Nos. 18-2847 and 18-3310

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

CREDIT BUREAU CENTER, LLC, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 1:17-cv-00194
Hon. Matthew F. Kennelly, District Court Judge

BRIEF OF THE FEDERAL TRADE COMMISSION

ALDEN F. ABBOTT
General Counsel

JOEL MARCUS
Deputy General Counsel

MICHAEL BERGMAN
Attorney

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3184
mbergman@ftc.gov

Of Counsel:
GUY G. WARD
Attorney

FEDERAL TRADE COMMISSION
Chicago, IL 60604

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES AND PUBLIC LAWS

RULES AND REGULATIONS

LEGISLATIVE HISTORY

OTHER AUTHORITIES

INTRODUCTION AND QUESTIONS PRESENTED

Undisputed evidence showed that Michael Brown and his company, Credit Bureau Center, deceived consumers into enrolling in a costly credit monitoring service. Brown and his confederates posted fake apartment rental listings on Craigslist and impersonated landlords in emails to lure consumers into getting a credit report from Brown's website. The website led consumers to believe that they would get a free credit report and score, but in reality they unwittingly signed up for an ongoing credit monitoring service with recurring monthly fees. Brown and his company reaped more than $6 million from the scheme. The district court held that they had violated the FTC Act and other consumer protection laws, entered summary judgment in favor of the Federal Trade Commission, and ordered Brown and his company to pay equitable monetary relief to consumers.

Brown and his company challenge the judgment on a large number of legal and factual grounds. The questions presented are:

1. Whether a district court may order equitable monetary relief under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b);

2. Whether the FTC may seek a permanent injunction under Section 13(b) without first conducting an administrative proceeding;

3. Whether Section 19 of the FTC Act, 15 U.S.C. § 57b, bars monetary remedies under Section 13(b);

4. Whether equitable monetary relief under Section 13(b) requires the FTC to trace specific funds to the wrongful conduct;

5. Whether Brown violated Section 5(a) of the FTC Act and ROSCA by misrepresenting that consumers would receive a free credit score and report, but instead enrolling them into a credit monitoring program with monthly charges without their consent;

6. Whether Brown's websites, which offered a free credit report and score product without disclosing consumers' right to a free annual credit report, violated the Free Report Rule, 12 C.F.R. § 1022.138, and whether the FTC can sue for an infraction of the rule in court under Section 13(b);

7. Whether the district court properly rejected Brown's testimony that his customers did not accurately report their experiences with his websites;

8. Whether the district court properly set equitable monetary relief equal to consumer loss;

9. Whether the district court's behavioral injunction was within its discretion; and

10. Whether the district court acted within its discretion when it declined to order that Brown's legal fees be paid out of the assets set aside for consumer redress.

JURISDICTIONAL STATEMENT

Appellants' recitation of jurisdiction is not complete or correct. The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 1681s(a)(1) and 8404(a).

CBC and Brown timely filed on August 22, 2018, their first notice of appeal (No. 18-2847) to review three orders of the district court: 1) its January 14, 2018, interlocutory order on defendants' motion to modify the preliminary injunction and seeking other relief (Doc.183) [A001]; 2) its June 26, 2018, opinion and order granting the FTC's motion for summary judgment and denying appellants' cross-motion (Doc.238) [A006]; and 3) its June 26, 2018, final judgment issued against CBC

and Brown (Doc.239) [A040].[1] The final judgment disposed of all remaining claims on the merits.

CBC and Brown timely filed their second notice of appeal (No. 18-3310) on October 26, 2018, to review the district court's postjudgment October 23, 2018, order denying petitions for attorneys' fees and costs (Doc.268) [A073]. This order was final for purposes of 28 U.S.C. § 1291 because it resolved all issues raised in the postjudgment petitions. *See Solis v. Current Dev. Corp*., 557 F.3d 772, 776 (7th Cir. 2009).

This Court has jurisdiction over both appeals pursuant to Section 1291.

STATEMENT OF THE CASE

A. Brown and CBC's Deceptive Craigslist Scheme

Michael Brown, the sole owner of Credit Bureau Center (we refer to them collectively as Brown), operated websites that offered consumers a "free" credit report and score but as described in more

[1] "Doc.xxx" refers to entries in the district court's docket; page cites are to ECF-generated page numbers; "Br." refers to Appellants' December 5, 2018 corrected Brief; "A[#]" refers to pages in the Appellants' Short Appendix; "SA[#] refers to pages in the FTC's Supplemental Appendix; "Tr." refers to pages in a hearing or deposition transcript; and "Op." refers to the district court's June 26, 2018 Memorandum Opinion and Order (Doc.238).

detail below actually enrolled them in an ongoing program with monthly bills. Op. 9-13, 19 [A014-18, A024]; Doc.215 ¶¶2, 4, 5, 41, 61 [SA169-70, SA188, SA205-07].[2] To get consumers to visit the sites, Brown paid independent contractors known as "affiliate marketers" to lure them there. Doc.215 ¶2 [SA169]. Brown's principal affiliate marketer between 2014 and 2017, who accounted for 92% of his commission payments and to whom he paid $2.3 million, was Danny Pierce. Doc.215 ¶¶19, 20 [SA175]; Doc.36 at 10; Doc. 36-1 at 2. Pierce in turn delegated some of his marketing functions to Andrew Lloyd. Op. 3-4 [A008-09]; Doc.215 ¶23 [SA176]; Doc.194-10 ¶2 [SA128].

---

[2] The facts set out in this statement were mostly adopted as undisputed by the district court. These facts, cited in Doc.215, Brown's Corrected Responses to Plaintiff's Statement of Material Facts as to Which There is No Genuine Issue (PSMF), Doc.194, were either admitted by Brown, deemed admitted by the district court, or not contested with admissible probative evidence. The district court deemed some facts admitted due to Brown's failure to adhere to the local rules. Op. 2. As adjusted for a numbering error in defendants' original response (Doc. 207), the paragraphs deemed admitted are: 57-61, 72-73, 81-83, 90 and 101. Where Brown denied a fact in the PSMF without providing admissible probative evidence, and that fact was not deemed admitted, facts in this statement also cite to undisputed record cites. This Court has consistently required strict compliance with local summary judgment rules and required parties to rebut statements of undisputed facts with relevant admissible evidence to create a genuine fact issue. *FTC v. Bay Area Bus. Council,* 423 F.3d 627*,* 633-34 (7th Cir. 2005).

As described in his uncontested declaration (Doc.194-10), Lloyd used Craigslist to advertise desirable rental properties at attractive prices to drive consumers to CBC's websites. The ads were bogus and Lloyd was not the landlord, but interested consumers were directed to email Lloyd, who pretended to be the landlord, for more information. Lloyd then directed the would-be renter to obtain a credit report and provided a link to a CBC website. Doc.194-10 at 2-22 (¶¶3-9 & Att. A) [SA128-48].[3]

Pierce, who had hired Lloyd, testified that he knew Lloyd was posting "phony ads," because Lloyd was "not renting these places out," he was "not a realtor," "doesn't own the place," and "has no connection to" the properties. Doc.199 at 20-21 (Tr. 73, 76) [SA162-63].

