

1 CONLY SCHULTE
2 FREDERICKS PEEBLES & MORGAN LLP
3 1900 Plaza Drive
4 Louisville, CO 80027
5 Telephone: (303) 673-9600
6 Facsimile: (303) 673-9155
7 Email: cschulte@ndnlaw.com

8 DAVID J. MERRILL
9 David J. Merrill, P.C.
10 Nevada Bar No. 6060
11 2850 West Horizon Ridge Parkway
12 Suite 200
13 Henderson, NV 89145
14 Telephone: (702) 566-1935
15 Facsimile: (702) 924-0787
16 Email: david@djmerrillpc.com

17 *Attorneys for Defendants AMG Services, Inc.; Red Cedar Services,*
18 *Inc. dba 500FastCash; SFS, Inc. dba OneClickCash; Tribal*
19 *Financial Services, dba Ameriloan, UnitedCashLoans,*
20 *USFastCash, Miami Nation Enterprises*

21 *Additional Counsel Listed on Following Page*

22 **UNITED STATES DISTRICT COURT**
23 **DISTRICT OF NEVADA**

24 FEDERAL TRADE COMMISSION,

25 Plaintiff,

26 v.

27 AMG Services, Inc., et al.,

28 Defendants, and

Park 269 LLC, et al.,

Relief Defendants.

Case No.: 2:12-cv-536

(Matter Pending in District of Nevada)

**DEFENDANTS AMG SERVICES, INC.,
ET AL.'S MOTION TO QUASH
PLAINTIFF'S SUBPOENA TO
PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS OR TO
PERMIT INSPECTION OF PREMISES
TO DATAX, LTD.**

Additional Counsel

ADAM S. HOFFINGER
BRADLEY S. LUI
NICHOLAS G. MIRANDA
Morrison & Foerster, LLP
2000 Pennsylvania Avenue
Suite 6000
Washington, DC 20006
Telephone: (202) 887-6924
Facsimile: (202) 887-0763
Email: AHoffinger@mofo.com

JOHN NYHAN
FREDERICKS PEEBLES & MORGAN LLP
2020 L St., Suite 250
Sacramento, CA 95811
Telephone: (916) 441-2700
Facsimile: (916) 441-2067
Email: jnyhan@ndnlaw.com

SHILEE MULLIN
FREDERICKS PEEBLES & MORGAN LLP
3610 North 163d Plaza
Omaha, NE 68116
Telephone: (402) 333-4053
Facsimile: (402) 333-4761
Email: smullin@ndnlaw.com

*Attorneys for Defendants AMG Services, Inc.; Red Cedar
Services, Inc. dba 500FastCash; SFS, Inc. dba
OneClickCash; Tribal Financial Services, dba
Ameriloan, UnitedCashLoans, USFastCash, Miami
Nation Enterprises*

1 COME NOW Defendants AMG Services, Inc.; Red Cedar Services, Inc. dba 500FastCash;
 2 SFS, Inc. dba OneClickCash; Tribal Financial Services dba Ameriloan, UnitedCashLoans, US
 3 FastCash; and Miami Nation Enterprises¹ (hereinafter “Tribal Defendants” or “Tribal Entities”),
 4 and, pursuant to Federal Rule of Civil Procedure 45, respectfully move this Court for an Order
 5 quashing the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of
 6 Premises issued by Plaintiff, the Federal Trade Commission (“FTC”), to DataX, Ltd., Las Vegas,
 7 Nevada (“Subpoena”) on or about July 19, 2012.

9 This Subpoena arises out of the FTC’s suit against the Tribal Entities that is currently
 10 pending in this Court. The Tribal Entities ask that the Court quash the Subpoena, which is
 11 virtually unbounded in time and scope and seeks their private, proprietary and commercial
 12 documents (it seeks every document that DataX, Ltd. has in its possession for the time period of
 13 2002 to the present date for these Tribal Entities), because the Tribal Entities’ Motion to Dismiss,
 14 Fed.R.Civ.P. 12(b)(6), the FTC’s Complaint in its entirety is currently pending and the documents
 15 sought via this Subpoena relate to, if anything, the merits of its case and, thus, the Subpoena is
 16 premature. The Tribal Entities have met and conferred with the FTC in an effort to stipulate to
 17 extend the return date on this Subpoena (which is currently set for August 10, 2012), but the FTC
 18 refused to enter into such a stipulation to present to this Court.

