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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
 CREDIT BUREAU CENTER, LLC,)
 a limited liability company, formerly known as)
 MYSCORE LLC, also doing business as)
 EFREESCORE.COM, CREDITUPDATES.COM,)
 and FREECREDITNATION.COM,)
)
 MICHAEL BROWN,)
 individually and as owner and manager of)
 CREDIT BUREAU CENTER, LLC,)
)
 DANNY PIERCE, individually, and)
)
 ANDREW LLOYD, individually,)
)
 Defendants.)

Case No.

17-cv-00194

Judge Matthew F. Kennelly

Magistrate Judge Maria Valdez

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS
EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, APPOINTMENT OF A RECEIVER,
OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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I. INTRODUCTION

The Federal Trade Commission (“FTC”) asks this Court to halt a fraudulent operation that falsely advertises rental properties nationwide in order to lure consumers to websites where they are deceptively enrolled in credit monitoring services. Defendants prey on consumers seeking housing by posting ads for desirable rental properties on Craigslist or similar sites. The ads are fake. Either the properties do not exist, or Defendants have no authority to offer them for rent. When consumers respond to the ads, Defendants reply by email, impersonating the owner or manager of the property, and offering to schedule a “walk-through” on one condition—that consumers first click on a link in the email to get their credit report and bring it to the tour. The link is a trap. It takes consumers to specially-designed versions of websites operated by Defendant Credit Bureau Center, LLC (“CBC”), including eFreeScore.com and CreditUpdates.com. The websites deceptively offer “free” credit reports and scores, just what consumers think they need, and require consumers to enter detailed personal information, including their Social Security numbers, birthdates, and credit or debit card numbers. Unbeknownst to many consumers, entering this information means that after seven days, they will be charged \$29.94 monthly for separate, unauthorized credit monitoring services. These charges recur unless and until consumers take affirmative steps to cancel the service. Defendants have billed consumers more than \$6 million for these services.

Defendants’ predatory conduct victimizes consumers in multiple ways. To begin with, the rental opportunities do not exist. The purpose for which consumers are getting their credit reports and scores—to qualify as prospective tenants—is a sham. When consumers, with credit reports and scores in hand, email the phony landlord to schedule the tour of the property, they get no response. They never get the promised tours. To make matters worse, many consumers incur

one or more monthly charges of \$29.94 for the credit monitoring service before they notice the unexpected charges and attempt to stop them. When they request refunds from CBC, the company refuses, informing them that they may only cancel future charges. Only the most persistent consumers have been able to get their money back by filing chargebacks with their banks or complaining to the Better Business Bureau (“BBB”) or their state attorney general. Some consumers, upon realizing that their Social Security numbers, birthdates, card numbers, and other personal details are now in the hands of scammers, spend time contacting banks and government agencies in an attempt to protect themselves from identity theft. To date, Defendants’ scheme has generated more than 500 consumer complaints and has caused millions of dollars of consumer loss.

The FTC brings this motion *ex parte* to seek an immediate halt to this operation, to freeze its assets and the assets of those involved, and to have a temporary receiver appointed over the business. The relief sought by the FTC is supported by overwhelming evidence, including consumer complaints; screenshots of Defendants’ deceptive advertisements, emails, and websites; and sworn statements from eight consumers, an FTC Investigator, and the BBB branch that has received hundreds of complaints against the business and rejected its bid for accreditation.

The evidence filed herewith shows that Defendants are violating multiple federal consumer protection laws:

- Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce;
- Section 4(1) and (2) of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403(1) & (2), prohibiting online sales effected through negative options unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing

information, and (2) obtains the consumer's express informed consent before making the charge; and

- Section 612(g)(1) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681j(g)(1), and the Free Annual File Disclosures Rule ("Free Reports Rule"), 12 C.F.R. § 1022.138, requiring that all websites advertising free credit reports disclose prominently, as specified in the rule, that free credit reports are available through AnnualCreditReport.com and 877-322-8228.

Defendants have continued these violations for nearly three years despite a flood of consumer complaints and repeated cancellations of their merchant accounts for excessive chargebacks. During this time, CBC has generated over \$6 million in sales while paying its affiliate marketers more than \$2.1 million in connection with the bogus rental ads.

Defendants' widespread pattern of fraud, unauthorized charges to consumers' accounts, and efforts to evade responsibility for their conduct all strongly suggest that they would hide or dissipate assets if they received notice of this action. The requested relief is necessary and appropriate to preserve the Court's ability to provide effective final relief, including eventual restitution to the victims.

II. DEFENDANTS' UNLAWFUL BUSINESS PRACTICES

Defendant's scheme involves three steps: First, Defendants post Craigslist ads for attractive rental properties in order to lure consumers to send emails expressing interest. Next, when consumers respond to the ads, Defendants reply by impersonating the owner or manager of the properties and inviting consumers to take a tour—but only if they first obtain a credit report and score by clicking on a link in the email. Finally, when consumers click on the link in the email, they arrive at a website that leads them to believe they are signing up for a free credit report and score, when in fact they are unwittingly being enrolled in an expensive credit monitoring service. Each step of this scheme will be discussed in turn.

A. Defendants' Fake Craigslist Ads

CBC promotes its websites through affiliate marketers, Defendants Danny Pierce and Andrew Lloyd. In affiliate marketing, a seller of goods or services (typically called the “merchant” or “advertiser”) uses other firms or individuals (the “affiliates” or “publishers”) to market the merchant’s goods or services by attracting potential customers to the merchant’s websites. The merchant pays an affiliate for each consumer who, as a result of that affiliate’s marketing efforts, visits the merchant’s website or purchases the merchant’s products. Here, as CBC’s affiliate marketers, Pierce and Lloyd place ads on Craigslist in local areas throughout the country, offering desirable rental properties, pictured in the ads, at attractive prices.¹ These ads typically do not include the physical address of the property or provide a telephone number for inquiries.² Consumers find that the only way to contact the persons offering the properties for rent is by email.³

The Craigslist ads are designed to catch the attention of consumers looking for rental properties. One such consumer, Alexandra Heller, was looking for a home in the greater Philadelphia area when she came across one of Defendants’ ads. “It was in my price range, was

¹ See, e.g., Plaintiff’s Exhibit (“PX”) 10, McKenney Dec. ¶¶ 7, 10-11, 15, 19-20, 22-24, 26-27, 37-38 & Atts. A at 1, D at 1-2, F at 1-2, H at 1-2, J at 1-2; PX 2, Berney Dec. ¶¶ 2-3 (consumer found listing on Craigslist “for a cute apartment with a good price in a neighborhood I liked”); PX 3, Chapple Dec. ¶¶ 2-3 (house advertised for rent on Craigslist “seemed perfect for my family”); PX 4, Falzarano Dec. ¶¶ 2-4 (apartment was reasonably priced and in building where consumer had lived before); PX 7 Spellman Dec. ¶ 3 (reasonably priced unit in secure building); PX 8, Tucker Dec. ¶ 3 (apartment listed at good price).