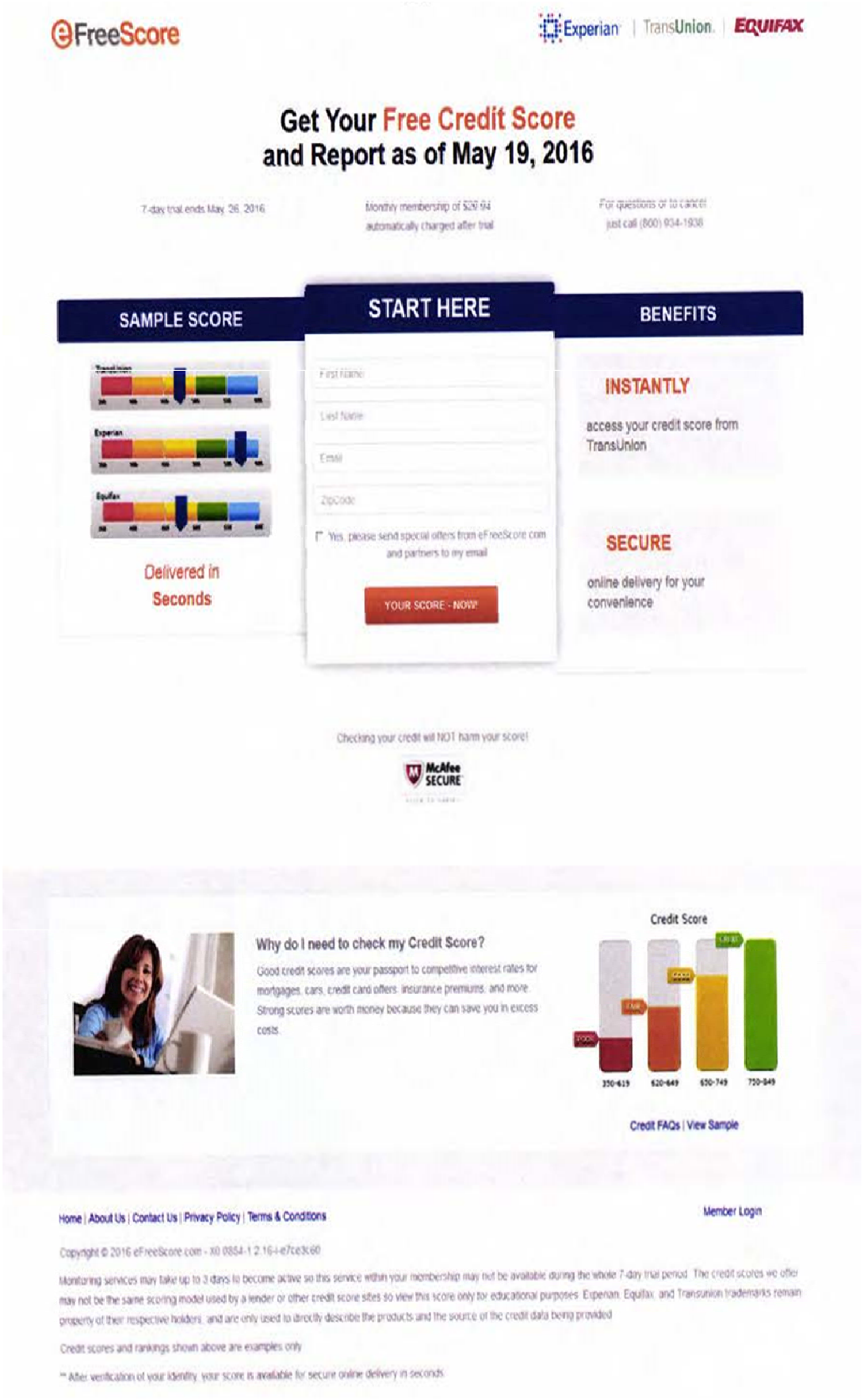
B. Brown's Deceptive Websites

As screenshots confirm, once a consumer reached Brown's website using the link in the fake landlord letter, the banner headline she saw on the first page (known as the "landing page") stated, in large bold

[3] Brown's assertion (Br. 4-5, 9) that Pierce and Lloyd used legitimate real estate services to drive consumers to CBC's websites lacks any support. Lloyd testified, to the contrary, that he only used postings on Craigslist and phony "landlord" emails. *See* Doc.194-10 at 2-22 (¶¶3-9 & Att. A) [SA128-48].

lettering, "**Get Your Free Credit Score and Report as of [date**]," with the words "Free Credit Score" in orange. Below that are three panels, marked "Sample Score," "Start Here," and "Benefits," an orange button labelled "Your Score – Now," and the bold statement "Why do I need to check my Credit Score?" Op. 9-10, 31 [A014-15, A036]; Doc.215 ¶¶41, 42 [SA188-90]; *e.g.,* Doc. 11-4 at 24-25; 62-63 [SA050-51, SA060-61].[4] The landing page, attached to the district court's opinion (Op. 31), looked like this:

[4] The pages at issue were reachable only through the link in the fake landlord email. Doc.61 at 28 (Tr. 79). Brown also had publicly-accessible versions of efreescore.com and creditupdates.com which had different content, and did not promise a "free" credit report and score. Doc.11-3 at 51-52 (¶¶30-31); Doc.11-4 at 68-89 (Att. L, M).


eFreeScore
Experian | TransUnion | EQUIFAX
Get Your Free Credit Score
and Report as of May 19, 2016
7-day trial ends May 26, 2016
Monthly membership of $29.94
automatically charged after trial
just call (800) 934-1938
SAMPLE SCORE
START HERE
BENEFITS
Delivered in
Seconds
First Name
Last Name
Email
Zipcode
Yes, please send special offers from eFreeScore.com
and partners to my email
YOUR SCORE - NOW!
INSTANTLY
access your credit score from
TransUnion
SECURE
online delivery for your
convenience
Checking your credit will NOT harm your score!
McAfee
SECURE
Why do I need to check my Credit Score?
Good credit scores are your passport to competitive interest rates for
mortgages, cars, credit card offers, insurance premiums, and more.
Strong scores are worth money because they can save you in excess
costs.
Credit Score
350-619
620-649
650-749
750-949
Credit FAQs | View Sample
Home | About Us | Contact Us | Privacy Policy | Terms & Conditions
Member Login
Copyright © 2016 eFreeScore.com - XI 0854-1.2.16-i-e7ce3c60
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
Credit scores and rankings shown above are examples only
** After verification of your identity, your score is available for secure online delivery in seconds

As shown, below the headline, in much smaller light grey text, and without any explanation, were the statements "7 day trial ends [date]," and "Monthly membership of $29.94 automatically charged after trial." Op. 31 [A036]; Doc.215 ¶45 [SA191]; *e.g.,* Doc. 11-4 at 24-25; 62-63 [SA050-51, SA060-61]. Those two statements did not appear on mobile devices, which were used by thousands of consumers. Doc.215 ¶46 [SA191-92]; *e.g.,* Doc.11-4 at 1-3, 51-54 [SA039-41, SA055-58]. The term "monitoring services" was separately mentioned in a block of small text at the bottom of the page (which the consumer would need to scroll down to see), but the term and its purported benefits were undefined. Op. 10, 31 [A015, A036]; Doc.215 ¶47 [SA192]; *e.g.*, Doc. 11-4 at 12, 25 [SA044, SA051].

Each of the next three pages of the website contains text boxes posing and answering the questions "What is a good Credit Score" and "Will I find errors on my credit report?" Op. 32-34 [A037-39]; *e.g.,* Doc.11-4 at 13-16 [SA045-48]. The second page boldly stated in large type "Your credit score is ready once we confirm your identity!" with a checkmark next to "Located Credit File." Beneath that, the consumer entered her credit card information to pay her "$1.00 refundable

processing fee and membership." Op. 33 [A038]; *e.g.*, Doc. 11-4 at 43, 65 [SA053, SA063].

Hidden below the payment section, in a block of small print, was the statement that once the order was placed, the consumer would "begin your membership" in the CBC website, that the $1 fee would "start your trial membership," and that "[a]fter your 7-day trial period you will be charged $29.94 every month" unless the consumer took steps to affirmatively cancel. *Id.* But nowhere do the sign-up pages explain what the consumer is purportedly getting for a monthly "membership." Op. 11 [A016].[5] Nor do those pages disclose that the consumer has a statutory right to a free credit report annually, 15 U.S.C. § 1681j(g)(1). Op. 16-17 [A021-22]; Doc.215 ¶44 [SA190]; *e.g.,* Doc.11-4 at 11-16 [SA043-048].

[5] Brown speculates that the consumer declarants chose not to read the complete "negative option disclaimer" before providing their payment information (Br. 8), but provides no support beyond conjecture.

Meanwhile, consumers who obtained their credit report and followed up with the "landlord" never heard back. Op. 7 [A012]; Doc.215 ¶39 [SA187]; Doc.11-1 at 30-35 [SA006-11].[6]

C. Consumer Complaints and Chargebacks

Unsurprisingly, many consumers complained to Brown about the fake Craigslist ads and landlord emails that brought them to Brown's website. Doc.215 ¶¶57-58 (deemed admitted) [SA198-202]. One noted that he was "pretty pissed off that you guys charged us for this thing and it was a total scam from a fake ad on Craigslist." Doc.194-11 at 86 [SA159]. When consumers learned about the recurring charges from their account statements, sometimes after several billing cycles, many demanded a refund (and explanation). Doc.215 ¶61 (deemed admitted) [SA205-06]. As one irate victim put it, "I don't want to be a member. I never consented to that and I want my $90 back." Doc.194-5 at 59 [SA068].

Between 2014 and January 2017, more than 500 people complained about Brown to the FTC, other law enforcement agencies, or

[6] Brown does not show otherwise. The consumer declarations he cited in Doc.215 ¶39 allegedly showing that "[s]ome consumers were able to contact the landlord," refer to Lloyd's fake landlord responses.

the Better Business Bureau, nearly all about the fake Craigslist scheme. Doc.215 ¶53 [SA195-96]; *e.g.*, Doc.11-3 at 69-71 (¶¶74-76) [SA035-37]. Brown routinely disclaimed any connection to the fake Craigslist postings, principally to retain customers complaining about the postings and unauthorized charges. Doc.215 ¶¶59, 60 (deemed admitted) [SA203-04].

On receiving a complaint, Brown typically agreed to cancel the charges going forward, but often refused to give refunds. Doc.215 ¶62 [SA207-08]; *e.g.*, Doc.11-1 at 79 (¶11) [SA020]; Doc 194-7 at 144 (Ex. 32) [SA106].[7] Many customers directed their credit card issuers to reverse the charges, known as a "chargeback." Op. 12 [A017]; Doc.215 ¶63 [SA209-10]. Brown had so many chargebacks that at least three payment processors closed his accounts. Doc.215 ¶¶65, 68, 69 [SA211-13]; *e.g.,* Doc.11-3 at 63-65 (¶¶59-62) [SA032-34]. The overwhelming majority of the chargebacks—nearly 90% in 2016—were initiated by consumers who got to Brown's websites via the Craigslist scheme. Doc.215 ¶¶71-73 (deemed admitted) [SA214-15].

[7] Brown claims that nearly all consumers who asked for a refund after 7 days were given a refund (Br. 9), but the statement is unsupported. *See* Doc.211 ¶64 [SA167].

