

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by the FTC Act

concert with others, Itria has advertised, marketed, offered, or distributed financing to small businesses throughout the United States.

COMMON ENTERPRISE

7. Defendants Biz2Credit and Itria (collectively, the “Defendants”) have operated as a common enterprise while engaging in the deceptive and unfair acts and practices and other violations of law.

rent, utilities, and other essential expenses. Many small businesses that applied for PPP loans desperately needed immediate funds to stay afloat.

11. Additionally, unlike most loans, PPP loans could be forgiven if small business owners used the loan proceeds for payroll costs and other eligible expenses — thus effectively transforming the loan into a free federal grant.

12. Lenders authorized by SBA to originate PPP loans could submit consumers' applications to SBA, which would then assign each application a reference number, called "e-tran" number. Once SBA assigned a consumer e-tran number, the consumer was restricted from submitting additional applications to other PPP lenders — unless the first lender withdrew the consumer's application. Lenders received fees from SBA for every PPP loan they successfully processed.

13. The PPP was an extraordinarily time-sensitive program, operating on a first-come, first-served basis. When the Program ran out of funds in May 2021, SBA ceased accepting new PPP loan applications.

Overview

14. Defendants run an online small business financing operation that advertises a variety of financing products. Between at least May 2020 and May 2021, Defendants advertised, marketed and offered PPP loans to struggling small business consumers in need of immediate funds as a result of the COVID-19 pandemic. Defendants originated these loans through their lending arm, Defendant Itria. In 2021, Defendants quickly rose to become one of the ten largest PPP lenders in the entire U.S., accepting a total of over 500,000 applications in the first 5 months of that year.

15. Defendants engaged in a pattern of deceptive and ~~unfair~~ conduct. They falsely touted that they would process consumers' applications within an average time ~~frame~~ "10-12 business days" or, in some instances, "12-14 business days." In fact, Defendants' application processing was riddled with delays, and the average processing time was ~~what~~ Defendants claimed, with tens of thousands of consumers ~~was~~ waiting over *two months* for a final determination. Many of Defendants' applicants never received funding at all. Defendants blocked consumers from withdrawing their applications so that they could apply to other lenders — frequently ignoring consumers' repeated and ~~urgent~~ requests to do so.

Misrepresentations Regarding
the Speed of the Application Process

16. Since at least February 2021 until at least May 2021, Defendants disseminated advertisements for PPP loans, or otherwise made statements to consumers, that claimed consumers' applications would be processed in a specific period of time.

17. For example, Defendants represented to consumers on their website, www.biz2credit.com "Average processing time: 12-14 business days"

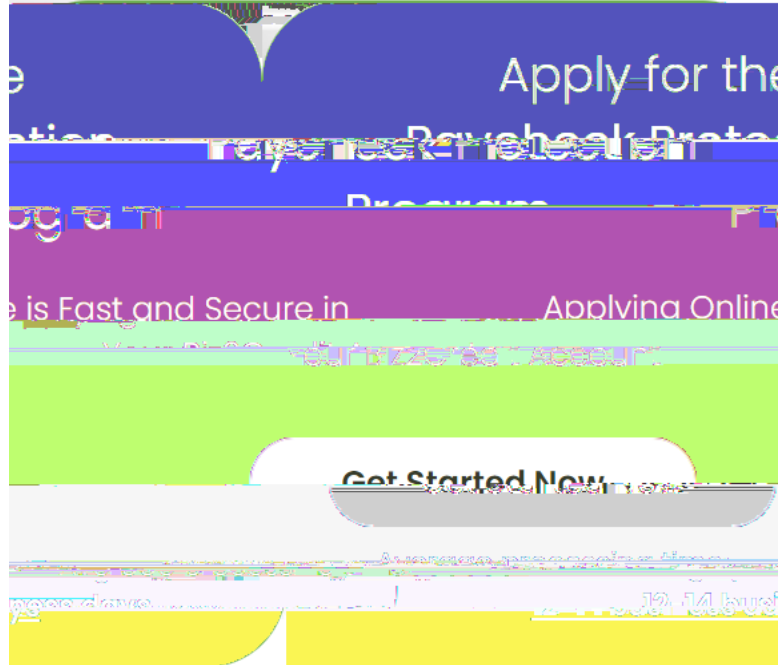


Exhibit A



Exhibit B

18. In webinar slide presentations to consumers, Defendants made similar claims regarding the number of days it would take to process consumers' applications:

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20. Unfortunately for applicants, Defendants' representations in Paragraphs 17 through 19 that consumers' applications would be processed

result Further

“elevated number of loans in undisbursed status.” Despite all of this, Defendants continued inviting

consumers' E-Tran numbers (i.e., to obtain these numbers in order to restrict consumers from applying with other lenders) before reviewing consumers' documents or other information necessary to underwrite the applications. In response, Defendants articulated a proposed online application process that allowed Defendants to "block the user's E-Tran number quickly."

VIOLATIONS OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

33. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

34. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

False, Misleading, or Unsubstantiated Claims Regarding
Application Processing OeaPion

Count II

Unfairly Blocking Consumers from
Applying with Other Lenders

38. In numerous instances, Defendants have failed to withdraw or cancel consumers' applications for PPP loans despite consumers' requests to do so, and, as a result, prevented delayed consumers from applying with other lenders.

39. Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

40. Therefore, Defendants' acts or practices as described in Paragraph 38 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and 45(n).

THE COVID -19 CONSUMER PROTECTION ACT

41. Enacted on December 27, 2020, the CCPA makes it unlawful, for the duration of the public health emergency declared on January 31, 2020 pursuant to Section 319 of the Public Health Service Act, for any person, partnership, or corporation to "engage in a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the [FTC] Act (15 U.S.C. 45(a)) that is associated with . . . a government benefit related to COVID-19." ~~LPN~~ b. 116-260, 134 Stat 1182, Title XIV, Section 1401(b)(2).

42. The PPP was a government benefit related to ~~COVID~~.

43. The CCPA provides that "[a] violation of subsection (b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the [FTC] Act," 15 U.S.C. § 57a(a)(1)(B). Therefore, through Section 19(b) of

the FTC Act, the CCPA authorizes this Court “to grant such relief as the court finds necessary to redress injury to consumers,” including the payment of damages.” 15 U.S.C. § 57b(b).

44. Defendants’ violations of the CCPA were committed during the public health emergency

Count III

Misrepresentations Associated with a
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PRAYER FOR RELIEF

49. Wherefore, the FTC requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by
Defendants

B. Award monetary and other relief within the Court's power to grant; and

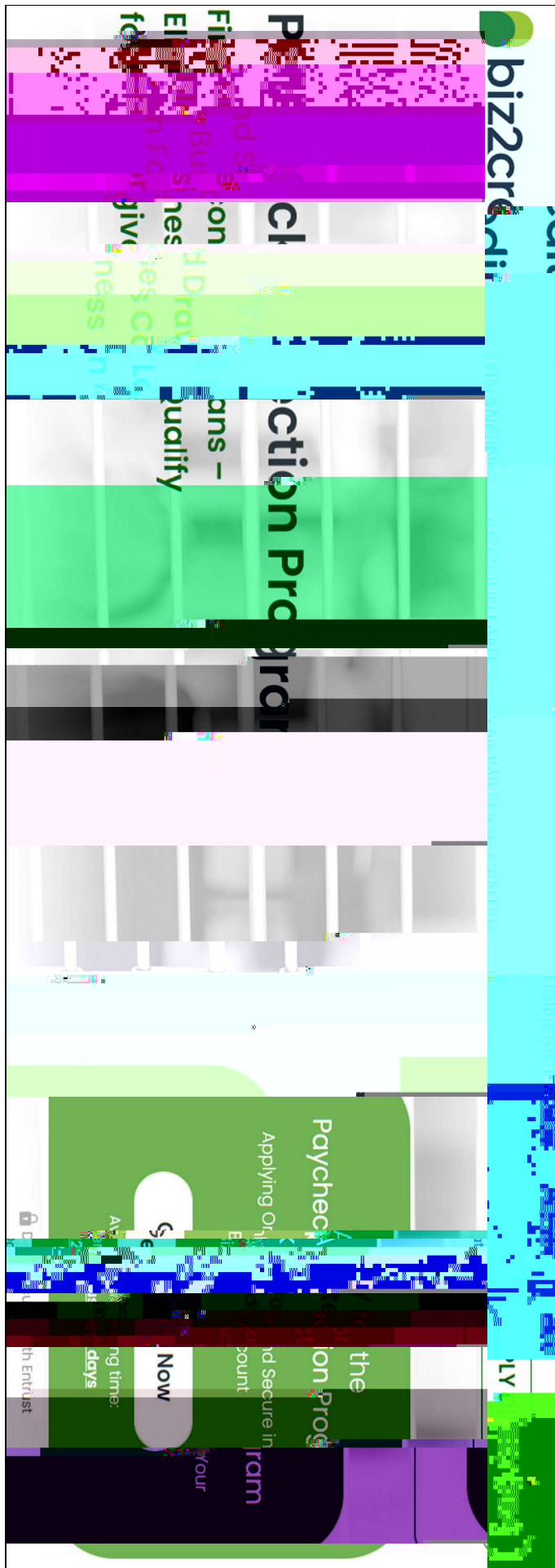
C. Award any additional relief as the Court determines to be just and proper.

