

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MAPLEBEAR INC., <i>doing business as</i>)	
INSTACART, <i>a Delaware corporation,</i>)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:21-cv-00474 (AJT/IDD)
)	
JOHN DOES 1-2, <i>Controlling and Operating</i>)	
<i>a Malicious Application known as Shopper Helper,</i>)	
)	
Defendants.)	
)	
_____)	

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff, Maplebear Inc.’s, d/b/a Instacart (“Instacart” or “Plaintiff”) Motion for Default Judgment against Defendants, John Does 1-2 (collectively “Defendants”). Pl.’s Mot. for Default J., Dkt. No. 37. After the Defendants failed to file an answer, plead, or otherwise defend this action, the undersigned Magistrate Judge took this matter under advisement to issue this Report and Recommendation. Upon consideration of the Complaint, Plaintiff’s Motion for Default Judgment, the supporting memorandum, and relevant portions of the underlying record, the undersigned Magistrate Judge makes the following findings and recommends that Plaintiff’s Motion be **GRANTED** as to Count I and **DISMISSED without prejudice** as to the remaining counts.

I. **INTRODUCTION**

Plaintiff filed its Complaint on April 16, 2021, against Defendants John Does 1-2. Dkt. No. 1. Plaintiff brought claims for: (1) violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030; (2) trademark infringement, false destination of origin, and trademark dilution under

the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) tortious interference with contractual relations; (4) trespass to chattels; (5) unjust enrichment; and (6) conversion. Compl. ¶ 1. Specifically, Plaintiff filed the lawsuit seeking “injunctive and other equitable relief and damages” against Defendants, to prevent Defendants from engaging in these alleged violations of law and causing Plaintiff further injury. *Id.*

A. **Jurisdiction and Venue**

Before the Court can render default judgment in this matter, it must have: (1) subject-matter jurisdiction, (2) personal jurisdiction, and (3) proper venue.

1. Subject Matter Jurisdiction

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 15 U.S.C. § 1125(d) because this case involves federal questions arising under the Lanham Act, a federal law relating to trademarks, and the Computer Fraud and Abuse Act. Furthermore, federal courts may exercise supplemental jurisdiction over claims that are so closely related to the original claim that said claims arise out of the “same case or controversy,” subject to exceptions that are inapplicable here. 28 U.S.C. § 1367(a). Here, Plaintiff brought state-law claims for tortious interference with contractual relationship, trespass to chattels, unjust enrichment, and conversion. The undersigned finds that these state-law claims arise from the same set of facts giving rise to Plaintiff’s claims under the Lanham Act and CFAA and therefore arise out of the same case or controversy. As a result, this Court may properly exercise supplemental jurisdiction over the state-law claims. This Court accordingly has subject-matter jurisdiction over all of Plaintiff’s claims.

2. Personal Jurisdiction

The Court must also be satisfied that it has personal jurisdiction over Defendants John Does 1-2. For this Court to exercise personal jurisdiction, two requirements must be satisfied. First,

Virginia's long-arm statute must authorize the exercise of jurisdiction. *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 292 (4th Cir. 2009). Second, if that authorization exists, then the Due Process Clause of the Fourteenth Amendment requires that the defaulting defendants have sufficient minimum contacts with the forum state. *Christian Sci. Bd. Of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 205 (4th Cir. 2001). Particularly, the defendants' conduct must have such a connection with Virginia that it is fair for defendants to be required to defend themselves in a court in the Commonwealth. *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414-15, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

In the online context, a state may exercise jurisdiction over a defendant when the defendant (1) directs electronic activity into the State; (2) with the manifest intent of engaging in business or other activities within the State; and (3) that activity gives rise to the plaintiff's claims. *See ALS Scan, Inc., v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002). The Fourth Circuit has adopted the framework set forth in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997); *see also ALS Scan, Inc.*, 293 F.3d at 707. Under *Zippo*, the exercise of personal jurisdiction is directly proportionate to the nature and quality of commercial activity that a defendant-entity conducts over the Internet. *Zippo*, 952 F. Supp. at 1124.