D. Brown's Knowledge of, and Control over, the Deceptive Conduct

The undisputed record showed that Brown knew about and exercised control over both the deceptive Craigslist scheme and the CBC websites. He knew Pierce was posting thousands of Craigslist ads per day and sending the landlord emails to drive consumers to CBC's websites. He even reviewed many of the ads and emails. Doc.215 ¶¶77-78 [SA218]; Doc.194-6 at 63-68, 79, 81-82, 88, 255-56 (Tr. 244-62, 305, 316-19, 343 & Ex. 18 at 36-37) [SA075-080, 085, 087-91].[8] Yet Brown was unaware of any relationship Pierce had with real landlords and assumed Pierce had no such connections. DE.215 ¶80 [SA220]; Doc.194-6 at 82 (Tr. 318) [SA088].

Brown also received hundreds of complaints from consumers directly and the BBB about the Craigslist fraud; Brown admitted he could trace the acts back to Pierce. Doc.215 ¶¶98, 99 [SA229-30]. Brown even discussed chargebacks with Pierce. *Id*. ¶¶75-76 [SA216-17]; *e.g.*,

[8] Brown's denials (Doc.215 ¶¶77-78) create no genuine dispute because he testified at his deposition to these facts. A party cannot create a disputed fact by contradicting his own sworn testimony with denials to his opponent's statement of undisputed facts, which were submitted by his attorney and provided no plausible explanation for any discrepancies. *See Beckel v. Wal-Mart Assocs.*, 301 F.3d 621, 623 (7th Cir. 2002).

Doc.194-6 at 51-52 (Tr. 194-98) [SA073-74]; Doc.194-7 at 21, 32 [SA092-93].

Brown received complaints from other sources as well. In November 2015, Brown's largest source of credit reports, Transunion, requested that its logo be removed from CBC's website due to "negative media attention . . . about deceptive listings on craigslist." Doc.215 ¶90 (deemed admitted) [SA225]. Earlier that year, a contractor sent Brown a consumer complaint stating in part, "fake-ad-for-apartment-led-to-my-buying-their-product-Internet," and told Brown "u are the one that taught me about these types of scams." *Id.* ¶82 (deemed admitted) [SA220-21].

Brown now claims that he worked with the Business Consumer Alliance (BCA) to reduce consumer fraud (Br. 8-9), but uncontroverted evidence shows that Brown received complaints from the BCA that were traceable to Pierce, but he did nothing. Doc.215 ¶¶92, 98 [SA226, SA229-30]; Doc.194-6 at 75-77 (Tr. 291-97) [SA081-083]; Doc.194-7 at 49-57 [SA097-105]. Brown knew by May 2016 that his agents were denying to complaining callers that the company advertised on Craigslist. Doc.215 ¶60 (deemed admitted) [SA204].

Brown received so many consumer complaints about unauthorized charges that in September 2015 he created frequently asked questions, including, "How did you get my credit card number?," "Didn't I only agree to pay $1," and "Why don't I remember signing up?" for the public versions of his websites, hoping that upset consumers searching for answers would call his customer service number before filing chargebacks. Doc.215 ¶¶87-89 [SA223-24]; Doc.194-9 at 11-18, 43-44, 52-57 (Tr. 37-44, 49-63 & Exhs. 4, 6) [SA111-126].

At a certain point, Brown simply avoided seeing Craigslist-related complaints. In September 2015, he instructed his staff not to escalate to him any complaints relating to rentals or housing, which included the Craigslist rental fraud. Doc.215 ¶85 [SA223]; Doc.194-7 at 44 (Ex. 23) [SA095].

Beyond merely knowing about the phony real estate listings, Brown controlled them as well. He admitted that in September 2015, he directed Pierce to change the landlord email templates to clarify that consumers should not email the credit reports, but bring them in person. Pierce promptly relayed Brown's instructions to Lloyd. Doc.215

¶79) [SA219].[9] Despite his control, however, Brown never told Pierce to stop his Craigslist activities and he never ended their relationship. Doc.215 ¶¶101, 102 [SA231]. As Pierce testified, he kept using the Craigslist ads "because Mike Brown wanted the traffic." Doc.199 at 21 (Tr. 74) [SA163].

E. Revenue from the Scheme

Brown received $6,832,435.81 from Pierce's deceptive Craigslist scheme; he paid $414,860.77 in refunds and $394,903.68 in chargebacks. Doc.215 ¶103 [SA231].[10] In settlements with Pierce and Lloyd, the FTC received $762,000. Doc.146. Net of all those amounts, consumers still lost $5,260,671.36. After the FTC filed this case, the district court froze about $2.2 million of defendants' assets (about $1.3 million from Brown) to preserve it for consumer redress.

---

[9] Brown claims (Br. 6) this email merely reflects his concern about consumers feeling "phished" by sending credit report information by email. Whatever Brown's motivation, the fact that he could change the text of the email at will reflects his control.

[10] Brown's claim about the amount of refunds provided (Br. 9), relates to CBC's overall refunds, not just what it paid to the Pierce referrals. *Id. See* Doc.215 ¶103 [SA231].

F. The FTC's Enforcement Lawsuit

1. The Complaint and Preliminary Relief

In January 2017, the FTC sued Brown, CBC, Pierce, and Lloyd for violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Section 4 of the Restore Online Shoppers' Confidence Act (ROSCA), 15 U.S.C. § 8403; Section 612(g) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681j(g); and the Free Reports Rule, 12 C.F.R. §§ 1022.130-1022.138. Doc.1. As pertinent here, the FTC Act makes illegal deceptive acts or practices in commerce, and ROSCA prohibits charging consumers for online purchases that employ a negative option feature unless the seller adequately discloses all the material terms of the transaction and obtains the consumer's express informed consent. The FCRA and the Free Reports Rule require an advertiser of free credit reports to notify consumers of their right to an annual free credit report.

The district court entered a temporary restraining order (TRO) and a preliminary injunction (PI) against Brown and CBC. Docs.16, 58,

59.[11] Pierce and Lloyd stipulated to the entry of preliminary and permanent injunctions, including monetary relief. Docs.49, 146.

2. Summary Judgment and Final Judgment

The FTC and Brown cross-moved for summary judgment. Doc.192 (FTC); Doc.205 (Brown). The district court granted summary judgment in favor of the FTC and denied Brown's motion. Doc.238 [A006]. The court concluded that the facts as set forth above were undisputed and thus that Brown's websites misrepresented "that consumers were obtaining a free credit score and report, not a membership in a monthly credit monitoring service." *Id.* 12 [A017]. The court explained that "[t]he website lacks any description of the monthly membership" for which it charged consumers. *Id.* 11 [A016]. For the same reason, the undisputed record showed that Brown violated ROSCA's commands to "clearly and conspicuously" disclose negative option features and obtain consumers' informed consent. *Id.* 13-16 [A018-21]. Brown also violated the Free Reports Rule by failing to notify consumers of their right to an annual free credit report. *Id.* 16-18 [A021-23].

[11] In July 2017, the court found Brown in contempt for violating the PI by charging his former customers for non-existent credit monitoring services. Doc.106. The court later rejected his request to modify the PI. Doc.183 [A001].

The court held CBC liable for Pierce and Lloyd's Craigslist scheme and Brown personally liable, as he controlled CBC and knew or should have known the scheme was fraudulent. *Id.* 7-9, 12-22 [A012-14, A017-27]. It held Brown personally liable as well for CBC's deceptive websites, as he controlled the company and its websites. *Id.* 19 [A024].

As a remedy, the court permanently enjoined Brown and CBC from offering credit monitoring services with a negative option feature and restricted their use of affiliate marketers. Doc.239 §§ I, III [A048-53]. It required them to provide disclosures relating to free credit reports, and disclosures and the receipt of consumer consent for sales made using negative options. *Id.*, §§ V-VI, VIII [A054-58, A059-63]. The court concluded these provisions were necessary given the reasonable likelihood that Brown and CBC could engage in future deceptive schemes. Op. 22-24 [A027-29]. The court also ordered Brown and CBC to pay, jointly and severally, $5,260,671.36 in equitable monetary relief, the amount that consumers lost from the Craigslist scheme and had not recouped from other sources. Doc.239 § IX [A064-65].

3. Request for Attorneys' Fees

In January 2018, the court granted in part an attorneys' fee request by Brown allowing about half of the fees he wanted, but cautioned that Brown's lawyer could not count on receiving additional funds as he "has no legitimate reliance interest" on receiving "any of the frozen funds for fees." Doc.183 at 4. After judgment was entered, in October 2018 the district court denied Brown's request for an additional $132,000 in attorneys' fees from money being held for consumer redress. Doc.268 [A073]. The court concluded that the lawyers had no basis to expect they would collect their fees and that the money was more equitably used to compensate victims, particularly where the frozen funds amounted to only about 20% of the consumer loss. *Id*. at 3-4 [A075-76].

4. Stay Requests

On September 26, 2018, the district court denied in large part Brown's motion to stay the permanent injunction, except it stayed the distribution of his funds pending appeal. Doc.266. On January 8, 2019, this Court denied Brown's motion to stay the judgment pending appeal.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's order of summary judgment, and views the record in the light most favorable to the non-moving party to determine if there are disputed issues of material facts. *Bay Area Bus. Council*, 423 F.3d at 634. The non-moving party, however, must set forth admissible record evidence to contest the moving party's statement of undisputed facts. *Id.* at 633.

The Court reviews for abuse of discretion district court orders: 1) deeming facts admitted due to a party's failure to comply with local summary judgment rules, *Cracco v. Vitran Express, Inc.*, 559 F.3d 625, 630, 632 (7th Cir. 2009); 2) granting equitable monetary and injunctive relief, *FTC v. Febre*, 128 F.3d 530, 533-34 (7th Cir. 1997); and 3) denying a motion to pay a defendant's legal bills out of an equitable judgment estate, *FTC v. Think Achievement Corp.*, 312 F.3d 259, 262 (7th Cir. 2002).

