

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Rob Portman, Chairman
Claire McCaskill, Ranking Member

BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING

STAFF REPORT

**PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS**

UNITED STATES SENATE



SENATOR ROB PORTMAN
Chairman

SENATOR CLAIRE McCASKILL
Ranking Minority Member

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

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Staff Director and General Counsel

MATT OWEN
Chief Counsel

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Senior Counsel

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RACHAEL TUCKER
PHILIP ALITO*
Counsels

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Special Counsel

WILL DARGUSCH
Investigator

MARGARET DAUM
Staff Director and Chief Counsel to the Minority

BRANDON REAVIS
Counsel to the Minority

KELSEY STROUD
Chief Clerk

ADAM HENDERSON
Professional Staff Member

* Staff during the 114th Congress.

BACKPAGE.COM’S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING

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EXECUTIVE SUMMARY

For more than twenty months, the Permanent Subcommittee on Investigations has investigated the problem of online sex trafficking. The investigation led the Subcommittee to focus on Backpage.com, the leading online marketplace for commercial sex. Operating in 97 countries and 943 locations worldwide—and last valued at more than a half-billion dollars—Backpage is the world’s second-largest classified advertising website. Backpage is involved in 73% of all child trafficking reports that the National Center for Missing and Exploited Children (NCMEC) receives from the general public (excluding reports by Backpage itself). The National Association of Attorneys General has aptly described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.”¹

Backpage does not deny that its site is used for criminal activity, including the sale of children for sex. Instead the company has long claimed that it is a mere host of content created by others and therefore immune from liability under the Communications Decency Act (CDA). Backpage executives have also repeatedly touted their process for screening adult advertisements as an industry-leading effort to protect against criminal abuse. Since June 2015, the Subcommittee has sought information from Backpage—first through a voluntary request, then by subpoena—about those screening measures. Backpage refused to comply, and the Subcommittee was forced to initiate the first civil contempt action authorized by the Senate in more than twenty years. In August 2016, the Subcommittee prevailed and secured a federal court order compelling Backpage to produce the subpoenaed documents.

The internal company documents obtained by the Subcommittee conclusively show that Backpage’s public defense is a fiction. Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of criminality, including child sex trafficking. Backpage has avoided revealing this information. On July 28, 2011, for example, Backpage co-founder James Larkin cautioned Backpage CEO Carl Ferrer against publicizing Backpage’s moderation practices, explaining that “[w]e need to stay away from the very idea of ‘editing’ the posts, as you know.”² Backpage had good reason to conceal its editing practices: Those practices served to sanitize the content of innumerable advertisements for illegal transactions—even as Backpage represented to the public and the courts that it merely hosted content others had created.

¹ Letter from the Nat’l Ass’n of Attorneys General to Samuel Fifer, Esq., Counsel for Backpage.com LLC (Aug. 31, 2011), http://www.ct.gov/ag/lib/ag/press_releases/2011/083111backpageletter.pdf.

² App. 000432.

This report contains three principal findings. *First*, Backpage has knowingly concealed evidence of criminality by systematically editing its “adult” ads. As early as 2006, Backpage executives began instructing staff responsible for screening ads (known as “moderators”) to edit the text of adult ads to conceal the true nature of the underlying transaction. By October 2010, Backpage executives formalized a process of both manual and automated deletion of incriminating words and phrases, primarily through a feature called the “Strip Term From Ad Filter.” At the direction of CEO Carl Ferrer, the company programmed this electronic filter to “strip”—that is, delete—hundreds of words indicative of sex trafficking (including child sex trafficking) or prostitution from ads before their publication. The terms that Backpage has automatically deleted from ads before publication include “lolita,” “teenage,” “rape,” “young,” “amber alert,” “little girl,” “teen,” “fresh,” “innocent,” and “school girl.” When a user submitted an adult ad containing one of these “stripped” words, Backpage’s Strip Term From Ad filter would immediately delete the discrete word and the remainder of the ad would be published. While the Strip Term From Ad filter changed nothing about the true nature of the advertised transaction or the real age of the person being sold for sex, thanks to the filter, Backpage’s adult ads looked “cleaner than ever.”³ Manual editing entailed the deletion of language similar to the words and phrases that the Strip Term From Ad filter automatically deleted—including terms indicative of criminality.

By Backpage’s own internal estimate, by late-2010, the company was editing “70 to 80% of ads” in the adult section either manually or automatically.⁴ It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter, but internal company emails indicate that the company used the filter to some extent as of April 25, 2014. Manual editing appears to have largely ended in late 2012.

Over time, Backpage reprogrammed its electronic filters to reject an ad in its entirety if it contained certain egregious words suggestive of sex trafficking. But the company implemented this change by coaching its customers on how to post “clean” ads for illegal transactions. When a user attempted to post an ad with a forbidden word, the user would receive an error message identifying the problematic word choice to “help” the user, as Ferrer put it.⁵ For example, in 2012, a user advertising sex with a “teen” would get the error message: “Sorry, ‘teen’ is a banned term.”⁶ Through simply redrafting the ad, the user would be permitted to post a sanitized version. Documents from as recently as 2014 confirm the continued use of

³ App. 000157.

⁴ App. 000133.

⁵ App. 000328.