Respectfully submitted,

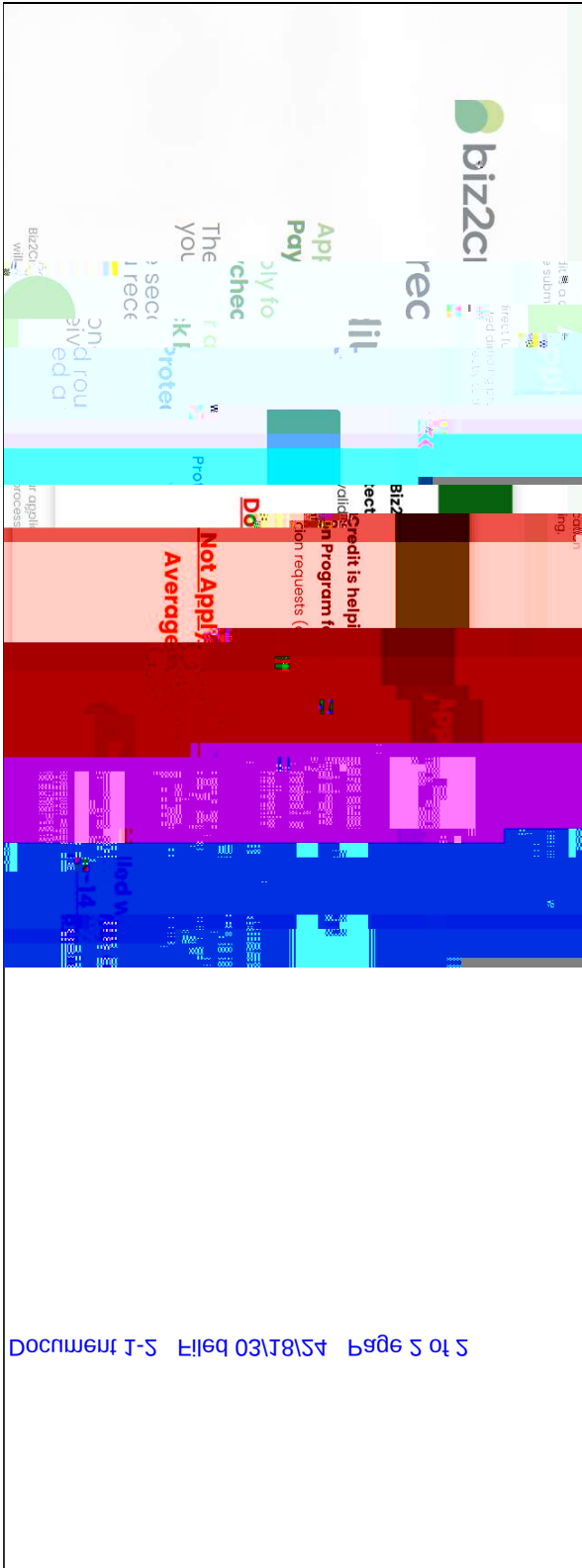
Dated: March 18, 2024

/s/ Evan R. Zullo