² See, e.g., PX 10, McKenney Dec. ¶¶ 7, 10-11, 15, 19-20, 22-24, 26-27, 37-38 & Atts. A at 1, D at 1-2, F at 1-2, H at 1-2, J at 1-2; PX 1, Allen Dec. ¶¶ 3-4; PX 2, Berney Dec. ¶¶ 3-4; PX 3, Chapple Dec. ¶ 3; PX 4, Falzarano Dec. ¶ 4; PX 5, Heller Dec. ¶¶ 3-4; PX 6, Leonard Dec. ¶¶ 2-3; PX 7, Spellman Dec. ¶¶ 3-4; PX 8, Tucker Dec. ¶ 4.

³ See *id.*

located in a good area, and looked appealing in the photos,” Ms. Heller later explained.⁴ After seeing the ad, she emailed the Defendants to express her interest:⁵

-----Original Message----- From: Alexandra Heller To: deniseog@yahoo.com
Sent: Mon, Jun 27, 2016 12:32:34 PM Subject: Interested in your apartment listing on Craigslist
Hello, I came across your listing on Craigslist for the apartment in Queen Village and am very interested to learn more. I would love to set up a walk-through sometime this week if possible. Please don't hesitate to reply back to this email or call/text me at [REDACTED]. Looking forward to hearing from you, and thanks so much! --Alexandra Heller

Unbeknownst to Ms. Heller, the ad was fake, as are all of Defendants’ rental ads.⁶

Defendants’ advertised properties either do not exist, or are properties that Defendants have no authority to offer for rent. In some instances, the ads are assembled from generic captions, text and photographs.⁷ In other instances, the contents are copied from legitimate rental ads or websites and are republished by the Defendants without authorization.⁸ The sole purpose of the ads is to generate responses from consumers, who are then driven to CBC’s websites by the fake landlord emails described below.

Based on the high number of consumer complaints that reference Defendants’ Craigslist rental ads, these ads appear to be highly effective.⁹ Many consumers looking for housing take the ads at face value, assuming that the advertised properties exist and are currently available for

⁴ PX 5, Heller Dec. ¶¶ 2-3.

⁵ *Id.* ¶ 4 & Att. A at 2.

⁶ *Id.* ¶¶ 4-12; McCool Dec. ¶¶ 6-8 & Att. A (consumer complaints).

⁷ PX 10, McKenney Dec. ¶¶ 37-38 & Att. N (describing and attaching an online repository of generic ads).

⁸ PX 9, McCool Dec. Att. A at 10, 34; PX 3, Chapple Dec. ¶ 12.

⁹ *See, e.g.*, PX 10, McKenney Dec. ¶¶ 74-76 (referencing 297 consumer complaints); PX 9, McCool Dec. ¶¶ 4-7, 17 & Att. A at 1-8, 10-17, 20, 22-23, 25-27, 30-31, 34-44, 46-53, 55-61, 64-78, 80-81 & Att. I at 4-10 (consumer complaints).

rent through Defendants. Deceived by the ads, consumers respond by email seeking more information and/or to schedule a tour of the property.¹⁰

B. Defendants' Fake Landlord Emails

When consumers respond to the Craigslist ads with emails inquiring about the properties, they receive responses that purport to be from the property owner or manager but in fact are designed to lure consumers to CBC's websites. Addressing the consumers personally, the emails typically state that the unit is still available and tout its amenities, such as new appliances and garage parking. The emails explain that the consumers will need to obtain a credit report and credit score in order to rent the unit, and instruct the consumers to obtain that information by clicking on a link in the email.¹¹ The emails frequently reassure consumers that "all of our tenants" have used the credit report website and "haven't had any problems."¹² As an extra incentive, many emails have stated that, if the consumer's credit score exceeds a certain level, such as 600, the security deposit on the rental property will be waived.¹³ The emails direct consumers to bring the credit report with them when they come to tour the rental property.

¹⁰ See, e.g., PX 1, Allen Dec. ¶ 4; PX 2, Berney Dec. ¶ 4; PX 3, Chapple Dec. ¶ 4; PX 4, Falzarano Dec. ¶ 4; PX 5, Heller Dec. ¶ 4; PX 6, Leonard Dec. ¶ 3; PX 7, Spellman Dec. ¶ 4; PX 8, Tucker Dec. ¶ 4.

¹¹ See, e.g., PX 10, McKenney Dec. Atts. A at 2, D at 3, F at 3, H at 3, J at 3; PX 1, Allen Dec. ¶¶ 6-7 & Att. A; PX 2, Berney Dec. ¶¶ 5-7 & Att. A; PX 3, Chapple Dec. ¶¶ 5-6; PX 4, Falzarano Dec. ¶¶ 5-8 & Att. A; PX 5, Heller Dec. ¶¶ 5-7 & Att. A; PX 6, Leonard Dec. ¶¶ 4-5 & Att. A; PX 7, Spellman Dec. ¶ 4 & Att. A; PX 8, Tucker Dec. ¶¶ 5-7; PX 9, McCool Dec. Att. I at 4-5.

¹² See, e.g., PX 2, Berney Dec. Att. A; PX 9, McCool Dec. Att. I at 4-5.

¹³ See, e.g., PX 1, Allen Dec. Att. A; PX 3, Chapple Dec. ¶ 5; PX 7, Spellman Dec. Att.

A.

A representative response email¹⁴ from the purported property owner or manager is set out below—these emails reinforce consumers’ impression from the Craigslist ads that the advertised property is real and that Defendants are authorized to lease it:

From: "Olivia Gentile" <leased@showtoure.site>
Date: June 28, 2016 at 5:09:41 PM EDT
To: [REDACTED]
Subject: RE: Interested in your apartment listing on Craigslist

Hello Alexandra,

Thank you for your interest in the property listed for rent. You were the second to e-mail from the ad. The first prospective tenant no longer had to move because of his home situation. So we give the opportunity to you. We are now ready to lease with flexible terms and just completed all new renovations. We will work together with you on move in date, lease security deposit and length.

I understand that you want the precise address of the property but my husband does not want me disclose due to security reasons. We have had a string of break-ins, squatters and thefts at our other properties. We want to prevent that with this property because of the renovations that have cost lots of money. You'll be the first to move in with the renovations. That is why we want to confirm you have your latest report before we arrange a walk through.

All utilities are priced into the lease along with garage parking spaces. The appliances in the kitchen as well as laundry room were just installed. You have the option to pick your paint color and flooring prior to your arrival

When you want to come look at the place, then please visit the link below and grab your report. We recommend this site because all of our tenants used it and haven't had any problems. Just fill out the form and indicate that you want the report. We are not concerned with any negative report items, it's more of a formality to ensure you have rental history. Simply get your report by [CLICKING HERE](#)

Keep in mind that you only have to bring your report to the tour. Please let me know when you grab your report. I can then schedule you for a walk through of the place.