20 Dated: August 9, 2012

21 /s/ Conly Schulte
 22 CONLY SCHULTE
 23 Fredericks Peebles & Morgan LLP
 24 1900 Plaza Drive
 25 Louisville, CO 80027
 Telephone: (303) 673-9600
 Facsimile: (303) 673-9155
 Email: cschulte@ndnlaw.com

26 ¹ Although not relevant for purposes of the instant Motion, the Complaint filed in *FTC v. AMG*
 27 *Services, Inc.*, No. 2:12-cv-536 (D.Nev.), improperly names “Ameriloan,” “United Cash Loans,”
 28 “USFastCash” and “Miami Nation Enterprises” as dba’s of Tribal Financial Services.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On or about July 19, 2012, the Plaintiff, the Federal Trade Commission (hereinafter “FTC”) issued a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises to DataX, Ltd. (hereinafter “Subpoena”). (A true and correct copy of the Subpoena is attached hereto as “**Exhibit A.**”) The Subpoena commands DataX, Ltd. to produce, by August 10, 2012, extensive documents concerning the Tribal Defendants’ private commercial and proprietary information spanning more than a ten year time period (2002 until the date of production) including:

1. All documents relating to any agreement between You and any Defendant, any Relief Defendant, or any Associated Person, including but limited to formal business contracts, sales agreements, informal agreements, and any other agreement that may arise in the ordinary course of business (including drafts of all of the foregoing).
2. All documents relating to payments, including in-kind payments and purchases of goods and services, between You and any Defendant, any Relief Defendant, or any Associated Person.
3. All documents relating to Financial Statements involving any Defendant, any Relief Defendant, or any Associated Person.
4. All documents relating to communications or meetings between You and any Defendant, any Relief Defendant, or any Associated Person, including, but not limited to, all notes, agendas, and minutes reflecting what was discussed at such meetings (including drafts of all of the foregoing).

(Ex. A, p 7.) The documents sought, by their very nature constitute the Tribal Defendants’ private and commercially sensitive records generated in conjunction with the operation of their business.

This Subpoena arises out of the FTC’s suit against the Tribal Entities (and others) that is pending in this Court. The FTC filed that action on April 4, 2012, alleging that the Tribal Entities violated the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1666j, and the Electronic Fund Transfer Act (“EFTA”) 15 U.S.C. §§ 1693-1693r, *inter alia*. The Tribal Entities subsequently filed a Motion to Dismiss the

1 Complaint in its entirety for failure to state a claim for relief under Fed.R.Civ.P. 12(b)(6) on May
2 25, 2012. (Doc. 101.) In their Motion to Dismiss, the Tribal Entities asserted that, *inter alia*, the
3 FTC lacks authority to pursue the claims alleged in the Complaint, and therefore it failed to state a
4 claim. The Tribal Entities' Motion to Dismiss is grounded in a strong jurisdictional argument, as
5 well as other well-founded legal arguments, that are likely to dispose of the entire case. Even if the
6 entire case is not disposed as a result of the Tribal Entities' Motion to Dismiss, a very real
7 possibility exists that the FTC's claims will be drastically narrowed.

8
9 Despite the pending Motion to Dismiss, the FTC has continued to press for massive, broad-
10 based discovery, like the Subpoena at bar. As a result thereof, the Tribal Entities have filed a Joint
11 Motion for a Protective Order Regarding All Discovery Currently Pending (including all subpoenas
12 duces tecum the FTC has issued) in this Court in the underlying action, requesting that this Court
13 issue an order staying all discovery until this Court has resolved the Defendants' Motion to Dismiss.
14 (Doc. 134.) That Joint Motion is grounded in the rule that "a stay of discovery is warranted when
15 motions to dismiss raise arguments that go to "jurisdiction, venue, or immunity." *Twin City Fire*
16 *Insurance v. Employers of Wausau*, 124 F.R.D. 652, 653 (D.Nev.1989). And, despite the
17 Defendants' attempts, the parties in that case, to date, have been unable to agree on a confidentiality
18 protective order and, thus, there is no mechanism in place to protect confidential documents. The
19 discussions between the FTC and the Tribal Defendants regarding the confidentiality protective
20 order are continuing.