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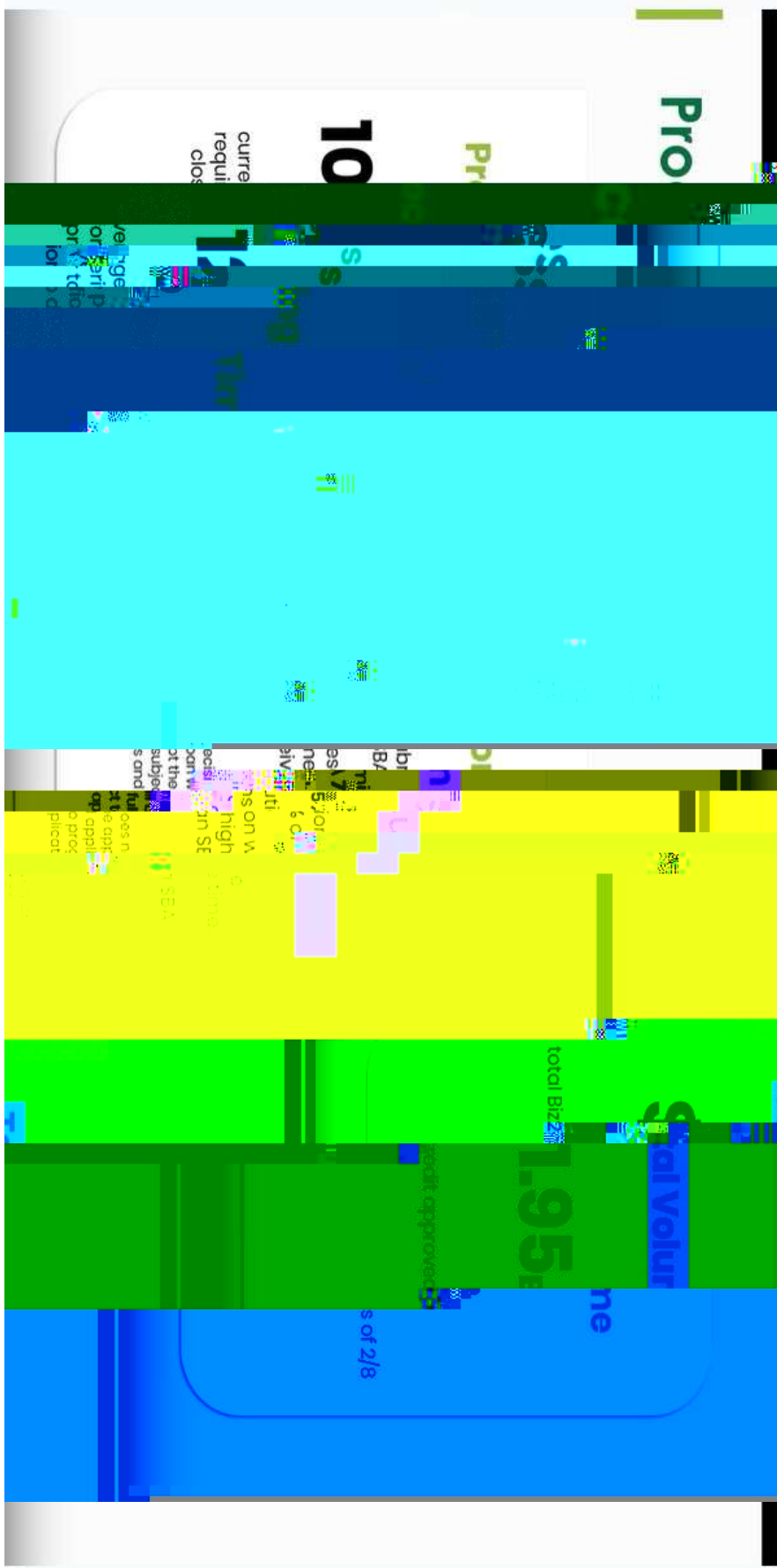


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