SUMMARY OF THE ARGUMENT

1.a. This Court recognized 30 years ago that Section 13(b) of the FTC Act empowers district courts to order equitable monetary relief as part of their authority to issue a "permanent injunction" under the statute. Congress has twice ratified this judicial power.

Nothing in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), disturbs this precedent. *Kokesh* considered how a statute of limitations applies to the securities laws; it did not speak to equitable monetary relief under the FTC Act. And the Court expressly disclaimed reaching any determination on judicial authority to order disgorgement under the securities laws.

b. The FTC can seek a permanent injunction under Section 13(b) without first undertaking an administrative proceeding. As this Court explained long ago, preliminary and permanent injunctions under Section 13(b) "are entirely different animals." *United States v. JS & A Grp., Inc.*, 716 F.2d 451, 456 (7th Cir. 1983). Preliminary relief is authorized by one part of the statute, and permanent relief by a wholly separate proviso.

c. Section 19 of the FTC Act, 15 U.S.C. § 57b, does not bar monetary relief under Section 13(b). To the contrary, and as courts have recognized, it expressly preserves remedies provided under other provisions of the Act, such as Section 13(b).

d. Tracing requirements do not apply to equitable monetary judgments under Section 13(b). The judgment imposes an equitable

obligation to return sums equal to the amount defendants wrongfully took from consumers, not particular funds in their possession.

2.a. Undisputed facts show that CBC's websites violated Section 5(a) of the FTC Act. The sites prominently featured the promise of a free credit report and score, but enrolled consumers in an expensive monthly credit monitoring service. Compared with the conspicuous and bold text promising the free report and score, disclosures about the monthly service were effectively hidden.

The FTC's consumer declarants testified that they were misled by Brown and CBC's websites. The many consumer complaints and chargebacks are further evidence of deceit. Brown's claim that some of the declarants knew they would be charged does not negate the deceptive net impression. The FTC need not show that every reasonable consumer was misled by a claim, but just that some misunderstood the message. And here, the undisputed record shows that *many* consumers were misled by the deceptive websites.

Brown challenges the declarants' reliability, but he failed to depose the declarants or provide his own consumer testimony. He offers only conjecture, not a genuine dispute of fact.

b. Brown's websites' failure to fully disclose their credit monitoring program with its monthly charges violated ROSCA. The statute requires a seller of online services using a negative option feature to clearly and conspicuously disclose all the material terms of the deal and get the consumers' express informed consent. The disclosures about charges the sites did contain were essentially designed to be overlooked by consumers, not to inform them.

3. CBC's websites violated the Free Reports Rule by failing to disclose that consumers have a legal right to a free annual credit report. The FTC need not enforce this rule administratively because a rule violation is also deemed a violation of Section 5(a), which the FTC may enforce in court under Section 13(b). The rule also covers a combined credit report and score, as the FTC made explicit when it amended the rule in 2010.

4. Brown does not challenge his personal liability for the Craigslist scheme. He challenges his liability for the deceptive websites, but he admitted control and gained the requisite knowledge of the fraud through the voluminous consumer complaints and chargebacks.

5.a. The district court properly based the amount of equitable monetary relief on consumer loss stemming from the deceptive websites and the Craigslist fraud, which began around January 2014. Joint and several liability was appropriate because Brown and CBC jointly contributed to the entire consumer harm. The monetary remedy also properly included losses from consumers who continued to pay for Brown's services because CBC misled them into remaining customers.

b. The behavioral injunction was reasonable and proportional to Brown's illegal conduct and the likelihood of recurrence. The permanent ban against selling credit monitoring services using a negative option feature prohibits Brown from engaging again in the very practice he was found liable for here. The affiliate notification provision likewise is an appropriate response to Brown's use of affiliates to carry out his unlawful scheme. Brown's lack of contrition is evident from his claim that he was Pierce's and Lloyd's victim, even though he ratified and enjoyed the fruits of their conduct for years.

c. The monetary and injunctive provisions imposed by the district court did not constitute a penalty or an "excessive fine" under the Eighth Amendment. The monetary judgment wasn't a fine at all, but

equitable relief, and it wasn't excessive because the monetary award equaled the amount of consumer loss.

6. The district court properly denied Brown's request to pay his legal bills from the money set aside for consumer redress. His lawyer worked the case knowing that he might not get paid, and his claims do not outweigh those of the defrauded consumers.

ARGUMENT

I. SECTION 13(b) OF THE FTC ACT EMPOWERED THE AGENCY TO SEEK AND THE COURT TO GRANT EQUITABLE MONETARY REMEDIES

Brown contends that the district court lacked authority to order monetary relief. He makes three overlapping arguments: 1) that Section 13(b) does not authorize equitable monetary relief at all; 2) that the Commission cannot seek any relief under Section 13(b) without first having issued an administrative complaint; and 3) that Section 19 confirms the first two points. Br. 17-26. He also argues that equitable restitution requires tracing and cannot include money unrelated to the fraud. Br. 27-28. He is wrong on all counts.

A. This Court Held Decades Ago That Section 13(b) Authorizes Equitable Monetary Relief, And That Ruling Remains Good Law

Brown first claims that Section 13(b) does not permit the FTC to seek monetary remedies. Br. 18, 21-23. Longstanding precedent of this Court shows otherwise.

The relevant part of Section 13(b) states: "provided further, that in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." Thirty years ago, this Court recognized that the statute's authorization of a "permanent injunction" also provides district courts with the power to direct "any ancillary equitable relief necessary to accomplish complete justice," including equitable monetary relief against a defendant whose deceptive conduct causes monetary harm to consumers. *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026 (7th Cir. 1988) (citation omitted). The Court has affirmed this principle repeatedly. *See, e.g., FTC v. Trudeau,* 579 F.3d 754, 771 (7th Cir. 2009); *Bay Area Bus. Council,* 423 F.3d at 634; *Think Achievement*, 312 F.3d at 262; *FTC v. Febre*, 128 F.3d 530, 534

(7th Cir. 1997). Every other court of appeals to have considered the issue has come to the same conclusion.[12]

These decisions are rooted in the Supreme Court's ruling in *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946), which held that where a statute authorizes the district court to issue an injunction, it may exercise "all the inherent equitable powers" necessary for "the proper and complete exercise of that jurisdiction," including the award of monetary relief. *Id*. at 398. The Court explained that "[n]othing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief." *Id*. at 399. The Court later emphasized that when Congress grants a court the power to issue an injunction, it "must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory

---

[12] *See FTC v. Commerce Planet, Inc.,* 815 F.3d 593, 598-99 (9th Cir. 2016)*; FTC v. Ross,* 743 F.3d 886, 890-92 (4th Cir. 2014); *FTC v. Bronson Partners*, LLC, 654 F.3d 359, 365-66 (2d Cir. 2011); *FTC v. Magazine Sols., LLC,* 432 F. App'x 155, 158 n.2 (3d Cir. 2011) (unpublished); *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 15 (1st Cir. 2010*); FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 n.6 (10th Cir. 2005*)*; *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-70 (11th Cir. 1996); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1314-1315 (8th Cir. 1991).

purposes." *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 291-92 (1960). Just four years ago, the Court cited *Porter* for the principle that "[w]hen federal law is at issue and the public interest is involved, a federal court's equitable powers assume an even broader and more flexible character than when only a private controversy is at stake," including the power to "accord full justice" to all parties. *Kansas v. Nebraska*, 135 S. Ct. 1042, 1053 (2015) (cleaned up).

Brown nevertheless claims (Br. 19-20) that in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), the Supreme Court upended that consistent line of precedent and "rejected the broad expansionist view set out in *Porter*." But the Court made explicitly clear that it did no such thing.

Kokesh addressed whether the general five-year statute of limitations for a "penalty" in 28 U.S.C. § 2462 applies to disgorgement under federal securities law and held that it does. 137 S. Ct. at 1639. Disgorgement, the Court explained, is a form of restitution, measured by the defendant's unlawful gain. *Id.* at 1640. The Court noted that "in many cases, SEC disgorgement is not compensatory," because disgorged funds are paid to the U.S. Treasury rather than to victims. *Id.* at 1644.

The Court thus held that this type of disgorgement was a "penalty" for purposes of the statute of limitations. *Id*. at 1644-45.

But the Court expressly limited its holding to the application of the statute of limitations to the securities laws. Effectively rejecting the very argument Brown now makes, the Court stated that:

> Nothing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context.

Id. at 1642 n.3. *Kokesh* thus plainly does not support a wholesale reversal of decades of decisions rendered by nine circuits. Brown gets no help from comments made by individual justices at the *Kokesh* oral argument. Br. 19 (citing Doc.156-7 at 7-9, 13). The Court's unanimous opinion speaks for itself.

Beyond its explicit disclaimer, *Kokesh* does not apply here for several more reasons. The case concerned application of the statute of limitations, an issue not presented here.[13] It also involved disgorged funds dispersed to the Treasury, coupled with civil penalties, a remedy that the Court found serves deterrent and not compensatory purposes.

---

[13] The complaint was filed in January 2017 seeking relief for deceptive conduct beginning in January 2014 (Doc.1 ¶11), well within Section 2462's five-year statute of limitations.

