these additional warranties should be explicitly
 2 addressed in ODFI agreements with Originators because
 3 there is a commercially reasonable standard that applies to
 4 several of the warranties, ODFIs need to be aware of what
 procedures, practices, and systems their Originators have
 deployed to meet these requirements.

5 **The FDIC Has Issued Guidance to State-Chartered Banks that Enter Into**
 6 **Payment Processor Relationships with Third Parties**

7 62. The Federal Deposit Insurance Corporation ("FDIC") regulates state-
 8 chartered banks such as First International and Mutual of Omaha.

9 63. On February 25, 2005, the FDIC issued guidance regarding Payday
 10 Lending and cautioned that such lending raises "significant risks" for banks,
 11 particularly when the payday lenders originate through Third-Party Senders. The
 12 FDIC guidance makes clear that:

13 The use of third parties in no way diminishes the
 14 responsibility of the board of directors and management to
 15 ensure that the third-party activity is conducted in a safe
 16 and sound manner and in compliance with policies and
 17 applicable laws. Appropriate corrective actions, including
 18 enforcement actions, may be pursued for deficiencies
 related to a third-party relationship that pose concerns
 about either safety and [sic] soundness or the adequacy of
 protection afforded to consumers.

19 64. On June 6, 2008, the FDIC issued additional "Guidance for Managing
 20 Third-Party Risk" which began by noting that:

21 An institution's board of directors and senior
 22 management are ultimately responsible for managing
 23 activities conducted through third-party relationships, and
 24 identifying and controlling the risks arising from such
 relationships, to the same extent as if the activity were
 handled within the institution.

25 65. Among the risks to banks the FDIC identified in its June 6, 2008
 26 "Guidance for Managing Third-Party Risk" was:
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1 Compliance risk. Compliance risk is the risk arising from
 2 violations of laws, rules, or regulations, or from
 3 noncompliance with internal policies or procedures or
 4 with the institution's business standards. This risk exists
 5 when the products or activities of a third party are not
 6 consistent with governing laws, rules, regulations,
 7 policies, or ethical standards. For example, some third
 8 parties may engage in product marketing practices that
 9 are deceptive in violation of Section 5 of the Federal
 10 Trade Commission Act . . . Compliance risk is
 11 exacerbated when an institution has inadequate oversight,
 12 monitoring or audit functions.

13 66. Accordingly, the FDIC advises banks to engage in "Due Diligence in
 14 Selecting a Third Party":

15 Following an assessment of risks and a decision to proceed
 16 with a plan to establish a third-party relationship,
 17 management must select a qualified entity to implement
 18 the activity or program. The due diligence process
 19 provides management with the information needed to
 20 address qualitative and quantitative aspects of potential
 21 third parties to determine if a relationship would help
 22 achieve the financial institution's strategic and financial
 23 goals and mitigate identified risks. Not only should due
 24 diligence be performed prior to selecting a third party, but
 25 it should also be performed periodically during the course
 26 of the relationship, particularly when considering a
 27 renewal of a contract.

28 *****

29 Comprehensive due diligence involves a review of all
 30 available information about a potential third party,
 31 focusing on the entity's financial condition, its specific
 32 relevant experience, its knowledge of applicable laws and
 33 regulations, its reputation, and the scope and effectiveness
 34 of its operations and controls.

35 67. On January 31, 2012, the FDIC issued revised guidance describing
 36 potential risks associated with relationships with third-party entities that process
 37 payments for telemarketers, online businesses, and other merchants. In a footnote
 38

1 to the guidance, the FDIC provided, "[e]xamples of telemarketing, online
 2 businesses, and other merchants that may have a higher incidence of consumer
 3 fraud or potentially illegal activities or may otherwise pose elevated risk" which
 4 included "payday or subprime loans."

5 68. The FDIC advised banks that:

6 . . . payment processors that deal with telemarketing and
 7 online merchants may have a higher risk profile because
 8 such entities have tended to display a higher incidence of
 9 consumer fraud or potentially illegal activities than some
 10 other businesses. Given this variability of risk, payment
 11 processors must have effective processes for verifying
 12 their merchant clients' identities and reviewing their
 13 business practices. Payment processors that do not have
 14 such processes can pose elevated money laundering and
 fraud risk for financial institutions, as well as legal,
 reputational, and compliance risks if consumers are
 harmed.

15 69. The FDIC made clear that banks faced potential liability if they failed
 16 to adequately manage their relationships with payment processors:

17 Deposit relationships with payment processors expose
 18 financial institutions to risks not customarily present in
 19 relationships with other commercial customers. These
 20 include increased operational, strategic, credit,
 21 compliance, and transaction risks. In addition, financial
 22 institutions should consider the potential for legal,
 23 reputational, and other risks, including risks associated
 24 with a high or increasing number of customer complaints
 25 and returned items, and the potential for claims of unfair
 26 or deceptive practices. *Financial institutions that fail to*
 27 *adequately manage these relationships may be viewed as*
 28 *facilitating a payment processor's or merchant client's*
fraudulent or unlawful activity and, thus, may be liable
for such acts or practices. In such cases, the financial
 institution and responsible individuals have been subject to
 a variety of enforcement and other actions. *Financial*
institutions must recognize and understand the
businesses and customers with which they have

1 *relationships and the liability risk for facilitating or*
 2 *aiding and abetting consumer unfairness or deception*
 3 under Section 5 of the Federal Trade Commission Act.
 (Emphasis added).

4 The OCC Has Issued Guidance to All Banks
 5 On Managing the Risks of ACH Activity

6 70. The OCC supervises national banks.

7 71. On September 1, 2006, the OCC provided guidance for national banks
 8 and examiners on managing the risks of ACH activity, explaining that "National
 9 banks may be exposed to a variety of risks when originating, receiving, or
 10 processing ACH transactions, or outsourcing these activities to a third party."

11 72. The guidance advised:

12 High-Risk Activities

13 Banks that engage in ACH transactions with high-risk
 14 originators or that involve third-party senders face
 15 increased reputation, credit, transaction, and compliance
 16 risks. High-risk originators include companies engaged in
 potentially illegal activities or that have an unusually high
 volume of unauthorized returns.

17 Before a bank engages in high-risk ACH activities, the
 18 board of directors should consider carefully the risks
 19 associated with these activities, particularly the increased
 20 reputation, compliance, transaction, and credit risks. The
 21 board should provide clear direction to management on
 whether, or to what extent, the bank may engage in such
 ACH activities. Some banks have established policies
 prohibiting transactions with certain high-risk originators
 and third-party senders.

22 73. In a footnote to the guidance, the OCC made the risk to banks even
 23 clearer, "[r]isks may include the risk of legal liability or damage to an institution's
 24 reputation when *originators or third-party senders facilitate or engage in activities*
 25 *that violate criminal laws.*" (Emphasis added).
 26
 27
 28

1 74. On April 24, 2008, the OCC provided guidance for national banks and
 2 examiners on managing the risks of ACH activity originated by Third-Party
 3 Processors, cautioning that:

4 Banks should also consider carefully the legal, reputation,
 5 and other risks presented by relationships with processors
 6 including risks associated with customer complaints,
 7 returned items, and potential unfair or deceptive practices.
 8 *Banks that do not have the appropriate controls to*
 9 *address the risks in these relationships may be viewed as*
 10 *facilitating a processor's or its merchant client's fraud or*
 11 *other unlawful activity.* (Emphasis added).

12 75. The guidance reminded banks that they:

13 ... must implement a due diligence and underwriting
 14 policy that, among other things, requires an initial
 15 background check of the processor and its underlying
 16 merchants to support the validity of the processor's and
 17 merchants' businesses, their creditworthiness, and
 18 business practices.

19 *****

20 By implementing the appropriate controls over processors
 21 and their merchant clients, a bank should be able to
 22 identify those processors that process for fraudulent
 23 telemarketers or other unscrupulous merchants and to
 24 ensure that the bank is not facilitating these transactions.
 25 In the event a bank identifies fraudulent or other improper
 26 activity with a processor or a specific merchant client of
 27 the processor, the bank should take immediate steps to
 28 address the problem, including filing a Suspicious Activity
 Report when appropriate, terminating the bank's
 relationship with the processor, or requiring the processor
 to cease processing for that specific merchant.

29 76. The guidance concludes that:

30 The OCC supports national banks' participation in
 31 payment systems to serve the needs of legitimate
 32 processors and the customers of such processors and to
 33 diversify sources of revenue. However, to limit potential
 34 risk to banks and consumers, banks should ensure
 35 implementation of risk management programs that include
 36 appropriate oversight and controls commensurate with the
 37 risk and complexity of the activities. At a minimum, bank

1 programs should verify the legitimacy of the processor's
 2 business operations, assess the bank's risk level, and
 3 monitor processor relationships for activity indicative of
 4 fraud.

5 **The Nature of the Origination Agreements Do Not Permit ODFI Banks**
 6 **To Be Considered "Agents" of Illegal Payday Lenders**

7 77. Subsection 2.2.1.1-2 of the 2013 NACHA Operating Rules states that
 8 an ODFI's "Origination Agreement [with the Originator or Third-Party Sender]
 9 must include, at a minimum, each of the following:

- 10 a. The Originator must authorize the ODFI to originate Entries on
- 11 behalf of the Originator to Receivers' accounts;
- 12 b. The Originator must agree to be bound by these Rules;
- 13 c. The Originator must agree not to originate Entries that violate the
- 14 laws of the United States;
- 15 d. Any restrictions on the types of Entries that may be originated;
- 16 e. The right of the ODFI to terminate or suspend the agreement for
- 17 breach of these Rules in a manner that permits the ODFI to comply
- 18 with these Rules; and,
- 19 f. The right of the ODFI to audit the Originator's compliance with the
- 20 Origination Agreement and these Rules."

21 78. To highlight the importance of Origination Agreements on the ACH
 22 Network, the NACHA Rules impose mandatory "audit requirements" for ODFIs.
 23 These requirements mandate, among other things, that ODFIs "Verify that the ODFI
 24 has entered into Origination Agreements with all Originators or Third-Party Senders
 25 that bind the Originator or Third-Party Sender to these Rules . . . [and] that, within
 26 such agreements, the Originator or Third-Party Sender acknowledges that Entries
 27 may not be initiated that violate the laws of the United States[.]" NACHA 2013
 28 Operating Rules, Appendix Eight, Part 8.4 Audit Requirements for ODFIs.

1 79. Appendix C of the NACHA Rules is entitled "Issues To Be Addressed
2 in the Agreement Between the ODFI and the Originator or Third-Party Sender" and
3 is attached hereto as Exhibit "A." In addition to the rights and responsibilities of the
4 parties, "issues that should be defined" in the Origination Agreement include
5 "*restrictions on the types of ACH Entries that may be originated*" and the "*right of*
6 *the ODFI to terminate or suspend an agreement for breach of the [NACHA]*
7 *Rules.*" Exhibit A, p. 1 (emphasis added).

8 80. These required provisions make clear than an ODFI is not and cannot
9 be considered an "agent" of the Originator because ODFI banks are required to
10 operate within the confines of the NACHA Rules, not under the direction or control
11 of the Originator. Indeed, the ODFI is required under the NACHA Rules to restrict
12 certain types of ACH entries and terminate its relationship with an Originator or
13 Third-Party Sender *at will* if those parties are not in compliance with the NACHA
14 Rules or state or federal law. As such, many Origination Agreements *expressly*
15 *disclaim* an agency relationship between the parties. *See* Sample Origination
16 Agreement attached hereto an Exhibit "B," ¶ 24, p. 11 ("Nothing contained in this
17 Agreement shall create any agency, fiduciary, joint venture or partnership
18 relationship between Company and Bank.").

19 81. Defendants' Origination Agreements with Illegal Payday Lenders (or
20 Third-Party Senders acting on their behalf) either expressly disclaim an agency
21 relationship or make clear by their terms that the nature and scope of the parties'
22 relationship is not that of principal-agent.

23 The ODFI Banks Are Not Loan Servicers

24 82. While Defendants' conduct creates a boon for the Illegal Payday
25 Lenders by allowing them access to borrowers' bank accounts on the secure ACH
26 Network, the ODFI banks' obligations on the ACH Network are not consistent with
27 that of a loan "servicer." In any lending industry, a loan servicer serves as an
28

1 intermediary between the lender and borrower and performs functions such as
2 contacting the borrower on behalf of the lender, maintaining records of payments
3 and balances, collecting and paying taxes and insurance, following up on
4 delinquencies, and structuring or restructuring payment plans.

5 83. Loan servicers are compensated by retaining a relatively small
6 percentage of each periodic loan payment known as the “servicing fee” or “servicing
7 strip.” This is usually 0.25% to 0.5% of the periodic interest payment.

8 84. Although Defendants collected unlawful debts on behalf of Illegal
9 Payday Lenders by permitting the lenders access to the ACH Network and debiting
10 borrowers’ accounts on their behalf, at no time did Defendants communicate
11 directly with Plaintiff or other borrowers or perform any other standard functions of
12 a loan servicer as that role is commonly understood in the lending industry. ODFIs
13 are not compensated by receiving a percentage of a loan’s periodic interest
14 payments, but rather a flat-fee, per transaction payment as negotiated between the
15 Originator and ODFI and set forth in the Origination Agreement. On information
16 and belief, neither First International nor Mutual of Omaha describe their flat fee
17 transaction compensation within their Origination Agreements as either a “servicing
18 fee” or a “servicing strip.” Neither First International nor Mutual of Omaha have
19 ever held themselves as providing “loan servicing” services to any lending
20 merchants through their role as an ODFI on the ACH Network.

21 85. Moreover, equating the role of a “loan servicer” with that of an ODFI
22 on the ACH Network would have far-reaching consequences under federal law. For
23 example, the Real Estate Settlement Procedures Act (“RESPA”) has very specific
24 requirements for servicers of mortgage loans. *See, e.g.*, 12 U.S.C. § 2605. If the
25 ODFI function were to equate with that of a “loan servicers,” then mortgagors that
26 paid their mortgage via ACH would subject the ODFI originating the borrower’s
27 mortgage loan payments to specific requirements under RESPA, as well as the Truth
28

1 in Lending Act. 15 U.S.C.A. § 1641. Likewise, since numerous states (including
2 California) require mortgage loan servicers to be licensed, in such a case, ODFIs
3 would be required to be licensed as loan servicers simply because they take on the
4 completely separate and distinct role and function of serving as an ODFI.