Thanks,
Olivia

Following the “CLICKING HERE” hyperlink takes consumers to one of CBC’s websites.

Defendants lure thousands of consumers across the United States to CBC’s websites based on these false pretenses.¹⁵ Defendants’ Craigslist ads and fake landlord emails are

¹⁴ PX 5, Heller Dec. Att. A.

designed to give consumers the impression that they are following the necessary steps to rent an attractive and inexpensive place to live. By representing to consumers that getting their credit report and credit score is a prerequisite to viewing and renting an actual physical property, the Defendants successfully deceive consumers into clicking on the links in the emails.

C. Credit Bureau Center's Deceptive Websites¹⁶

Consumers arriving at CBC's websites via the fake landlord email have just been assured that they can obtain their credit report through a simple and trustworthy process:

When you want to come look at the place, then please visit the link below and grab your report. We recommend this site because all of our tenants used it and haven't had any problems. Just fill out the form and indicate that you want the report. We are not concerned with any negative report items, it's more of a formality to ensure you have rental history. Simply get your report by [CLICKING HERE](#)

Keep in mind that you only have to bring your report to the tour. Please let me know when you grab your report. I can then schedule you for a walk through of the place.

See PX 5, Heller Dec. Att. A. CBC designs its websites to offer consumers just what the fake landlord said they needed in order to tour the rental property—a credit report and score, containing their current information, for “free.” This offer is express and unambiguous. On May 19, 2016, for example, the banner headline on the landing page of both the [eFreeScore.com](#) and [CreditUpdates.com](#) websites stated:

**Get Your Free Credit Score
and Report as of May 19, 2016**

¹⁵ PX 10, McKenney Dec. ¶ 33 (referencing 146,000 sales); PX 9, McCool Dec. ¶ 6 (referencing 227 complaints).

¹⁶ As [eFreeScore.com](#) and [CreditUpdates.com](#) are materially similar, the description and analysis that follow would apply to the consumer experience on either site.

See PX 10, McKenney Dec. Att. E at 1, 2. Having promised consumers what they came for, the websites then guide them through a series of four webpages: a landing page followed by three webpages marked as (1) Complete, (2) Confirm, and (3) Verify.¹⁷

Consumers find that each of these webpages contains a few spaces where they must enter personal information. They advance through the webpages by clicking on large orange buttons labeled “YOUR SCORE - NOW!” and “Submit & Continue.” By the end of the process, consumers have entered their name, address, telephone number, email address, credit or debit card number, birthdate, and Social Security number.¹⁸ Unfortunately for consumers, they have divulged all of this highly personal information to get a credit report and score in order to qualify for a rental opportunity that does not exist.

CBC rakes in millions of dollars through this scheme¹⁹ because every consumer who enters his or her information on the website is automatically enrolled in a negative option seven-day trial of its credit monitoring service. After seven days, CBC charges \$29.94 monthly to the card the consumer entered on the website, unless and until the consumer cancels the service. There is no way consumers can obtain the promised free credit score and report without being automatically signed up for the negative option trial.

By designing its websites to appeal to consumers looking to obtain a “free” credit report that will enable them to tour an attractive apartment, CBC is routinely able to charge consumers for its credit monitoring service without their knowledge or consent.²⁰ This is no accident. The

¹⁷ See PX 10, McKenney Dec. ¶¶ 13-14, 17-18, 21, 25, 28 & Atts. B, E, G, I, K (website printouts).

¹⁸ *Id.*

¹⁹ *Id.* ¶ 63.

²⁰ See, e.g., PX 10, McKenney Dec. ¶¶ 74-76 (noting that many consumers complain of unauthorized charges); PX 1, Allen Dec. ¶ 13; PX 2, Berney Dec. ¶¶ 13-14; PX 3, Chapple Dec.

nature of CBC's scheme is apparent from the company's maintenance of two versions of its websites: one cleaned-up version for public display, accessible through any browser at eFreeScore.com or CreditUpdates.com, and the other for consumers who have arrived there via the link in the fake landlord emails.²¹ On its publicly accessible websites, CBC does not hide the fact that the service being offered is not a free credit report and score but rather a paid subscription for credit monitoring.²² On the deceptive version of its websites shown to apartment-hunting consumers, however, CBC prominently advertises a "free" credit report and score without prominently advertising its credit monitoring service.²³ Indeed, the sole reference to credit monitoring on these deceptive websites during the sign-up process appears at the bottom of the landing page, in a block of fine print that consumers would have to scroll down to see.²⁴

Elsewhere on the deceptive versions of CBC's websites, there are fine-print references to a trial period and monthly membership, but these references are confusing, inconspicuous, and do not mention the credit monitoring service for which consumers are to be charged. For

¶ 22; PX 4, Falzarano Dec. ¶¶ 11-13; PX 5, Heller Dec. ¶¶ 13-14; PX 6, Leonard Dec. ¶ 10; PX 8, Tucker Dec. ¶¶ 12-15.

²¹ PX 10, McKenney Dec. ¶¶ 13-14, 17-18, 21, 25, 28, 30-32.

²² PX 10, McKenney Dec. ¶¶ 30-32 & Atts. L-M.

²³ In addition to the bold heading on the landing page, "Get Your Free Credit Score and Report as of [date]," each of the three webpages that follow include headings and text addressing "What is a good Credit Score?" and "Will I find errors on my credit report?" *See, e.g.*, PX 10, McKenney Dec. Att. E at 3, 5-6. Nowhere in the sign-up process are the benefits of the credit monitoring service advertised.

²⁴ The fine print at the bottom of the landing page states:

Monitoring services may take up to 3 days to become active so this service within your membership may not be available during the whole 7-day trial period. The credit scores we offer may not be the same scoring model used by a lender or other credit score sites so view this score only for educational purposes. Experian, Equifax, and Transunion trademarks remain property of their respective holders, and are only used to directly describe the products and the source of the credit data being provided.

See PX 10, McKenney Dec. Atts. B at 2, E at 2, G at 2, K at 2.

example, the desktop version of the landing page includes fine print merely stating, “7-day trial ends [date],” and, separately, “Monthly membership of \$29.94 automatically charged after trial.”²⁵ These fine-print statements are much smaller and fainter than the banner headline above them advertising the “free” credit report and score. On the mobile version of that same page, the statements do not appear at all.²⁶ Even if consumers visiting the desktop version of the landing page were to see these statements, they do not explain why consumers would be charged for something already promised to them for “free,” nor do they provide any basis for the charges.

