

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BAYVIEW SOLUTIONS, LLC, et al.,

Defendants.

Case No.

Case: 1:14-cv-01830  
Assigned To : Contreras, Rudolph  
Assign. Date : 10/31/2014  
Description: TRO/PI

**STIPULATION TO ENTRY OF PRELIMINARY INJUNCTION**

THIS MATTER comes before the Court upon the stipulation of Plaintiff, Federal Trade Commission, and Defendants Bayview Solutions, LLC (d/b/a Bayview Risk Management Capital, d/b/a Bayview Commercial Recovery) and Aron Tomko (collectively "Defendants") for the entry of a stipulated preliminary injunction order ("Order").

Having considered the Complaint, the stipulation of the parties, and the other filings in this action, the Court finds that:

1. The FTC and the Defendants have stipulated and agreed to the entry of this preliminary injunction order without any admission of wrongdoing or violation of law, and without a finding by the Court of law or fact other than stated below;
2. The Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of their Stipulation hereto or this Order;
3. This Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over all parties hereto, and venue in this district is proper;

4. The FTC asserts that there is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the FTC is therefore likely to prevail on the merits of this action;
5. The FTC asserts that there is good cause to believe that immediate and irreparable damage will result unless the Defendants are restrained and enjoined by Order of this Court;
6. The entry of this Order is in the public interest; and
7. No security is required of any agency of the United States for issuance of a TRO, Fed R. Civ. P. 65(c).

#### **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

- A. **“Alleged Debtor”** means any natural person obligated or allegedly obligated to pay any debt.
- B. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.
- C. **“Consumer”** means any person.
- D. **“Corporate Defendant”** means Bayview Solutions, LLC, and its successors, assigns, affiliates, or subsidiaries, by whatever names it might be known, including, but not limited to, Bayview Risk Management Capital or Bayview Commercial Recovery.

- E. **“Covered Debt”** means any Debt relating to any Alleged Debtor whose Protected Information any Defendant disclosed prior to the date of entry of this Order without having implemented reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information.
- F. **“Debt”** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- G. **“Defendants”** means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination, and each of them by whatever names each might be known.
- H. **“Document”** and **“Electronically Stored Information”** are synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a) of the Federal Rules of Civil Procedure and include but are not limited to:
- i. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, email or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and
  - ii. Any electronically stored information stored on any server, Blackberrys or any type of mobile device, flash drives, personal digital assistants (“PDAs”), desktop personal computer and workstations, laptops, notebooks, and other portable computers, or other electronic storage media, whether assigned to individuals or

in pools of computers available for shared use, or personally owned but used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility, or stored, hosted, or otherwise maintained offsite by a third-party; and computers and related offline storage used by Defendants or Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

- I. **"Financial Institution"** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.
- J. **"Individual Defendant"** means Aron Tomko.
- K. **"Person"** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
- L. **"Protected Information"** shall mean information from or about an Alleged Debtor, including but not limited to (a) first and last name; (b) home or other physical address, including street name and name of city or town; (c) email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) telephone number; (e) Social Security number; (f) driver's license or other state-issued identification number; (g) financial institution account number; (h) credit or debit card

information; (i) credit report information; (j) authentication credential, such as a username or password; (k) military identification number; or (l) passport number.

**ORDER**

**PROHIBITION ON DISCLOSURE OF PROTECTED INFORMATION WITHOUT REASONABLE SAFEGUARDS**

- I. **IT IS THEREFORE ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby temporarily restrained and enjoined from disclosing any Protected Information without first implementing reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information.