In the instant case, Plaintiff's Complaint alleges that Defendants' conduct justifies this Court's exercise of personal jurisdiction because Defendants directed electronic activity in the state of Virginia by accessing Instacart's servers, located in the Eastern District of Virginia, with an intent to obtain, distribute, copy, and reproduce Instacart's intellectual property without authorization. Compl. ¶15. Furthermore, these alleged actions directly gave rise to the claims in Plaintiff's Complaint. Accordingly, the undersigned finds this Court has personal jurisdiction over Defendants.

3. Venue

Venue is proper in “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located” and in a judicial district where “a substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. §§ 1391(b)(1)-(2). Venue is also proper where a defendant “is subject to the court’s personal jurisdiction with respect to such action.” 28 U.S.C. § 1391(b)(3). Here, a substantial part of the events or omissions giving rise to this lawsuit occurred in this District. *Id.* ¶17. Furthermore, as discussed above, Defendants are subject to the Court’s personal jurisdiction. Therefore, the undersigned finds that venue is proper in this Court under 28 U.S.C. § 1391(b).

B. Service of Process

The Court must also be satisfied that the defaulting party has been properly served. Pursuant to Federal Rule of Civil Procedure 4(f)(3), a plaintiff may serve an individual who does not reside within a judicial district of the United States “by other means not prohibited by international agreement, as the court orders.” FED. R. CIV. P. 4(f)(3). Here, Defendants Does’ identities are unknown, and the Court previously ordered that Plaintiff may serve the Defendants “by any means authorized by law including transmission by email, facsimile, mail, and/or personal delivery to the contact information provided by Defendants to Defendants’ domain registrars...and publishing notice on a publicly available Internet website.” Dkt. No. 17 at 10-11. Plaintiff subsequently served Defendants by publication on the publicly available website, www.noticeofpleadings.com/shopperhelper, on May 3, 2020. Decl. Gabriel M. Ramsey, Ex. 1, Dkt. No. 35-1. Therefore, the undersigned finds that service of process is proper in this action.

C. Grounds for Default Judgment

Plaintiff filed its Complaint on April 16, 2021. Dkt. No. 1. In accordance with the Court’s April 20, 2021 Order authorizing service by Internet publication, Plaintiff served Defendants by email on May 3, 2020. Dkt. No. 35-1. Plaintiff filed a Request for Clerk’s Entry of Default on

October 19, 2021, and the Clerk of the Court entered default on October 21, 2021. Dkt. Nos. 35-36. On November 3, 2021, Plaintiff filed its Motion for Default Judgment and accompanying memorandum in support of its motion. Dkt. Nos. 37-38. Upon this matter's referral, a hearing was held before the undersigned on November 19, 2021. Dkt. No. 40. In light of Defendant's failure to appear at the hearing or otherwise defend this action, the undersigned Magistrate Judge took this matter under advisement to issue this Report and Recommendation. *Id.*

II. FACTUAL FINDINGS

Plaintiff is a Delaware corporation with its principal place of business in San Francisco, California. Compl. ¶ 2. Plaintiff operates the Instacart platform and Instacart Shopper App used by its "Shoppers" to review and accept batches of customer orders for shopping and delivery purposes. Mem. in Supp. of Default J. at 2-3. Shopper Helper is an unauthorized third-party mobile application, operated by Defendants John Does 1-2, that runs on top of Instacart's Shopper App. *Id.* at 3; Compl. ¶¶ 3-4. In that regard, the Shopper Helper app cannot operate unless the user has at some point created an Instacart account and downloaded the Instacart Shopper app. Mem. in Supp. of Default J. at 5.