The same is true of fine print on the webpage where consumers enter their credit or debit card information. The stated purpose of this webpage²⁷ (step 2 of 3) is to confirm the consumer’s identity. Large, bold print across the top of the page states, “Your credit score is ready once we confirm your identity!” The webpage then requests “Verification and Payment Information,” stating, “Tell us which card you would like to use for your \$1.00 refundable processing fee and membership.” Below that are spaces for the consumer to enter their credit or debit card information. Near the bottom of the page, there is a block of fine print referencing the 7-day trial and the monthly charges commencing after the trial.²⁸ Once again, however, this fine print fails to explain why consumers would be charged for their “free” credit report and score, and fails to identify anything else for which consumers would be charged. Even if seen by consumers, this language is confusing at best, and wholly inadequate to correct the wall-to-wall deception aimed at consumers in this case.²⁹

²⁵ See PX 10, McKenney Dec. Atts. B at 1, E at 1, G at 1, I at 1, K at 1.

²⁶ See PX 10, McKenney Dec. Atts. C, I.

²⁷ See PX 10, McKenney Dec. Atts. B at 21, E at 5, G at 20, K at 5.

²⁸ *Id.*

²⁹ The terms and conditions on CBC’s websites, which are accessible only through a hyperlink, contain additional statements referencing credit monitoring buried in numerous pages of dense text. These statements discuss the “Credit Monitoring Membership With Trial,” and

After completing the required steps on the website and obtaining their credit report and score, consumers attempt to schedule the walk-through of the rental property.³⁰ They are never able to do so. There is no rental property to see. Emails to the fake landlord receive no response or bounce back as undeliverable.³¹ Consumers have paid to obtain a purportedly “free” credit report and score for no reason.

D. Consumer Injury

After having been promised “free” credit reports and scores, many consumers are surprised to find on their debit or credit card statements unauthorized charges for CBC’s credit monitoring service.³² Many of these consumers do not realize they have been scammed until they notice these charges, sometimes after several billing cycles.³³ Moreover, CBC routinely denies consumers’ requests for refunds, despite being informed the charges were unauthorized, and agrees only to cancel future charges.³⁴ When consumers complain about the fake Craigslist ads and landlord emails, the company’s representatives deny responsibility, or dismiss these

also point out that consumers may obtain a free credit report from AnnualCreditReport.com or (877) 322-8228. *See, e.g.* PX 10, McKenney Dec. Att. B at 9-15. However, the sign-up process does not require consumers to click on the terms and conditions or to acknowledge that they understand and expressly agree to the negative option trial. Given the large number of consumers who complain about having been unwittingly enrolled in CBC’s credit monitoring services, CBC’s terms and conditions are plainly insufficient to cure CBC’s false promise of a “Free Credit Score and Report.”

³⁰ *See, e.g.*, PX 2, Berney Dec. ¶ 12; PX 3, Chapple Dec. ¶ 11; PX 4, Falzarano Dec. ¶ 15 & Att. A; PX 5, Heller Dec. ¶ 12; PX 6, Leonard Dec. ¶ 8 & Att. A; PX 7, Spellman Dec. ¶ 7.

³¹ *See id.*

³² *See, e.g.*, PX 10, McKenney Dec. ¶¶ 74-76; PX 1, Allen Dec. ¶ 13; PX 2, Berney Dec. ¶¶ 13-14; PX 3, Chapple Dec. ¶ 22; PX 4, Falzarano Dec. ¶¶ 11-13; PX 5, Heller Dec. ¶¶ 13-14; PX 6, Leonard Dec. ¶ 10; PX 8, Tucker Dec. ¶¶ 12-15. Some consumers have incurred unauthorized charges even after cancelling the service. *See, e.g.*, PX 7, Spellman Dec. ¶¶ 13-14 & Atts. C, D.

³³ *See, e.g.*, PX 9, McCool Dec. Att. A at 77 (consumer was charged for three months of credit monitoring without her knowledge or consent).

³⁴ *See, e.g.*, PX 9, McCool Dec. ¶ 8 (describing CBC’s typical response to consumer complaints) and Att. A at 9, 15, 20, 21, 24, 25, 32, 37, 43, 50, 55, 59, 63, 79; PX 6, Leonard Dec. ¶ 11.

tactics as harmless “phishing.”³⁵ Only very persistent consumers get their money back by initiating chargebacks with their banks or credit card companies or by filing complaints with law enforcement or the BBB.³⁶

Apart from the financial losses, consumers are deeply concerned that a company like CBC still has their Social Security numbers, birthdates, card numbers and other personal information. Consumers understandably do not trust CBC to safeguard this information, given that it obtained the information by deceiving them. Seeking to protect themselves, consumers have closed their accounts and reported the misappropriation of their personal identifiers to the Social Security Administration, Internal Revenue Service, and credit bureaus.³⁷ Meanwhile, CBC continues to extract the same information from more consumers through its scheme.

Since 2014, when CBC retained Pierce and Lloyd to drive traffic to its websites, more than 146,000 consumers have been driven to CBC’s websites by the fake landlord emails, and more than 500 consumers have complained about this scheme to the FTC, other law enforcement, or the BBB, with a majority of those complaints referencing Defendants’ Craigslist

³⁵ See, e.g., PX 3, Chapple Dec. ¶ 21; PX 9, McCool Dec. Att. A at 18, 64, 73.

³⁶ See, e.g., PX 9, McCool Dec. ¶ 8 (discussing large number of consumer complaints to BBB and their disposition); PX 1, Allen Dec. ¶¶ 14-17 (denied refund initially until informing CBC it was a “scam”); PX 2, Berney Dec. ¶¶ 14-16 (told customer service representative that the charge was unauthorized and then complained to BBB); PX 3, Chapple Dec. ¶¶ 19-22 (demanded that CBC not charge her and delete her personal information); PX 6, Leonard Dec. ¶¶ 11-12 (denied a refund until complaining to the BBB); PX 7, Spellman Dec. ¶¶ 9-15 (attempted but was unable to cancel service until complaining to BBB); PX 8, Tucker Dec. ¶¶ 15-23 (obtained a refund only after complaining to BBB).

³⁷ See, e.g., PX 10, McKenney Dec. ¶¶ 74-76 (summarizing typical consumer complaints); PX 3, Chapple Dec. ¶¶ 15, 18, 21, 23-24 (contacted IRS and Social Security Administration); PX 4, Falzarano Dec. ¶¶ 22-23 (contacted Social Security Administration and credit bureaus); PX 5, Heller Dec. ¶¶ 16-17 (contacted Social Security Administration and credit bureaus); PX 6, Leonard Dec. ¶ 13 (concerned by CBC’s possession of her personal information).

ads.³⁸ During the same time period, CBC has taken in at least \$6 million in sales, while paying Pierce and Lloyd more than \$2.1 million in affiliate commissions.³⁹

III. DEFENDANTS

The four Defendants are a limited liability company, its owner, and two affiliate marketers. Defendant **Credit Bureau Center, LLC**, formerly known as MyScore LLC, is a Delaware LLC and does business as eFreeScore.com, CreditUpdates.com, and FreeCreditNation.com. The company was organized in California as MyScore LLC on August 8, 2011, and converted to a Delaware LLC on October 20, 2016.⁴⁰ Defendant **Michael Brown** is the owner and manager of CBC. Brown controls and actively participates in its activities, including the operation of its websites and the hiring of its affiliate marketers.⁴¹ Brown was a resident of Los Angeles until 2016, when he moved to the U.S. Virgin Islands.⁴²

Defendants **Danny Pierce** and **Andrew Lloyd** are affiliate marketers for CBC and are responsible for the fake Craigslist ads and fake landlord emails luring consumers to the company's websites.⁴³ Pierce is a resident of New Jersey.⁴⁴ Lloyd is a resident of Pennsylvania.⁴⁵ They have received more than \$2.1 million in commissions on over 146,000 sales of CBC's credit monitoring service.⁴⁶

³⁸ PX 10, McKenney Dec. ¶¶ 33 (tabulating sales), 74-76 (referencing 297 consumer complaints); PX 9, McCool Dec. ¶ 6 (referencing 227 consumer complaints).