5 86. Similarly, Defendants are not “servicers” of the loans because they do
6 not and cannot recognize their ACH origination agreements as liabilities or assets
7 under FASB Accounting Standards Codification (“ASC”) paragraph 860-50.
8 FASB ASC paragraph 860-50-25-1 (Transfers and Servicing - Servicing Assets and
9 Liabilities) provides that “[a]n entity shall recognize a servicing asset or servicing
10 liability each time it undertakes an obligation to service a financial asset by entering
11 into a servicing contract in . . . an acquisition or assumption of a servicing
12 obligation that does not relate to financial assets of the servicer or its consolidated
13 affiliates . . .” Defendants are unable to recognize an ACH Origination Agreement
14 as a servicing asset or liability because the agreement is not a commitment to any
15 particular value of ACH transactions. Rather, Defendants are simply agreeing to
16 originate transactions initiated by the Originator that are in compliance with the
17 Origination Agreement in exchange for a fee to be assessed on each transaction.
18 The Origination Agreement cannot be recognized as either an asset or a liability
19 under FASB ASC paragraph 860-50 because its value is indeterminate.

20 87. The distinctions between loan servicers and ODFIs are obvious.
21 Lenders and loan servicers enter into a written contractual agreement, typically
22 styled as a “loan servicing contract” to perform the functions set forth in paragraph
23 82 above. This contract is different and separate from the Origination Agreement
24 between the lender and the ODFI bank required by the NACHA Rules. Indeed,
25 “originating” ACH entries is a specific task governed by NACHA Rules and
26 banking regulator guidance—it is completely separate and apart from general
27 servicing of a loan that is simply covered by a written agreement between the lender
28

1 and its servicers—activity that is not governed, covered or addressed by the
2 NACHA Rules and in no way is a part of routine ACH Network activity.

3 88. SFS, MNE, and Sandpoint take on loan “servicing” functions
4 internally, or use a separate entity as their loan “servicer” –which is separate and
5 distinct from the Mutual of Omaha and First International’s role as an ODFI on the
6 ACH Network.¹

7 **Defendants Knew the Illegal Payday Lenders Were Making Illegal Payday**
8 **Loans in California**

9 89. At the time Defendants originated the entries on the ACH Network
10 referenced herein, they knew the identity of the Illegal Payday Lenders, they knew
11 the lenders were engaged in the business of making payday loans, they knew the
12 Illegal Payday Lenders were engaged in the business of making Illegal Payday
13 Loans in California where payday lending was unlawful, and they knew the Illegal
14 Payday Lenders were not licensed to make payday loans in California.

15 90. The State of California maintains a public database with information
16 about lenders licensed to make payday loans in California, but SFS, MNE, and
17 Sandpoint do not and have not appeared on that public database as holding valid
18 licenses.

19 91. According to the NACHA Rules, NACHA represents more than 10,000
20 financial institutions via 17 regional payments associations and direct membership.
21

22 ¹ On December 10, 2013, Defendant First International served an “intention to arbitrate dispute”
23 upon counsel for Plaintiffs. Annexed as an exhibit to that intention to arbitrate dispute was a
24 declaration by one Natalie Dempsey (the “Dempsey Declaration”) who represented herself to be
25 an employee of AMG Services, Inc., which she claimed “operates as a shared service provider” for
26 both SFS and MNE. In support of a motion to compel arbitration in the prior action, Defendant
27 Mutual of Omaha submitted a declaration by one Wes Suma (the “Suma Declaration”) who
28 represented himself to be the “Operations Manager at CWB Services, LLC (‘CWB’) which
services loans originated by Sandpoint Capital LLC (‘Sandpoint’). Neither the Dempsey
Declaration nor the Suma Declaration identified either of the Defendants as the “agents” or
“servicers” for the payday lenders.

1 Approximately 99% of these banking institutions have never originated entries on
2 the ACH Network at the request of a payday lender.

3 92. In contrast, First International and Mutual of Omaha are some of the
4 most active originators of ACH WEB and ACH TEL entries on the ACH Network
5 for high risk originators such as payday lenders. First International and Mutual of
6 Omaha originate entries on the ACH Network at the request of payday lenders
7 because they can charge payday lenders higher fees to originate high-risk payday
8 loans entries than are customarily paid for originations on the ACH Network by
9 legitimate originators. First International and Mutual of Omaha charge these higher
10 fees because they know the transactions they are originating are illegal.

11 93. The higher origination fees charged to the payday lenders reflect the
12 calculated risk First International and Mutual of Omaha take knowingly to assist
13 "high-risk" originators like Illegal Payday Lenders in violating the laws of the
14 banned states and California, the NACHA Rules, and OCC and FDIC guidelines.
15 The overwhelming majority of ODFIs on the ACH Network have refused to
16 originate entries on behalf of these same Illegal Payday Lenders.

17 94. Without direct, unilateral access to borrowers' bank accounts provided
18 by these ODFI banks willing to abandon their "gatekeeper" responsibilities to guard
19 the secure ACH Network, the Illegal Payday Lenders would need borrowers to take
20 an affirmative step such as writing and mailing a check for each loan repayment.
21 Borrowers that find lenders' demands for repayment to be inconsistent with their
22 respective understandings of their loan agreements would have an opportunity—
23 *before money is unilaterally taken from their bank accounts by the ODFI banks*
24 *"originating" the debit entries requested by the lenders—to question, reject, or*
25 *dispute the demand for payment. The FTC has warned consumers about this practice*
26 *and sued certain payday lenders for engaging in similar conduct.*

27 <<https://www.consumer.ftc.gov/articles/0249-online-payday-loans>> (last visited on
28

1 March 28, 2014).

2 95. Characteristics of Illegal Payday Lender transactions themselves also
3 notified ODFIs of unlawful activity.

4 96. ACH debits originated on behalf of Illegal Payday Lenders raised “red
5 flags” to First International and Mutual of Omaha, which alerted them to the fact
6 that potential unlawful activity was occurring.

7 97. Chief among these “red flags” were high return rates and charge backs
8 on ACH debit transactions. An ACH debit transaction may be returned for
9 numerous reasons including, *inter alia*, the account to be debited having insufficient
10 funds or the account owner claiming the debit was not authorized.

11 98. In addition to NACHA Rules discussing the importance of
12 investigating high return rates (*see* 2013 NACHA Rules, subsection 2.17.2.2 “ODFI
13 Reduction of Return Rate”), the banking industry has been informed that high rates
14 of returned transactions – regardless of the specific reason for the return – indicate
15 suspicious activity. As noted by the Financial Crimes Enforcement Network of the
16 U.S. Department of the Treasury (“FinCEN”):

17 *Fraud:* High numbers of consumer complaints about
18 Payment Processors and/or merchant clients, and
19 particularly **high numbers of returns or chargebacks**
20 (aggregate or otherwise), suggest that the originating
21 merchant may be engaged in unfair or deceptive practices
or fraud, including using consumers’ account information
to create unauthorized RCCs or ACH debits.

22 *FinCEN Advisory: Risk Associated with Third-Party Payment Processors*, FIN-
23 2012-A010 (October 22, 2012) (bold added).

24 99. ACH debits originated on behalf of the Illegal Payday Lenders far
25 exceed the return rate for all electronic payments, which is less than 1%. Although
26 high-return rates alerted ODFIs of potential illegal activity, First International and
27 Mutual of Omaha ignored these warnings—not only because they already knew the
28

1 business of the Illegal Payday Lenders through their required due diligence
 2 obligations, but also because the ODFIs charge fees on every return payment made
 3 by the Originator. Thus, they can potentially twice the profit in fees associated with
 4 unauthorized payments.²

5 100. Defendants knowingly ignored the nature of the Illegal Payday
 6 Lenders' business, ignored their usage of entry codes that are known to be used by
 7 high risk Originators ACH WEB and ACH TEL, and ignored excessively high-
 8 return rates and charge backs in order to turn extra profit through origination fees.
 9 Moreover, Defendants ignored *public warnings* of the nature of the Illegal Payday
 10 Lenders' business, as discussed below.

11 **Defendants Were Aware That The State of California Has Taken Numerous**
 12 **Actions against Both Ameriloan.com and USFastCash.com to Prevent Their**
 13 **Continued Illegal Payday Lending Within the State**

14 101. On August 22, 2006, the California Corporations Commissioner issued
 15 a "Desist and Refrain Order" charging Ameriloan and USFastCash (along with other
 16 Illegal Payday Lenders) with "originating or offering deferred deposit transaction
 17 loans ('payday loans') to the public, through their websites since at least about May
 18 2005 to the present" and imposing "fees and charges that are in excess of the
 19 amount allowed under the California Deferred Deposit Transaction Law ('CDDTL')
 20 (California Financial Code § 23000 *et seq.*)"

21 102. The Desist and Refrain Order held that neither Ameriloan.com nor
 22 USFastCash.com had "been issued a license by the Commissioner authorizing them
 23 to engage in the business of originating deferred deposit transactions under the
 24

25 ² For example, between 2003 and 2006, Wachovia Bank collected millions of dollars in
 26 origination fees by debiting funds for fraudulent telemarketers. The OCC asserted that some of the
 27 bank's officials knew about the deceptive telemarketing practices but failed to take quick action to
 28 resolve the problem because high-return rates alone netted Wachovia \$1.45 million in return item
 fees. Ultimately Wachovia agreed to pay over \$150 million in restitution to defrauded consumers,
 a \$10 million civil money penalty and \$8.9 million in contributions to consumer education.

1 CDDTL” and “were not exempt from the licensing requirements of California
2 Financial Code § 23005.”

3 103. Accordingly, the Desist and Refrain Order found that Ameriloan.com
4 and USFastCash.com had:

5 [E]ngaged in the business of originating or offering to
6 originate deferred deposit transactions, or acting as an
7 agent for a deferred deposit originator or assisting a
8 deferred deposit originator in the origination of a deferred
9 deposit transaction without having first obtained a license
10 from the Commissioner in violation of California
11 Financial Code section 23005.

12 104. The Desist and Refrain Order then ordered Ameriloan.com and
13 USFastCash.com to:

14 [D]esist and refrain from engaging in the business of
15 deferred deposit transactions, including but not limited to,
16 originating or offering to originate deferred deposit
17 transactions or acting as an agent for a deferred deposit
18 originator or assisting a deferred deposit originator in the
19 origination of a deferred deposit transaction in the State of
20 California without first obtaining a license from the
21 Commissioner, or otherwise being exempt. This Order is
22 necessary, in the public interest, for the protection of
23 consumers and is consistent with the purposes, policies
24 and provisions of the California Deferred Deposit
25 Transaction Law. This order shall remain in full force and
26 effect until further order of the Commissioner.

27 105. Ameriloan.com and USFastCash.com (along with other Illegal Payday
28 Lenders) disregarded the Desist and Refrain Order.

106. On June 29, 2007, the California Corporations Commissioner filed suit
against Ameriloan and USFastCash (along with other Illegal Payday Lenders)
charging them with “unlawfully engag[ing] in the business of originating deferred
deposit transactions in California” and “originat[ing] excessive loans and impos[ing]
on consumers extortionate fees and charges far exceeding the amount allowed under

1 the California Deposit Transaction Law ("CDDTL") (California Financial Code §
2 23000 *et seq.*)"

3 107. First International continued to originate entries on the ACH Network
4 for MNE (d/b/a Ameriloan.com and USFastCash.com) even after this order was
5 issued.

6 **Defendants Were Aware The State of Oregon Has Taken Action against**
7 **Sandpoint to Prevent its Continued Illegal Payday Lending Within the State**

8 108. On May 16, 2013, the Director of the Department of Consumer and
9 Business Services for the State of Oregon (the "Director") issued an Order to Cease
10 and Desist, Order Suspending Collection Activities, Proposed Order Assessing Civil
11 Penalty and Notice of Right to an Administrative Hearing ("Notice Order"), to
12 Sandpoint after learning that Sandpoint was not licensed in the state and had made a
13 loan to an Oregon resident with at term of less than 31 days at an interest rate in
14 excess of 36 percent per annum.

15 109. Following Sandpoint's failure to respond or request and administrative
16 hearing, the Director issued a FINAL ORDER BY DEFAULT (PD-13-0109)
17 finding that:

18 The short term consumer loan made by Sandpoint to
19 Oregon resident JLM is a payday loan as defined in ORS
20 725A.010 (5).

21 The payday loan that Sandpoint made to Oregon resident
22 JLM is subject to ORS chapter 725A because Sandpoint
23 offered to and made a loan for personal, family or
24 household purposes of less than \$50,000 to a consumer
25 who resided in Oregon and the terms of the loan were
26 agreed to via the Internet while the consumer was
27 physically present in Oregon.

28 Sandpoint violated ORS 725A.020 by conducting a
business in which it made a payday loan as defined by
ORS 725A.010 (5) to an Oregon resident without first
obtaining a license under ORS chapter 725A.

1 Sandpoint violated ORS 725A.064 (1) by making or
 2 renewing a payday loan at a rate of interest exceeding 36
 3 percent per annum, excluding a one-time origination fee
 for a new loan.

4 Sandpoint violated ORS 725A.064 (3) by making or
 5 renewing a payday loan for a term of less than 31 days.

6 110. Accordingly, the Director issued a Final Order for Sandpoint to Cease
 and Desist and to Suspend Collection Activities:

7 Pursuant to the authority of ORS 725A.082, the Director
 8 hereby ORDERS Sandpoint, and all entities owned or
 9 controlled by Sandpoint and their successors and
 assignees, to CEASE AND DESIST from violating any
 10 provision of the Oregon statutes regulating payday
 11 lending, ORS 725A.010 to 725A.092 and 725A.990, OAR
 441-730-0000 through 441-730-0320, or any rule, order,
 12 or policy issued by the Division.

13 Pursuant to the authority of ORS 725A.020, the Director
 14 ORDERS Sandpoint, and all entities owned or controlled
 by Sandpoint and their successors and assignees, to
 15 suspend all activities for the collection of principal,
 16 interest, or any fees or charges on loans made to Oregon
 consumers unless within 90 days of the date of this Order
 17 Sandpoint obtains a license under ORS 725A.022 and
 18 725A.024.

19 111. The Director then issued a Final Order for Sandpoint to pay a civil
 20 penalty:

21 In accordance with ORS 725A.990 (1), the Director
 22 hereby ORDERS Sandpoint to pay a Civil Penalty in the
 amount of \$7,500 (seven thousand five hundred dollars)
 23 for the following violations:

24 A. A Civil Penalty of \$2,500 for violation of ORS
 725A.020 by conducting a business in which Sandpoint
 25 made a payday loan as defined by ORS 725A.010 (5) to an
 Oregon resident without first obtaining a license under
 26 ORS chapter 725A.

27 B. A Civil Penalty of \$2,500 for violation of ORS
 28 725A.064 (1) by making or renewing a payday loan at a

1 rate of interest that exceeds 36 percent per annum,
 2 excluding a one-time origination fee for a new loan.

3 C. A Civil Penalty of \$2,500 for violation of ORS
 4 725A.064 (3) by making or renewing a payday loan for
 terms of less than 31 days.

