

1 DANIEL G. BOGDEN
 2 United States Attorney
 3 District of Nevada
 4 BLAINE T. WELSH
 5 Assistant United States Attorney
 6 Nevada Bar. No. 4790
 7 333 Las Vegas Blvd. South, Suite 5000
 8 Las Vegas, Nevada 89101
 9 Phone: (702) 388-6336
 10 Facsimile: (702) 388-6787
 11 Email: Blaine.Welsh@usdoj.gov

12 JONATHAN E. NUECHTERLEIN
 13 General Counsel
 14 NIKHIL SINGHVI
 15 JASON D. SCHALL
 16 HELEN P. WONG
 17 IOANA RUSU
 18 LaSHAWN M. JOHNSON
 19 COURTNEY A. ESTEP
 20 THOMAS KANE
 21 Federal Trade Commission
 22 600 Pennsylvania Avenue, NW
 23 Mailstop CC-10232
 24 Washington, D.C. 20580
 25 Phone: (202) 326-3480 (Singhvi)
 26 Facsimile: (202) 326-3768
 27 Email: nsinghvi@ftc.gov (Singhvi); jschall@ftc.gov (Schall)
 28 *Attorneys for Plaintiff Federal Trade Commission*

29 **UNITED STATES DISTRICT COURT**
 30 **DISTRICT OF NEVADA**

31 FEDERAL TRADE COMMISSION,

32 Plaintiff,

33 v.

34 AMG Services, Inc. et al.,

35 Defendants, and

36 Park 269 LLC, et al.,

37 Relief Defendants.

38 Case No. 2:12-cv-536

39 **JOINT MOTION FOR MODIFIED**
 40 **PHASE 2 DISPOSITIVE MOTIONS**
 41 **BRIEFING SCHEDULE AND**
 42 **LEAVE TO FILE MEMORANDA**
 43 **IN EXCESS OF PAGE**
 44 **LIMITATIONS**

1 Plaintiff Federal Trade Commission (“FTC”), Scott Tucker, Nereyda Tucker, executor of the estate
2 of Blaine Tucker, Black Creek Capital Corporation, Level 5 Motorsports LLC, LeadFlash Consulting LLC,
3 Broadmoor Capital Partners, LLC, and AMG Capital Management, LLC (the "Tucker Defendants"), and
4 Kim Tucker and Park 269, LLC (the “Relief Defendants”) jointly move the Court for an order setting forth
5 a briefing schedule for the parties' Phase 2 dispositive motions briefing, and for leave to file memoranda in
6 excess of the page limitations in the local rules, as follows:

- 7 1. The parties are currently required to file dispositive motions on or before January 22, 2016.
8 (ECF No. 886 at 3.) The FTC, the Tucker Defendants and the Relief Defendants plan to file
9 dispositive motions. Pursuant to LR 7-2(e), the opposing party would have 21 days after service
10 to respond to the moving party’s motion, and the moving party would have 14 days to reply in
11 support of its motion. Pursuant to LR 7-4, memoranda of points and authorities supporting and
12 opposing those motions would be limited to 30 pages each, and reply memoranda would be
13 limited to 20 pages.
- 14 2. The parties jointly request a briefing schedule as follows:
 - 15 a. Dispositive motions and memoranda of points and authorities to be filed on January 20,
16 2016.
 - 17 b. Responding points and authorities to be filed on February 26, 2016.
 - 18 c. Reply memoranda to be filed on March 18, 2016.
- 19 3. The parties jointly request page allowances for their briefing as follows:
 - 20 a. For the FTC’s summary judgment motion, the FTC’s opening memorandum may be up
21 to 90 pages in length, the Tucker Defendants’ and the Relief Defendants’ oppositions
22 may be up to 90 pages, and the FTC’s reply memorandum may be up to 40 pages.
 - 23 b. For the Tucker Defendants’ summary judgment motion, the Tucker Defendants’ opening
24 memoranda may be up to 60 pages in length, the FTC’s opposition may be up to 60
25 pages, and the Tucker Defendants’ reply memorandum may be up to 25 pages.