³⁹ PX 10, McKenney Dec. ¶¶ 33, 63.

⁴⁰ PX 10, McKenney Dec. ¶¶ 32, 53-54, 56-59 and Atts. O-P (corporate records).

⁴¹ PX 10, McKenney Dec. ¶¶ 33, 56-60, 62, 66, 68-73.

⁴² PX 10, McKenney Dec. ¶ 70.

⁴³ PX 10, McKenney Dec. ¶¶ 33-52, 69.

⁴⁴ PX 10, McKenney Dec. ¶¶ 35-36.

⁴⁵ PX 10, McKenney Dec. ¶¶ 40, 52.

⁴⁶ CBC pays these commissions to Pierce. See PX 10, McKenney Dec. ¶¶ 33, 69. The affiliate marketers' respective roles in the overall scheme are discussed in section IV.B.1.f.

IV. ARGUMENT

Defendants' deceptive scheme violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 612(g)(1) of the FCRA, 15 U.S.C. § 1681j(g)(1), and the Free Reports Rule, 12 C.F.R. § 1022.138. To prevent any further injury to consumers, the FTC asks that the Court issue *ex parte* the proposed Temporary Restraining Order ("TRO"). This order would enjoin Defendants' ongoing law violations and would provide for other equitable relief designed to preserve the Court's ability to provide restitution to victims at the conclusion of the case.

A. This Court Has the Authority to Grant the Requested Relief.

The FTC Act provides that "in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). Once the FTC invokes the federal court's equitable powers, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989). The court also may enter a temporary restraining order, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988). Such ancillary relief may include an asset freeze to preserve assets for eventual restitution to victimized consumers. *World Travel*, 861 F.2d at 1031. Appropriate ancillary relief also includes the appointment of a receiver. *See, e.g., FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984).

B. The FTC Meets the Standard for Issuance of a Temporary Restraining Order.

To grant preliminary injunctive relief in an FTC Act case, the district court must:

(1) determine the likelihood that the FTC will ultimately succeed on the merits, and (2) balance the equities. *World Travel*, 861 F.2d at 1029. Unlike private litigants, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* When the court balances the equities, the public interest “must receive far greater weight” than any private concerns. *Id.* As detailed below, the FTC has demonstrated that it will succeed on the merits of its claims and that the balance of equities favors injunctive relief.

1. The FTC is Likely to Succeed on the Merits.

Finding that the FTC is likely to prevail on the merits requires only a showing that its chances of success are “better than negligible.” *D.U. v. Rhoades*, 825 F.3d 331, 338 (7th Cir. 2016). The FTC clears this hurdle easily. Extensive evidence shows that all four Defendants—CBC, Brown, Pierce and Lloyd—are liable for falsely advertising rental opportunities to drive traffic to CBC’s websites, as alleged in Count I of the FTC’s Complaint. The evidence also shows that two of the Defendants, CBC and Brown, are liable for the deceptive and unlawful practices on the websites, as alleged in Counts II through V of the FTC’s Complaint.

a. Defendants’ Practices Violate Section 5(a) of the FTC Act.

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45. An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances. *See FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006). The materiality requirement is satisfied if the misrepresentation or omission involves information that is likely to affect a consumer’s choice of, or conduct regarding, a product or service. *See Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992), *cert.*

denied, 507 U.S. 909 (1993). Reliance on express claims is presumptively reasonable. *See World Travel*, 861 F.2d at 1029. In deciding whether particular statements are deceptive, courts must look to the overall net impression of consumers. *See FTC v. US Sales Corp.*, 785 F. Supp. 737, 745 (N.D. Ill. 1992). Defendants' false advertising of rental properties and CBC's offer of free credit reports on its websites are deceptive.

i. Defendants' False Advertising of Rental Properties on Craigslist and by Email Violates Section 5(a) of the FTC Act.

Defendants' fake Craigslist ads for rental properties and fake landlord emails driving consumers to CBC's websites are deceptive acts or practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). As discussed above, Defendants lure consumers to CBC's websites by posting fake ads for rental properties on Craigslist and impersonating landlords when consumers respond to the ads. Defendants claim to be currently offering the properties for rent, and promise consumers tours of the properties if they will first go on CBC's websites and get their credit reports. Defendants' representations are utterly false. The advertised rental properties either do not exist or are properties Defendants have no authority to offer for rent. Consumers who obtain their credit reports as instructed and attempt to arrange tours of the properties receive no response, and never get the promised tours.

ii. Credit Bureau Center's Websites Violate Section 5(a) of the FTC Act.

CBC's websites violate Section 5(a) of the FTC Act by deceptively offering consumers "free" credit reports and scores without adequately disclosing that consumers will be automatically enrolled in the negative option trial of a credit monitoring service, and other material terms and conditions.

CBC's websites build on the deception in the fake Craigslist ads and fake landlord emails. Having responded to the fake rental ads, consumers are steered to the websites believing they need their credit reports and scores to tour attractive rental properties and possibly get their security deposits waived. The websites, on cue, expressly offer consumers "free" credit reports and scores. The offer is conveyed in a large, bolded heading on the landing page: "**Get Your Free Credit Score and Report as of [Date]**."⁴⁷ When consumers enter their personal information to get these items, however, they automatically are enrolled in a costly separate service mentioned only cryptically in fine print.

The fine print on CBC's websites cannot and does not cure the deceptive net impression of consumers lured to the websites by false rental opportunities and the promise of free credit reports and scores. It is well established that deceptive practices cannot be cured by fine print disclosures that consumers may not read or understand. *See Porter & Dietsch v. FTC*, 605 F.2d 294, 301 (7th Cir. 1979). As explained in *FTC v. US Sales Corp.*, 785 F. Supp. 737, 751 (N.D. Ill. 1992) (quoting *Removatron International Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir.1989)), *modified*, No. 91 C 3893, 1992 WL 104819 (N.D. Ill. May 6, 1992):

Disclaimers or qualifications in any particular ad are not adequate to avoid liability unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory meanings.