Kokesh, 137 S. Ct. at 1643-44. In contrast, here the FTC seeks redress for consumer losses, not retribution or deterrence. The FTC fully intends to distribute the money it collects from Brown to defrauded consumers.[14] As the Supreme Court has recognized, a "public remedy" granting equitable monetary relief is not "rendered punitive" when it is compensatory. *Mitchell*, 361 U.S. at 293.[15]

Brown also is wrong that *Meghrig v. KFC Western, Inc.*, 516 U.S. 479 (1996), "dramatically limited *Porter*." Br. 20. *Meghrig* held that a citizen-suit provision in an environmental law that gives district courts

---

[14] Indeed, over the last few years, over 99% of the monetary remedies obtained in Section 13(b) cases were distributed to consumers (less the costs of distribution) rather than disgorged to Treasury. *See* Federal Trade Commission, Office of Claims and Refunds, *2018 FTC Annual Report on Refunds to Consumers*, https://www.ftc.gov/system/files/documents/reports/2018-annual-report-refunds-consumers/annual_redress_report_2018.pdf, at 1 (comparing money sent for consumer refunds to money sent to Treasury); Federal Trade Commission, Office of Claims and Refunds, *Annual Report 2017*, https://www.ftc.gov/system/files/documents/reports/bureau-consumer-protection-office-claims-refunds-annual-report-2017-consumer-refunds-effected-july/redressreportformattedforweb122117.pdf, at 1 (same).

[15] Brown also cites (Br. 24) a recent concurring opinion expressing the view that controlling Ninth Circuit precedent on this issue should be overruled. *See FTC v. AMG Capital Mgmt., LLC*, 910 F.3d 417 (9th Cir. 2018). For the reasons discussed herein, we respectfully disagree with that view. Other Ninth Circuit panels have ruled that *Kokesh* does not affect the SEC's authority to seek disgorgement. *See*, *e.g.*, *SEC v. Liu*, No. 17-55849, 2018 WL 5308171, at *3 (9th Cir. Oct. 25, 2018).

injunctive authority to order the remediation of present harms and the prevention of future ones did not allow a court to award compensation to private parties for past cleanup costs. *Id.* at 484. *Meghrig* reached that determination by comparing the statute before it with a similar environmental statute that afforded identical injunctive relief, but expressly provided for the recovery of past cleanup costs. Congress "knew how to provide for the recovery of cleanup costs," the Court explained, so its decision to provide such a recovery in one statute revealed an intent not to do so in the other statute, which lacked the operative language. 516 U.S. at 485. Moreover, the injunctive authority conveyed in the statute before it limited relief to instances of "imminent" danger, which an already-cleaned-up site did not pose. *Id.* at 485-86. The holding, which turns on the particularities of two specific environmental statutes, sheds no light on how to interpret Section 13(b).

Indeed, Congress has twice ratified the FTC's authority to obtain equitable monetary relief under Section 13(b). A decade after courts recognized the availability of such relief, Congress expanded the statute's venue and service-of-process provisions. *See* FTC Act

Amendments of 1994, Pub. L. No. 103-312, § 10, 108 Stat. 1691 (Aug. 26, 1994). Even as it amended Section 13(b), Congress let stand the many existing decisions permitting monetary relief under the statute. The Senate Report accompanying the legislation recognized that Section 13(b) authorizes the FTC to "go into court … to obtain consumer redress." S. Rep. No. 103-130, at 15-16 (1993). Congressional retention of statutory language, which courts have interpreted in a particular way, when Congress otherwise amends a statute shows "that Congress accepted and ratified" that interpretation. *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2520 (2015).

Congress directly codified the judicial understanding of Section 13(b) when it enacted the U.S. Safe Web Act of 2006, Pub. L. 109-455, 120 Stat. 3372 (Dec. 22, 2006) (codified in scattered sections of 15 U.S.C.). There, the legislature expanded the FTC's authority to enforce the FTC Act against certain practices abroad, providing that "[a]ll remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices [in

foreign commerce] … including restitution to domestic or foreign victims." 15 U.S.C. § 45(a)(4)(B).

B. Section 13(b) Does Not Require The FTC To Pursue Administrative Proceedings Before Seeking A Permanent Injunction

Brown next claims that Section 13(b) permits the FTC to seek a permanent injunction only after it conducts an administrative proceeding under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b). Br. 18, 25. This Court long ago rejected that argument, recognizing that the part of Section 13(b) that authorizes *preliminary* injunctive relief pending issuance of an administrative complaint and the second proviso of the statute that authorizes *permanent* injunctive relief "are entirely different animals." *JS & A Group,* 716 F.2d at 456. Had Congress intended to require the Commission to file an administrative complaint before it sought permanent relief "it undoubtedly would have included language similar to that found in the provision governing preliminary injunctive relief." *Id.*

The Senate Report supporting Section 13(b) makes this clear. It explains that where the FTC "does not desire to further expand upon the prohibitions of the [FTC] Act through the issuance of a cease-and-

desist order" after administrative proceedings, the Commission could "seek a permanent injunction" directly in district court. S. Rep. No. 93-151, 93d Cong., 1st Sess. 30-31 (1973). This Court relied on that history to hold that the Commission may seek a permanent injunction in federal court where the agency does not need to apply its "expertise to a novel regulatory issue through administrative proceedings." *World Travel Vacation Brokers*, 861 F.2d at 1028.

Brown gets no help from language in the first portion of Section 13(b) limiting the Commission's authority to seek an injunction to cases where it has reason to believe a defendant "is violating, or is about to violate" a law provision. Br. 23. When the FTC filed its complaint, Brown and CBC were actively violating the FTC Act; they stopped only after the district court issued a TRO. Their related contention that the FTC cannot seek a remedy for past conduct, Br. 23, 24, is plainly wrong in light of the legions of decisions recognizing the agency's ability to obtain monetary redress, which necessarily involves past conduct.

C. Section 19 Does Not Limit The Remedies Separately Authorized Under Section 13(b)

Brown and CBC further assert that the monetary remedies expressly authorized under Section 19 of the FTC Act, 15 U.S.C. § 57b,

limit the remedies available under Section 13(b). Br. 24-26. In fact, Section 19 precludes such a result on its face.

Section 19(a), 15 U.S.C. § 57b(a), authorizes suit in federal court where a defendant has violated a Commission rule or an administrative cease-and desist order. In such suits, a court may order "relief . . . necessary to redress injury to consumers," including "rescission," "the refund of money," and "the payment of damages," but not "any exemplary or punitive damages." Section 19(b), 15 U.S.C. § 57b(b). The statute then states expressly that the "[r]emedies provided in this section are in addition to, and not in lieu of, any other remedy" allowed under the FTC Act, and that "[n]othing in this section shall be construed to affect any authority of the Commission under any other provision of law." 15 U.S.C. § 57b(e). Not surprisingly, courts have long ruled without exception that Section 19 does not limit the Commission's ability to seek equitable remedies under Section 13(b). *See*, *e.g.*, *FTC v. H.N. Singer*, *Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982); *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 366-67 (2d Cir. 2011).

Brown and CBC also contend that the FTC cannot seek restitution under Section 13(b), because it is "punitive" and thus barred by Section

19. Br. 26. Even if Section 19 applied here, the district court ordered the monetary award to redress consumer loss. There is nothing punitive about it.[16]

D. Tracing Is Not Required For Equitable Monetary Relief Under Section 13(b)

Brown next argues that the FTC and the district court were required to trace consumer relief to specific funds in his bank account. Because the account holds both tainted and untainted money, he claims, it cannot be used to pay the monetary award here. Br. 27-28. No such tracing was required.

Tracing of funds is not required for equitable monetary relief under Section 13(b). *Commerce Planet*, 815 F.3d at 601; *Bronson Partners,* 654 F.3d at 373-74; *see* Op. 26-27 [A031-32]. As the Ninth Circuit explained, "tracing requirements would greatly hamper the FTC enforcement efforts by, among other things, precluding restitution of any funds the defendant has wrongfully obtained but already managed

[16] Brown mistakenly relies (Br. 26) on a law review article written by former FTC personnel. Even if such a paper could constitute authority, the authors recognize that Section 13(b) should "allow for monetary relief when the practices at issue are dishonest or fraudulent," as they were here. *See* J. Howard Beales III & Timothy J. Muris, *Striking the Proper Balance: Redress Under Section 13(b) of the FTC Act*, 79 Antitrust L.J. 1, 33 (2013).

to spend on non-traceable items." 815 F.2d at 601 (citing *Montanile v. Bd. of Trustees of the Nat'l Elevator Industry Health Benefit Plan*, 136 S. Ct. 651, 657-62 (2016)). Indeed, Brown's suggested rule would simply create an incentive for scammers to dispose of tainted money as quickly as possible. *Bronson Partners* thus recognized that there is "no case in which a public agency seeking to obtain equitable monetary relief has been required to satisfy the tracing rules." 654 F.3d at 374. That Court explained that equitable relief sought by the FTC under Section 13(b) is distinct from private remedies based on common law claims, because the FTC is "seeking to enforce explicit statutory provisions" to obtain a "public-regarding remedy." *Id.* at 372-73.