21
22 On August 3, 2012, this Court issued an order temporarily staying discovery in the
23 underlying action pending its resolution of the Motion for Protective Order, which is set for hearing
24 August 23, 2012. (Doc. 137.) Counsel for the Tribal Defendants, Shilee Mullin, contacted counsel
25 for the Federal Trade Commission, Ms. Julie Bush and Ms. Helen Wong, et al., on August 6, 7 and
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1 8, 2012 in an effort to resolve this dispute. Ms. Mullin asked that the FTC withdraw its Subpoena
2 in light of this Court's August 3, 2012 Order staying discovery. The FTC would not agree to
3 withdraw the Subpoena. The FTC agreed to stay the return date on the Subpoena (currently set for
4 August 10, 2012) until the day the stay of discovery is lifted or until five business days after the stay
5 of the discovery is lifted, and the Tribal Entities asked the FTC to execute a stipulation evincing its
6 agreement, which could then be submitted to this Court for approval. However, the FTC would not
7 agree to execute a joint stipulation.
8

9 **II. ARGUMENT**

10 The Subpoena should be quashed pursuant to Fed.R.Civ.P. 45(3)(A)(iv) because a Motion to
11 Dismiss the case in its entirety is currently pending in the District of Nevada, along with a Motion
12 for Protective Order and to Stay All Discovery. At a minimum, the Subpoena's compliance date
13 (which is currently August 10, 2012) should be modified pursuant to Fed.R.Civ.P. 45(c)(3)(C) to
14 *after* the District of Nevada has resolved the aforementioned motions, which the FTC apparently
15 does not dispute.
16

17 A party moving to quash a subpoena may do so on the grounds that the subpoena fails to
18 seek relevant information.² *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679-80 (N.D.Cal.2006). The
19

20 ² A party generally does not have standing to seek to quash a subpoena issued to a non-party unless
21 the moving party claims some personal right or privilege with regard to the documents sought. *E.g.*
22 *Washington v. Thurgood Marshall Academy*, 230 F.R.D. 18, 21 (D.D.C. 2005); *contra In Re:*
23 *Rhodes Companies, LLC*, ___ B.R. ___, 2012 WL 1512509 (D.Nev.2012) (declining (uniquely) to
24 adopt the longstanding rule that a party claiming a personal right or privilege enjoys standing to
25 seek to quash a subpoena issued to a non-party). A party, including a corporate or organizational
26 party, enjoys a personal right in its commercial records such that it enjoys standing to quash a third-
27 party subpoena. *Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 591 (D.Kan.2003). An
28 Indian Tribe in particular enjoys a personal interest in its commercial records such that it, too,
enjoys standing to quash a third-party subpoena. *Catskill Development, L.L.C. v. Park Place
Entertainment Corp.*, 206 F.R.D. 78, 93 (S.D.N.Y. 2002). The FTC's Subpoena has requested the
Tribal Defendants' commercial records, therefore, the Tribal Defendants clearly enjoy standing to
quash the FTC's Subpoena directed to the third party, Data X, Ltd.

1 *Gonzales* court equated the relevance requirement with a finding of “undue burden,” an enumerated
2 reason for quashing a subpoena pursuant to Fed.R.Civ.P. 45(3)(A)(iv). The *Gonzales* court
3 reasoned that although irrelevance itself is not contained within the list of enumerated reasons for
4 quashing a subpoena under Rule 45 “the scope of discovery through a subpoena is the same as that
5 applicable to Rule 34. . .” and Rule 26. *Gonzales*, 674 F.R.D. at 679 (Advisory Committee Notes to
6 the 1970 Amendment to Rule 45 and *Exxon Shipping Co. v. U.S. Dept. of Interior*, 34 F.3d 774, 779
7 (9th Cir.1994) (internal quotation marks omitted). *Gonzales* concluded that “if the sought after-
8 documents are not relevant, nor calculated to lead to the discovery of admissible evidence, then any
9 burden whatsoever imposed would be by definition ‘undue.’” *Gonzales*, 234 F.R.D. at 680 (citing
10 *Compaq Computer Corp. v. Packard Bell Elec., Inc.*, 163 F.R.D. 329, 335-36).

