

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMG Services, Inc., et al.,

Defendants, and

Park 269 LLC, et al.,

Relief Defendants.

Case No.: 2:12-cv-536-GMN-VCF

**ORDER ENTERING
STIPULATED PRELIMINARY
INJUNCTION AND BIFURCATION**

THIS MATTER comes before the Court upon the stipulation of Plaintiff Federal Trade Commission (“FTC”) and Defendants AMG Services, Inc., SFS, Inc., Red Cedar Services, Inc., MNE Services, Inc., Scott A. Tucker, Blaine A. Tucker, AMG Capital Management, LLC, Level 5 Motorsports, LLC, LeadFlash Consulting, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Don E. Brady, Robert D. Campbell, and Troy L. LittleAxe (collectively, “Defendants”) for the entry of a stipulated preliminary injunction and bifurcation.

Having considered the Complaint and other filings in this action, and now being advised in the premises, the Court finds that:

1. This Court has jurisdiction over the subject matter of this case, there is good cause to believe that it will have jurisdiction over all parties pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and venue in the District of Nevada is proper under 28 U.S.C. §§ 1391(b) and (c).

1 4. “Defendants” means AMG Services, Inc., SFS, Inc., Red Cedar Services, Inc.,
2 MNE Services, Inc., Scott A. Tucker, Blaine A. Tucker, AMG Capital Management, LLC,
3 Level 5 Motorsports, LLC, LeadFlash Consulting, LLC, Black Creek Capital Corporation,
4 Broadmoor Capital Partners, LLC, Don E. Brady, Robert D. Campbell, and Troy L. LittleAxe.
5

6 5. “Document” is equal in scope and synonymous in meaning to the usage of the
7 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
8 photographs, audio and video recordings, computer records, and any other data compilations
9 from which information can be obtained. A draft or non-identical copy is a separate document
10 within the meaning of the term.

11 6. “Person” means a natural person, organization, or other legal entity, including a
12 corporation, partnership, proprietorship, association, cooperative, or any other group or
13 combination acting as an entity. Defendants do not, by virtue of their agreement to this
14 definition, waive any defense they may raise with respect to the meaning or scope of the term
15 “person” as used in the Federal Trade Commission Act, 15 U.S.C. §§ 41, *et seq.*
16

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,
2 subsidiary, division, or other device, in connection with the collection of debts, are hereby
3 preliminarily restrained and enjoined from misrepresenting, or assisting others in
4 misrepresenting:
5

- 6 A. That consumers can be arrested or imprisoned for failing to pay Defendants;
- 7 B. That if consumers do not pay Defendants, Defendants will or can take formal legal
8 action against consumers, including but not limited to, filing suit; and
- 9 C. Any other material fact.

10 **III. TRUTH IN LENDING REQUIREMENTS**

11 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,
12 agents, servants, employees, and attorneys, and those persons or entities in active concert or
13 participation with any of them who receive actual notice of this Order by personal service,
14 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,
15 subsidiary, division, or other device, are hereby preliminarily restrained and enjoined from
16 failing, or assisting others who fail, to disclose in writing before extending credit the following
17 information in a manner reflecting the terms of the legal obligation between the parties:
18
19

- 20 A. the finance charge;
- 21 B. the annual percentage rate;
- 22 C. the payment schedule; and
- 23 D. the total of payments.

24 **IV. PROHIBITED ELECTRONIC FUND TRANSFER PRACTICES**

25 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,
26 agents, servants, employees, and attorneys, and those persons or entities in active concert or
27

1 participation with any of them who receive actual notice of this Order by personal service,
2 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,
3 subsidiary, division, or other device, are hereby prohibited from conditioning the extension
4 of credit on preauthorized electronic fund transfers.
5

6 **V. PROHIBITION AGAINST DISCLOSURE OF CONSUMER INFORMATION**

7 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,
8 agents, servants, employees, and attorneys, and those persons or entities in active concert or
9 participation with any of them who receive actual notice of this Order by personal service,
10 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,
11 subsidiary, division, or other device, are hereby preliminarily restrained and enjoined from
12 disclosing to any third party the name, address, telephone number, Social Security number,
13 credit card number, bank account number, email address, or other identifying information of
14 any person who applied for and/or obtained a loan from any Defendant, except as follows:
15

- 16 a) Defendants may disclose such information to a law enforcement agency or as
17 required by any law, regulation, or other court order;
18
19 b) Defendants may disclose such information to third parties for any lawful purpose
20 related to extending loans issued by Defendants, receiving or processing loan
21 payments owed to Defendants, or collecting debt owed to Defendants;
22
23 c) Defendants may disclose such information for purposes of selling debt owed to
24 Defendants; and
25
26 d) Defendants may disclose such information for purposes of selling the lending
27 business (in whole or in part), provided that before any such disclosure: (i) the
28 purchaser must first agree in writing to be bound by the terms of Articles I to IV