**PROHIBITION ON DISCLOSURE OR USE OF CONSUMER INFORMATION**

- II. **IT IS FURTHER ORDERED** that, except as required by a law enforcement agency, law, regulation or court order, Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are temporarily restrained and enjoined from disclosing, or financially benefitting from any Protected Information that any Defendant disclosed prior to the date of entry of this Order and without having implemented reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information. *Provided that,*
- A. Thirty (30) days after complying with Section IV.B of the Order, Defendants shall not be precluded from directly collecting or attempting to collect on any Covered

Debt. Defendants, however, shall cease any and all collection or attempted collection on any Covered Debt in each instance in which an Alleged Debtor asserts, directly or through a third party, with or without any evidence, that the Alleged Debtor has paid or otherwise satisfied the debt.

- B. Defendants shall maintain and provide the FTC, upon written request, any and all documents relating to each Alleged Debtor or Covered Debt that Defendants have ceased collection or attempted collection pursuant to Subsection II.A.

**TEMPORARILY DISABLING ACCESS TO INTERNET CONTENT CONTAINING  
PROTECTED INFORMATION**

**III. IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including any person hosting or otherwise controlling any Internet content, server, or website that contains Protected Information posted by or on behalf of any Defendant, immediately upon service of the Order upon them, shall:

- A. Immediately take any necessary steps to ensure that any Protected Information posted by or on behalf of any Defendant on any website, blog, social media service, or server is no longer viewable or accessible to the public using the Internet;
- B. Preserve any: (1) Internet content, servers, or websites that contain Protected Information posted by or on behalf of any Defendant, by preserving such content, servers, or websites in the format in which they were maintained as of the date of entry of this Order, and (2) electronically stored information;

- C. Immediately implement reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of any Protected Information subject to Subsection III.B; and
- D. Immediately notify in writing counsel for the FTC of any other Internet content, server, or website used, operated or controlled by, on behalf of, or for the benefit of any Defendant.

#### NOTIFICATION TO CONSUMERS

**IV. IT IS FURTHER ORDERED** that Defendants, within ten (10) business days of service of this Order, shall:

- A. Provide notification to each person whose Protected Information Defendants disclosed without implementing and using reasonable safeguards to maintain and protect the privacy, security, confidentiality, and integrity of such Protected Information prior to the date of entry of this Order. Defendants shall use the notification provided as **Attachment A** to this Order. Notification shall be given:
  - 1. By electronic mail to the most recent electronic mail address known to the Defendants; or
  - 2. By written notice sent to the most recent address of the person known to the Defendants [if electronic notice is unsuccessful].
- B. Provide the FTC, within thirty (30) calendar days of service of the Order, with an affidavit identifying the name of each person required to be notified pursuant to Subsection IV.A, including, to the extent known: (i) mailing address; (ii) email address; (iii) telephone number; (iv) the method or methods of notification; and (v) whether Defendants were unable to notify the person.

**PRESERVATION OF RECORDS AND TANGIBLE THINGS**

V. **IT IS FURTHER ORDERED** that, except as required by Section III, Defendants and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records that relate to the business practices, or business and personal finances, of Defendants and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise.

**ACCOUNTING**

VI. **IT IS FURTHER ORDERED** that each Defendant, within fifteen (15) business days of service of this Order, shall prepare and deliver to counsel for Plaintiff a completed statement, verified under oath, of all Covered Debt sold, transferred, or assigned since June 1, 2010. Such statement shall include: (a) the name of each purchaser, transferee, or assignee, including their last known address, email address, and telephone number(s); (b) the date of the sale, transfer, or assignment; (c) the type and amount of consideration paid to the Defendant, whether directly or indirectly through any corporation, subsidiary, division, or other device.

**CONSUMER CREDIT REPORTS**

VII. **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports concerning any Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C.

§ 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiff.