5 112. Mutual of Omaha continued to originate entries on the ACH Network
 6 for Sandpoint even after this order was issued.

7 **Defendants Were Aware The Federal Trade Commission Has Filed Suit against**
 8 **Both SFS and MNE Accusing Them of Numerous Violations of Federal Law**

9 113. On April 2, 2012, the Federal Trade Commission filed suit in the
 10 United States District Court for the District of Nevada, alleging that AMG Services,
 11 Inc., SFS, Inc., Red Cedar Services, Inc., and MNE Services, Inc. had violated
 12 portions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41–58;
 13 the Truth in Lending Act ("TILA"), 15 U.S.C. § § 1601–1667f; and the Electronic
 14 Fund Transfer Act ("EFTA"), 15 U.S.C. §§ 1693–1693r. ("The FTC Complaint"
 15 attached hereto as Exhibit "C.")

16 114. The FTC Complaint alleges that:

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

20 Defendants, in numerous instances, withdraw only the
 21 finance charge from a consumer's bank account on the
 22 specified due date for the loan (usually, the first payday
 23 after the loan) and upon each of the consumer's next three
 24 paydays. The consumer's outstanding principal does not
 25 decrease during this time. On the fifth payday, Defendants
 26 withdraw a fifth finance charge and, for the first time, an
 27 additional \$50 sum to be applied toward principal. On
 28 successive paydays thereafter, Defendants continue to
 withdraw principal in \$50 increments, along with
 additional finance charges, 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.

Exhibit C, ¶¶ 37-38

115. The FTC Complaint also alleges that:

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

Exhibit C, ¶ 42.

116. On March 7, 2014, the United States District Court for the District of Nevada held that SFS and MNE were subject to the authority of the Federal Trade Commission, even if they were arms of Indian Tribes. *See, F.T.C. v. AMG Servs., Inc.*, 2:12-CV-00536-GMN, 2014 WL 910302 *6 (D. Nev. Mar. 7, 2014).

117. First International continued to originate entries on the ACH Network for MNE and SFS even after the FTC suit was filed.

FACTS AS TO PLAINTIFFS JOHN AND CHRISTINA LABAJO

118. On or about June 23, 2013, Plaintiff Christina Labajo applied for and received a payday loan in the amount of \$600 from SFS, Inc. d/b/a/ OneClickCash by completing an application on the www.oneclickcash.com website. As part of the application process, Ms. Labajo authorized SFS OneClickCash to "initiate" credit and debit entries from Plaintiffs' joint checking account with Wells Fargo in California in order to repay the loan. On information and belief, the entries initiated by OneClickCash were ACH WEB or ACH TEL.

1 119. SFS, Inc. was not licensed by the Department of Corporations as a
2 payday lender at the time of the loan.

3 120. The interest rate on the loan was 30%. The entirety of the interest plus
4 principal, which equaled \$780.00, was due 12 days from the date of the loan.

5 121. Thus, the nominal annual interest rate on the loan was at least 912.50%.

6 122. On or about July 19, 2013, OneClickCash “initiated” a debit transaction
7 of \$180.00 from Plaintiffs’ joint checking account in California through the ACH
8 Network. First International, pursuant to its written contract with OneClickCash (or
9 a Third-Party Sender acting on its behalf) then “originated” that debit entry into the
10 ACH Network where it was received by Plaintiffs’ bank and debited from Plaintiffs’
11 joint checking account. The \$180 payment was applied solely to interest accrued on
12 and did not reduce the amount of Ms. Labajo’s \$600.00 debt. On information and
13 belief, the entries initiated by OneClickCash were ACH WEB or ACH TEL.

14 123. On or about June 13, 2013, Plaintiff John Labajo applied for and
15 received a payday loan in the amount of \$800.00 from MNE d/b/a/ USFastCash by
16 completing an application on the www.usfastcash.com website. As part of the
17 application process, Mr. Labajo authorized USFastCash to “initiate” credit and debit
18 entries from Plaintiffs’ joint checking account with Wells Fargo in order to repay
19 the loan.

20 124. MNE was not licensed by the Department of Corporations as a payday
21 lender at the time of the loan.

22 125. The interest rate on the loan was 30%. The entirety of the interest plus
23 principal, which equaled \$1,040.00, was due 15 days from the date of the loan.

24 126. Thus, the nominal annual interest rate on the loan was at least 730%.

25 127. On or about June 28, 2013, USFastCash “initiated” a debit transaction
26 of \$240.00 for Plaintiffs’ joint checking account in California through the ACH
27 Network. First International, pursuant to its written contract with USFastCash (or a
28

1 Third-Party Sender acting on its behalf) then “originated” that debit entry into the
2 ACH Network where it was received by Plaintiffs’ bank and debited from Plaintiffs’
3 joint checking account. The \$240.00 payment was applied solely to interest accrued
4 on and did not reduce the amount of Mr. Labajo’s \$800 debt. On information and
5 belief, the entries initiated by USFastCash were ACH WEB or ACH TEL.

6 128. On or about January 30, 2013, Plaintiff John Labajo applied for and
7 received a payday loan in the amount of \$300.00 from Sandpoint Capital, LLC by
8 completing an application. As part of the application process, Mr. Labajo
9 authorized Sandpoint to “initiate” credit and debit entries from Plaintiffs’ joint
10 checking account with Wells Fargo in order to repay the loan.

11 129. Sandpoint was not licensed by the Department of Corporations as a
12 payday lender at the time of the loan.

13 130. The interest rate on the loan was 30%. The entirety of the interest plus
14 principal, which equaled \$390.00, was due 9 days from the date of the loan.

15 131. Thus, the nominal annual interest rate on the loan was at least 1,564%.

16 132. On or about February 10, 2013, Sandpoint originated a debit
17 transaction of \$90.00 for Plaintiffs’ joint checking account in California through the
18 ACH Network. Mutual of Omaha, pursuant to its written contract with Sandpoint
19 (or a Third-Party Sender acting on its behalf) then “originated” that debit entry into
20 the ACH Network where it was received by Plaintiffs’ bank and debited from
21 Plaintiffs’ joint checking account. The \$90.00 payment was applied solely to interest
22 accrued on and did not reduce the amount of Mr. Labajo’s \$300.00 debt. On
23 information and belief, the entries initiated by Sandpoint were ACH WEB or ACH
24 TEL.

25 133. Defendants First International and Mutual of Omaha derived a benefit
26 through the receipt of origination fees for their originations of debit entries on the
27
28

1 ACH Network initiated by OneClickCash, USFastCash, and Sandpoint (or Third-
2 Party Senders acting on their behalf).

3 4 CLASS ACTION ALLEGATIONS

5 134. Description of the Class: Plaintiffs bring this class action on behalf of
6 themselves and a Class defined as follows:

7 All natural persons within the State of California whose
8 accounts were debited via an ACH entry originated by either
9 First International Bank & Trust or Mutual of Omaha Bank as
10 an ODFI on behalf of an Illegal Payday Lender in repayment of
a loan which was usurious under California law (the "Class").

11 135. Excluded from the Class are Defendants' officers, directors, affiliates,
12 legal representatives, employees, successors, subsidiaries, and assigns. Also
13 excluded from the Class is any judge, justice or judicial officer presiding over this
14 matter and the members of their immediate families and judicial staff.

15 136. Numerosity: The proposed Class is so numerous that individual joinder
16 of all members is impracticable.

17 137. Common Questions of Law and Fact Predominate: There are many
18 questions of law and fact common to Plaintiffs and the Class, and those questions
19 substantially predominate over any questions that may affect individual Class
20 members. Common questions of fact and law include (a) whether the Illegal Payday
21 Lenders were unlicensed in violation of State law; (b) whether the Illegal Payday
22 Loans were usurious and unenforceable under State or Federal law in whole or in
23 part as to principal or interest because of the laws relating to usury; (c) whether
24 debts owed to payday lenders are incurred in connection with the business of
25 lending money at an usurious rate; (d) whether the usurious rate was at least twice
26 the enforceable rate under the law of California; (e) whether Defendants' collection
27 of the illegal or unenforceable debt was made with actual or constructive knowledge
28

1 of the illegality of the loans; (f) whether Defendants' collection of the illegal debt
2 was the proximate cause of the Class's injuries; (g) whether the Class suffered an
3 injury to property by the debiting of their accounts by Defendants; and (h) should
4 the running of the statute of limitations for the Class's claims be equitably tolled.

5 138. Typicality: Plaintiffs' claims are typical of the claims of the members
6 of the Class. Plaintiffs and all members of the Class have been similarly affected by
7 First International's and Mutual of Omaha's actions.

8 139. Adequacy of Representation: Plaintiffs will fairly and adequately
9 represent and protect the interests of the Class. Plaintiffs have retained counsel with
10 substantial experience in prosecuting complex and class action litigation. Plaintiffs
11 and their counsel are committed to vigorously prosecuting this action on behalf of
12 the Class, and have the financial resources to do so.

13 140. Superiority of Class Action: Plaintiffs and the members of the Class
14 suffered, and will continue to suffer, harm as a result of Defendants' unlawful and
15 wrongful conduct. A class action is superior to other available methods for the fair
16 and efficient adjudication of the present controversy. Individual joinder of all
17 members of the Class is impractical. Even if individual class members had the
18 resources to pursue individual litigation, it would be unduly burdensome to the
19 courts in which the individual litigation would proceed. Individual litigation
20 magnifies the delay and expense to all parties in the court system of resolving the
21 controversies engendered by Defendants' common course of conduct. The class
22 action device allows a single court to provide the benefits of unitary adjudication,
23 judicial economy, and the fair and equitable handling of all class members' claims
24 in a single forum. The conduct of this action as a class action conserves the
25 resources of the parties and of the judicial system, and protects the rights of the class
26 members.

FIRST CLAIM FOR RELIEF
Violation of 18 U.S.C. § 1962(c) by First International

141. Plaintiffs incorporate by reference the preceding paragraphs.

142. First International is a “person” as defined by 18 U.S.C. § 1961(3).

143. The financial entity participants in the ACH Network are comprised of the following:

- a. “Originators” which include any party that “initiates” entries into the ACH Network pursuant to an Origination Agreement with an ODFI or an agreement with a Third-Party Sender to initiate entries on its behalf, including Illegal Payday Lenders;
- b. Third Party Service Providers” which include entities other than the Originator, ODFI, or RDFI that perform any function on behalf of the Originator, ODFI, or RDFI with respect to the processing of ACH entries. A “Third-Party Sender” is a type of Third-Party Service Provider that enters into an agreement with an Originator to “initiate” entries on its behalf and then enters into an Origination Agreement with an ODFI to “originate” the entries initiated by the Third-Party Sender on behalf of the Originator;
- c. “ODFIs” which include all financial institutions participating in the ACH Network that originate ACH entries pursuant to an Origination Agreement with Originators or Third-Party Senders and that agree to abide by the NACHA Rules, including First International;
- d. “ACH Operators” which include two central clearing facilities, the Federal Reserve Banks and Electronic Payments Network (EPN), that receive entries from ODFIs and distribute the entries to the appropriate RDFI; and
- e. “RDFIs” which include all depository financial institutions participating in the ACH Network that receive ACH transaction

1 instructions from ODFIs through the ACH Operator and credit or
2 debit funds to or from its customers' accounts and that are qualified
3 to receive ACH entries and agree to abide by the NACHA Rules.

4 144. These financial entity participants in the ACH Network constitute an
5 "association-in-fact" enterprise as those terms are used in 18 U.S.C. § 1961(4) (the
6 "ACH Network Enterprise") in that:

- 7
8 a. Participants in the ACH Network Enterprise share the common
9 lawful and legitimate purpose of facilitating batch processing of
10 electronic payments (credit and debit transactions) for and between
11 participating depository financial institutions;
12 b. To achieve this common purpose, participants in the ACH Network
13 Enterprise preserve close business relationships and maintain
14 established and defined roles within the enterprise;
15 c. The ACH Network Enterprise has been in existence for many years,
16 is still ongoing, and has longevity and structure sufficient to permit
17 the participants to achieve their common purpose.

18 145. The ACH Network Enterprise is an enterprise engaged in and whose
19 activities, including daily batch processing of electronic payments across the United
20 States, affect interstate commerce. First International is associated with the ACH
21 Network Enterprise through its role as an ODFI within the ACH Network
22 Enterprise.

23 146. First International, as an ODFI, plays a distinct role in the operation,
24 management, and control of the ACH Network Enterprise. Under the NACHA
25 Rules, First International serves the critical function of "gatekeeper of the ACH
26 Network" and is responsible for all entries originated through First International,
27 whether initiated by an Originator, or by a Third Party Service Provider acting on
28

1 the Originator's behalf. First International has decision-making authority within the
 2 ACH Network Enterprise regarding which Originators to accept or reject into the
 3 ACH Network.

4 147. In order to initiate debit entries from consumer checking accounts on
 5 the ACH Network, Illegal Payday Lenders, or Third-Party Senders acting on their
 6 behalf, must enter into an Origination Agreement with an ODFI, such as First
 7 International, and the ODFI must originate the ACH debit. Pursuant to NACHA
 8 Rules, when an ODFI originates an ACH entry, it is warranting to each RDFI and
 9 ACH Operator that the entry has been properly authorized meaning that it is, *inter*
 10 *alia*, compliant with the NACHA Rules and state and federal laws.

11 148. While First International shares in the common purpose of the ACH
 12 Network and uses the ACH Network to originate lawful and legitimate transactions,
 13 First International also uses its role within the ACH Network Enterprise to conduct
 14 unlawful payday loan debt collection by granting Illegal Payday Lenders access to
 15 the ACH Network and "originating" debit entries from the bank accounts of
 16 California consumers "initiated" by the Illegal Payday Lenders (or Third-Party
 17 Senders working on their behalf) for the purpose of repaying usurious and illegal
 18 loans. The loans made by Illegal Payday Lenders are "unlawful debts" under 18
 19 U.S.C. § 1961(6) in that the loans are:

- 20 a. unenforceable under State or Federal law in whole or in part as to
- 21 principal or interest because of the laws relating to usury;
- 22 b. incurred in connection with the business of lending money at a rate
- 23 usurious under State or Federal law; and
- 24 c. the usurious rate was at least twice the enforceable rate.

25 149. First International, in its role as an ODFI in the ACH Network
 26 Enterprise, originated debit entries on the ACH Network at the request of Illegal
 27 Payday Lenders (or Third-Party Senders acting on the Illegal Payday Lenders'

1 behalf) that First International knew routinely violate State law; and originated debit
2 entries that First International knew were in violation of California law, the NACHA
3 Rules and FDIC and OCC guidelines.