1 of this Stipulated Injunction, and (ii) Defendants must provide a copy of such
2 agreement to the FTC.
3

4 **VI. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

5 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,
6 agents, servants, employees, and attorneys, and those persons or entities in active concert or
7 participation with any of them who receive actual notice of this Order by personal service,
8 facsimile transmission, email, or otherwise, whether acting directly or through any corporation,
9 subsidiary, division, or other device, are hereby enjoined from: destroying, erasing, mutilating,
10 concealing, altering, transferring, or otherwise disposing of, in any manner, directly or
11 indirectly, any documents or records that relate to the business practices, or business or
12 personal finances, of Defendants or any other entity directly or indirectly under the control of
13 any Defendant.
14

15 **VII. CONSUMER REPORTS**

16 **IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit
17 Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer
18 report concerning any Defendant to the FTC.
19

20 **VIII. MONITORING COMPLIANCE WITH THIS ORDER**

21 **IT IS FURTHER ORDERED** that, for purposes of monitoring compliance with this
22 Order, the FTC is authorized to use all lawful means, including, but not limited to, posing as
23 consumers and suppliers to Defendants, their employees, or any other entity managed or
24 controlled in whole or in part by any Defendant, without the necessity of identification or prior
25 notice.
26
27
28

1
2 **BIFURCATION OF PROCEEDINGS**

3 WHEREAS the parties have agreed to a bifurcation of these proceedings into a liability
4 phase and if necessary, a relief phase; and

5 WHEREAS pursuant to Federal Rule of Civil Procedure 42(b), bifurcation serves the
6 interests of judicial economy, avoids costly and potentially unnecessary proceedings, and does
7 not prejudice any party,

8 **IT IS FURTHER ORDERED** that these proceedings shall be bifurcated as follows:

9 **PHASE 1: LIABILITY**

10 A. The Court shall first adjudicate the merits of the following FTC claims, including
11 discovery, motion practice, and, if necessary, a hearing related thereto:

- 12
- 13 1. Defendants’ alleged violations of the FTC Act (15 U.S.C. § 45(a));
 - 14 2. Defendants’ alleged violations of TILA (15 U.S.C. §§1601-1666j) and
15 Regulation Z (12 C.F.R § 1026);
 - 16 3. Defendants’ alleged violations of EFTA (15 U.S.C. § 1693) and
17 Regulation E (12 C.F.R. § 1005.10(e)(1)).

18 B. The Court shall also adjudicate through motion practice the legal question of
19 whether, and to what extent, the FTC has authority over Indian tribes whose
20 sovereignty is asserted in this case and/or AMG Services, Inc., MNE Services,
21 Inc., Red Cedar Services, Inc., and SFS, Inc. for alleged violations of the FTC
22 Act.
23

24 ///
25 ///
26 ///
27 ///
28 ///

1 PHASE 2: COMMON ENTERPRISE CLAIM, INDIVIDUAL LIABILITY, AND
2 MONETARY RELIEF

3 A. Upon a finding by this Court of liability for any of the claims listed in paragraphs
4 A(1), A(2), or A(3), the parties shall adjudicate all remaining issues, claims, and
5 defenses, including discovery, motion practice, and a hearing related thereto,
6 including, but not limited to:

- 7
- 8 1. Whether Defendants constitute a common enterprise;
 - 9 2. Whether any individual Defendant is personally liable for corporate
10 violations of the FTC Act; and
 - 11 3. Relief sought by the FTC from Defendants and Relief Defendants.

12

13 B. If the Court determines that the FTC Act does not give the FTC authority over the
14 Indian tribes whose sovereignty is asserted in this case, but may give the FTC
15 authority over AMG Services, Inc., MNE Services, Inc., Red Cedar Services, Inc.,
16 and SFS, Inc. for alleged violations of the FTC Act, the parties may resume fact
17 discovery related to the Defendants' defense that the FTC does not have authority
18 to bring suit against Defendants for violations of the FTC Act.

19 This Order may be modified upon motion by any party for good cause shown.

20 If any dispute arises between the parties as to whether discovery requests, facts, or legal issues
21 pertain to Phase 1 or Phase 2 as described above, such dispute may be submitted to the Court for
22 resolution.
23

24 IT IS SO ORDERED:

25 
26 _____
26 United States District Judge

27 DATED: December 27, 2012