11
12 The *Gonzales* court therefore analyzed Rule 45’s burden inquiry in terms of Rule 26’s
13 contours and determined that is also proper to consider whether the subpoena’s request is
14 unreasonably cumulative and whether the benefit outweighs the harm. *Gonzales*, 234 F.R.D. at
15 680. Other courts integrating Rules 34 and 26 into the Rule 45 analysis have concluded that courts
16 “must examine whether a request contained in a subpoena is overly broad or seeks irrelevant
17 information under the same standards as set forth in Rule 26(b) and as applied to Rule 34 for
18 requests for production.” *Goodyear Tire & Rubber Co. v. Kirk’s Tire & Auto Servicer of*
19 *Haverstraw, Inc.*, 211 F.R.D. 658, 662 (D.Kan2003). This inquiry requires a balancing of factors
20 such as “relevance, the need of the party for the documents, the breadth of the document request,
21 the time period covered by it, the particularity with which the documents are described and the
22 burden imposed.” *Id.* (quoting *Concord Boat Corp. v. Burnswick Corp.*, 169 F.R.D. 44, 53
23 (S.D.N.Y.1996) (internal quotation marks omitted).
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1 The scope of discovery where a Motion to Dismiss pursuant Rule 12(b)(6) is pending is
2 extremely limited. It is axiomatic that Rule 12(b)(6) is intended to “streamline[] litigation by
3 dispensing with needless discovery and factfinding.” *Neitzke v. Williams*, 490 U.S. 319, 326-27
4 (1989) (emphasis added). As such, courts have found that “a plaintiff’s entitlement to discovery
5 before a ruling on a [dispositive motion] is not unlimited and may be cut off when the record shows
6 that the requested discovery will not be likely to produce facts he needs to withstand the [dispositive
7 motion].” *Paul Kadair, Inc. v. Sony Corp. or America*, 694 F.2d 1017, 1029-30 (citing
8 *Contemporary Mission, Inc. v. United States Postal Service*, 648 F.2d 97 (2d Cir. 1981); *Walters v.*
9 *City of Ocean Springs*, 626 F.2d 1317, 1321 (5th Cir. 1980)).

11 The Tribal Entities’ Motion to Dismiss is fully briefed and is currently pending in this Court.
12 The Motion to Dismiss pursuant to Rule 12(b)(6) goes to this Court’s jurisdiction to hear the FTC’s
13 claims and the FTC’s authority to bring this cause of action under the statute. Thus, the records are
14 relevant to, if anything, the substantive claims. They are not related to the fundamental
15 jurisdictional issues contained in the Motion to Dismiss.

17 Moreover the FTC’s request is both substantively and temporally overbroad. The Tribal
18 Defendants’ business records by their nature constitute private, sensitive, commercial information.
19 The FTC, moreover, has requested essentially every document in the possession of DataX, Ltd. that
20 pertains to the Tribal Defendants’, without an attempt to narrow their inquiry as to substance or to
21 identify even one document with particularity. Furthermore, the FTC has requested these records
22 reaching back more than ten years. It is impossible to overstate the irreparable harm to the Tribal
23 Defendants’ business affairs should this proprietary and confidential commercial information
24 needlessly be released prior to possible disposition of this case on jurisdictional grounds. This
25 potential for harm clearly outweighs the FTC’s need for the requested information at any time
26
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1 before the District of Nevada has ruled upon the pending dispositive motion. *See Gonzales*, 234
2 F.R.D. at 680; *Goodyear Tire & Rubber Co.*, 211 F.R.D. at 662.