4 150. Pursuant to the fraudulent scheme, First International participated in the
5 collection of unlawful debts in that:

- 6 a. Illegal Payday Lenders, or Third-party Senders acting on their
7 behalf, "initiated" debit entries that were subsequently "originated"
8 into the ACH Network by First International whereby borrowers'
9 bank accounts were debited and the unlawful debts collected in
10 violation of 18 U.S.C. § 1962(c);
- 11 b. First International "originated" ACH entries by which the accounts
12 were debited and the unlawful debts collected in violation of 18
13 U.S.C. §1962(c);
- 14 c. First International knew that the Illegal Payday Lenders were
15 payday lenders and that their payday loans were illegal and
16 unenforceable in California in part as to interest and still originated
17 ACH debit entries into California at the request of the Illegal
18 Payday Lenders in violation of 18 U.S.C. §1962(c).

19 151. Accordingly, First International has used its gatekeeping role as an
20 ODFI in the ACH Network to directly and indirectly conduct and participate in the
21 conduct of the affairs of the ACH Network Enterprise through the collection of
22 unlawful debts in violation of 18 U.S.C. § 1962(c).

23 152. As a direct and proximate result of First International's violations of 18
24 U.S.C. § 1962(c), Plaintiffs and the members of the Class were injured in their
25 property by the debiting of their bank accounts by First International and such injury
26 was reasonably foreseeable.

SECOND CLAIM FOR RELIEF

Violation of 18 U.S.C. § 1962(d) by First International

153. Plaintiffs incorporate by reference the preceding paragraphs.

154. First International and Illegal Payday Lenders, or Third Party Senders acting on their behalf, reached an agreement to use their respective roles within the ACH Network Enterprise to facilitate payday loans to consumers residing in states that banned the practice, including California, and collect usurious interest rates in violation of State law. Their endeavor, if completed, would constitute the collection of “unlawful debts” under 18 U.S.C. § 1961(6) in that the loans are:

- a. unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury;
- b. incurred in connection with the business of lending money at a rate usurious under State or Federal law; and
- c. the usurious rate was at least twice the enforceable rate.

155. In furtherance of their agreement, First International and Illegal Payday Lenders agreed to take certain acts to facilitate the collection of unlawful debts:

- a. Illegal Payday Lenders, or Third-Party Senders acting on their behalf, agreed to “initiate” ACH debit entries to be originated on the ACH Network by First International whereby borrowers’ bank accounts were debited and the unlawful debts collected in violation of 18 U.S.C. § 1962(c);
- b. First International agreed to “originate” the ACH debit entries initiated by Illegal Payday Lenders despite their unlawful nature by which the accounts were debited and the unlawful debts collected in violation of 18 U.S.C. § 1962(c);
- c. First International knew that the Illegal Payday Lenders were payday lenders and that their loans were illegal and unenforceable in

1 California in part as to interest and still originated ACH debit entries
 2 into California on behalf of the Illegal Payday Lenders in violation
 3 of 18 U.S.C. §1962(c).

4 156. Accordingly, First International intentionally conspired and agreed with
 5 Illegal Payday Lenders to use its gatekeeping role as an ODFI in the ACH Network
 6 to directly and indirectly conduct and participate in the conduct of the affairs of the
 7 ACH Network Enterprise through the collection of unlawful debts in violation of 18
 8 U.S.C. § 1962(c).

9 157. As a direct and proximate result of First International and Illegal
 10 Payday Lenders' conspiracy, the overt acts taken in furtherance of that conspiracy,
 11 and violations of 18 U.S.C. § 1962(d), Plaintiffs and the members of the Class were
 12 injured in their property by the debiting of their bank accounts by First International
 13 and such injury was reasonably foreseeable.

14 **THIRD CLAIM FOR RELIEF**
 15 **Violation of 18 U.S.C. § 1962(c) by Mutual of Omaha**

16 158. Plaintiffs incorporate by reference the preceding paragraphs.

17 159. Mutual of Omaha is a "person" as defined by 18 U.S.C. § 1961(3).

18 160. The financial entity participants in the ACH Network are comprised of
 19 the following:

- 20 a. "Originators" which include any party that "initiates" entries into
 21 the ACH Network pursuant to an Origination Agreement with an
 22 ODFI or an agreement with a Third-Party Sender to initiate entries
 23 on its behalf, including Illegal Payday Lenders;
- 24 b. Third Party Service Providers" which include entities other than the
 25 Originator, ODFI, or RDFI that perform any function on behalf of
 26 the Originator, ODFI, or RDFI with respect to the processing of
 27 ACH entries. A "Third-Party Sender" is a type of Third-Party
 28

- 1 Service Provider that enters into an agreement with an Originator to
 2 “initiate” entries on its behalf and then enters into an Origination
 3 Agreement with an ODFI to “originate” the entries initiated by the
 4 Third-Party Sender on behalf of the Originator;
 5 c. “ODFIs” which include all financial institutions participating in the
 6 ACH Network that originate ACH entries pursuant to an Origination
 7 Agreement with Originators or Third-Party Senders and that agree
 8 to abide by the NACHA Rules, including Mutual of Omaha;
 9 d. “ACH Operators” which include two central clearing facilities, the
 10 Federal Reserve Banks and Electronic Payments Network (EPN),
 11 that receive entries from ODFIs and distribute the entries to the
 12 appropriate RDFI; and
 13 e. “RDFIs” which include all depository financial institutions
 14 participating in the ACH Network that receive ACH transaction
 15 instructions from ODFIs through the ACH Operator and credit or
 16 debit funds to or from its customers’ accounts and that are qualified
 17 to receive ACH entries and agree to abide by the NACHA Rules.

18 161. These financial entity participants in the ACH Network constitute an
 19 “association-in-fact” enterprise as those terms are used in 18 U.S.C. § 1961(4) (the
 20 “ACH Network Enterprise”) in that:

- 21 a. Participants in the ACH Network Enterprise share the common
 22 lawful and legitimate purpose of facilitating batch processing of
 23 electronic payments (credit and debit transactions) for and between
 24 participating depository financial institutions;
 25 b. To achieve this common purpose, participants in the ACH Network
 26 Enterprise preserve close business relationships and maintain
 27 established and defined roles within the enterprise;
 28

1 c. The ACH Network Enterprise has been in existence for many years,
2 is still ongoing, and has longevity and structure sufficient to permit
3 the participants to achieve their common purpose.

4 162. The ACH Network Enterprise is an enterprise engaged in and whose
5 activities, including daily batch processing of electronic payments across the United
6 States, affect interstate commerce. Mutual of Omaha is associated with the ACH
7 Network Enterprise through its role as an ODFI within the ACH Network
8 Enterprise.

9 163. Mutual of Omaha, as an ODFI, plays a distinct role in the operation,
10 management, and control of the ACH Network Enterprise. Under the NACHA
11 Rules, Mutual of Omaha serves the critical function of “gatekeeper of the ACH
12 Network” and is responsible for all entries originated through Mutual of Omaha,
13 whether initiated by an Originator, or by a Third Party Service Provider acting on
14 the Originator’s behalf. Mutual of Omaha has decision-making authority within the
15 ACH Network Enterprise regarding which Originators to accept or reject into the
16 ACH Network.

17 164. In order to initiate debit entries from consumer checking accounts on
18 the ACH Network, Illegal Payday Lenders, or Third-Party Senders acting on their
19 behalf, must enter into an Origination Agreement with an ODFI, such as Mutual of
20 Omaha, and the ODFI must originate the ACH debit. Pursuant to NACHA Rules,
21 when an ODFI originates an ACH entry, it is warranting to each RDFI and ACH
22 Operator that the entry has been properly authorized meaning that it is, *inter alia*,
23 compliant with the NACHA Rules and state and federal laws.

24 165. While Mutual of Omaha shares in the common purpose of the ACH
25 Network and uses the ACH Network to originate lawful and legitimate transactions,
26 Mutual of Omaha also uses its role within the ACH Network Enterprise to conduct
27 unlawful payday loan debt collection by granting Illegal Payday Lenders access to
28

1 the ACH Network and “originating” debit entries from the bank accounts of
 2 California consumers “initiated” by the Illegal Payday Lenders (or Third-Party
 3 Senders working on their behalf) for the purpose of repaying usurious and illegal
 4 loans. The loans made by Illegal Payday Lenders are “unlawful debts” under 18
 5 U.S.C. § 1961(6) in that the loans are:

- 6 a. unenforceable under State or Federal law in whole or in part as to
 7 principal or interest because of the laws relating to usury;
- 8 b. incurred in connection with the business of lending money at a rate
 9 usurious under State or Federal law; and
- 10 c. the usurious rate was at least twice the enforceable rate.

11 166. Mutual of Omaha, in its role as an ODFI in the ACH Network
 12 Enterprise, originated debit entries on the ACH Network at the request of Illegal
 13 Payday Lenders (or Third-Party Senders acting on the Illegal Payday Lenders’
 14 behalf) that Mutual of Omaha knew routinely violate State law; and originated debit
 15 entries that Mutual of Omaha knew were in violation of California law, the NACHA
 16 Rules and FDIC and OCC guidelines.

17 167. Pursuant to the fraudulent scheme, Mutual of Omaha participated in the
 18 collection of unlawful debts in that:

- 19 a. Illegal Payday Lenders, or Third-party Senders acting on their
 20 behalf, “initiated” debit entries that were subsequently “originated”
 21 into the ACH Network by Mutual of Omaha whereby borrowers’
 22 bank accounts were debited and the unlawful debts collected in
 23 violation of 18 U.S.C. § 1962(c);
- 24 b. Mutual of Omaha “originated” ACH entries by which the accounts
 25 were debited and the unlawful debts collected in violation of 18
 26 U.S.C. §1962(c);

1 c. Mutual of Omaha knew that the Illegal Payday Lenders were
 2 payday lenders and that their payday loans were illegal and
 3 unenforceable in California in part as to interest and still originated
 4 ACH debit entries into California at the request of the Illegal
 5 Payday Lenders in violation of 18 U.S.C. §1962(c).

6 168. Accordingly, Mutual of Omaha has used its gatekeeping role as an
 7 ODFI in the ACH Network to directly and indirectly conduct and participate in the
 8 conduct of the affairs of the ACH Network Enterprise through the collection of
 9 unlawful debts in violation of 18 U.S.C. § 1962(c).

10 169. As a direct and proximate result of Mutual of Omaha's violations of 18
 11 U.S.C. § 1962(c), Plaintiffs and the members of the Class were injured in their
 12 property by the debiting of their bank accounts by Mutual of Omaha and such injury
 13 was reasonably foreseeable.

14 **FOURTH CLAIM FOR RELIEF**

15 **Violation of 18 U.S.C. § 1962(d) by Mutual of Omaha**

16 170. Plaintiffs incorporate by reference the preceding paragraphs.

17 171. Mutual of Omaha and Illegal Payday Lenders, or Third Party Senders
 18 acting on their behalf, reached an agreement to use their respective roles within the
 19 ACH Network Enterprise to facilitate payday loans to consumers residing in states
 20 that banned the practice, including California, and collect usurious interest rates in
 21 violation of State law. Their endeavor, if completed, would constitute the collection
 22 of "unlawful debts" under 18 U.S.C. § 1961(6) in that the loans are:

- 23 a. unenforceable under State or Federal law in whole or in part as to
- 24 principal or interest because of the laws relating to usury;
- 25 b. incurred in connection with the business of lending money at a rate
- 26 usurious under State or Federal law; and
- 27 c. the usurious rate was at least twice the enforceable rate.

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1 172. In furtherance of their agreement, Mutual of Omaha and Illegal Payday
2 Lenders agreed to take certain acts to facilitate the collection of unlawful debts:

- 3 a. Illegal Payday Lenders, or Third-Party Senders acting on their
4 behalf, agreed to “initiate” ACH debit entries to be originated on the
5 ACH Network by Mutual of Omaha whereby borrowers’ bank
6 accounts were debited and the unlawful debts collected in violation
7 of 18 U.S.C. § 1962(c);
- 8 b. Mutual of Omaha agreed to “originate” the ACH debit entries
9 initiated by Illegal Payday Lenders despite their unlawful nature by
10 which the accounts were debited and the unlawful debts collected in
11 violation of 18 U.S.C. §1962(c);
- 12 c. Mutual of Omaha knew that the Illegal Payday Lenders were
13 payday lenders and that their loans were illegal and unenforceable in
14 California in part as to interest and still originated ACH debit entries
15 into California on behalf of the Illegal Payday Lenders in violation
16 of 18 U.S.C. §1962(c).

17 173. Accordingly, Mutual of Omaha intentionally conspired and agreed with
18 Illegal Payday Lenders to use its gatekeeping role as an ODFI in the ACH Network
19 to directly and indirectly conduct and participate in the conduct of the affairs of the
20 ACH Network Enterprise through the collection of unlawful debts in violation of 18
21 U.S.C. § 1962(c).

22 174. As a direct and proximate result of Mutual of Omaha and Illegal
23 Payday Lenders’ conspiracy, the overt acts taken in furtherance of that conspiracy,
24 and violations of 18 U.S.C. § 1962(d), Plaintiffs and the members of the Class were
25 injured in their property by the debiting of their bank accounts by Mutual of Omaha
26 and such injury was reasonably foreseeable.

FIFTH CLAIM FOR RELIEF
Aiding and Abetting Violations of California
Usury Laws against All Defendants

175. Plaintiffs incorporate by reference the preceding paragraphs.

176. Pursuant to Cal. Const., art. XV, Section 1, parties may not contract for a loan with interest greater than “10 percent per annum.” Pursuant to Cal. Civ. C. Section 1916-1 *et seq.*, “[t]he rate of interest upon the loan or forbearance of any money, goods or things in action or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding twelve dollars on the one hundred dollars for one year and not exceeding that rate for a greater or less sum or for a longer or shorter time, in which case such rate exceeding seven dollars on one hundred dollars shall be clearly expressed in writing.” Cal. Civ. Code § 1916-1 (collectively referred to with Cal. Const., art. XV, Section 1 as the “California usury laws”).

177. As set forth more fully above, in the course of processing payday loans to consumers in California, Defendants repeatedly and knowingly aided and abetted the Illegal Payday Lenders’ violations of California usury laws by causing to be collected usurious interest payments.

178. On the dates specified above, Defendants credited and withdrew money from Plaintiffs’ checking accounts and electronically transmitted it to the Illegal Payday Lenders.

179. In making these withdrawals, credits and transmissions, Defendants knowingly provided substantial assistance to—and profited from—the illegal lending activities of the Illegal Payday Lenders.

1 180. At the time Defendants made these electronic withdrawals and
2 transfers, they knew the identity of the Illegal Payday Lenders, including their
3 unlawful activity.

4 181. Defendants were prohibited by NACHA Rules from honoring ACH
5 transactions on unlawful payday loans.

6 182. Defendants were aware of the illegal nature of the lending activities of
7 the Illegal Payday Lenders through due diligence procedures.