**LIMITED EXPEDITED DISCOVERY**

**VIII. IT IS FURTHER ORDERED** that Plaintiff is granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery as to parties and non-parties shall proceed as follows:

- A. Plaintiff may, upon three (3) calendar days' notice, take the deposition of any person or entity, whether or not a party, in any judicial district, for the purpose of discovering: (1) the assets of Defendants; (2) location of documents; and (3) compliance with this Order. Depositions may be conducted telephonically or in person. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter. *Provided that*, notwithstanding Federal Rule of Civil Procedure 30(a)(2), this Section shall not preclude any future depositions by Plaintiff. *Provided further*, that any deposition taken pursuant to this Section shall be in addition to, and not subject to, the presumptive limits on depositions set forth in Federal Rule of Civil Procedure 30(a)(2)(A).
- B. Plaintiff may serve interrogatories for the purpose of discovering: (1) the assets of Defendants; (2) the location of documents; and (3) compliance with this Order. Defendants shall respond within five (5) calendar days after Plaintiff serves such interrogatories. *Provided that*, notwithstanding Federal Rule of Civil

Procedure 33(a)(1), this Section shall not preclude any future interrogatories by Plaintiffs.

- C. Plaintiff may, upon five (5) calendar days' notice, including through the use of a Rule 45 subpoena, demand the production of documents from any person or entity, whether or not a Defendant, relating to: (1) the assets of Defendants; (2) the location of documents; and (3) compliance with this Order. *Provided that* two (2) calendar days' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.
- D. Plaintiff is granted leave to subpoena documents immediately from any financial institution, account custodian, or other entity or person that holds, controls, or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any account or asset of any Defendant concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five (5) business days after service.
- E. For purposes of discovery pursuant to this Section, service shall be sufficient if made by facsimile, email, or overnight courier.

#### **SERVICE OF THIS ORDER**

- IX. IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile, email, personal or overnight delivery, or U.S. Express Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on Defendants or any other persons or entities that may be subject to any provision of this

Order.

**DISTRIBUTION OF ORDER BY DEFENDANTS**

- X. **IT IS FURTHER ORDERED** that within ten (10) business days after service of this Order, Defendants shall provide a copy of this Order to each of their agents, employees, directors, officers, subsidiaries, affiliates, attorneys, independent contractors, representatives, franchisees, and all persons in active concert or participation with Defendants. Defendants shall also provide a copy of this Order to any purchaser, transferee, or assignee of any Debt related to the Protected Information that any Defendant disclosed as alleged in the Complaint. Within ten (10) business days following this Order, Defendants shall provide Plaintiff with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Defendants have served with a copy of this Order in compliance with this provision.

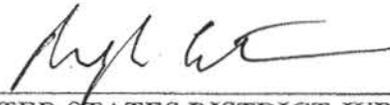
**CORRESPONDENCE WITH PLAINTIFF**

- XI. **IT IS FURTHER ORDERED** that, for the purposes of this Order, because mail addressed to the FTC is subject to delay due to heightened security screening, all correspondence and service of pleadings on Plaintiff Federal Trade Commission shall be sent either via electronic transmission or via Federal Express to: Thomas Widor, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room CC-10232, Washington, DC 20580. Email: [twidor@ftc.gov](mailto:twidor@ftc.gov); telephone: (202) 326-3039; facsimile: (202) 326-3768.

**JURISDICTION**

**XII. IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

**IT IS SO ORDERED:**



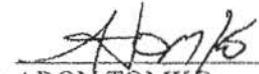
**UNITED STATES DISTRICT JUDGE**

11/3/2014

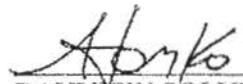
**SO STIPULATED AND AGREED:**



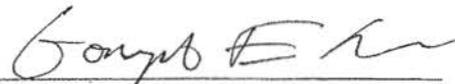
THOMAS J. WIDOR (D.C. Bar No. 490184)  
MICHAEL WHITE (D.C. Bar No. 493481)  
KATHERINE WHITE (under LCvR 83.2(e))  
Attorneys  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Avenue, N.W.  
Mailstop CC-10232  
Washington, D.C. 20580  
Telephone: (202) 326-3039 (Widor)  
Telephone: (202) 326-3196 (M. White)  
Telephone: (202) 326-2878 (K. White)  
Facsimile: (202) 326-3768  
Email: twidor@ftc.gov; mwhite1@ftc.gov; kwhite@ftc.gov  
§  
*Attorneys for Plaintiff*  
**FEDERAL TRADE COMMISSION**