See also FTC v. Cyberspace.com LLC, 453 F.3d 1196, 1200 (9th Cir. 2006) ("A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.").

⁴⁷ PX 10, McKenney Dec. ¶¶ 13-14, 17-18, 21, 25, 28 & Atts. B at 1, C at 1, E at 1, G at 1, I at 1, K at 1.

Here, the only information about the charges for CBC’s credit monitoring service is incomplete, inconspicuous, and inconsistent with the express representations on CBC’s websites. In certain places, and only in fine print, CBC mentions a “trial” or a “membership” without any reference to a credit monitoring service or a \$29.94 monthly charge.⁴⁸ In other places, also in fine print, CBC mentions the \$29.94 monthly charge but fails to connect that charge to the credit monitoring service.⁴⁹ In only one instance does CBC mention the monitoring service, and there it is only to state—again, in fine print—that it may take three days to become active.⁵⁰ Tellingly, nowhere does CBC reveal the full story: that obtaining a “free credit score and report”—the explicit promise made on the landing page—requires consumers to sign up for a trial membership in a \$29.94/month credit monitoring service. CBC’s acontextual and inconspicuous disclosures are therefore wholly inadequate to “change the apparent meaning of the claims and to leave an accurate impression.” *US Sales Corp.*, 785 F. Supp. at 751.

The inadequacy of the fine print is further evidenced by the hundreds of consumers deceived by Defendants’ scheme.⁵¹ Although it is not necessary to prove actual deception to establish a violation of the FTC Act, “such proof is highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances.” *Cyberspace.com*, 453 F.3d at 1201 (citation omitted).

b. Credit Bureau Center’s Websites Violate ROSCA.

CBC’s websites also violate Sections 4(1) and (2) of ROSCA, 15 U.S.C. § 8403(1) & (2), which prohibit charging consumers for goods or services sold in transactions effected on the Internet through a negative option feature unless the seller (1) clearly and conspicuously

⁴⁸ PX 10, McKenney Dec. ¶¶ 17-18 & Att. E at 1, 2.

⁴⁹ PX 10, McKenney Dec. ¶¶ 17-18 & Att. E. at 1, 2, 5.

⁵⁰ PX 10, McKenney Dec. ¶¶ 17-18 & Att. E at 2.

⁵¹ PX 10, McKenney Dec. ¶¶ 74-76; PX 9 McCool Dec. ¶¶ 6-7 & Att. A.

discloses all material terms of the transaction before obtaining the consumer's billing information, and (2) obtains the consumer's express informed consent before making the charge.

CBC's credit monitoring service includes a "negative option feature" as defined by ROSCA because the "silence or failure to take affirmative action to reject goods or services or to cancel the agreement" subjects consumers to recurring \$29.94 charges for credit monitoring.⁵² But, as discussed in section IV.B.1.a.ii above, CBC obtains consumers' billing information on its websites without clearly and conspicuously disclosing that the consumers are being enrolled in that negative option feature. CBC also routinely charges consumers for its credit monitoring service without obtaining their express informed consent.

c. Credit Bureau Center's Websites Violate the FCRA and the Free Reports Rule.

CBC's websites also violate Section 612(g) of the FCRA, 15 U.S.C. § 1681j(g)(1),⁵³ and the Free Reports Rule, 12 C.F.R. § 1022.138. Section 612(g) of the FCRA requires all advertisements for free credit reports to prominently disclose that such reports are available from AnnualCreditReport.com. The Free Reports Rule sets forth specific requirements for such disclosures, including that any website offering free credit reports⁵⁴ in connection with the sale of a product or service must display a prominent disclosure across the top of each page that

⁵² ROSCA, 15 U.S.C. § 8403, defines "negative option feature" by incorporating the definition in the FTC's Telemarketing Sales Rule: "in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

⁵³ Pursuant to Section 621(a)(1) of FCRA, "a violation of any requirement or prohibition imposed under [the FCRA] shall constitute an unfair or deceptive act or practice in commerce, in violation of Section 5(a) of the [FTC] Act." 15 U.S.C. § 1681s(a)(1).

⁵⁴ Under the Free Reports Rule, 12 C.F.R. § 1022.138, "free credit report" means "a file disclosure prepared by or obtained from, directly or indirectly, a nationwide consumer reporting agency (as defined in Section 603(p) of the FCRA), that is represented, either expressly or impliedly, to be available to the consumer at no cost if the consumer purchases a product or service, or agrees to purchase a product or service subject to cancellation."

mentions free credit reports, and across the top of each page of the ordering process, which states:

THIS NOTICE IS REQUIRED BY LAW. Read more at consumerfinance.gov/learnmore. You have the right to a free credit report from AnnualCreditReport.com or 877-322-8228, the ONLY authorized source under federal law.

CBC's websites advertise free credit reports but contain none of the required disclosures. This case presents a perfect example of why those disclosures are required—because they could help to steer consumers away from deceptive websites like CBC's.

d. Credit Bureau Center is Liable for the Deceptive Practices of its Affiliate Marketers.

Defendant CBC is liable for the deceptive representations in the fake rental property ads and fake landlord emails disseminated by its agents, Defendants Pierce and Lloyd.⁵⁵ CBC pays millions of dollars in commissions for Pierce and Lloyd to drive consumers to CBC's websites using the fake ads and emails.⁵⁶ CBC and its owner and manager Brown are fully aware of the deceptive practices of Pierce and Lloyd, as shown by hundreds of consumer complaints to the BBB describing the fake ads and emails, and Brown's communications with the BBB about those complaints.⁵⁷ Rather than end this conduct, however, CBC has embraced it. To date, Pierce's and Lloyd's conduct on CBC's behalf has resulted in more than 146,000 consumers enrolling in CBC's credit monitoring service, netting Pierce and Lloyd more than \$2.1 million in commissions. It is well established that “[p]rincipals are liable for the misrepresentations of their

⁵⁵ Under the Restatement, agency is a “fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” Restatement (Third) of Agency § 1.01 (2006). *See also Opp v. Wheaton Van Lines, Inc.*, 231 F.3d 1060, 1064 (7th Cir. 2000) (recognizing that the federal common law of agency accords with the Restatement).

⁵⁶ PX 10, McKenney Dec. ¶¶ 33, 69.

⁵⁷ PX 9, McCool Dec. ¶¶ 3, 6-7, 11-23 & Atts. A, C-I. McCool Att. I shows Brown being forwarded consumer complaints that include reprints of fake landlord emails (pp. 4-5, 6-7).

agents under the FTC Act.” *FTC v. Lifewatch Inc.*, 176 F. Supp. 3d 757, 779 (N.D. Ill. 2016) (collecting authorities). *See also* *FTC v. Stefanchik*, 559 F.3d 924, 930 (9th Cir. 2009) (defendant liable for misrepresentations of agent it hired to market wealth-building program).⁵⁸ CBC is therefore liable for the misrepresentations in the ads and emails disseminated by Pierce and Lloyd, as described in sections II.A-B and IV.B.1.a.i above.

e. Defendant Brown is Individually Liable.