Furthermore, Shopper Helper replicates the Shopper App's functionalities, user interface, trademarks, and content. *Id.* at 4. The app possesses technology that leverages filters such as geographic proximity of the grocery store, delivery distance, and the order's earning potential, and automatically accepts these orders in a manner that may prevent Shoppers using the legitimate Shopper App from accepting such orders. *Id.* at 4. Further, the Shopper Helper App, by intercepting user credentials, engages in unauthorized access to Plaintiff's Amazon Web Services servers, located in the Eastern District of Virginia. *Id.* Once intercepted, Plaintiff's Shopper App ceases to operate normally and because Shopper Helper bears Plaintiff's trademarks, it misleads Plaintiff's Shoppers and the public into believing that Instacart condones or facilitates the use of Shopper

Helper. *Id.* at 6.

Plaintiff has generated substantial goodwill with its Shoppers due to the high quality and effectiveness of its products and services. *Id.* Defendants' activities harm Instacart's established reputation and goodwill among the public and its customers. *Id.*

III. EVALUATION OF PLAINTIFFS' COMPLAINT

Rule 55 of the Federal Rules of Civil Procedure provides for the entry of default judgment when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." A defendant in default concedes the factual allegations of the complaint. *See, e.g., DIRECTV, Inc. v. Rawlins*, 523 F.3d 318, 322 n.2 (4th Cir. 2008); *Partington v. Am. Int'l Specialty Lines Ins. Co.*, 443 F.3d 334, 341 (4th Cir. 2006); *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001). Default does not, however, constitute an admission of the adversary's conclusions of law and is not to be "treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover." *Ryan*, 253 F.3d at 780 (quoting *Nishimatsu Constr. Co., Ltd. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). Instead, the Court must "determine whether the well-pleaded allegations in [the plaintiff's] complaint support the relief sought in [the] action." *Id.*

Thus, in issuing this Report and Recommendation, the undersigned Magistrate Judge must evaluate Plaintiff's claims against the standards of Rule 12(b)(6) of the Federal Rules of Civil Procedure to ensure that the Complaint contains plausible claims upon which relief may be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining the analysis for examining a plaintiff's claims under a 12(b)(6) motion to dismiss). To meet this standard, a complaint must set forth "sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In determining whether allegations are plausible, the reviewing court may draw on context, judicial experience, and

common sense. *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (citing *Iqbal*, 556 U.S. at 679).

As noted above, Plaintiff brought claims for (1) violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030; (2) trademark infringement, false destination of origin, and trademark dilution under the Lanham Act, 15 U.S.C. § 1114 *et seq.*; (3) tortious interference with contractual relations; (4) trespass to chattels; (5) unjust enrichment; and (6) conversion. As discussed more below, Plaintiff requests that the Court grant injunctive relief by enjoining Defendants from engaging in future similar conduct. For purposes of fashioning appropriate relief, it is therefore only necessary for the Court to analyze Plaintiff’s claim under the CFAA and the Lanham Act.

A. Count One: Violation of the Computer Fraud and Abuse Act

To establish a claim under the Computer Fraud and Abuse Act, a plaintiff must demonstrate that the accused party (1) intentionally accesses a computer without authorization or exceeds authorized access, 18 U.S.C. § 1030(a)(5)(C); (2) knowingly accesses a protected computer without authorization and furthers the intended fraud and obtains anything of value, 18 U.S.C. § 1030(a)(2)(C); and (3) intentionally accesses a protected computer without authorization, and as a result, recklessly causes damage and loss, 18 U.S.C. § 1030(a)(5)(A). *See also WEC Carolina Energy Sols. LLC v. Miller*, 687 F.3d 199, 201 (4th Cir. 2012).