Brown's cases are not to the contrary. *Montanile* and *Great-West Life & Annuity Ins. Co. v. Knudson,* 534 U.S. 204 (2002), both involved lawsuits by private health plans under the Employee Retirement Income Security Act seeking reimbursement for expenses from plan participants who recovered from third parties. The Act only allowed the plans to recover "appropriate equitable relief." *Great West* rejected the plan's claim to equitable restitution in the form of a constructive trust or equitable lien over specific property, because the participant no

longer possessed those particular funds so the claim was legal not equitable. 534 U.S. at 714-15. *Montanile* held that the plan could not seek an equitable remedy (such as an equitable lien) when the participant had dissipated those particular funds. Both cases recognized that, under longstanding principles of equity, the constructive trust or equitable lien require private plaintiffs to identify particular funds that belonged to them, but were possessed by the defendant "in trust" or traceable items that the defendant purchased with those funds. *See also Bronson Partners*, 654 F.3d at 373.

But this case involves a government lawsuit seeking general equitable monetary remedies, not a constructive trust or equitable lien. The FTC does not seek any particular funds in Brown's possession, but rather "an equitable obligation to return a sum equal to the amount wrongfully obtained." *Id.* at 374 (citing *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000) (tracing not required in SEC disgorgement cases because there is no "requirement to replevy a specific asset.")). The two situations are not comparable.

Moreover, the injunctive relief available under Section 13(b) is broader than that available under ERISA. And private remedies are

more limited than public ones. When the government seeks equitable relief to protect the public interest, a court's "equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Porter*, 328 U.S. at 398. Tracing would undermine the FTC Act's broad remedial purpose "to protect consumers from economic injuries" by allowing the recovery of all consumer losses. *Febre,* 128 F.3d at 536.

II. UNDISPUTED RECORD FACTS SHOWED THAT BROWN'S WEBSITES MISLED CONSUMERS IN VIOLATION OF SECTION 5 OF THE FTC ACT AND ROSCA

The district court determined that undisputed facts showed that Brown's websites misled consumers in violation of Section 5 of the FTC Act and ROSCA. Brown asserts that the determination was error because he showed genuine disputes over material facts. Br. 28-36. The court's judgment was sound.

A. Uncontroverted Evidence Showed That Brown's Websites Deceived Consumers

A claim is deceptive in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), if it contains "material misrepresentations likely to mislead a reasonable consumer." *Bay Area Bus. Council*, 423 F.3d at 635. A representation is material if it is likely to affect a consumer's

conduct regarding a product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992). When making those determinations, courts consider the overall net impression of an advertisement or claim. *FTC v. Colgate-Palmolive Co.,* 380 U.S. 374 (1965); *Kraft*, 970 F.2d at 322; *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984).

It is well established that it is deceptive under the FTC Act to prominently advertise a low-cost or free product while burying in less conspicuous fine print a more expensive conjoined product. This Court explained in *Porter & Dietsch v. FTC*, 605 F.2d 294, 301 (7th Cir. 1979), that fine print disclosures do not negate a misleading net impression created by large headlines. The Ninth Circuit similarly held in *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1200-01 (9th Cir. 2006), that deception caused by a check falsely purporting to be a refund or rebate was not cured by fine print disclosures on the back that cashing it signed the consumer up for an ongoing monthly service. Instead, disclosures of the true deal must be "sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression." *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989).

The district court applied those principles to find that Brown's website was deceptive as a matter of law. The court carefully examined the text size, placement, and contrast of the various statements on screenshots of the websites. It is not in dispute that the offer of "free" credit reports and scores was conveyed in a large, bolded heading on the landing page: "**Get Your Free Credit Score and Report as of [Date]**." Op. 31 [A036]; Doc.215 ¶41 [SA188-89]; *e.g.*, Doc.11-4 at 24-25, 62-63 [SA050-51, SA060-61]; *see supra* at 6-8. Additional statements – all in bold highlighted text – on the landing page and subsequent pages of the website reaffirmed CBC's offering of a credit score and report for a mere $1 refundable processing fee. Op. 31-34 [A036-39]; *e.g.,* Doc. 11-4 at 11-12, 15, 43, 65 [SA043-44, SA047, SA053, SA063]; *see supra* at 9-10. By contrast, the only discussion of ongoing monthly services appeared in far smaller type and far less conspicuous color, and the services were not described.

Moreover, consumer declarants stated that the only payment information they saw was a "$1.00 refundable processing fee," announced above the payment space. Doc.211 ¶32 [SA182-83]; *e.g.,* Doc.11-1 at 6 (¶8) [SA003]; *id.* at 31 (¶10) [SA007]. And the sheer

number of consumer complaints and credit card charge backs challenging the unexpected charges (*supra* at 11-12) significantly underscore the deceptive nature of the website. Although the FTC need not prove actual deception, consumer declarations of this nature are "highly probative to show that a practice is likely to mislead consumers acting reasonably under the circumstances." *Cyberspace.com*, 453 F.3d at 1201.

On that record, the district court properly concluded that the net impression of the websites was the claim that consumers would receive a free credit score and report, not enroll in a costly ongoing credit monitoring service. Op. 9-11 [A014-16]. And the court was correct in ruling that consumers "can discern that submitting payment information will enroll them in the membership only by reviewing text that is smaller and less noticeable than the surrounding text"; indeed, "[t]he website lacks any description of the monthly membership." *Id.* 11 [A016].

Brown is wrong that the disclosures on his websites raise a genuine question of fact. Br. 29-30. There is no dispute over the information his websites conveyed; as discussed above, the net

impression of the websites can be a question of law, and so long as the net impression is misleading, the mere fact of some disclosure does not raise a factual dispute. Brown's disclosures appear in much smaller type and in a much less prominent color than the headline promise of a free credit score and report, and the disclosures never even describe the alleged monthly service they pertain to.

Brown also claims that the FTC's consumer declarations raise genuine issues regarding the websites' net impression. Br. 31-32. Not so. The district court deemed admitted that many consumers learned about CBC's monthly charges only when they discovered the charges on their account statements. Doc.215 ¶61 [SA205-06]. That in itself is sufficient to show that consumers were misled into believing that they would receive a free credit report and score.

The consumer declarants confirmed the misleading nature of the website, testifying that the prominent feature they saw on CBC's website was the free credit report and score (at most with the $1 processing fee) and not a monthly credit monitoring service. *E.g.,* Doc.11-1 at 5-7 [SA002-04]; *id.* at 52-55 [SA013-16]. Although Brown

challenges the declarants' "reliability," Br. 31, he failed to depose any of them or provide his own consumer testimony.

Brown points to two declarants who claimed they saw language about the monthly charge. Br. 31. But this does not negate the deceptive net impression. This Court has long recognized that the FTC need not show that *every* reasonable consumer would be misled by a claim; rather, it need only show that "some customers actually misunderstood the thrust of the message" to support a "finding of a tendency to mislead." *World Travel,* 861 F.2d at 1029-30 (citing *Beneficial Corp v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976)). The undisputed record shows that *many* consumers were misled by the websites' misrepresentations.

Brown is also wrong that a reasonable consumer could not read only the portion of the website about the free credit scores and report yet miss disclosures about the negative option feature and its fees. Br. 32. But for all the reasons described above, undisputed facts show that disclosures about monthly services were inconspicuous and overwhelmed by the larger and bolder claims offering free credit reports and scores. Op. 31-34 [A036-39]; *see supra* at 6-10. That is the essence

of the "net impression" test. If Brown were right, any disclosure, however buried, would defeat a charged FTC Act violation.

Finally, Brown challenges the district court's rejection of his "friendly fraud" argument that many consumers knowingly signed up for his services and then falsely claimed they were deceived in order to get a refund. Br. 32-33. But as the district court correctly found, the claim lacked admissible evidentiary support, and before this Court Brown supplies none. Op. 13 [A018]. The material Brown relies on are not admissible. For example, his testimony challenging consumers' motives and honesty is not based on his personal knowledge, as required by Fed. R. Evid. 602 and Fed. R. Civ. P. 56(c)(4). It also constituted improper lay opinion testimony under Fed. R. Evid. 701. The "article" he cites that purportedly shows the harm caused by friendly fraud, *see* Doc.206-1 §24, Ex.10, is in reality a blog post/advertisement that lacks foundation and is inadmissible hearsay. Fed. R. Evid. 801(c), 802; Fed. R. Civ. P. 56(c)(2) & (4).

B. Brown's Websites Violated ROSCA

For similar reasons, Brown's websites also plainly violated ROSCA. That statute prohibits a seller from charging consumers for

online purchases that employ a negative option feature unless the seller (1) clearly and conspicuously discloses all the material terms of the transaction and (2) obtains the consumer's express informed consent. 15 U.S.C. § 8403(1) and (2).[17] Brown's credit monitoring service was a negative option program under ROSCA because consumers who requested a free credit report were automatically enrolled in the program and charged a monthly fee unless they took action within seven days to cancel. *See* 16 C.F.R. § 310.2(w) (definition from FTC's Telemarketing Sales Rule adopted into ROSCA by Section 8403).

Brown contends that his websites complied with ROSCA because consumers were informed three times that they were subscribing to his monthly credit monitoring program and could cancel within seven days if they did not want to be charged. He claims those disclosures were conspicuously depicted. Br. 33-36.

But the undisputed evidence showed otherwise for all the reasons discussed above. As the district court concluded, CBC "embedded its disclosures into pages with larger, bolder text that promised 'free' credit reports and scores." Op. 15 [A020]. The disclosures "were not

[17] A third element in Section 8403 was not at issue.

prominent" compared to the other larger and bolder text, and "appear 'designed to ensure minimal attention by the reader.'" *Id.* (citing *Cole v. U.S. Capital, Inc.*, 389 F.3d 719, 731 (7th Cir. 2004)).