3 Finally, as the U.S. Supreme Court described in *Neitzke v. Williams*, a dispositive motion
4 like the Tribal Defendants' 12(b)(6) motion is intended to "streamline[] litigation by dispensing
5 with needless discovery and factfinding." *Neitzke* 490 U.S. at 326-27 (emphasis added). The FTC's
6 Subpoena, however, attempts to obtain the Tribal Defendants' private commercial information as it
7 relates to the merits of this case. Until this Court has issued a ruling upon their 12(b)(6) Motion, the
8 Tribal Defendants' private and confidential banking information is not relevant to that cause of
9 action. Its release would, therefore, represent an undue burden such that this Court "**must** quash"
10 pursuant to Fed.R.Civ.P. 45(A)(3)(iv)(emphasis added); *see* 197 F.3d at 925; *Goodyear Tire &*
11 *Rubber Co.*, 211 F.R.D. at 662.
12

13 III. CONCLUSION

14 In light of the foregoing, the Tribal Defendants respectfully request that this Court issue an
15 order quashing the FTC's Subpoena to DataX, Ltd. in its entirety, as it seeks private information
16 that is irrelevant at this time and would pose an undue burden in light of the Tribal Defendants'
17 pending 12(b)(6) Motion. In the alternative, the Tribal Defendants respectfully request an order
18 staying enforcement of the Subpoena or modifying the return date until this Court has resolved the
19 currently pending Motion for Protective Order Staying Discovery.
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1 Dated: August 9, 2012

2 /s/ Conly Schulte
3 CONLY SCHULTE
4 Fredericks Peebles & Morgan LLP
5 1900 Plaza Drive
6 Louisville, CO 80027
7 Telephone: (303) 673-9600
8 Facsimile: (303) 673-9155
9 Email: cschulte@ndnlaw.com

10 JOHN NYHAN
11 Fredericks Peebles & Morgan LLP
12 2020 L St., Suite 250
13 Sacramento, CA 95811
14 Telephone (916) 441-2700
15 Facsimile (916) 441-2067
16 Email: jnyhan@ndnlaw.com

17 SHILEE MULLIN
18 Fredericks Peebles & Morgan LLP
19 3610 North 163d Plaza
20 Omaha, NE 68116
21 Telephone: (402) 333-4053
22 Facsimile: (402) 333-4761
23 Email: smullin@ndnlaw.com

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 9th day of August, 2012 service of the foregoing **MOTION TO QUASH, OR IN THE ALTERNATIVE TO REMIT ENFORCEMENT OF, PLAINTIFF'S SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES** was submitted electronically for filing and/or service with the United States District Court of Nevada. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

Blaine T. Welsh	blaine.welsh@usdoj.gov
Julie G. Bush	jbush@ftc.gov
Jason Schall	jschall@ftc.gov
Nikhil Singhvi	nsinghvi@ftc.gov
Helen Wong	hwong@ftc.gov

Attorneys for Plaintiff

Von S. Heinz	vheinz@lrlaw.com
Darren J. Lemieux	dlemieux@lrlaw.com
E. Leif Reid	lreid@lrlaw.com

Attorneys for Defendants AMG Capital Management, LLC; Level 5 Motorsports, LLC; LeadFlash Consulting, LLC; Black Creek Capital Corporation; Broadmoor Capital Partners, LLC; Scott A. Tucker; Blaine A. Tucker

L. Christopher Rose	lcr@juww.com
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Attorney for Defendants The Muir Law Firm, LLC and Timothy J. Muir

Whitney P. Strack	pstrack@gbmglaw.com
Brian R. Reeve	breeve@swlaw.com
Nathan F. Garrett	ngarrett@gbmglaw.com

Attorneys for Defendant Don E. Brady

Jay Young	jay@maclaw.com
-----------	----------------

Attorney for Defendant Robert D. Campbell

Paul C. Ray	PaulCRayLaw@gmail.com
-------------	-----------------------

Attorney for Defendant Troy L. Littleaxe

Patrick J. Reilly preilly@hollandhart.com
Attorney for Defendants Kim C. Tucker and Park 269 LLC

/s/ Carol Cyriacks
Paralegal
Fredericks Peebles & Morgan LLP
3610 North 163rd Plaza
Omaha, NE 68116

EXHIBIT A

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT

for the
District of Nevada

Federal Trade Commission

Plaintiff

v.