ARON TOMKO  
*Individual Defendant*



BAYVIEW SOLUTIONS, LLC  
By Aron Tomko  
*Corporate Defendant*



GONZALO E. MON  
Kelley Drye & Warren LLP  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007  
Telephone: (202) 342-8576  
Facsimile: (202) 342-8451  
Email: gmon@kelleydrye.com  
  
*Attorney for Defendants*  
*Aron Tomko and Bayview Solutions, LLC*

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# **ATTACHMENT**

## **A**

COMPANY LETTERHEAD

We are writing to tell you that personal information about you was posted on a publicly available website, possibly putting you at risk for identity theft.

Our company is a debt broker. Among other things, we sell to debt collectors lists of information about people who may owe money. Your name and personal data was on one of those lists, which was posted on a website.

The FTC alleges that information was disclosed that may include some or all of the following: your first or last name, email address, street address, date of birth, phone numbers, the name of your bank, your bank account number, your credit card number, and your driver's license number. The information also said that you owe on a payday loan, credit card, or other debt.

The information has been taken off the website, but you may still be at risk of identity theft. Here are some steps you can take to help protect yourself:

**1. Place a fraud alert on your credit file and get your credit report.** Call each of the three major credit reporting companies listed below and tell them to place a fraud alert on your file. A fraud alert tells creditors to contact you before they open new accounts or change your current account. This can protect you if a thief tries to open an account in your name. At the same time, ask each credit reporting company to send you a free fraud-related copy of your credit report. That allows you to see if anyone has tried to open accounts or has created debts in your name.

Equifax  
1-800-685-1111  
[www.equifax.com](http://www.equifax.com)

Experian  
1-888-397-3742  
[www.experian.com](http://www.experian.com)

TransUnion Corp  
1-800-916-8800  
[www.transunion.com](http://www.transunion.com)

**2. Read your credit reports to spot any fraud.** Check the reports line by line to see if anyone has tried to open accounts or created debts in your name. Even if you don't spot fraud on your credit report at first, check periodically. Everyone has a right to get one free copy of their credit report annually from each of three credit reporting companies. Ordering a free report every four months from a different credit reporting agency each time lets you monitor your file and spot errors early.

**3. If you find suspicious activity on an account, follow the FTC's step-by-step guidance.** If you spot the signs of identity theft, the FTC's identity theft site has advice for consumers. The brochure, Taking Charge: What To Do If Your Identity Is Stolen, offers tips on how to help protect yourself.

**4. If a debt collector contacts you about a debt you believe is the result of identity theft, dispute the debt in writing within 30 days after the debt collector contacts you.** The FTC has advice for consumers about disputing debts and other actions you can take if an identity thief opens accounts in your name.

**5. Before paying a debt, take steps to verify that the debt collector is legitimate.** If someone calls you about a debt, ask for his or her name, company, street address, and telephone number. Demand that the person provide you with a written notice about the debt. By law, the notice must include the amount of the debt, the name of the creditor you owe, and your rights under the Fair Debt Collection Practices Act (FDCPA), including your right to dispute the debt. Don't discuss any debt with a caller until you get that written notice. The FTC has guidance about your rights under the law.

**6. Never give out or confirm your personal financial information or other sensitive data to someone who contacts you.** Now that your personal information is out there, scammers may call you, pretending to be debt collectors. These fake debt collectors may already have sensitive data about you that they may try to use to trick you into revealing more information. The FTC has tips on how to protect yourself from fake debt collectors.

If you think your identity has been stolen, call the FTC at 1-877-ID-THEFT (877-438-4338) or file an online report with the FTC.

The FTC also has information for consumers in debt.