Defendant Michael Brown is responsible for CBC’s deceptive and unlawful practices and should thus be subject to the temporary restraining order and asset freeze. Under the FTC Act, an individual defendant is liable for corporate misconduct if he (1) participated directly in, or had some control over, a corporation’s deceptive practices, and (2) had actual or constructive knowledge of the practices. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636.⁵⁹ The FTC does not need to show intent to defraud. *Amy Travel*, 875 F.2d at 573-74. Defendant Brown both controls and is aware of CBC’s practices.

As an officer and manager of CBC, Brown plainly has authority to control the company. *See id.* at 573 (“Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate

⁵⁸ “For purposes of liability under the FTC Act, it is of no consequence” whether CBC’s affiliate marketers “would be considered at law as employees of the company or independent contractors.” *FTC v. SkyBiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *9 (N.D. Okla. Aug. 31, 2001) (citing *Goodman v. FTC*, 244 F.2d 548, 591-92 (9th Cir. 1957)); *see also* *Int’l Art Co. v. FTC*, 109 F.2d 393, 396 (7th Cir. 1940) (“We know of no theory of law by which the company could hold out to the public these salesmen as its representatives, reap the fruits from their acts and doings without incurring such liabilities as attach thereto.”).

⁵⁹ The knowledge requirement is satisfied by a showing that the defendant (1) had actual knowledge of the deceptive acts or practices, (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *World Media Brokers*, 415 F.3d at 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 574.

officer”). He is the sole signatory on CBC’s corporate bank accounts and pays for its websites. He signs the company’s merchant processing agreements and directs the routing of the proceeds to accounts under his control. He pays the affiliate marketers who drive consumer traffic to the websites. And he tracks the volume of that traffic through an online platform that he set up and controls.⁶⁰

Moreover, Brown is well aware of the consumer complaints and high chargebacks dogging the enterprise because of its deceptive practices. *See Bay Area Bus. Council, Inc.*, 423 F.3d at 637 (finding, for purposes of establishing individual liability, that consumer complaints placed the defendant on notice). Since 2014, the BBB’s Los Angeles office alone has sent CBC hundreds of consumer complaints.⁶¹ In many of these complaints, consumers detail not only their unwitting enrollment in a credit monitoring service but also their experiences with fake Craigslist ads and landlord emails.⁶² In June of 2016, Brown personally contacted the BBB⁶³ to contest its statement alerting consumers about CreditUpdates.com’s “pattern of complaints concerning consumers alleging being misled into signing up for a credit reporting service when they thought they were applying for housing.”⁶⁴ In response, the BBB emailed several representative complaints directly to Brown.⁶⁵

In addition to consumers and the BBB, merchant processors have placed Brown on notice of the widespread fraud being perpetrated by CBC. Since 2014, CBC has lost at least five merchant accounts due to excessive chargebacks, meaning the payment processors will no longer

⁶⁰ PX 10, McKenney Dec. ¶¶ 33, 53-73 & Atts. D-S.

⁶¹ PX 9, McCool Dec. ¶¶ 3, 6-7 & Att. A.

⁶² *Id.*

⁶³ *Id.* ¶ 16 & Att. H at 4-5.

⁶⁴ *Id.* ¶ 12 & Att. F.

⁶⁵ *Id.* ¶¶ 11-23 & Atts. C-I. McCool Att. I shows Brown being forwarded consumer complaints that include reprints of fake landlord emails (pp. 6-7).

do business with CBC due to the large number of consumers claiming fraud.⁶⁶ This has forced Brown to cycle through multiple merchant processors to avoid any disruption to his fraudulent operation.⁶⁷

In sum, there is no doubt that Brown not only controls CBC's deceptive practices but also has actual knowledge that consumers routinely are being deceived by both the CBC websites and the fake Craigslist ads and landlord emails driving consumers to the websites.

f. Defendants Pierce and Lloyd are Individually Liable.

As discussed above, Defendants Pierce and Lloyd are the affiliate marketers responsible for the fake Craigslist ads and landlord emails luring consumers to CBC's websites. Their coordination of the fake rental ad scheme renders them individually liable under Section 5(a).⁶⁸

Pierce is registered on CBC's online platform as the affiliate marketer responsible for sending consumers from the fake landlord emails to the deceptive eFreeScore.com and CreditUpdates.com landing pages.⁶⁹ He has retained Lloyd to help drive this traffic, and both individuals earn revenue each time consumers click on the link in the fake landlord emails and are enrolled in CBC's credit monitoring service.⁷⁰ Since 2014, Pierce has received from CBC more than \$2.1 million in commissions on over 146,000 sales.⁷¹

Lloyd controls the website used to assemble the fake Craigslist ads.⁷² He also registers the domains used to send consumers the fake landlord replies containing links to CBC's

⁶⁶ PX 10, McKenney Dec. ¶¶ 59, 62.

⁶⁷ *Id.* ¶¶ 55-64.

⁶⁸ Unlike Brown, who engaged in unlawful conduct through his company CBC, Lloyd and Pierce did not operate through corporate entities but rather engaged personally in deceptive conduct declared unlawful by Section 5(a) of the FTC Act.

⁶⁹ PX 10, McKenney Dec. ¶¶ 33-36, 69.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* ¶¶ 37-38 & Att. N.

websites.⁷³ The domains featured in these links are also registered by Lloyd.⁷⁴ Lloyd has attempted to hide his involvement in the scheme by using several aliases in registering domains and PayPal accounts to fund his operations.⁷⁵ By coordinating the creation of fake Craigslist ads and fake landlord emails, Lloyd is engaged in deceptive conduct in violation of Section 5(a) of the FTC Act.

2. The Equities Tip Decidedly in the FTC's Favor.

Once the FTC has shown a likelihood of success on the merits, preliminary injunctive relief is warranted as long as the Court, balancing the equities and giving greater weight to the public interest than to Defendants' private concerns, finds that relief is in the public interest. *World Travel*, 861 F.2d at 1029. The public equities here are compelling, as the public has a strong interest in halting the deceptive scheme, and in preserving the assets necessary to provide effective final relief to victims. *See FTC v. Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). Defendants, by contrast, have no legitimate interest in continuing to deceive consumers and persisting with conduct that violates federal law. *See id.*; *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (upholding district court finding of “no oppressive hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation or preserve their assets from dissipation or concealment.”). An injunction is necessary to ensure that Defendants do not continue their scheme while the case is pending.

C. The Scope of the Proposed TRO is Necessary and Appropriate.

The evidence shows that the FTC is likely to succeed in proving that Defendants have engaged in deceptive and unlawful conduct, and the balance of equities strongly favors

⁷³ *Id.* ¶¶ 39-52.

