

In the Supreme Court of the State of California

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Appellant,

v.

**MIAMI NATION ENTERPRISES, ET
AL.,**

**Defendants and
Respondents.**

Case No. S216878

SUPREME COURT
FILED

JUL 28 2014

Frank A. McGuire Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B242644
Superior Court of California, County of Los Angeles,
Case No. BC373536
Yvette M. Palazuelos, Judge

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATIONS OF JOSEPH M. MAIO AND PATRICIA A.
BRANDT; PROPOSED ORDER**

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TO RESPONDENTS AND THEIR ATTORNEYS OF RECORD:
PLEASE TAKE NOTICE that pursuant to Rule 8.252(a) of the California Rules of Court, Appellant the People of the State of California move this Court to take judicial notice of certain materials cited in the People's Opening Brief on the Merits.

This motion is made on the following grounds:


- 1) Evidence Code sections 459, 453, and 452 authorize this Court to take judicial notice of the materials set forth in this motion; and
- 2) The materials are relevant to the issues addressed in the People's brief.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Joseph M. Maio and Patricia A. Brandt, and the attached exhibits, which are true and correct copies of the documents described.

Dated: July 28, 2014

Respectfully submitted,

KAMALA D. HARRIS
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EDWARD C. DUMONT
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF PEOPLE'S REQUEST FOR JUDICIAL NOTICE**

I. INTRODUCTION

The People respectfully request that the Court take judicial notice of the following materials, true and correct copies of which are attached as exhibits to the declarations of Joseph M. Maio (Maio Decl.) and Patricia A. Brandt (Brandt Decl.):

Screenshots:

Screenshot of Internet homepage of Ameriloan at <https://ameriloan.com/>. (Attached as Exhibit A to Maio Decl.)

Screenshot of Internet homepage of UnitedCashLoans at <https://unitedcashloans.com/>. (Attached as Exhibit B to Maio Decl.)

Screenshot of Internet homepage of USFastCash at <https://usfastcash.com/>. (Attached as Exhibit C to Maio Decl.)

Screenshot of Internet homepage of OneClickCash at <https://oneclickcash.com/>. (Attached as Exhibit D to Maio Decl.)

Screenshot of Internet homepage of PreferredCashLoans at <https://preferredcashloans.com/>. (Attached as Exhibit E to Maio Decl.)

**Information from the United States Patent and Trademark
Office (USPTO):**

Trademark Status Information for the trademark Ameriloan.
(Attached as Exhibit F to Brandt Decl.)

Trademark Status Information for the trademark UnitedCashLoans.
(Attached as Exhibit G to Brandt Decl.)

Trademark Status Information for the trademark USFastCash.
(Attached as Exhibit H to Brandt Decl.)

Trademark Status Information of trademark OneClickCash.
(Attached as Exhibit I to Brandt Decl.)

Printout of search results for search term PreferredCashLoans showing absence of registration for this trademark. (Attached as Exhibit J to Brandt Decl.)

II. THE EVIDENCE CODE AND THE RULES OF COURT PERMIT THIS COURT TO TAKE JUDICIAL NOTICE OF THE MATERIALS REQUESTED

The materials that are the subject of this request are relevant to this matter because they help to provide context for the remedy requested by the People—a remand to determine whether SFS, Inc. and MNE Services, Inc. are arms of the Sante Sioux Nation and the Miami Tribe of Oklahoma, respectively. (Cal. Rules of Court, rule 8.252(a)(2)(A).) The materials update, for the Court’s convenience, information that is in the record concerning these corporations’ use and ownership of the Payday Lenders’ trademarks. The current screenshots support the assertions in the People’s Opening Brief that the websites remain active and contain specified statements regarding SFS, Inc., MNE Services, Inc., and tribal affiliation. The information from the USPTO verifies that SFS, Inc. and MNE Services, Inc. are the current trademark owners and confirms the date that each became owners.

Screenshots of the Payday Lenders’ websites and information about the Payday Lenders’ trademarks were placed into the record and considered by the trial court and the Court of Appeal.¹ The information in the record

¹ Historic screenshots for the Payday Lenders are in the record at the following locations: Ameriloan (4 SSCT 727-733 [2007 website]; 20 CT 4748-4773 [2012 website]), UnitedCashLoans (4 SSCT 742-751 [2007]; 20 CT 4848-4875 [2012]), USFastCash (4 SSCT 735-738 [2007]; 21 CT 4882-4907 [2012]), OneClickCash (4SSCT 739-740 [2007]; 20 CT 4780-4806 [2012]), PreferredCashLoans (4 SSCT, 753-754 [2007]).