Brown also failed to obtain the required consent. Other than a vague statement that consumers would be charged a monthly fee for some service, the disclosures Brown cites never actually described the service he was offering. A consumer cannot meaningfully consent to charges of which they were unaware for services that were undisclosed. Op. 16 [A021].

Brown also contends (Br. 34) that the district court erroneously relied on *Murray v. New Cingular Wireless Servs., Inc.*, 523 F.3d 719 (7th Cir. 2008) and *Cole*, 389 F.3d at 731. Op. 15. Both cases were private suits claiming that the defendants failed to make certain FCRA-required disclosures (which were made in 6-point font) "clear and conspicuous," a term left undefined in the statute. *Cole* concluded that a notice is conspicuous if the consumer's attention is drawn to it, a condition not met in that case. 389 F.3d at 731. *Murray* interpreted the same FCRA provision, but also looked for guidance to an FTC rule (issued after *Cole*), 16 C.F.R. § 642.3, that requires 8-point or 12-point

font consumer disclosure notices (depending on the type of notice). 523 F.3d at 725. But a rule requiring a minimum font size does not by itself immunize any disclosure using that font, when other elements yield a misleading net impression. Indeed, *Cole* and *Murray*, as well as Section 642.3, require the disclosures to be sufficiently distinct from other text (such as being in bold, italicized, underlined, or in a contrasting color) to be adequately conspicuous.

Finally, Brown gets no help from *Commerce Planet*, 878 F. Supp. 2d 1048, 1064-66 (C.D. Cal. 2012), Br. 35, which concluded that disclosures about defendants' negative option plan with a monthly membership fee was "buried with other densely packed information and legalese" in smaller text and hard-to-read graphics. Brown is not correct that just because the disclosures in another case may have been even more obscure than his, that means that his were adequate.

III. BROWN'S WEBSITES VIOLATED THE FREE REPORTS RULE, AND THE FTC CAN ENFORCE THE VIOLATION IN FEDERAL COURT

Brown next challenges (Br. 36-38) the district court's conclusion that he violated the Free Reports Rule. Op. 16-19 [A021-24]. The rule requires that an advertisement for a free credit report must disclose

that a consumer has the right to obtain a free report annually under federal law. 15 U.S.C. § 1681j(g)(1); 12 C.F.R. § 1022.138. Brown does not contend that he provided the notice. Op. 16-17 [A021-22]. He claims instead that the FTC cannot enforce the rule in federal court and that the rule does not apply to him in any case. While the judgment is unaffected by Brown's arguments (it is fully supported by his other law violations), his assertions fail.

Brown first contends that the rule may be enforced only through an administrative proceeding (which does not allow a monetary award) and not in federal court. Br. 36-37. The claim rests on 15 U.S.C. § 1681s(a)(1), which provides that violations of FCRA-based rules "shall be subject to enforcement by the Federal Trade Commission under Section 5(b)" of the FTC Act, 15 U.S.C. § 45(b). Section 5(b) authorizes administrative proceedings and does not mention judicial proceedings, and Brown asserts that Congress's use of "shall" means that only administrative enforcement is allowed.

Brown waived the argument by raising it only in his reply brief below. *See Mendez* v. *Perla Dental*, 646 F.3d 420, 423-24 (7th Cir. 2011). It also fails on the merits, because it runs counter to the plain language

of the FCRA and the FTC Act. The FCRA (under which the Free Report Rule was established) states that "a violation of any requirement or prohibition imposed under" the FCRA "constitute[s] an unfair or deceptive act or practice . . . in violation of Section 5(a) of the [FTC] Act." 15 U.S.C. § 1681s(a)(1). Section 13(b) of the FTC Act, in turn, allows the FTC to seek both injunctive and monetary relief for the violation of "any provision of law enforced by" the FTC. 15 U.S.C. § 53(b). The plain statutory terms thus defeat Brown's claim that the FTC can enforce the FCRA only through administrative proceedings.

Congress's use of the word "shall" in § 1681s(a)(1) does not change the analysis. It is obvious from the passive statutory usage of the term – "shall be subject to enforcement" – that Congress used the word "shall" to provide *authority* to the FTC to enforce through administrative proceedings, not as an exclusive *mandate* for that particular means of enforcement. Indeed, the statute also states that a violation of the FCRA "shall constitute an unfair or deceptive act or practice" in violation of the FTC Act, thereby subjecting the violator to all the

means of FTC enforcement of that Act.[18] The full statutory context is important because it can show, as here, that "shall" can be "the equivalent of 'may.'" *Sierra Club v. Whitman*, 268 F.3d 898, 904 (9th Cir. 2001).

Second, Brown argues that his product, which combined a credit report and a credit score, is not subject to the rule, which he claims does not apply to credit scores. Br. 37-38. Nowhere does the rule exempt credit report advertisers who also offer scores. Indeed, when the Commission amended the rule in 2010, it rejected the very argument Brown now makes. As the Commission explained, "advertising for bundled services that promote free credit reports, in addition to other products and services, such as credit monitoring, is the very type of advertising that is likely to confuse consumers," and thus must be covered by the rule. Free Annual File Disclosures; Final Rule, 75 Fed. Reg. 9726, 9733, 2010 WL 710308 (Mar. 3, 2010) (now codified at 12 C.F.R. § 1022.130).

---

[18] When the FCRA was enacted in 1970, *see* Pub. L. 91-508, 84 Stat. 1127, 1134-1135 (1970), the FTC's sole means of enforcement was through administrative proceedings. But Congress expanded the FTC's enforcement arsenal when it added Section 13(b) in 1973 and authorized judicial enforcement as well.

Regardless of what Brown thinks landlords want when seeking new tenants, Br. 37-38, the rule requires disclosure to consumers that they are entitled to a free credit report. And his assertion that consumers were not injured by his rule violations, Br. 37, is belied by the fact that the Craigslist scheme duped them out of more than $6 million instead of informing them they could get a credit report for free.

IV. BROWN IS PERSONALLY LIABLE FOR CBC'S DECEPTIONS

Brown challenges the district court's determination that he is individually liable for CBC's fraud. Br. 39. The claim is meritless.

Under the FTC Act, once corporate liability is established, an individual defendant may be held jointly and severally liable for corporate misconduct if he: (1) participated directly in or controlled the corporation's deceptive practices and (2) had "actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Amy Travel*, 875 F.2d at 573-74. An individual's "degree of participation in business affairs is probative of knowledge." *Id.* at 574.

Brown concedes that he controlled the CBC websites and knew their contents.[19] Doc.215 ¶5 [SA170]. He also knew that many consumers complained about unauthorized charges and about the high number of credit card chargebacks for those charges. *See supra* at 11-12. "To claim ignorance in the face of the consumer complaints and returned checks amounts to, at the least, reckless indifference to the corporations' deceptive practices." *Bay Area Bus. Council,* 423 F.3d at 638; *see also Amy Travel*, 875 F.2d at 574-75 (high volume of consumer complaints and "excessive credit card chargebacks" placed defendants on notice of fraud).

Instead, Brown contends that he bears no liability because CBC did not violate the law, which was supported by his friendly fraud testimony. Br. 39. The claim is nothing more than a rehash of all the arguments discussed above, and it fails for the same reasons.

[19] Brown does not appear to challenge his personal liability for the Craigslist fraud, which he also knew of and controlled. *See supra* at 13-16; Op. 7-9 [A012-14].

V. THE DISTRICT COURT'S REMEDIES WERE APPROPRIATE

A. The District Court Properly Ordered Monetary Relief

Brown next challenges the monetary remedy. Br. 39-41. He shows no reason why the district court's determination to impose $5,260,671.36 in monetary relief (Op. 27-29 [A032-34]; Doc.239 § IX [A064-65]) fell beyond its broad discretion.

To support a claim for equitable monetary relief, the FTC must provide evidence and calculations showing the amount of consumer loss. *Febre*, 128 F.3d at 535-36; *Amy Travel*, 875 F.2d at 570-72. The monetary remedy ordered by the court reflected consumer loss because it was based on the revenue CBC earned from consumers deceived by the Craigslist scheme, less chargebacks, refunds, and the amounts collected from the Pierce and Lloyd settlements.

Brown asserts that he may be held liable only for conduct occurring after CBC activated certain websites on December 1, 2015, and not before then. Br. 40. But before December 2015, consumers deceived through the Craigslist scheme were directed to get their credit reports from earlier versions of CBC's websites. Doc.215 ¶35 [SA184-85]; Doc.194-10 at 2-18 [SA128-44]. Thus, as the district court held, "the

amount of liability is based on the duration of the campaign of misrepresentation conducted through the Craigslist marketing scheme, not the existence of certain websites." Op. 27-28 [A032-33]. "The date on which certain websites became active is irrelevant to the calculation." *Id*.

Brown also asserts that joint and several liability cannot be imposed in FTC cases. Br. 40 (citing *Honeycutt v. United States,* 137 S. Ct. 1626 (2017)). This Court and others have consistently held to the contrary where multiple actors collectively cause a single harm. *See, e.g.*, *FTC v. World Media Brokers*, 415 F.3d 758, 765-66 (7th Cir. 2005); *Commerce Planet*, 815 F.3d at 600-01; *FTC v. WV Universal Mgmt., LLC*, 877 F.3d 1234, 1240-43 (11th Cir. 2017). *Honeycutt* does not change those holdings. It turned on the specific language of a criminal forfeiture statute that restricted forfeiture to the property a defendant acquired from the crime. The statutory language precluded joint and several liability for property the defendant did not acquire. 137 S. Ct. at 1632-33. Section 13(b) contains no similar language and therefore is not so limited.