Here, the undersigned finds that Plaintiff has established a violation of the CFAA for the following reasons. First, Plaintiff has sufficiently proven that Defendants intentionally accessed a computer without authorization. In that regard, courts in this District have held that the use of authentication credentials belonging to another when accessing a computing facility constitutes unauthorized access. *See Glob. Pol’y Partners, LLC v. Yessin*, 686 F. Supp. 2d 631, 636-37 (E.D. Va. 2009); *Hains v. Adams*, No. 3:19-cv-504 (DJN), 2019 WL 5929259 (E.D. Va. Nov. 12, 2019).

Shopper Helper accessed Plaintiff's servers without authorization by intercepting authentication tokens created by Plaintiff in order to send queries to Plaintiff's servers and obtain batch information. Mem. in Supp. of Default J. at 15.

Second, Defendants knowingly accessed a protected computer with the intent to defraud and obtain something of value. A protected computer is defined as a computer "used in interstate or foreign commerce or communication." See *Estes Forwarding Worldwide LLC v. Cuellar*, 239 F. Supp. 3d 918, 926 (E.D. Va. 2017). Plaintiff's servers are used in interstate commerce and therefore qualify as protected computers. As discussed above, Defendants, by way of Shopper Helper, knowingly accessed Plaintiff's servers to benefit from Plaintiff's algorithm and profitability. Defendants therefore knowingly obtained "something of value" from protected computers through their fraudulent activity and conduct.

Lastly, Plaintiff alleges that Defendants, because of their conduct, recklessly caused damage and loss. Under the CFAA, loss is defined as "any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service." *Sprint Nextel Corp. v. Simple Cell, Inc.*, No. CIV. CCB-13-617, 2013 WL 3776933, at *6 (D. Md. July 17, 2013) (citing 18 U.S.C. § 1030(e)(8)). The CFAA requires a plaintiff to prove loss or damage in excess of \$5,000 but permits plaintiffs to aggregate multiple intrusions or violations for the purpose of satisfying the \$5,000 threshold. See *Sprint Nextel Corp.*, 2013 WL 3776933, at *7. Here, Defendants' conduct caused damage or loss to Plaintiff in excess of \$5,000. In that regard, Plaintiff Instacart's engineers spent considerable resources analyzing the Shopper Helper app, its infrastructure, and attempting to identify its developers, all of which exceeded \$5,000. Dkt. No. 12, ¶¶ 29-30. Plaintiff has also expended significant resources in investigating and tracking Defendants' illegal activities and

trying to remediate the damage caused to its Shoppers and the general public. *Id.* ¶ 32. Finally, Plaintiff has expended funds pursuing this action against Defendants in this Court. Therefore, for the foregoing reasons, the undersigned Magistrate Judge finds that Plaintiff is entitled to relief under the CFAA.

B. Counts Two and Three: Violations of the Lanham Act – 15 U.S.C. §§ 1114 et seq.; 15 U.S.C. § 1125(a)

A party is liable for trademark counterfeiting where: (1) the defendant intentionally used a counterfeit mark in commerce; (2) the defendant knew that the mark was counterfeit; (3) the use occurred in connection with the sale, offer for sale, or distribution of goods; and (4) the use of the counterfeit mark was likely to confuse consumers. 15 U.S.C. § 1114(1); *Match.Com, LLC v. Fiesta Catering Int'l, Inc.*, No. 1:12-cv-363, 2013 WL 428056, at *6 (E.D. Va. Jan. 31, 2013). The Lanham Act defines a counterfeit mark as “a spurious mark which is identical with, or substantially indistinguishable from, [the plaintiff’s] mark.” 15 U.S.C. § 1127 (2012); *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252, 269 (4th Cir. 2007). A counterfeit mark does not have to be an exact replica because to do otherwise would allow counterfeiters to “escape liability” by modifying trademarks in “trivial ways.” *United States v. Chong Lam*, 677 F.3d 190, 199 (4th Cir. 2012) (internal quotations and citation omitted).