AMG SERVICES, INC., et al.

Defendant

Civil Action No. 2:12-cv-00536-GMN-VCF

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISESTo: DataX, Ltd., 325 East Warm Springs Rd, Suite 202, Las Vegas, NV 89119
c/o John Graubert, Covington & Burling, LLP, 1201 Pennsylvania Ave., NW, Washington, DC 20004☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached

Place: Federal Trade Commission 600 Pennsylvania Avenue, NW, Mail Stop: NJ-3158, Washington, D.C. 20580	Date and Time: 08/10/2012 17:00
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/9/12

CLERK OF COURT

OR

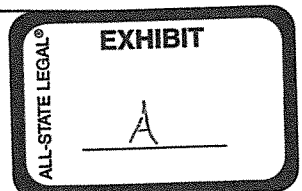
Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

Federal Trade Commission

, who issues or requests this subpoena, are:

Helen Wong, 600 Pennsylvania Avenue, NW, Mail Stop: NJ-3158, Washington, D.C. 20580, E-mail: hwong@ftc.gov,
Phone Number: 202-326-3779

Civil Action No. 2:12-cv-00536-GMN-VCF

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the subpoena on the individual at *(place)* _____
 on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT

SUBPOENA DUCES TECUM TO DATAx, LTD

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in this Request is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in this Request, the following terms are to be interpreted in accordance with these definitions:

1. “**All**” means “any and all,” and “any” means “any and all.”
2. “**And**” and “**or**” shall be individually interpreted in every instance as meaning “and/or” and shall be construed as is necessary in each case to make each Request inclusive rather than exclusive and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any Request.
3. “**Associated Persons**” means Miami Tribe of Oklahoma, Modoc Tribe of Oklahoma, Santee Sioux Nation, MNE Services, Inc., Norma Tucker, Crystal Cram, Charles Hallinan, Hallinan Capital, or Joel Tucker, including any wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
4. “**Communication**” means the transmittal of information by any means.
5. “**Defendant**” means defendants: 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, LLC, a Nevada Limited Liability Company; LEVEL 5 MOTORSPORTS, LLC, a Nevada Limited Liability Company; LEADFLASH CONSULTING, LLC, a Nevada Limited Liability Company; BLACK CREEK CAPITAL CORPORATION, a Nevada Corporation; BROADMOOR CAPITAL PARTNERS, LLC, a Nevada Limited Liability Company; THE MUIR LAW FIRM, LLC, a Kansas Limited Liability Company; SCOTT A. TUCKER, in his individual and corporate capacity; BLAINE A. TUCKER, in his individual and corporate capacity; TIMOTHY J. MUIR, in his individual and corporate capacity; DON E. BRADY, in his individual and corporate capacity; ROBERT D. CAMPBELL, in his individual and corporate capacity; and TROY L. LITTLEAXE, in his individual and corporate capacity, and also relief defendants, PARK 269 LLC, a Kansas Limited Liability Company; and KIM C. TUCKER, in her individual and corporate capacity.
6. “**Document**” shall have the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure, including, but not limited to, all writings (whether in printed or recorded

form or reproduced by any other mechanical process or written or reproduced by hand), electronically stored information, internet web pages, tape and sound recordings and also includes agreements, contracts, communications, correspondence, memoranda, records of telephone conversations, notes, drafts, reports, notebooks, corporate resolutions and minutes, recordings, and other data or data compilations stored in any medium from which information can be obtained or translated, if necessary, by detection devices into reasonably usable form. In addition, the term includes copies of documents that are not identical duplicates to the originals, and copies of documents, the originals of which are not in your possession, custody, or control. The term also includes e-mails, (whether they reside on computer hard drives, servers or back-up tapes) searchable and readable in native format, and information stored in any modern word processing program, including all reasonably current versions of WordPerfect and Microsoft Word.