⁷⁴ *Id.* ¶¶ 44-45.

⁷⁵ *Id.* ¶¶ 39-52.

protecting the public. Temporary injunctive relief preventing Defendants from continuing to engage in such misconduct, freezing Defendants' assets, and appointing a receiver is justified.

1. The Conduct Relief is Necessary and Appropriate.

The FTC is asking this Court to halt Defendants' scheme by (i) prohibiting Defendants from making further misrepresentations on Craigslist, in fake landlord emails, and on CBC's websites; (ii) enjoining Defendants from charging or continuing to charge consumers without having obtained their express informed consent; and (iii) ordering Defendants to protect consumers' personal information. This relief is consistent with that ordered in previous FTC actions in this District. *See, e.g., FTC v. Big Dog Sols. LLC*, No. 16-cv-6607 (N.D. Ill. June 28, 2016) (Blakey, J.) (*ex parte* TRO prohibiting deceptive conduct and further charging of consumers); *FTC v. Stark Law, LLC et al.*, No. 16-cv-3463 (N.D. Ill. Mar. 22, 2016) (Pallmeyer, J.) (*ex parte* TRO prohibiting deceptive conduct); *FTC v. Apogee One Enterprises LLC et al.*, No. 12-cv-588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.) (*ex parte* TRO prohibiting deceptive conduct and the sale or transfer of consumers' personal information).

2. An Asset Freeze and the Appointment of a Receiver are Necessary and Appropriate.

The relief sought by the FTC includes restitution for the victims of Defendants' fraud. To preserve the possibility of such relief, the FTC seeks a freeze of Defendants' assets and an immediate accounting to prevent concealment or dissipation of assets. The FTC also seeks appointment of a temporary receiver. These provisions are well within this Court's authority and are similar to provisions that other courts in this District have granted in prior FTC cases. *See, e.g., FTC v. Big Dog Sols. LLC*, No. 16-cv-6607 (N.D. Ill. June 28, 2016) (Blakey, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Stark Law, LLC et al.*, No. 16-cv-3463 (N.D. Ill. Mar. 22, 2016) (Pallmeyer, J.) (*ex parte* TRO with asset freeze and appointment

of a receiver); *FTC v. Caprice Marketing LLC et al.*, No. 13-cv-6072 (N.D. Ill. Aug. 29, 2013) (Lee, J.) (*ex parte* TRO with asset freeze); *FTC v. Apogee One Enterprises LLC et al.*, No. 12-cv-588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.) (*ex parte* TRO with asset freeze and appointment of a receiver).

An asset freeze is appropriate once the Court determines that the FTC is likely to prevail on the merits. *See World Travel*, 861 F.2d at 1031 & n.9. The district court at that juncture has “a duty to ensure that the assets of the corporate defendants [are] available to make restitution to the injured consumers.” *Id.* at 1031. Here, a freeze would reduce the very tangible risk that Defendants would quickly conceal or dissipate funds. An asset freeze also is needed to prevent Defendants from moving their cash and other assets outside the United States. In a case such as this, in which the FTC is likely to succeed in showing that Brown, Pierce, and Lloyd are individually liable for the payment of restitution, the freeze should extend to individual assets as well. *See id.* (affirming freeze on individual assets); *see also FTC v. Datacom Mktg. Inc.*, 2006 WL 1472644, at *5 (N.D. Ill. 2006) (freezing assets of individual and corporate defendants).

Appointing a temporary receiver to manage CBC also is necessary and appropriate. “[A] federal court’s authority to grant ancillary relief includes the authority to appoint a receiver.” *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1021 (N.D. Ind. 2000). The appointment of a receiver is appropriate upon a “prima facie showing of fraud and mismanagement.” *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963). Here, where there is overwhelming evidence that CBC is engaged in widespread fraud, a receiver could help assess the extent of the fraud, trace the proceeds of that fraud, prepare an accounting, and make an independent report of Defendants’ activities to the Court. Additionally, a receiver could prevent the destruction of documents and the dissipation of assets while the case is pending. Appointing

a receiver is particularly appropriate given the highly sensitive personal information concerning thousands of consumers that is collected by CBC, information including names, birthdates, addresses, and Social Security numbers. A receiver could ensure that consumers' highly sensitive personal information is safeguarded.

D. The Temporary Restraining Order Should Be Issued *Ex Parte* to Preserve the Court's Ability to Fashion Meaningful Relief.

To prevent Defendants from dissipating or concealing their assets, the requested TRO should be issued *ex parte*. An *ex parte* TRO is warranted when the facts show that immediate and irreparable injury, loss, or damage will occur before the defendants can be heard in opposition. *See* Fed. R. Civ. P. 65(b); *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974) (*ex parte* TROs are available in order to “preserv[e] the status quo and prevent[] irreparable harm.”). Here, assets and evidence stemming from the illegal activity are seriously at risk of disappearing if Defendants receive prior notice. In this case, the blatantly deceptive nature of Defendants' scheme, their efforts to hide their involvement, and their continued operation despite hundreds of complaints and cancellation of merchant accounts all indicate a high risk that Defendants will destroy documents and dissipate assets if given advance notice of the FTC's motion.⁷⁶ Courts routinely grant the FTC's requests for *ex parte* temporary restraining orders under such circumstances. *See, e.g., FTC v. Big Dog Sols. LLC*, No. 16-cv-6607 (N.D. Ill. June 28, 2016) (Blakey, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Stark Law, LLC et al.*, No. 16-cv-3463 (N.D. Ill. Mar. 22, 2016) (Pallmeyer, J.) (*ex parte* TRO with asset freeze and appointment of a receiver); *FTC v. Caprice Marketing LLC et al.*, No. 13-cv-6072

⁷⁶ *See* Declaration and Certification of Plaintiff's Counsel pursuant to Fed. R. Civ. P. 65(b) and Local Rule 5.5(d), filed herewith.

(N.D. Ill. Aug. 29, 2013) (Lee, J.) (*ex parte* TRO with asset freeze); *FTC v. Apogee One Enterprises LLC et al.*, No. 12-cv-588 (N.D. Ill. Jan. 30, 2012) (Kennelly, J.) (*ex parte* TRO with asset freeze and appointment of a receiver).

V. **CONCLUSION**

For the reasons set forth above, the FTC respectfully requests that the Court enter the proposed *ex parte* TRO to halt Defendants' violations of the FTC Act, ROSCA, the FCRA, and the Free Reports Rule and to help ensure the possibility of effective final relief for consumers, and require Defendants to show cause why a preliminary injunction should not issue.⁷⁷

Respectfully submitted,

Dated: January 10, 2017



Guy G. Ward
Samuel A.A. Levine
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [telephone]
(312) 960-5600 [facsimile]
gward@ftc.gov
slevine1@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

⁷⁷ Along with this Memorandum, the FTC has submitted a proposed *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should not Issue.