8 183. At the time Defendants transmitted these funds, they knowingly
9 assisted the Illegal Payday Lenders and were incentivized to do so by a bare profit
10 motive.

11 184. As a result of Defendants' knowing participation in the making of
12 illegal payday loans, each is liable as an aider and abettor to the violations of the
13 California usury laws referenced herein.

14 **SIXTH CLAIM FOR RELIEF**

15 **Violation of California Unfair Competition Law, Unlawful Prong** 16 **Business and Professions Code § 17200, *et seq.* against All Defendants**

17 185. Defendants' conduct described herein violates the Unfair Competition
18 Law (the "UCL"), codified at California Business and Professions Code section
19 17200, *et seq.*

20 186. The UCL prohibits, and provides civil remedies for, unfair competition.
21 Its purpose is to protect both consumers and competitors by promoting fair
22 competition in commercial markets for goods and services. In service of that
23 purpose, the Legislature framed the UCL's substantive provisions in broad,
24 sweeping language.

25 187. By defining unfair competition to include any "any unlawful, unfair or
26 fraudulent business act or practice," the UCL permits violations of other laws to be
27 treated as unfair competition that is independently actionable, and sweeps within its
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1 scope acts and practices not specifically proscribed by any other law. Defendants’
 2 conduct violates the UCL’s “unlawful” prong in the following respects, among
 3 others: Defendants repeatedly conspired with and aided and abetted Illegal Payday
 4 Lenders, to make payday loans that were illegal, usurious, and unconscionable under
 5 California law, which conduct violated Cal. Const. art. XV, § 1, 18 U.S.C. §
 6 1962(c), and/or 19 U.S.C. § 1962(d).

7 188. Defendants’ conduct further violates the California Deferred Deposit
 8 Transaction Law (“CDDTL”), which also governs payday lending in California.
 9 Under Financial Code section 23001, subdivision (a), a “deferred deposit
 10 transaction” (commonly known as a “payday loan”), is a transaction whereby a
 11 person defers depositing a customer’s personal check until a specific date, pursuant
 12 to a written agreement for a fee or other charge. “Personal check” includes the
 13 electronic equivalent of a personal check that is transmitted through the ACH
 14 Network. Financial Code section 23001, subdivision (f) defines “deferred deposit
 15 originator” as a person who offers, originates, or makes a deferred deposit
 16 transaction.

17 189. Financial Code section 23005, subdivision (a) states, in relevant part,
 18 “No person shall offer, originate, or make a deferred deposit transaction, arrange a
 19 deferred deposit transaction for a deferred deposit originator, act as an agent for a
 20 deferred deposit originator, or assist a deferred deposit originator in the origination
 21 of a deferred deposit transaction without first obtaining a license from the
 22 commissioner. . . .” Defendants each violated the CDDTL by arranging deferred
 23 deposit transactions for Illegal Payday Lenders and assisting Illegal Payday Lenders
 24 in originating ACH debits without first obtaining a license in California to do so.

25 190. The conduct of Defendants was not motivated by any business or
 26 economic need or rationale. The harm and adverse impact of Defendants’ conduct
 27
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1 on members of the general public was neither outweighed nor justified by any
2 legitimate reasons, justifications, or motives.

3 191. Defendants' conduct was substantially injurious to consumers in that
4 they have been forced to pay substantial sums in the form of unlawful interest
5 charges and fees on payday loans.

6 192. As a result of Defendants' violations of the UCL's "unlawful" prong,
7 Plaintiffs and members of the Class have paid, and/or will continue to pay,
8 unreasonably excessive amounts of money for banking services and thereby have
9 suffered and will continue to suffer actual damages.

10 193. Pursuant to California Business and Professions code section 17203,
11 Plaintiffs and the Class are therefore entitled to, *inter alia*:

12 a. An order requiring Defendants to cease the unlawful and unfair acts
13 alleged herein;

14 b. Full restitution of all monies paid by Illegal Payday Lenders, pursuant
15 to California Code of Civil Procedure section 384;

16 c. Pre-judgment interest at the highest rate allowable by law; and

17 d. Payment of their attorneys' fees and costs pursuant to, *inter alia*,
18 California Code of Civil Procedure section 1021.5.

19 **SEVENTH CLAIM FOR RELIEF**

20 **Violation of California Unfair Competition Law, Unfair Prong** 21 **Business and Professions Code § 17200, et seq. against All Defendants**

22 194. Defendants' conduct described herein violates the Unfair Competition
23 Law (the "UCL"), codified at California Business and Professions Code section
24 17200, *et seq.*

25 195. Defendants' conduct violates the UCL's "unfair" prong for the reasons
26 set forth above, including without limitation: by conspiring with and aiding and
27 abetting Illegal Payday Lenders to charge illegal, usurious, and unconscionable fees
28

1 for payday loans, Defendants violate California's usury laws and harm California
2 consumers.

3 196. Defendants' conduct was not motivated by any business or economic
4 need or rationale. The harm and adverse impact of Defendants' conduct on
5 members of the general public was neither outweighed nor justified by any
6 legitimate reasons, justifications, or motives.

7 197. The harm to Plaintiffs and Class Members arising from Defendants'
8 unfair practices relating to the imposition of unlawful payday loans outweighs the
9 utility, if any, of those practices.

10 198. Defendants' unfair business practices relating to the provision of
11 unlawful payday loans are immoral, unethical, oppressive, unscrupulous,
12 unconscionable and/or substantially injurious to Plaintiffs and members of the Class.

13 199. Pursuant to California Business and Professions code section 17203,
14 Plaintiffs and the Class are therefore entitled to, *inter alia*:

15 a. An order requiring Defendants to cease the unlawful and unfair acts
16 alleged herein;

17 b. Full restitution of all monies paid to Illegal Payday Lenders, pursuant
18 to California Code of Civil Procedure section 384;

19 c. Pre-judgment interest at the highest rate allowable by law; and

20 d. Payment of their attorneys' fees and costs pursuant to, *inter alia*,
21 California Code of Civil Procedure section 1021.5.

22
23 **EIGHTH CLAIM FOR RELIEF**
Assumpsit against All Defendants

24 200. Plaintiffs incorporate by reference the preceding paragraphs.

25 201. Defendants First International and Mutual of Omaha received funds
26 belonging to Plaintiffs and the Class.

1 202. Defendants First International's and Mutual of Omaha's receipt of
2 money belonging to Plaintiffs and the Class was improper because the money
3 represented repayments of debts that were illegal and unenforceable.

4 203. Defendants First International and Mutual of Omaha benefited from
5 receipt of the funds.

6 204. Plaintiffs and the Class are entitled to return of the funds received by
7 First International and Mutual of Omaha.

8 205. Because the funds received from Plaintiffs and the Class are, upon
9 information and belief, no longer in the possession of First International and Mutual
10 of Omaha, Plaintiffs have a right to restitution *at law* from First International and
11 Mutual of Omaha.

12
13 **NINTH CLAIM FOR RELIEF**
14 **Unjust Enrichment against All Defendants**

15 206. Plaintiffs re-allege the preceding paragraphs as if fully set forth herein
16 and, to the extent necessary, plead this cause of action in the alternative.

17 207. Defendants in their roles as ODFIs, originated debit entries on the ACH
18 Network initiated by Illegal Payday Lenders (or Third-Party Senders acting on the
19 Originator's behalf) that were in violation of state law, the NACHA Operating
20 Rules, and FDIC and OCC guidelines.

21 208. Defendants charged and retained a transaction fee for each debit entry
22 they originated on the ACH Network initiated by Illegal Payday Lenders (or Third-
23 Party Senders acting on the Originator's behalf) that were in violation of state law,
24 the NACHA Operating Rules, and FDIC and OCC guidelines.

25 209. Defendants received and retained wrongful benefits from Plaintiffs and
26 the Class in the form of such transaction fees.
27
28

1 210. As a result of Defendants' wrongful conduct as alleged herein,
 2 Defendants have been unjustly enriched at the expense of, and to the detriment of,
 3 Plaintiffs and members of the Class.

4 211. Defendants' unjust enrichment is traceable to, and resulted directly and
 5 proximately from, the conduct alleged herein.

6 212. It is inequitable for Defendants to be permitted to retain the benefits
 7 they received, and are still receiving, without justification, from originating debit
 8 entries on the ACH Network initiated by Illegal Payday Lenders (or Third-Party
 9 Senders acting on the Originator's behalf). Defendants' retention of such funds
 10 under circumstances making it inequitable to do so constitutes unjust enrichment.

11 213. The financial benefits derived by Defendants rightfully belong to
 12 Plaintiffs and members of the Class. Defendants should be compelled to disgorge in
 13 a common fund for the benefit of Plaintiffs and members of the Class all wrongful
 14 or inequitable proceeds received from them. A constructive trust should be imposed
 15 upon all wrongful or inequitable sums received by Defendants traceable to Plaintiffs
 16 and the members of the Class.

17 214. Plaintiffs and members of the Class have no adequate remedy at law.

18
 19 **TENTH CLAIM FOR RELIEF**
 20 **Permanent Injunctive Relief against All Defendants**

21 215. Plaintiffs re-allege the preceding paragraphs as if fully set forth herein
 22 and, to the extent necessary, plead this cause of action in the alternative.

23 216. Defendants First International and Mutual of Omaha should be
 24 enjoined and prohibited from serving as the ODFI for Illegal Payday Lenders.

25 **WHEREFORE**, Plaintiffs on her behalf and on behalf of the Class seeks judgment
 26 in an amount to be determined at trial but not less than \$5,000,000, as follows:

- 27 (a) Under 18 U.S.C. § 1964(c), awarding each member of the Class
 28 damages from First International for First International's violations of

1 18 U.S.C. § 1962(c) consisting of a refund of every ACH debit from
2 their account in which First International was the ODFI and which
3 represented payment of interest on a loan from an Illegal Payday
4 Lender, trebled;

5 (b) Under 18 U.S.C. § 1964(c), awarding each member of the Class
6 damages from First International for First International's violations of
7 18 U.S.C. § 1962(d) consisting of a refund of every ACH debit from
8 their account in which First International was the ODFI and which
9 represented payment of interest on a loan from an Illegal Payday
10 Lender, trebled;

11 (c) Under 18 U.S.C. § 1964(c), awarding each member of the Class
12 damages from Mutual of Omaha for Mutual of Omaha's violations of
13 18 U.S.C. § 1962(c) consisting of a refund of every ACH debit from
14 their account in which Mutual of Omaha was the ODFI and which
15 represented payment of interest on a loan from an Illegal Payday
16 Lender, trebled;

17 (d) Under 18 U.S.C. § 1964(c), awarding each member of the Class
18 damages from Mutual of Omaha for Mutual of Omaha's violations of
19 18 U.S.C. § 1962(d) consisting of a refund of every ACH debit from
20 their account in which Mutual of Omaha was the ODFI and which
21 represented payment of interest on a loan from an Illegal Payday
22 Lender, trebled;

23 (e) Awarding the Class damages against all Defendants as aiders and
24 abettors to the violations of the California Deferred Deposit
25 Transaction Law;

26 (f) Awarding the Class damages against all Defendants as aiders and
27 abettors to the violations of the California usury laws;
28

- (g) Awarding the Class injunctive relief, restitution, damages, and penalties as against all Defendants pursuant to the California Unfair Competition Law;
- (h) Permitting each member of the Class to recover damages in assumpsit from all Defendants consisting of a refund of every ACH debit from their account in which Defendants were the ODFI and which represented repayment of a loan from an Illegal Payday Lender;
- (i) Compelling Defendants to disgorge in a common fund for the benefit of Plaintiffs and members of the Class all wrongful or inequitable proceeds received from them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Defendants traceable to Plaintiffs and the members of the Class;
- (j) Granting a permanent injunction enjoining and prohibiting First International and Mutual of Omaha from serving as the ODFI for Illegal Payday Lenders and directing First International;
- (k) Awarding Plaintiffs attorneys' fees and costs in pursuing this action; and
- (l) Awarding such other and further relief as this Court deems just, proper and equitable.

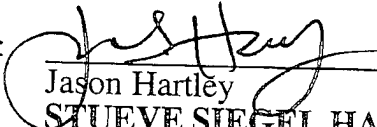
JURY DEMAND

Plaintiffs hereby demand a jury trial in the instant action.

Dated: March 31, 2014

Respectfully submitted,

By:


 Jason Hartley
STUEVE SIEGEL HANSON LLP
 550 West C. Street, Suite 1750
 San Diego, CA 92101
 Tel: (619) 400-5822
 Fax: (619) 400-5832

1 Norman E. Siegel
2 Steve Six
3 J. Austin Moore
4 (*pro hac vice forthcoming*)
5 **STUEVE SIEGEL HANSON LLP**
6 460 Nichols Road, Suite 200
7 Kansas City MO 64112
8 Tel: (816) 714-7100
9 Fax: (816) 714-7101

10 Darren T. Kaplan
11 (*pro hac vice forthcoming*)
12 **CHITWOOD HARLEY HARNES LLP**
13 1350 Broadway, Suite 908
14 New York, NY 10018
15 Tel: (917) 595-4600
16 Fax: (404) 876-4476
17 dkaplan@chitwoodlaw.com

18 Jeffrey M. Ostrow
19 Jason H. Alperstein
20 (*pro hac vice forthcoming*)
21 **KOPELOWITZ OSTROW P.A.**
22 200 S.W. 1st Avenue, 12th Floor
23 Fort Lauderdale, Florida 33301
24 Tel: (954) 525-4100
25 Fax: (954) 525-4300
26 ostrow@KOlawyers.com
27 alperstein@KOlawyers.com

28 Hassan A. Zavareei (CA Bar No. 181547)
Jeffrey D. Kaliel (CA Bar No. 238293)
Anna C. Haac
(*pro hac vice forthcoming*)
TYCKO & ZAVAREEI LLP
2000 L Street, N.W., Suite 808
Washington, D.C. 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
hzavareei@tzlegal.com
jkaliel@tzlegal.com
ahaac@tzlegal.com

Counsel for Plaintiffs and the Class

EXHIBIT A

SECTION VII – Appendices

APPENDIX C ISSUES TO BE ADDRESSED IN THE AGREEMENT BETWEEN THE ODFI AND THE ORIGINATOR OR THIRD-PARTY SENDER

APPENDIX C

Issues To Be Addressed in the Agreement Between the ODFI and the Originator or Third-Party Sender

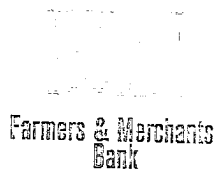
CONSUMER		CORPORATE		ISSUES THAT SHOULD BE DEFINED IN ORIGATION AGREEMENT BETWEEN ODFI AND ORIGINATOR OR THIRD-PARTY SENDER
DR.	CR.	DR.	CR.	
X	X	X	X	The nature, format and medium of Entries, or Entry information to be furnished by the Originator.
X	X	X	X	The place and time the Entries or Entry information is to be furnished by the Originator.
X	X	X	X	The Originator's obligation to obtain valid authorization of Entries from Receivers.
X	X	X	X	The level of security to be established for delivering the payment data from the Originator to the ODFI, such as transmittals with authorized signatures, the method used to verify authenticity of telecommunicated data, etc.
X	X	X	X	Other data security and data breach provisions.
X	X	X	X	Responsibilities of the participating ODFI and Originator with respect to remaking Rejected Entries or Files.
X	X	X	X	The deadline for Reversals, corrections, or changes by the Originator of Entries or Entry information furnished to the ODFI.
X	X	X	X	The ODFI's responsibility for delay by the ACH Operator or RDFI in processing any credit or debit the DFI Transmits to the ACH Operator, or failure to process or credit or debit any such Entry or other acts of omission of a third party.
X	X	X	X	Whether the Origination Agreement covers credit or debit Entries or both.
X	X	X	X	Any restrictions on the types of ACH Entries that may be originated.
X		X		The time when the funds may be available to the Originator.
	X		X	The time when funds are to be provided to the ODFI by the Originator.
X	X	X	X	The charges or fees by the ODFI for providing services to the Originator under the Origination Agreement.
X	X	X	X	Exposure limits for the Originator.
X	X	X	X	Responsibilities of the ODFI and Originator with respect to handling Returns, Notifications of Change, dishonored Returns, and refused Notifications of Change.
X	X	X	X	The conditions under which a Third-Party Service Provider will be utilized.
X	X	X	X	Procedures for terminating the Origination Agreement and time frames under which the processing of Entries under that Origination Agreement will cease.
X	X	X	X	The right of the ODFI to terminate or suspend an agreement for breach of the Rules.
X	X	X	X	The Originator's obligation regarding Prenotifications, if Prenotification process is used.