Here, the undersigned finds that Plaintiff has established a violation of the Lanham Act. Plaintiff has demonstrated that Defendants “intentionally used a counterfeit mark in commerce connected to the sale or distribution of goods without authorization or license.” Defendants created a mobile application that once installed on a mobile device compromises underlying code of Plaintiff’s Shopper App through the creation and operation of a counterfeit, adulterated version of the Shopper App. Because the compromised Shopper App uses Instacart’s trademarks and does not appear any different to a party viewing that app on the mobile device than the legitimate app,

there is likelihood of confusion by anyone viewing the Shopper Helper app, in that they would think that the adulterated Shopper Helper app is developed, distributed, affiliated and/or endorsed by Plaintiff. The user interface of the infringing Shopper Helper app reproduces the Instacart trademark and is nearly identical to the legitimate application. Defendants also make unauthorized use of Instacart's trademarks to promote, market, or sell products and services. Where a party produces counterfeit goods, it is presumed to create a likelihood of confusion. 15 U.S.C. § 1117(b)-(c) (2012); *Polo Fashions, Inc. v. Craftex, Inc.*, 816 F.2d 145, 148 (4th Cir. 1987).

In addition, the undersigned finds that Plaintiff has established false designation of origin under section 1125(a), which prohibits use of a registered mark that: is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person. 15 U.S.C. § 1125(a)(1)(A); see also *Lone Star Steakhouse & Saloon, Inc. v. Alpha of Va., Inc.*, 43 F.3d 922, 930 (4th Cir. 1995). Shopper Helper's use of Plaintiff's trademarks and its symbols and brand identity, in the process of carrying out unauthorized access, in the user interface of the Shopper Helper application and in the promotion, marketing and sale of the application, causes and is likely to cause confusion and mistakes as to Plaintiff's affiliation with Shopper Helper in violation of section 1125(a). See, e.g., *Automobili Lamborghini S.P.A. v. Garcia*, 467 F. Supp. 3d 385, 404 (E.D. Va. 2020); Mem. in Supp. of Default J. at 18-19, Dkt. No. 38 (citing additional cases). This Court has previously granted similar relief, where Defendants² used trademarks in carrying out fraudulent online activity to cause consumer confusion. *Microsoft Corp. v. John Does 1-2*, Case No. 1:20-cv-01217-LDH-RER (E.D.V.A 2019), Dkt. 11. Therefore, Defendants' conduct constitutes trademark infringement and false designation of origin under Sections 1114 and 1125(a) of the Lanham Act.

A.C. Requested Relief: Permanent Injunction

Plaintiff seeks a default judgment and permanent injunction to prevent Defendants Does 1-2 from continuing to operate the Shopper Helper application. Mem. in Supp. of Default J. at 1. To obtain a permanent injunction in the Fourth Circuit, a plaintiff must show that: (1) he suffered an irreparable injury; (2) that remedies available at law such as monetary damages are inadequate to compensate for that injury; (3) that, considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Christopher Phelps & Assocs., LLC v. Galloway*, 492 F.3d 532, 543 (4th Cir. 2007). Here, the undersigned finds that Plaintiff has satisfied its burden in proving that injunctive relief is appropriate in this matter.

First, the Honorable District Judge Anthony J. Trenga previously found that the harm caused to Plaintiff by the Defendants' Shopper Helper operations and activities, constituted irreparable harm. Dkt. No. 29 at ¶¶ 3-12. This finding is consistent with several cases within this District that found that fraudulent computer activities cause irreparable harm. *See Microsoft Corp. v. Peng Yong et al.*, Case No. 1:12-cv-1004-GBL (E.D. Va. 2012) (Lee, J.) (injunction to dismantle botnet command and control servers); *Microsoft v. Piatti, et al.*, Case No. 1:11-cv-1017 (E.D. Va. 2011) (Cacheris, J.) (injunction to dismantle botnet command and control servers). In that regard, the undersigned concludes that Plaintiff has suffered irreparable injury.