26 The parties respectfully submit that a number of reasons support their request for the foregoing
27 briefing schedule and page limit allowances:
28

1 1. For its summary judgment motion, the FTC contends that its presentation of facts and law
2 will approach 90 pages to adequately address the duration of the unlawful activity, the
3 harm to consumers, the legal and factual issues pertaining to Defendants’ individual
4 liability and common enterprise liability, the legal and factual issues pertaining to the
5 Relief Defendants’ liability, the consequences of certain witnesses’ Fifth Amendment
6 invocations, the Defendants’ affirmative defenses, and the nature of the injunctive relief
7 requested.

8 2. For their summary judgment motion, the Tucker Defendants contend that their
9 presentation of facts and law will approach 60 pages to adequately address the legal and
10 factual issues pertaining to their defenses to the FTC’s allegations and their affirmative
11 defenses.

12 The parties further submit that their proposed briefing schedule and page allowances will enable
13 omnibus motions and memoranda and reduce the likelihood of piecemeal briefing. In addition, the parties’
14 requested page limits are consistent with those permitted by this Court in recent FTC matters. *See, e.g.,*
15 *FTC v. Ivy Capital*, No. 2:11-CV-283 JCM (GWF), 2012 WL 4482796, at *2 (D. Nev. Sept. 27, 2012) (Court
16 first struck but then allowed an FTC motion for summary judgment of 130 pages in length); *FTC v. Johnson*,
17 No. 2:10-cv-02203-MMG-GWF (D. Nev. 2013) (ECF No. 1234) (order permitting FTC to file 140 pages in
18 total briefing for two summary judgment memoranda); *FTC v. Grant Connect*, No. 2:09-cv-01349-PMP-NJK
19 (D. Nev. 2010) (ECF No. 275-2) (145-page FTC summary judgment memorandum); *see also FTC v. Publishers*
20 *Business Services, Inc.*, No. 2:08-cv-00620-APG-GWF (D. Nev. 2009) (ECF Nos. 88, 90) (87 total pages for
21 FTC summary judgment memorandum and separate statement of facts); *FTC v. Ideal Financial Solutions, Inc.*,
22 No. 2:13-cv-00143-JAD-GWF (D. Nev. 2014) (ECF No. 194) (minute order) (“The Court agrees that it is more
23 efficient to consider all of the FTC’s [summary judgment] arguments in a single filing, providing good cause
24 for relief from the 30-page limit.”).

25 If this Stipulation is accepted by the Court, the parties’ previous briefing on the procedures to govern
26 the forthcoming motions for summary judgment (ECF Nos. 890, 892 and 893) is rendered moot.

1 Dated: December 7, 2015

2 /s/ Nikhil Singhvi

/s/ Nick Kurt

3
4 Nikhil Singhvi
5 Federal Trade Commission
6 600 Pennsylvania Ave., NW
7 Mailstop CC-10232
8 Washington, DC 20580
9 nsinghvi@ftc.gov
10 Tel. (202) 326-3480
11 Fax (202) 326-3629

Nick Kurt
Berkowitz Oliver Williams Shaw & Eisenbrandt LLP
2600 Grand Boulevard,
Suite 1200
Kansas City, MO 64108
NKurt@BerkowitzOliver.com
Phone: 816-561-7007
Fax: 816-561-1888

12 *Attorney for Plaintiff Federal Trade Commission*

*Attorney for Defendants Scott Tucker, Nereyda
Tucker, the executor of the estate of Blaine Tucker,
Black Creek Capital Corporation, Level 5
Motorsports LLC, LeadFlash Consulting LLC,
Broadmoor Capital Partners, LLC, and AMG Capital
Management, LLC*

13 /s/ Linda McFee

14
15 Linda McFee
16 McDowell, Rice, Smith & Buchanan, P.C.
17 605 W. 47th Street, Suite 350
18 Kansas City, Missouri 64112
19 lmcfee@mcdowellrice.com
20 Tel. (816) 753-5400
21 Fax: (816) 753-9996

22 *Attorney for Kim Tucker and Park 269, LLC*

23
24 The Parties' Joint Motion to Extend Time (ECF No. 894) and Joint Motion for Leave (ECF 896) are
25 **GRANTED**. Plaintiff's Motion for Leave (ECF No. 890) is **DENIED as moot**.

26 **IT IS SO ORDERED:**

27
28 
UNITED STATES DISTRICT JUDGE

Dated: December 8, 2015