APPENDIX C ISSUES TO BE ADDRESSED IN THE AGREEMENT BETWEEN THE ODFI AND THE ORIGINATOR OR THIRD-PARTY SENDER

SECTION VII – Appendices

CONSUMER		CORPORATE		ISSUES THAT SHOULD BE DEFINED IN ORIGINATION AGREEMENT BETWEEN ODFI AND ORIGINATOR OR THIRD-PARTY SENDER
DR.	CR.	DR.	CR.	
X				The Originator's obligation to obtain, retain, and provide copies of authorizations, particularly with regard to consumer authorizations under Regulation E.
X				The Originator's obligation with respect to consumer alleged errors, including under Regulation E.
X	X	X	X	The right of, and procedures for, the ODFI to audit an Originator for compliance with the Origination Agreement and the <i>Rules</i> .
X	X	X	X	Record retention requirements.
X	X	X	X	Use of proper authorization methods, authorization forms, and ACH formats.
X	X	X	X	The use of appropriate encryption standards for ACH Entries involving banking information that is Transmitted or exchanged via an Unsecured Electronic Network.
			X	Responsibilities of the ODFI and Originator with respect to handling Acknowledgment Entries, if such transactions are desired by the Originator.
X	X	X	X	An acknowledgment by the Originator that ACH transactions it originates comply with the provisions of U.S. law.
X	X	X	X	The Originator's responsibility for matters warranted or agreed by the ODFI in the <i>Rules</i> pertaining to Entries exchanged through the ACH Network, which may vary depending on the Entry Type.
X	X	X	X	For International ACH Transactions, (IAT entries), <ul style="list-style-type: none"> • The terms and conditions for the allocation of gains, losses and the assumption of risk for foreign exchange conversion. • The rights and responsibilities of the ODFI in the event of an Erroneous Entry.

EXHIBIT B



ELECTRONIC PAYMENT SERVICES AGREEMENT (ODFI)
ACH ORIGINATOR

This Agreement is made as of _____ 20__ between _____
_____ ("Company") and Farmers & Merchants Bank of Long Beach ("Bank").

RECITALS

Company wishes to use one or more of the electronic payment services described in the attached service addendum or addenda. Bank is willing to provide one or more of such services to Company, subject to the terms of this Agreement and the ACH Rules (the "Rules"), as amended from time to time, of the National Automated Clearing House Association and the Western Payment Alliance, as applicable.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Services: Defined Terms.

- (a) Subject to the terms and conditions of this Agreement and the attached Appendices Bank agrees to provide Company the electronic payment services (collectively, the "Services" and individually a "Service") selected by Company and approved by Bank. The attached Appendix or Appendices (collectively, the "Appendices" and individually an "Appendix") are incorporated herein by reference and made a part hereof. The Appendices describe the Services and the security procedures for the Services. The Appendices also specify maximum limits applicable to the Services. Company and Bank may agree in writing, from time to time, to add more Services. Bank may delay access to any Service until the Service has been approved by Bank for Company and all applicable Appendices and any other documents requested by Bank have been fully executed by Company and (where applicable) by Bank.
- (b) Either Company or Bank may discontinue any Service upon prior notice to the other party. If all Services are discontinued, this Agreement shall terminate automatically. Bank may terminate, or limit access to, a Service or all Services without prior notice to Company for any reason or for no reason, including if Bank reasonably believes that such action is necessary or appropriate to aid in the prevention or reduction of a loss or damage to Bank or to Company.
- (c) Bank may electronically record any telephone communications relating to any Service and all other telephone communications with Company. Company will ensure that all individuals using the Services on Company's behalf have consented to such recording.
- (d) Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules, and shall include entries for credit or debit to an account maintained with Bank (On-Us Entries) and (if used) any Prenotifications.

2. Compliance with Rules.

Company and Bank shall comply with and be subject to the Rules with respect to all Entries, whether or not a particular Entry is distributed through the Automated Clearing House (ACH) network, except as otherwise expressly provided herein. Unless the context otherwise requires, the Rules shall apply to On-Us Entries. Company shall act as an Originator and Bank shall act as an Originating Depository Financial Institution (ODFI)

with respect to Entries. After approval of Company, Company may originate PPD and CCD Entries subject to such restrictions as Bank may apply from time to time. Unless otherwise specified in writing by Bank, Company may not use the Services to originate Entries with other Standard Entry Codes other than PPD or CCD.

3. **Provisional Payments.**

- (a) Company agrees to be bound by the provision of the Rules making payment of a credit Entry by the Receiving Depository Financial Institution (RDFI) to the Receiver provisional until receipt by the RDFI of final settlement for such credit Entry. Company understands that if final settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the credit Entry.
- (b) Company agrees that any payment by Bank to Company for any debit Entry, returned credit Entry, or credit Reversal (as Reversal is defined in Section 13 of this Agreement) is provisional until receipt by Bank of final settlement for such Entry. If final settlement is not received, Bank is entitled to a refund from Company of the amount credited and Bank may charge Company's account for the amount credited. Bank may refuse to permit the use of any amount credited for a debit Entry or credit Reversal if it believes that there may not be sufficient funds in the Company's account to cover chargeback or return of such Entry or Reversal.

4. **Compliance with Laws; Consumer Debits.**

- (a) Company agrees to comply with all state and federal laws, rules regulations applicable to Company and its activities, including in connection with its use of the Services and the fulfillment of its obligations under this Agreement. Company acknowledges that Entries through the ACH system may not be used by Company in violation of, and the Entries originated by Company must comply with, the laws of the United States, including sanctions laws administered by the Office of Foreign Asset Control (OFAC).
- (b) Company agrees to comply with the notice requirements set forth in the Rules, the Electronic Fund Transfer Act, and Regulation E of the Board of Governors of the Federal Reserve System, as applicable, in connection with debit Entries from a consumer's account, including:
 - a. Before the initiation by Company of the first Entry to a Customer's Account, Company shall obtain from such Customer an authorization to initiate one or more Entries to the Customer's Account, which authorization shall comply with Regulation E and the Rules. Preauthorized Debit Entries to a consumer account must be authorized in a writing signed or similarly authenticated by the Customer. Electronic writings and authorizations must comply with Section 2.1.2 of the Rules and Sections 205.4(c) and 205.10(b) of Regulation E, or such successor or supplemental rules or regulations as may apply to the Debit Entries. Company shall provide Customer with a copy of such authorization. Each Entry thereafter shall be made pursuant to such authorization, and no Entry shall be initiated by Company after such authorization has been revoked or the arrangement between Company and such Customer has terminated. Company shall retain Customer authorizations for two years after they are terminated, and other documents related to Entries for a period of seven years. Company shall immediately furnish such authorizations and documents to Bank upon Bank's request.

- b. If the amount of a Debit Entry to a Customer's Account varies in amount from the previous Debit Entry relating to the same authorization or preauthorized amount, Company shall, at least ten (10) calendar days before the Effective Entry Date of such Debit Entry, send the Customer written notice of the amount of such Debit Entry and its Effective Entry Date, unless Customer has previously been notified of Customer's right to receive such notice and Customer has elected to receive such notice only when the Debit Entry does not fall within a specified range of amounts or varies from the most recent Debit Entry by an agreed amount.
- c. If any change is made by Company in the scheduled Effective Entry Date of one or more Debit Entries, Company shall, at least seven (7) calendar days before the Effective Entry Date of the first such Debit Entry to be affected by such change, send the Customer a written notice of the new Effective Entry Date(s) of such Entry or Entries.

5. **Delivery of Entry Data by Company.**

Company may, from time to time, deliver data for Entries (Entry Data) to Bank; provided that Company has successfully completed any required implementation testing prior to commencement of the applicable Service. The Entry Data shall be in the form, have the content, and be delivered to Bank in conformity with the Rules and any Bank Entry Data requirements provided to Company, as amended by Bank from time to time. In the event of any conflict between Bank Entry Data requirements and the Rules, the Bank Entry Data requirements shall govern. Company shall deliver such Entry Data in compliance with the Security Procedures (as defined in subparagraph 7(a) of this Agreement).

6. **Issuance of Checks.**

Company authorizes Bank to issue depository transfer checks and demand drafts (Checks) to debit accounts at financial institutions to accomplish the same purpose as debit Entries, as instructed by Company or as reasonably determined by Bank as appropriate for efficient processing of transfers of funds.

7. **Security Procedures.**

- (a) The Security Procedures agreed to by Company for use in connection with the delivery of Entry Data to Bank in the name of Company for each Service are described in Schedule B. For each Service, Security Procedure means each of the Primary Security Procedures selected by Company and any Secondary Security Procedures described in the applicable Service Addendum.
- (b) Company and Bank agree that the purpose of the Security Procedures is to verify the authenticity of Entry Data delivered to Bank in the name of Company and not to detect an error in the transmission or content of any Entry Data.
- (c) Company agrees that Bank Entry Data submitted in the name of Company will be deemed and be treated as Company's Entry Data, binding on Company: (i) if authorized by Company or submitted to Bank by one who is authorized by Company; and (b) if the authenticity of the Entry Data has been verified by Bank through the use of the Security Procedures, even if the Entry Data was not authorized by Company or submitted to Bank by one who is authorized by Company. For purposes of this Agreement, any "Authorized Person" (as defined below) and any person to whom Company or any Authorized Person directly or indirectly delivers or discloses any Security Procedures shall be deemed to be authorized to provide Entry Data to Bank on behalf of Company.

- (c) Company understands that any materials such as passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures (the "Materials") are confidential. Company agrees to safeguard the Materials at all times and to establish and maintain procedures to assure the confidentiality thereof. Company agrees not to disclose the Materials to any person, firm, corporation or governmental entity, except Company's authorized personnel. Company shall not make or allow anyone else to make any copies, in whole or in part, of any Materials or to disassemble, decompile or reverse-engineer any security device. Company shall notify Bank immediately if the confidentiality of any of the Materials is breached.
- (d) If any Service is terminated for any reason, Company shall, with respect to the applicable Service, (i) immediately cease using the related Materials, (ii) return to Bank any related Bank-provided security devices and, (iii) at the option of Bank, either return to Bank or destroy all physical embodiments of any other related Materials.
- (e) The provisions and obligations in this Section 7 shall survive termination of this Agreement.

8. Security Devices; Disclaimer of Warranties.

- (a) Any security device provided by Bank to Company for use in connection with a Service is the property of Bank. If Company notifies Bank that a security device is defective or inoperable and returns such device to Bank, Bank will issue Company a replacement security device for the device claimed to be defective or inoperable. Notwithstanding any other provision of this Agreement or otherwise, Bank's issuance of a replacement security device is Company's sole remedy and Bank's sole obligation concerning defective and inoperable security devices.
- (b) BANK SPECIFICALLY AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SERVICES AND ANY SECURITY DEVICES.
- (c) Company shall have sole responsibility for the custody, control and use of each security device. Company shall promptly return to Bank each security device that becomes inoperable or is removed from service.

9. Authorized Persons.

Company shall, prior to its first use of the applicable Service, provide Bank with a written list (Authorized Customer Contact List) in Schedule B containing the names and telephone numbers of the customer contact persons (Authorized Persons) who are authorized by Company to provide the required Entry Data information for purposes of verifying the authenticity of Entry Data in accordance with the Security Procedures. Bank may rely on the Authorized Customer Contact List, which Company provides to Bank until Bank receives a written notice from Company changing the telephone number(s) or adding or deleting Authorized Persons. Bank may rely on Entry Data information and any confirming instructions from any person Bank believes to be an Authorized Person.

10. Processing, Sending and Settlement by Bank.

Except as provided in Sections 11 and 12 and subject to subparagraph 10(a), Bank will (i) process Entry Data received from Company, (ii) send the related Entries to the ACH processor selected by Bank, and (iii) settle for such Entries in accordance with the Rules,

as applicable. Notwithstanding the foregoing, to protect itself Bank may from time to time not process Entry Data, either for cause or without cause.

- (a) Bank will send Entries to its selected ACH processor by the applicable deadline prior to the Effective Entry Date shown in the related Entry Data, provided (i) such Entry Data are received by Bank by its applicable file input deadline on a Business Day within the applicable processing window for the distribution cycle agreed to by Company and Bank and (ii) the selected ACH processor is open for business. For purposes of this Agreement a "Business Day" is any day, other than Saturday or Sunday, on which Bank and the ACH Operator is open for general banking business in California. Entry Data received by Bank after the applicable file input deadline on a Business Day or on a day that is not a Business Day may be treated by Bank as received on the next Business Day. Entry Data are not deemed received by Bank until the complete file in which the Entry Data are included has been received at the specific Bank ACH Operations location designated by Bank.
- (b) If any of the conditions of subparagraph 10(a) is not met, Bank may use reasonable efforts to send Entries to its selected ACH processor by the ACH processor's next applicable deadline, on a day on which the ACH processor is open for business, or otherwise to handle the Entries in accordance with any exception processing arrangements agreed to between Company and Bank. Bank is not liable for any loss, harm or damage to Company as a result of such efforts by Bank.