Second, the undersigned finds that monetary legal remedies are insufficient to address Plaintiff's injury here. Defendants Does are elusive parties, and therefore, their locations and identities are unknown. Further, since Defendants have failed to appear or respond to this lawsuit, it would be highly unlikely that Plaintiff would be able to enforce a judgment against Defendants. *See Khepera- Bey v. Santander Consum. USA, Inc.*, 2013 U.S. Dist. LEXIS 87641, 13-14 (D. Md. June 21, 2013) ("unsatisfiability of a money judgment can show irreparable harm.") Accordingly, this factor weighs in favor of awarding Plaintiff injunctive relief.

Third, the balance of the hardships weighs in favor of Plaintiff. On one hand, Plaintiff has been harmed and continues to be harmed by Defendants' ongoing fraudulent scheme. Alternatively, Defendants would not suffer cognizable hardship because an injunction would require them to cease from engaging in illegal activities. *See US Airways, Inc. v. US Airline Pilots Ass'n*, 813 F. Supp. 2d 710, 736 (W.D.N.C. 2011) (injunction appropriate where, in balance of the equities, denying injunction would result in "enormous disruption and harm" to plaintiff and the public, and granting injunction would only require defendant to comply with existing legal duties.) For these reasons, the undersigned finds that the balance of hardships weigh strongly in favor of Plaintiff.

Lastly, the undersigned finds that awarding injunctive relief is in the best interest of the public. In CFAA cases, the public interest typically weighs in favor of injunction in order to prevent the furtherance of and profit from false or misleading representations. *See Microsoft Corp. v. Doe*, 2014 U.S. Dist. LEXIS 48398, 32 (E.D. Va. Jan 6, 2014) (public interest weighed in favor of injunction to enforce CFAA). Absent the requested injunction, the public would be susceptible to Defendants' fraudulent and deceptive activities. Further, in Lanham Act cases, it is well-settled that consumer confusion and injury to business goodwill constitute irreparable harm. *See MicroAire Surgical Instruments, LLC v. Arthrex, Inc.*, 726 F. Supp. 2d 604, 635 (W.D. Va. 2010) ("The loss of goodwill is a well-recognized basis for finding irreparable harm"); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546 (4th Cir. 1994)), *abrogated on other grounds, Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376, 172 L. Ed. 2d 249 (2008). A finding of irreparable harm usually follows a finding of unlawful use of a trademark and a likelihood of confusion. *Ledo Pizza Sys., Inc. v. Singh*, No. CIV. WDQ-13-2365, 2013 WL 5604339, at *3 (D. Md. Oct. 10, 2013). Therefore, the undersigned finds a preliminary injunction against Defendants to be appropriate relief.

IV. RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge recommends entry of default judgment as to Count One in favor of Plaintiff against the Defendants John Does 1-2 for violation of the Computer Fraud and Abuse Act and the Lanham Act and dismissal without prejudice as to the remaining counts. The undersigned further recommends that an Order be entered restraining and enjoining Defendants from infringing Plaintiff's trademarks and acting in any manner that suggests in any way that Defendants' activities, products, or services are conducted by or are affiliated with Plaintiff.

V. NOTICE

By mailing copies of this Report and Recommendation, the Court notifies the parties as follows. Objections to this Report and Recommendation, pursuant to 28 U.S.C. § 636 and Rule 72(b) of the Federal Rules of Civil Procedure, must be filed within fourteen (14) days of service on you of this Report and Recommendation. A failure to file timely objections to this Report and Recommendation waives appellate review of the substance of the Report and Recommendation and waives appellate review of a judgment based on this Report and Recommendation.

The Clerk is directed to send a copy of this Report and Recommendation to all counsel of record and to the registrant(s) at the physical and email addresses associated with the Defendants:

John Does 1-2

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| April 6th, 2022 Alexandria,
Virginia

/s/ Ivan D. Davis

Ivan D. Davis
United States Magistrate Judge