Brown's argument that monetary liability should be "setoff" by amounts received from purportedly legal sources (Br. 41) fails because the remedy was already limited to money derived from the Craigslist scheme. Op. 28 [A033]. To the extent Brown seeks additional setoffs for business costs or lost revenue (Br. 41), the district court properly denied this request as inappropriately reducing consumer recovery to compensate him for the costs of running his scheme. Op. 29 [A034]; *see also Febre,* 128 F.3d at 536 (rejecting net profits as measure of relief).

Brown further contends monetary relief should exclude those customers who did not cancel the credit monitoring after calling to complain. Br. 40. Undisputed evidence showed, however, that Brown retained those customers by lying to them, falsely saying that his company had no connection to the Craigslist scheme. *See* Doc.215 ¶59 (deemed admitted) [SA203-04]. As the district court held, Brown should not "keep the revenue obtained from customers who were retained" under false pretenses. Op. 28 [A033].

Finally, Brown argues that monetary relief should be limited to the period when Brown first became aware of the Craigslist fraud, which he claims was when he saw the BBB complaints in June 2016.

Br. 41. As the district court concluded, however, undisputed evidence shows that Brown learned of Pierce's scheme no later than April 2015 and received numerous additional signs of Pierce's misconduct well before he received the BBB complaints. Op. 28-29 [A033-34]. Indeed, Brown knew from the time Pierce became his affiliate in January 2014 that Pierce was advertising apartments on Craigslist and directing would-be renters to CBC's websites despite having no connection to any landlords. Doc.215 ¶80 [SA220]; Doc.194-6 at 63-65 (Tr. 244, 248, 252) [SA075-77]. Brown knew or could easily have determined that 84% of CBC's chargebacks beginning in January 2015 were from Pierce's customer traffic. Doc.215 ¶¶72, 98 [SA215, SA229-30]. Brown therefore is liable for the revenue generated from the Craigslist scheme beginning in January 2014 when he "should have known about the deceptive practices." *Bay Area Bus. Council*, 423 F.3d at 636.

B. The District Court Properly Ordered Injunctive Relief

Brown also challenges the permanent injunction as overly broad and disproportionately severe. Br. 43-47. To the contrary, the injunctions were an appropriate and proportional response to his Craigslist scheme violations.

Section 13(b) of the FTC Act authorizes the entry of a permanent injunction to prevent further violations of the FTC Act. *Febre*, 128 F.3d at 534. To justify behavioral injunctive relief, the moving party must "show that there is a reasonable likelihood of future violations." *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982). Factors that courts consider in making this determination include: (1) the gravity of harm; (2) the extent of the defendant's participation; (3) whether the infraction is recurring and the likelihood the defendant may engage in the same conduct again; (4) the defendant's recognition of his own culpability; and (5) the sincerity of assurances against future violations. *Id.*; Op. 22 [A027]. Past misconduct is "highly suggestive of the likelihood of future violations." *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

The district court found that *all* those factors supported imposing a permanent injunction. Brown caused significant consumer harm to the tune of millions of dollars and needless exposure of their sensitive financial information. Op. 23 [A028]. He was "deeply involved" in the scheme and could engage in similar conduct again because such schemes "are easy to facilitate." *Id.* Indeed, Brown violated the preliminary injunction by charging consumers, again, through a

negative option feature without their consent. Doc.99 at 7; Doc.106. Brown also eschewed culpability and failed to give any assurances against future violations, as shown by Brown's blame-the-consumer "friendly fraud" defense.[20] Op. 23 [A028].

Brown's objections fail. He first claims the permanent ban on selling credit monitoring services employing a negative option feature is "draconian." Br. 43-44. But he provides no reason to believe that colorful adjective is accurate. The provision restricts Brown from reengaging in the precise conduct for which he was found liable. Imposing that ban on an unrepentant fraudster was well within the district court's discretion. Contrary to Brown's description, the injunction does not bar him "from employment in the credit card reporting industry" generally. Br. 44.

Brown also challenges the requirement that he notify potential affiliates (the role played by Pierce and Lloyd here) about the order and take steps to ensure that they comply with it. Doc.239 § III [A049-53]. Brown cannot use or pay for noncompliant affiliate marketing materials

[20] Brown's failure to accept responsibility is made clear by his remarkable claim that *he* was the victim of Pierce and Lloyd. Br. 45. In fact, he ratified, directed, and benefited from their fraud and could have stopped it at any time. Op. 7-9, 21-22; *see supra* at 15-16.

and must end his relationship with an affiliate he determines has violated the order. This provision too is well within the court's discretion to curtail future abuse of affiliate relationships. It is not rendered unduly burdensome because it may dissuade affiliates from doing business with Brown. Br. 44. To be sure, affiliates may wish not to do business with a proven fraudster, but that does not turn a sensible prophylactic requirement into a punishment. No law-abiding affiliate marketer would hesitate to acknowledge the order. Further, as the district court recognized, legitimate affiliates would find out about the order anyway when they conduct due diligence on Brown. Doc.266 at 2-3.

The remainder of Brown's challenges to the injunction are insubstantial. He claims no evidence shows that he created the Craigslist scheme, Br. 45, but undisputed evidence shows he controlled and ratified the scheme by letting it continue and enjoying its fruits for three years and that he had the requisite knowledge of the fraud. *See supra* at 13-16. His unsupported claim that consumers were only injured "minimally" and received what they paid for is belied by uncontested evidence showing that consumers were swindled out of

more than $6 million. His contention that some consumers received refunds, Br. 45, is rebutted by the many consumers who complained they were denied refunds. *See supra* at 11-12. In any event, refunds do not negate the need for injunctive relief to prevent future deception.

Finally, Brown asserts that the monetary judgment, together with the injunction barring Brown (he claims) from working in "internet marketing," amounts to an "excessive fine" or penalty in violation of the Eighth Amendment. Br. 46-47. The equitable monetary judgment is not a fine at all but a way to return ill-gotten gains to victims, and it is directly related to the amount of harm Brown caused; he fails to explain how that remedy can possibly be "grossly disproportional" to his misdeeds. *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). He also mischaracterizes the behavioral injunctive relief. In fact, Brown may engage in internet marketing as long as it does not involve credit monitoring services with a negative option feature.

VI. THE DISTRICT COURT PROPERLY DENIED BROWN'S PETITION FOR ATTORNEYS' FEES

Brown asked the district court to allow him to pay his lawyers from the frozen funds set aside for victim relief. The court denied that request (Doc.268 [A073] and Brown now challenges the denial. Br. 41-

43. He does not nearly establish that the court abused its discretion. The law is clear that redress to victims takes priority over legal fees where counsel undertook the representation knowing he might not get paid.

Once a final judgment is entered under the FTC Act, any frozen assets (up to the full amount of the judgment) are designated for redress to the consumer victims. *Think Achievement*, 312 F.3d at 262. The final judgment establishes that the frozen assets are "a product of fraud or necessary to compensate the victims of the fraud for their losses" and that defendants therefore have "no right to use any part of the frozen money for [their] own purposes," including paying their legal bills. *Id.* The only exception to that rule is where attorneys can show they could "count on" payment from frozen assets and agreed to the representation on that ground. *Id.* at 262-63.

Here, Brown's lawyer could not "count on" the payment Brown now seeks. Before judgment, the district court allowed Brown to pay about half of the then-incurred fees from frozen assets, but he warned Brown and his lawyer that "[c]ounsel has no legitimate reliance interest, because he came into the case with no understanding or

representations regarding the availability of any of the frozen funds for fees." Doc.183 at 4.

After final judgment, the court ruled that all of the seized or frozen funds should go to compensate Brown's consumer victims and none should go to pay legal bills. Doc.268 at 3 [A075]. Indeed, only about 20% of the approximately $5.2 million monetary judgment had been recovered from Brown, and Brown's attorney sought more than 12% of that amount. As in *Think Achievement*, the frozen assets were substantially less than the amount "necessary to compensate the victims of the fraud for their losses." 312 F.3d at 262. The court recognized that the propriety of devoting the funds to consumer redress "far outweigh[s]" paying legal bills. Doc.268 at 4 [A076]. The decision was well within the court's discretion.[21]

[21] Brown also contends that the district court was required to address his fee requests before final judgment, but he provides no good reason why the court's decision to defer the matter could possibly amount to an abuse of discretion.

CONCLUSION

For the foregoing reasons, the rulings of the district court on appeal should be affirmed.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

JOEL MARCUS
Deputy General Counsel

/s/ *Michael D. Bergman*
MICHAEL D. BERGMAN
Attorney
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Of Counsel:
GUY G. WARD
Attorney
Federal Trade Commission
Chicago, IL 60604

Dated: March 12, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief of the Federal Trade Commission complies with the type-volume limitation in Fed. R. App. P. 32(a)(7) and 7th Cir. R. 32(c) because it contains 12,312 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). It also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 7th Cir. R. 32(b), and the type style requirements of Fed. R. App. P. 32(a)(6), because the brief has been prepared in a proportionally spaced typeface using 14-point Century Schoolbook type style.

March 12, 2019

Michael D. Bergman
Michael D. Bergman

CERTIFICATE OF SERVICE

I certify that on March 12, 2019, I electronically filed the foregoing Brief of the Federal Trade Commission with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Michael D. Bergman
Michael D. Bergman