7. **“Financial Statements”** means periodic financial reports (annual, quarterly, or monthly) regarding income, revenue, costs, expenses, profits, losses, property, assets, liabilities, debts or claims, audited or unaudited, and consolidated and unconsolidated.
8. **“Relating to”** and **“reflecting”** means constituting, comprising, containing, consisting of, setting forth, proposing, showing, disclosing, describing, or tending to describe, identifying, pertaining to, discussing, explaining, evidencing, comprising, indicating, analyzing, summarizing, authorizing, communicating about, or referring to directly or indirectly.
9. **“Relief Defendants”** mean relief defendants: PARK 269 LLC, a Kansas Limited Liability Company; and KIM C. TUCKER, in her individual and corporate capacity.
10. **“You”** and **“Your”** shall mean the person or entity to whom this subpoena issued.

INSTRUCTIONS

A. If, in responding to this request, the responding party encounters any ambiguities when construing a request or definition, the response shall set forth the matter deemed ambiguous and the construction used in responding.

B. Whenever in this request you are asked to identify or produce a document that you wish to assert may be properly withheld from production for inspection and copying, with respect to each document:

- i. If you are withholding the document under claim of privilege (including, but not limited to, the work product doctrine), the claim must be asserted no later than the return date of this subpoena. Please also provide the information set forth in Fed. R. Civ. P. 26(b)(5), including the type of document, the general subject matter of the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the

document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable Plaintiff to assess the applicability of the privilege or protection claimed by you; or

ii. If you are withholding the document for any reason state the reason with respect to each document withheld and provide the information requested in ¶ B.i above, as well as any other information necessary to support your claim that withholding the document is justified.

C. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege (or other basis for withholding information) is asserted with regard to part of the material contained in a document, you must clearly identify the portions as to which the privilege is claimed. When a document has been redacted or altered in any fashion, provide as to each document the information set forth in ¶ B above with respect to the redaction or alteration. Any redaction must be clearly visible on the redacted document.

D. If you object to production of any requested document(s) on the grounds that production is unduly burdensome, describe the burden or expense of the proposed discovery.

E. Unless otherwise requested, in lieu of producing original documents, you may produce photocopies, provided that you shall retain the original documents and produce them to the FTC upon request. Further, copies of original documents may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents, and their submission constitutes a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any legal proceeding. Please provide color copies of any document originally produced in color or containing type, writing, or other marks in any color other than black.

F. You shall produce the documentary material by making all responsive documents available for inspection and copying by the Commission's staff at the location noted on the subpoena. Alternatively, you may send via overnight delivery service, all responsive documents to Helen Wong, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Mail Drop NJ-3158, Washington, D.C. 20580. Please do not send the documents via regular mail as the mail delivery system is unpredictable due to security precautions applied to all processed mail.

G. You shall produce electronic or electronically stored documents in their native form. If any of the information requested in this subpoena is available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or a record generated by a computer, indicate whether you have an existing program

that will print out the record in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.

H If you believe that the scope of either the required search or any specification can be narrowed consistent with the Commission's need for documents, you are encouraged to discuss such possible modifications of this request, including any modifications of definitions and instructions, with Helen Wong at (202)326-3779.

I. All documentary materials used in the preparation of responses to the specifications of this subpoena shall be retained. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this subpoena, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.

J. The relevant time period for which production of documents and things are requested shall be from 2002, to the present, unless otherwise specified.

REQUESTS

1. All documents relating to any agreement between You and any Defendant, any Relief Defendant, or any Associated Person, including but not limited to formal business contracts, sales agreements, informal agreements, and any other agreement that may arise in the ordinary course of business (including drafts of all of the foregoing).

2. All documents relating to payments, including in-kind payments and purchases of goods and services, between You and any Defendant, any Relief Defendant, or any Associated Person.

3. All documents relating to Financial Statements involving any Defendant, any Relief Defendant, or any Associated Person.

4. All documents relating to communications or meetings between You and any Defendant, any Relief Defendant, or any Associated Person, including, but not limited to, all notes, agendas, and minutes reflecting what was discussed at such meetings (including drafts of all of the foregoing).