The trademark information is located in the record at the following locations: Ameriloan (23 CT 5529-5533), UnitedCashLoans (24 CT 5704-5708), USFastCash (24 CT 5720-5724), OneClickCash (24 CT 5620-5624).

was gathered in June 2007 and January 2012. Current, updated information about the Payday Lenders' websites and trademarks, set out in this motion, was not, and could not have been, presented to the trial court. (Cal. Rules of Court, rule 8.252(a)(2)(B).)

The matters at issue in this motion are subject to judicial notice. (Cal. Rules of Court, rule 8.252(a)(2)(C).) Under Evidence Code section 452, this Court may take judicial notice of any matter that would be subject to discretionary judicial notice by the trial court. (Evid. Code, § 459, subd. (a); see also *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 379 [an appellate court can take judicial notice of matters that were not before the trial court].)

The screenshots are all of publically available websites on the Internet. (See Miao Decl.) Therefore these materials may be judicially noticed pursuant to Evidence Code section 452, subdivision (h), because they concern matters that are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. California courts have taken judicial notice of materials available online that are not reasonably subject to dispute. (See, e.g., *Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 821, fn. 1 [judicial notice of description of operations posted on website]; *Citizens For Responsible Open Space v. San Mateo County Local Agency Formation Commission* (2008) 159 Cal.App.4th 717, 727, fn. 5 [judicial notice of map available on website of local public agency].) This Court may take judicial notice because the websites' homepages and their contents are not subject to dispute.

All of the trademark materials are publically available on the Internet and are judicially noticeable under Evidence Code section 452, subdivision (h), because they are not reasonably subject to dispute. The trademark materials are also records of the United States Trade and Patent Office, a federal agency, and therefore are judicially noticeable as official

acts pursuant to Evidence Code section 452, subdivision (c). “Official acts include records, reports and orders of administrative agencies.” (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 911, fn. 8; quoting *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) Accordingly, the People respectfully request that the Court take judicial notice of these materials.²

The materials do not relate to proceedings occurring after the trial court’s order that is the subject of this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

Copies of all materials are filed and served with this motion. (Cal. Rules of Court, rule 8.252(a)(3).)

CONCLUSION

Based on the foregoing, the People respectfully request that this Court grant the request for judicial notice of Exhibits A through J.

² Section 453 of the Evidence Code provides that judicial notice of the matters set forth in section 452 is mandatory if properly requested by a party. The requesting party must give sufficient notice of the request to enable the adverse party to prepare to meet it, and furnish the court with sufficient information to enable the Court to take judicial notice of the matter. (Evid. Code, § 453, subs. (a) & (b).)

Dated: July 28, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
SARA J. DRAKE
Senior Assistant Attorney General
JANILL L. RICHARDS
Principal Deputy Solicitor General

A handwritten signature in black ink, appearing to read 'J. Henderson', with a long horizontal flourish extending to the right.

JENNIFER T. HENDERSON
Deputy Attorney General
Attorneys for Appellant and Petitioner

DECLARATION OF JOSEPH M. MAIO

I, Joseph M. Maio, declare:

1. I am an Assistant Information Systems Analyst working in Litigation Support for the Department of Justice.

2. I have been employed by the Department of Justice since September of 2013. My workplace is located at 1300 I Street, Sacramento, California 95814. I have personal knowledge of, and may competently testify concerning, the contents of this declaration.

3. On June 30, 2014, I began the web capture process for the requested websites. Using the web capture software called "HTTRACK," I created a working, offline copy of the websites as they appeared on the Internet. All files and links associated with the captured domains were downloaded and converted into a format that allows for offline usability.

The web capture contains the following domains:

Ameriloans.com
UnitedCashLoans.com
USFastCash.com
OneClickCash.com
PreferredCashLoans.com

4. Using the working copy I created through HTTRACK, I created screenshots of the websites' home pages in PDF format as they appeared on the date of capture. True and correct copies of the screenshots are attached, marked as Exhibits A through E.