11. On-Us Entries.

Except as provided in Section 12, in the case of any On-Us Entry Bank will credit or debit, as appropriate, the Receiver's account in the amount of such Entry on the Effective Entry Date contained in the related Entry Data, provided such Entry Data are received by Bank by its applicable file input deadline on a Business Day within the applicable processing window for the distribution cycle agreed to by Company and Bank. If the condition of the immediately preceding sentence is not met, Bank may use reasonable efforts to credit or debit, as appropriate, the Receiver's account in the amount of such Entry no later than the next Business Day following the Business Day of receipt. Bank is not liable for any loss, harm or damage to Company as a result of such efforts by Bank. To protect itself, Bank may from time to time not process Entry Data, either for cause or without cause.

12. Rejection of Entry Data or Entries.

Bank may reject any Entry Data or Entry, at any time, either for cause or without cause. Without limitation, Bank may reject any Entry Data or Entry which does not comply with the requirements of Section 5 or any other written Bank requirements provided by Bank to Company from time to time or for any reason for which an Entry may be returned under the Rules. Bank also shall have the right to reject any Entry Data if Bank has attempted but is unable to verify the authenticity of the Entry Data in accordance with the applicable Security Procedure or if Company has failed to satisfy its obligations under Section 14 of this Agreement. Bank will give notice of rejection to Company by telephone, electronically, by facsimile, or in writing, as Bank deems appropriate under the circumstances. Written notices may be sent by ordinary mail. Notices of rejection shall be effective when given. Bank will seek to give the notice of rejection within two Business Days of (i) the Business Day such Entry would otherwise have been sent by Bank to the selected ACH processor or, (ii) in the case of an On-Us Entry, the Business Day the Entry would otherwise have been credited or debited to the Receiver's account. Bank shall have no liability to Company for the rejection of any Entry Data or Entry as permitted under this Agreement, and Bank shall have no obligation to pay interest to or otherwise compensate Company, credit Company's account or make any adjustment to

Company's account analysis statement (if any) with respect to any interest or interest equivalent for the period before Company receives the notice of rejection.

13. Cancellation or Amendment by Company.

Company may not cancel or amend any Entry Data after its receipt by Bank. Company may deliver Entry Data to Bank for reversing Entries ("Reversals") pursuant to the Rules, subject to Section 5 of this Agreement; however, Bank has no liability if such Reversals are not effected.

14. Payment with Respect to Entries.

- (a) Company is obligated to pay Bank the amount of each Entry transmitted by Bank pursuant to this Agreement at such time (i) on the date of transmittal by Bank of such Entry by Bank as the Bank, at its discretion, may determine, or (ii) if so specified by Bank, at such earlier time as the Bank, at its discretion, may determine and communicate to Company.
- (b) Company is obligated to pay Bank the amount of each On-Us entry at such time on the Effective Entry Date of such Entry as the Bank, at its discretion, may determine.
- (c) Company shall pay Bank in immediately available funds for the amount of any rejected Entries, returned Entries, returned Checks or Adjustment Entries accepted by Bank, which Bank has previously credited to Company's account. Such amounts shall be immediately due and payable by Company to Bank. Returned debit Entries and returned Checks, if any, appear on Company's regular returned item reports to the extent agreed to between Company and Bank, and Company agrees that Bank need not send a separate notice of debit Entries or Checks which are returned unpaid.

15. Payment for Services; Taxes.

- (a) Company shall pay Bank its fees and charges for the Services in accordance with Schedule A. All fees and charges are subject to change upon prior written notice from Bank to Company, except that any increase in fees to offset any increase in rates charged Bank by public or private or common carrier communications facilities and third-party time-sharing suppliers (collectively, "Vendors") for services affecting the Services shall become effective on the same day as any Vendor's rate increase. Bank will; however, use reasonable efforts to give Company prior written notice of fee increases due to Vendor's rate increases. Amounts due to Bank may at Bank's option be charged against any account of Company (including the Company "Account," as defined in Section 16, below), or at Bank's option payable immediately in good funds upon demand by Bank, or be determined and paid according to Bank's account analysis procedures, unless Company arranges another payment procedure acceptable to Bank.
- (b) Company shall pay or reimburse Bank for any sales and use taxes, where applicable, and any other governmental charges payable by Bank (including property taxes) levied, imposed or assessed on any Service or any security device, equipment, documentation, printed materials, training or maintenance relating to this Agreement, and any other such taxes or charges arising out of or in any way relating to this Agreement, excluding, however, taxes based upon Bank's net income.

16. **Account: Security Interest.**

- (a) Company shall maintain and designate an account or accounts described in Schedule A with Bank which Bank may use for debiting or crediting with respect to all Entries and Checks and related adjustments and charges under this Agreement (collectively the "Accounts" and individually an "Account"). Company represents and warrants that the Accounts are, and during the term of this Agreement will be, maintained primarily for commercial, and not personal, family or household, purposes. Company further represents and warrants that the debiting of the Accounts as provided under this Agreement is not inconsistent with any restriction on the use of the Accounts. Company agrees that it shall be deemed to make and renew each representation and warranty made in this Section 16 on and as of each day it uses any Services.
- (b) Company agrees that Bank may hold all funds in an Account if Bank reasonably determines that there are inconsistent instructions regarding settlement or claims on the Account (including, without limitation, any claim by judgment creditor of a Company, levy or other legal process, or proceeding in bankruptcy) or otherwise any risk of loss to Bank or Company. Bank may interplead any or all funds, freeze or hold funds, prevent withdrawals or transfers, or otherwise act to prevent or reduce loss or risk to Bank, and (in addition to any other remedy Bank may have) Company shall reimburse Bank for any costs associated with the same. Bank shall not be responsible for any harm or losses caused to Company if Bank's interpleader action is later determined by any court to have been improper.
- (c) Bank may from time to time establish minimum amounts to be funded by Company as reserve amounts. Bank will provide notice to Company of any reserve requirement, and Company shall immediately fund the reserve amount with good funds. Bank may withhold and use any amounts due to Company to maintain any required reserve amounts.
- (d) To secure all obligations of Company to Bank arising from this Agreement or any other agreement between Bank and Company, Company grants to Bank a security interest in all Accounts of Company at Bank, all funds in those accounts, any reserve amounts or reserve accounts or funds therein, all Entries (including any funds in process of settlement), and any other deposit accounts of Company at Bank, whether now or hereafter established by or for the benefit of Company at Bank, and all proceeds of the foregoing. Bank's security interest will survive termination of this Agreement. This Security Interest is supplemental to and not in lieu of the security interest granted by Company to Bank under any other agreement.

17. **Erroneous or Unauthorized Entries; Dishonor of Returned Entries.**

- (a) Company understands information with respect to Entries sent by Bank to its selected ACH processor and On-Us Entries credited or debited, as appropriate, to a Receiver's account will be reflected on Company's periodic account statements issued by Bank with respect to the applicable Account and also may be made available to Company by an electronic report produced through one of Bank's information reporting services if Company has subscribed to such services (each such statement or report being a "Bank Statement"). Company shall examine such Bank Statements and shall give Bank prompt written notice (including a statement of relevant facts) of any unauthorized or erroneous Entry or any other discrepancy between Company's records and the information shown on the relevant Bank Statement within 45 calendar days after Bank's making available to Company of the first relevant Bank Statement indicating a

discrepancy. If Company fails to give Bank such written notice; Bank shall not be liable for or otherwise be required to compensate Company (through account analysis or otherwise), with respect to any loss of interest or any interest equivalent relating to the unauthorized or erroneous Entry or discrepancy. If Company fails to notify Bank of any discrepancy within 45 calendar days of receipt of the first relevant Bank Statement, Company shall be precluded from asserting that Bank is not entitled to retain any payment received from Company relating to the Entry or discrepancy. Company shall notify Bank promptly in writing if it learns of or discovers from any source other than a Bank Statement any information concerning an unauthorized or erroneous Entry.

- (b) Company has no right to request Bank to dishonor any returned Entry unless Company gives Bank such request in writing, together with any relevant information required under the Rules, and Bank receives such written request and information within four Business Days after Bank has notified Company of Bank's receipt of the returned Entry. Bank's receipt of such a request does not obligate Bank to seek to dishonor any returned Entry, but Bank may do so at Bank's discretion following receipt of the request. Bank will give notice of returned Entries by the means and to the extent agreed to between Company and Bank for such notices. Notice by Bank of a returned Entry shall be effective when given.

18. Company Representations and Warranties.

- (a) Company represents and warrants that:
 - (i) Company (A) has the corporate power and authority to execute, deliver and perform this Agreement; (B) has complied with all Company's obligations under this Agreement as of the date of submission of any Entry Data, both as to the Entry Data and as to Company; and (C) is not aware of any facts that constitute (or with the passage of time would constitute) a breach by Company of any of its obligations under this Agreement;
 - (ii) Company has obtained the appropriate authorization from each person owning or holding the account shown in Entry Data delivered by Company to Bank, and Company's instructions to Bank conform to the authorization, and such authorization will be operative at the time of: (A) Bank's sending of the related Entry to an ACH processor; or (B) Bank's crediting or debiting, as appropriate, of the related On-Us Entry to the Receiver's account; or (C) Bank's issuance of Checks.
 - (iii) Except as previously disclosed in writing by Company to Bank: (A) Company is not a "money-services business" (as defined at 31 CFR 103.11(uu) or successor regulation) and is not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (B) no Entry Data is submitted by Company on behalf of, or as agent, service bureau or processor for, another. By way of example, Company will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver;
 - (iv) Company's execution, delivery and performance of this Agreement and the transactions contemplated herein have been duly authorized by all necessary action and do not: (A) violate any provision of any applicable law, rule or regulation (including but not limited to any licensing

requirement(s) or of Company's charter or bylaws or other governing documents, as applicable; or (B) result in the breach of, constitute a default under, or require any consent under any agreement or instrument to which Company is a party or by which Company is bound.

- (b) Company hereby makes the same representations and warranties to Bank with respect to Entries sent by Bank to an ACH processor upon the authorization of Company as Bank is deemed to make under the Rules, and Bank shall have no responsibility with respect to matters so represented and warranted by Company. The foregoing sentence shall not apply to any representation or warranty contained in the Rules relating to (i) the power of Bank under applicable law or (ii) the conformity of Entries to the file specifications contained in the Rules.
- (c) Company agrees that it shall be deemed to make and renew each representation and warranty made in subparagraphs 18(a) and (b) on and as of each day on which it delivers Entry Data to Bank. Company will inform Bank in writing immediately upon Company's becoming aware of facts or circumstances that cause (or with the passage of time would result in) any representation or warranty given by Company to cease to be true and correct. Company will provide such information or documentation as Bank may request from time to time to demonstrate compliance by Company with Company's representations and warranties, or other obligations of Company under this Agreement.

19. Limitation on Liability; Compensation.

- (a) For Entries other than those described in subparagraph 19(b), and for Bank's other obligations under this Agreement, Bank will not be liable for any expense, claim, loss, damage, or cost ("Damages") arising out of or relating to its performance under this Agreement other than those Damages which result from its acts or omissions constituting gross negligence, subject to the limits in the next succeeding sentence. Bank's liability is limited to direct money Damages actually incurred by Company in an amount not exceeding the greater of (i) the fees for the Service during the two months preceding the month in which the acts or omissions occurred, or (ii) compensation equivalent to interest, for the period of delay, on the amount of any debit Entry or Check which Bank delayed crediting to Company's account, calculated in accordance with subparagraph 19(f) or (iii) the amount, if any, debited by Bank from Company's account for (A) any credit Entries sent by Bank to an account not specified in the Entry Data or (B) any overpayments for which Bank is liable and Company is unable to recover. If such an overpayment or incorrect transfer occurs, Bank also will calculate and pay or credit Company compensation equivalent to interest on the overpayment or the amount incorrectly transferred, as applicable, as provided in subparagraph 19(f). Company shall use reasonable efforts to assist Bank in recovering the amount of any overpayments.
- (b) For Entries subject to Division 11 of the California Commercial Code (Division 11) governing funds transfers, Bank will not be liable for any Damages arising out of or relating to its performance under this Agreement other than those Damages required to be paid under Division 11; provided, however, that Bank will not be liable for any such Damages to the extent otherwise provided in this Agreement
- (c) Bank will not be responsible for the acts or omissions of Company or Company's officers, employees, or agents (including without limitation the amount, accuracy, timeliness of delivery or due authorization of any Entry Data received from Company) or the acts or omissions of any other person, including without

limitation any national or regional clearing house association or any other financial institution or any Vendors, and no such person shall be deemed Bank's agent.

- (d) In no event will Bank be liable for any special, indirect, exemplary, or consequential damages, including but not limited to lost profits.
- (e) Bank will be excused from failing to act or delay in acting, and no such failure or delay shall constitute a breach of this Agreement or otherwise give rise to any liability of Bank if (i) such failure or delay is caused by circumstances beyond Bank's control, including but not limited to legal constraint, emergency conditions, action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, war, riot, theft, flood, earthquake or other natural disaster, breakdown of public or private or common carrier communications facilities, computer malfunction, or act, negligence or default of Company, or (ii) such failure or delay resulted from Bank's reasonable belief that the action would have violated any guideline, rule, or regulations of any governmental authority.
- (f) In the event Bank is obligated to pay compensation equivalent to interest, Bank will pay such compensation, or credit Company's account, as Bank determines, upon written demand by Company. Compensation equivalent to interest for the relevant period will be calculated as follows:
 - (i) if the applicable account is an analyzed account, Bank will calculate the amount using the earnings credit rate(s) for the account for the relevant period according to Bank's published account analysis procedures;
 - (ii) if the applicable account is a non-analyzed interest bearing account, Bank will calculate the amount using the interest rate(s) for the account for the relevant period; or
 - (iii) if the applicable account is a non-analyzed non-interest bearing account, Bank will calculate the amount using the average of the Federal Funds rate published by the Federal Reserve Bank of San Francisco for the relevant period, adjusted by a percentage equal to the reserve requirement for the account.
- (g) Notwithstanding any other provision of this Agreement, if Bank would be obligated to pay compensation equivalent to interest when Company had a withdrawable credit balance in the applicable account and such account was an analyzed account, Bank will not be obligated to pay any compensation other than in accordance with Bank's published account analysis procedures.

20. Protection from Third Parties (Indemnity).

Company shall indemnify and hold Bank harmless from and against any and all actions, claims, demands, losses, liabilities, damages, costs and expenses whatsoever (including but not limited to attorneys' fees, expenses of litigation and allocated costs for in-house legal services) arising out of or relating to:

- (a) any Entry Data or Entry delivered or authorized by Company, or any Entry Data or Entry the authenticity of which was verified pursuant to the Security Procedures;
- (b) Bank's acting or attempting to act upon any Entry Data for Reversals, or upon any request for return of an Entry, delivered to Bank by Company;

- (c) any claim that Bank is responsible for any act or omission of Company or any other person described in subparagraph 19(c);
- (d) any action (including assessment, fine, penalty or otherwise) imposed by NACHA or any other supervisory or governing body with jurisdiction over Bank, the ACH, or over any activity of Company, to the extent arising out of or relating to any use by Company of the Services, irrespective of whether the action is or is not authorized by the Rules (in the case of NACHA) or laws (in the case of supervisory or other governing bodies) applicable to the third party taking the action;
- (e) any breach of this Agreement, including any of the representations and warranties made by Company under Section 18 or elsewhere in this Agreement; or
- (f) any other claims, disputes or actions by third parties concerning Company's use of the Service or Bank's acts or omissions in providing the Service, except this clause does not apply to the gross negligence or intentional misconduct of Bank.

Company's obligations hereunder are cumulative and shall survive the termination of this Agreement. Nothing in this Section shall limit any right Bank has at law, in equity or under this Agreement or any other agreement with Company.

21. Inconsistency of Receiver Name and Account Number.

Company acknowledges and agrees that, if Entry Data describes a Receiver inconsistently by name and account number, payment of the related Entry may be made by an RDFI (or by Bank in the case of an On-Us Entry) solely on the basis of the account number supplied by Company even if it identifies a person different from the named Receiver.

22. Inconsistency of RDFI Name and Number.

Company acknowledges and agrees that, if Entry Data describes the RDFI inconsistently by name and identifying number, payment of the related Entry may be made solely on the basis of the identifying number supplied by Company even if the identifying number identifies a person different from the named RDFI.

23. Advertising.

Neither Company nor Bank shall use the other party's name or refer to the other party directly or indirectly in any advertisement, new release, or other release to any publication without receiving the other party's specific prior written approval for each such use or release. In addition to the foregoing, neither Company nor Bank shall use the other party's name or refer to the other party directly or indirectly in any solicitation or marketing materials without receiving the other party's specific prior approval for each such use or release. This Section shall not limit either party's ability to satisfy any governmentally or judicially required disclosure.

24. Relationship.

Nothing contained in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Company and Bank.

25. Vendors.

Bank makes no representation or warranty regarding any Vendor's service.

26. **Notices; Instructions.**

- (a) Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter under this Agreement.
- (b) Except as otherwise expressly provided herein, any written notice or other written communication to be given under this Agreement shall be given by mailing the same, postage prepaid, or by personal delivery to each party at the addresses set forth on the signature page of this Agreement or to such other address as a party may specify in writing. Except as otherwise expressly provided herein, any such notice shall be effective upon receipt.

27. **Termination of Agreement.**

Subject to termination of a particular Service pursuant to subparagraph 1(b), Services shall continue until this Agreement is terminated as provided below:

- (a) This Agreement may be terminated by either party upon 45 calendar days' prior written notice to the other.
- (b) This Agreement may be terminated by Bank at any time if: (i) Company breaches any of the terms of this Agreement or any other agreement with Bank or any agreement involving the borrowing of money or the extension of credit; (ii) Company suffers any seizure, levy or other legal process, investigation or regulatory enforcement action, liquidates, dissolves, merges into or consolidates with another entity, or sells, leases or disposes of a substantial portion of its business or assets; (iii) Company terminates its business, fails generally to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or if any bankruptcy, reorganization, arrangement, insolvency, dissolution or similar proceeding is instituted with respect to Company, or if Company makes any assignment for the benefit of creditors or enters into any composition with creditors or takes any corporate action in furtherance of any of the foregoing; or (iv) Company suffers any material adverse changes occurs in Company's financial condition or results of operations or ability to perform its obligations hereunder. Company shall promptly give written notice to Bank of the occurrence of any of the foregoing events.
- (c) Termination of a Service or of this Agreement shall not affect (i) the rights and obligations of the parties with respect to any Entries initiated or Checks issued prior to termination or (ii) the payment obligations of Company with respect to Services performed by Bank prior to termination or (iii) any other obligations which survive termination of this Agreement. Without limitation to any other provision of this Agreement, provisions of this Agreement that by their terms survive termination of this Agreement shall survive, including Sections 2, 3, 4, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 20, and this Section 27.

28. **Agreement.**

This Agreement supersedes any prior agreement(s) between Company and Bank with respect to the subject matter hereof. In the event of conflict between this Agreement and the Rules, the Rules shall govern. Except as otherwise expressly provided herein, in the event of any conflict between this Agreement and any other document or oral statement (including without limitation any deposit agreement between Company and Bank) the terms of this Agreement shall govern.

29. **Severability.**

In the event that any provision of this Agreement or the application of any such provision to any person or set of circumstances shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

30. **Non-Assignment.**

Neither Company nor Bank may assign any of its rights under this Agreement without the prior written consent of the other party.

31. **Binding Agreement; Benefit.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Company or Bank hereunder.

32. **Headings.**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

33. **Governing Law.**

This Agreement shall be interpreted in accordance with California law without reference to California principles of conflicts of law.

34. **Waiver.**

No delay or omissions by Bank to exercise any right under this Agreement shall impair any such right, nor shall it be construed to be a waiver thereof. No waiver by Bank of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default. Any waivers under this Agreement must be in writing.

35. **Effectiveness.**

This Agreement shall not become effective until fully executed by Bank at one of its offices in California.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Company

By _____
(Signature) Date

Name _____
(Print or Type)

Title _____
(Print or Type)

By _____
(Signature) Date

Name _____
(Print or Type)

Title _____
(Print or Type)

Farmers & Merchants Bank of Long Beach

By _____
(Signature) Date

Name _____
(Print or Type)

Title _____
(Print or Type)

Appendix

Schedule A

ACH Item Origination Services, Fee Schedule and Origination Limits

This schedule defines Company's allowed transactions using the Bank's Online Banking System or Bank designated secured system to originate, create and/or deliver PPD or CCD NACHA-formatted files for further processing in accordance with the attached agreement. All Entries shall be conducted via the Bank's Online Banking System or Bank designated secured system in accordance with the instructions provided by the Bank's representatives. The allowed Services granted to Company may consist of multiple features such as web-enabled data entry screens, file transfers and uploads. This Schedule itemizes the features, fees and maximum dollar limits for each type of origination service.

❖ ACH Origination services may be delayed or terminated if Schedule A of this Agreement is not filled out completely.

Company Name: _____ Account to Fund Origination: _____

Type of Business: _____ Number of Years in Operation: _____

Charge Fees to Primary Account #: _____ ☐ Checking ☐ Savings

The fees that have been separately disclosed to you in connection with your eligible account(s) will continue to apply to those account(s) except as noted below:

ACH Item Origination Services & Fee Schedule

Description of Fees	Fee
Online Cash Management Services (ACH item origination)	\$14.95 per month
Online ACH Item Origination - Payments	\$ 0.10 per item
Online ACH Item Origination - Receipts	\$ 0.10 per item
Online ACH Item Origination - Payroll	\$ 0.10 per item
Online ACH Item Origination - Collections	\$ 0.10 per item
Online ACH Item Origination - Send A File	\$ 0.10 per item
ACH Origination File Transmission (Bank designated secure system)	\$ 0.10 per item
ACH Chargeback Fee	\$ 5.00 per item

Authorized ACH Item Origination Limits

(To be completed by Customer: daily origination limits are REQUIRED for all selected ACH services)

ACH Item Origination	Access	Daily Limit
Online Payments (Originate a single ACH credit)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Online Receipts (Originate a single ACH debit)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Online Payroll (Originate multiple ACH credits)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Online Collections (Originate multiple ACH debits)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
Online Send A File (Originate an ACH credit and/or debit file)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$
ACH Origination File Transmission (Originate an ACH credit and/or debit file)	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$

Schedule B**Security Procedures and Transaction Settlement/Delivery Timeframes****Security Procedures**

Farmers & Merchants Bank of Long Beach ("Bank") grants access to the Online Banking System or Bank designated secured system to perform or deliver transactions authorized in Schedule A. The Company agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Security Procedures (login IDs and passwords) that are assigned to the Company for initiating transactions using the Online Banking System or Bank designated secured system. Any transaction initiated or authorized using a valid combination of a login ID and password will be considered authentic, valid and binding by and upon Company and may be relied upon by Bank. Bank agrees to provide reasonable assistance to establish login IDs and passwords, training, and support to the Company for properly using the services. If Company suspects or believes any such information has been compromised, it shall immediately contact the Bank at the following address:

❖ ACH Origination services may be delayed or terminated if Schedule B of this Agreement is not filled out completely

Emergency Contact: Online Banking/Support Center Manager
 Bank: Farmers & Merchants Bank
 Street Address: P.O. Box 2400
 City/State/Zip: Seal Beach, CA. 90740
 Telephone Number: (562) 344-2370 (outside of California 1-866-437-0011)
 FAX Number: (562) 562-344-2371
 Email: internet.support@fmb.com

In the event the Bank needs to contact the Company, the following contact information shall constitute notice if delivered to:

Emergency Contact : _____ Title: _____
 Company Name: _____ Street Address: _____
 City/State/Zip: _____ Telephone Number: _____
 FAX Number: _____ Email: _____

Transaction Settlement/Delivery Timeframes

All ACH Credit Entries should be completed/authorized at least two (2) business days prior to the "Effective Date" of the transactions. All ACH Debit Entries should be completed/authorized at least two (2) business days prior to the "Effective Date" of the transactions. If the transactions are not completed/authorized by the required timeframe, the Bank cannot guarantee the transactions will be accepted by ACH processors, or be received/posted on the "Effective Date" by the recipient's Bank. The Bank may accept these items and they will be forwarded to the ACH processor no later than the Bank's next regularly scheduled delivery time. Bank may require Company to initiate Prenotification procedures, at Bank's discretion. For Settlement/Delivery purposes, a business day is defined as legal banking days where both the Bank and ACH processor is open for business. The end-of-day cutoff time is shown below:

End-of-day Cut-off Time: 3:00 PM Time zone: Pacific Time

All ACH Credit originations represent financial obligations for the Company and Bank. The Bank may reject any Entry if Company has failed to comply with its account balance obligations under the Agreement. The balance associated with the account designated as the settlement account for the Entries must be sufficient to cover the total originations on the Delivery date as described above or as otherwise specified by Bank. If the settlement account does not have sufficient funds at that time, the Bank may, without any liability, deny, reject or process the Entries. If the entries are processed, the Company is still obligated to pay the Bank for the Entries.

EXHIBIT C

DANIEL G. BOGDEN
United States Attorney
District of Nevada
BLAINE T. WELSH
Assistant United States Attorney
Nevada Bar. No. 4790
333 Las Vegas Blvd. South, Suite 5000
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Facsimile: (702) 388-6787
Email: Blaine.Welsh@usdoj.gov

WILLARD K. TOM
General Counsel
NIKHIL SINGHVI*
JULIE G. BUSH*
JASON D. SCHALL*
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mailstop NJ-3158
Washington, D.C. 20580
Phone: (202) 326-3480 (Singhvi)
Facsimile: (202) 326-3629
Email: nsinghvi@ftc.gov; jbush@ftc.gov;
jschall@ftc.gov
(*Motion to permit appearance pending)

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.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.

JURISDICTION AND VENUE

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

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

See 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.

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,
2 www.ameriloan.com, www.oneclickcash.com, www.unitedcashloans.com, and
3 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, www.unitedcashloans.com, and 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. 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. 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

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:

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

\$50 sum to be applied toward principal. On successive paydays thereafter, Defendants continue to withdraw principal in \$50 increments, along with additional finance charges, 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.

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

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

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

VIOLATIONS OF SECTION FIVE OF THE FTC ACT

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

COUNT ONE

(Deceptive Acts and Practices)

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

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

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

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

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

1 **COUNT TWO**

2 **(Deceptive Collection Practices)**

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.

COUNT FOUR**(Violations of EFTA and Regulation E)**

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

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.

1 **THIS COURT'S POWER TO GRANT RELIEF**

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

9 **PRAYER FOR RELIEF**

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

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

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
7 Jason D. Schall

8 *Attorneys for Plaintiff*
9 **FEDERAL TRADE COMMISSION**
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and the assigned Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

EDCV14-00627 JFW (CWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

March 31, 2014

Date

By L. Murray
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☐ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Central District of California

Christina and John Labajo, on behalf of themselves
and all others similarly situated,

Plaintiff(s)

v.

First International Bank & Trust, and Mutual of
Omaha Bank,

Defendant(s)

EDCV14-00627

Civil Action No.

JFW (<W/X)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

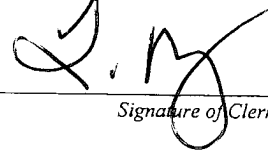
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jason S. Hartley
Stueve Siegel Hanson LLP
550 West C Street, Suite 1750
San Diego, CA 92101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

TERRY NAFISI

CLERK OF COURT



Signature of Clerk or Deputy Clerk

Date: _____

MAR 31 2014

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

CHRISTINA and JOHN LABAJO, on behalf of themselves and all other similarly situated

DEFENDANTS (Check box if you are representing yourself ☐)

FIRST INTERNATIONAL BANK & TRUST, and MUTUAL OF OMAHA

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

Jason S. Hartley (CA Bar No. 192514)
Stueve Siegel Hanson LLP
550 West C Street, Suite 1750
San Diego, CA 92101 619-400-5822; hartley@stuevesiegel.com

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES—For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
- ☐ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No

MONEY DEMANDED IN COMPLAINT: \$ 0.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violation of 18 USC 1962(c) and 1962(d); Aiding and Abetting Violations of California Usury Laws; Viol. of Calif. Unfair Competition Law and B&P Code 17200 et seq.;
Assumpsit; Unjust Enrichment; Permanent Injunctive Relief

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 420 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 430 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input checked="" type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number

EDCV14-00627

JFW (CLWx)

CV-71 (09/13)

CIVIL COVER SHEET

Page 1 of 3

MAR 31 2014

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Western Southern Eastern
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Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside. <input type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino <input type="checkbox"/> Other	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside. <input type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino <input type="checkbox"/> Other	Western Western Southern Eastern Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right.	C.2. Is either of the following true? If so, check the one that applies: <input checked="" type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below.
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division? Enter the initial division determined by Question A, B, or C above:	INITIAL DIVISION IN CACD Eastern
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

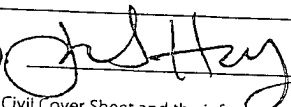
IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES
If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ NO ☒ YES
If yes, list case number(s): 13-cv-1861 VAP (DTBx) (Case dismissed 3/24/14)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT)**



DATE: March 31, 2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))