Exhibit A: <https://ameriloan.com/>
Exhibit B: <https://unitedcashloans.com/>
Exhibit C: <https://usfastcash.com/>
Exhibit D: <https://oneclickcash.com/>
Exhibit E: https://preferredcashloans.com

I declare under penalty of perjury that the foregoing is true and correct, executed in Sacramento, California, on July 25, 2014.



JOSEPH M. MAIO

DECLARATION OF PATRICIA A. BRANDT

I, Patricia A. Brandt, declare:

1. I am a Senior Legal Analyst employed with the California Attorney General's Office (AGO). I am a paralegal assisting Deputy Attorney General Jennifer T. Henderson, counsel of record for the State of California (People) in this matter. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. On July 23, 2014, I searched for information located at the United States Patent and Trademark Office (USPTO) website at: <http://www.uspto.gov/index.jsp>. I located the Trademark Electronic Search System (TESS) at:

<http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4810:zra5o9.1.1>.

3. At the TESS website location, I conducted a Basic Word Mark Search for each of the following terms: Ameriloan, UnitedCashLoans, USFastCash, OneClickCash, and PreferredCashLoans. For each of the search terms for which I received results, I selected the live trademark, then opened the Trademark Status & Document Retrieval (TSDR) system. I expanded the tabs for "Goods and Services," "Current Owner(s) Information," and "Assignment Abstract of Title Information." I then printed out the resulting information for each trademark. Attached are true and correct copies of those documents, marked as follows:

Exhibit F (Ameriloan)
Exhibit G (UnitedCashLoans)
Exhibit H (USFastCash)
Exhibit I (OneClickCash)

4. On July 25, 2014, at the TESS website location, I conducted a Basic Word Mark Search for "PreferredCashLoans" and the query returned an indication of "No TESS records were found to match the criteria of your query." I also tried the following search terms: "Preferred Cash Loans," "PreferredCash," and "CashLoans," and all queries came back with an indication of no TESS records found. When I tried the search term "Preferred Cash," three results were returned, and none were related to payday lending. Attached as Exhibit J are true and correct copies of the screenshots of the query pages and the results pages.

I declare under penalty of perjury that the foregoing is true and correct, executed in Sacramento, California, on July 25, 2014.



PATRICIA A. BRANDT



Large enough to serve you. Small enough to know you.



**It's easy to get the funds
you need in seconds!**

[CLICK HERE TO APPLY NOW](#)

GET A NEW LOAN

If you have paid off your loan and would like to get another.

[click here for faster service](#)

FAQ's

Would you like to know more about cash advances and our other services?

[Consumer Notice Tips](#)
[Carcare](#)
[FAQ's](#)

ATTENTION MILITARY!

Are you a covered member or the dependent of a covered military member of a branch of the US Military?

[click here](#)

WELCOME

We've made it easier than ever to access your account. Log in here!

Username:
Password:



Forgot your password?
[Click Here](#)



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[FAQ's](#)

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I couldn't believe how easy it was!

Before I knew it, the money was in my account and my cash problems were solved! Thanks!

- Steve, MD

EXISTING CUSTOMER LOGIN

Username:

Password:

[Log In](#)

Forgot your password?
[Click Here](#)

PERSONAL

Introducing...

Our new **faster** and **easier** loan application.

[Apply Now!](#)

ATTENTION!

Are you a covered member or the dependent of covered member of a branch of the U.S. Military?

[Click Here](#)

I'm Looking into a Cash Advance for the First Time

What is a cash advance?

Can I qualify?

How much can I qualify for?

What does it cost?

When do I get my money?

When do I repay?

My Loan Application has been Submitted Online

I don't have a printer and I want to print a copy of my loan documents. Can I get my documents another way?

How do I reprint my loan documents?

Would you like to get a new loan?

ADDITIONAL RESOURCES

Would you like to know more about cash advances and our other services?

[Consumer Notice Tips](#)

[Careers](#)

MNE Services, Inc., doing business as UnitedCashLoans[®], is a tribal lending entity wholly owned by the Miami Tribe of Oklahoma, a Sovereign Nation recognized by the United States government under the Oklahoma Indian Welfare Act of 1936.

[HOME](#) | [APPLY NOW](#) | [HOW IT WORKS](#) | [REMOVE ME](#) | [CONTACT US](#) | [PRIVACY POLICY](#) | [ABOUT US](#)
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