⁶ App. 000801-35. (Forbidden Term List attachment and accompanying email of the same date).

these error messages.⁷ Backpage employed a similarly helpful error message in its “age verification” process for adult ads. In October 2011, Ferrer directed his technology consultant to create an error message when a user supplied an age under 18. He stated that, “An error could pop up on the page: ‘Oops! Sorry, the ad poster must be over 18 years of age.’”⁸ With a quick adjustment to the poster’s putative age, the ad would post.⁹

Second, Backpage knows that it facilitates prostitution and child sex trafficking. In addition to the evidence of systematic editing described above, additional evidence shows that Backpage is aware that its website facilitates prostitution and child sex trafficking. Backpage moderators told the Subcommittee that everyone at the company knew the adult-section ads were for prostitution and that their job was to “put[] lipstick on a pig” by sanitizing them. Backpage also knows that advertisers use its site extensively for child sex trafficking, but the company has often refused to act swiftly in response to complaints about particular underage users—preferring in some cases to interpret these complaints as the tactics of a competing escort. Backpage may also have tried to manipulate the number of child-exploitation reports it forwards to the National Center for Missing and Exploited Children.

Third, despite the reported sale of Backpage to an undisclosed foreign company in 2014, the true beneficial owners of the company are James Larkin, Michael Lacey, and Carl Ferrer. Acting through a complex chain of domestic and international shell companies, Lacey and Larkin lent Ferrer over \$600 million to purchase Backpage from them. But as a result of this deal, Lacey and Larkin retain significant financial and operational control, hold almost complete debt equity in the company, and still receive large distributions of company profits. According to the consultant that structured the deal, moreover, this transaction appears to provide no tax benefits. Instead, it serves only to obscure Ferrer’s U.S.-based ownership and conceal Lacey and Larkin’s continued beneficial ownership.

⁷ App. 000397.

⁸ App. 000297.

⁹ Yiota Souras, NCMEC General Counsel, testified at the Subcommittee’s 2015 hearing that Backpage also has “more stringent rules to post an ad to sell a pet, a motorcycle, or a boat. For these ads, you are required to provide a verified phone number.” Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations (Nov. 19, 2015).

BACKGROUND

A. Sex Trafficking on the Internet

The crime of human trafficking generates billions of dollars each year in illegal proceeds, making it more profitable than any transnational crime except drug trafficking.¹⁰ Under U.S. law, human trafficking includes, among other things, the unlawful practice of selling, soliciting, or advertising the sexual services of minors or of adults who have been coerced into participating in commercial sex.¹¹ Precise empirical data concerning this black-market trade are scarce. But in 2013, social scientists estimated that there were as many as 27 million victims of human trafficking worldwide,¹² including 4.5 million people trapped in sexual exploitation.¹³ In the United States the percentage is much higher; over eight in ten suspected incidents of human trafficking involve sex trafficking.¹⁴

Too often, the victims of sex trafficking are minors. The Department of Justice has reported that more than half of sex-trafficking victims are 17 years old or younger.¹⁵ Last year, NCMEC reported an 846% increase from 2010 to 2015 in reports of suspected child sex trafficking—an increase the organization has found to be “directly correlated to the increased use of the Internet to sell children for sex.”¹⁶ Children who run away from home are particularly vulnerable to this crime. In

¹⁰ U.S. Dep’t of Homeland Security, *Blue Campaign: What is Human Trafficking?* (Sept. 14, 2015), <http://www.dhs.gov/blue-campaign/what-human-trafficking>. Sections A and B are adapted from the Subcommittee’s November 2015 report. They are included here for the readers’ convenience.

¹¹ See 18 U.S.C. § 1591(a); 22 U.S.C. § 7102(10).

¹² U.S. Dep’t of State, *Trafficking in Persons Report 2013*, at 7 (June 2013), <http://www.state.gov/documents/organization/210737.pdf>.

¹³ Polaris Project, *Sex Trafficking*, <http://www.polarisproject.org/sex-trafficking>.

¹⁴ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, at 1 (Apr. 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti0810.pdf>.

¹⁵ U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Literature Review: Commercial Sexual Exploitation of Children/Sex Trafficking*, at 3 (2014) (citing Bureau of Justice Statistics data), <http://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

¹⁶ Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 2 (Nov. 19, 2015); Br. of National Center for Missing & Exploited Children, *J.S. v. Village Voice Media Holdings, LLC*, No. 4492-02-II, at 3 (Wash. Sup. Ct. Sept. 15, 2014). Congress designated NCMEC to be the “official national resource center and information clearinghouse for missing and exploited children.” 42 U.S.C. § 5773(b)(1)(B). Among its 22 statutorily authorized duties, NCMEC assists law enforcement in identifying and locating victims of sex trafficking and operates a “cyber tipline,” which collects reports of Internet-related child sexual exploitation, including suspected child sex trafficking. *Id.* §§ 5773(b)(1)(P)(3), (b)(1)(V).

2015, one in five endangered runaways reported to NCMEC was likely a child sex trafficking victim.¹⁷

Online advertising has transformed the commercial sex trade and in the process has contributed to the explosion of domestic sex trafficking.¹⁸ Sex trafficking previously took place “on the streets, at casinos and truck stops, and in other physical locations”; now it appears that “most child sex trafficking currently occurs online.”¹⁹ Sex trafficking has thrived on the Internet in part because of the high profitability and relatively low risk associated with advertising trafficking victims’ services online in multiple locations.²⁰ With the help of online advertising, traffickers can maximize profits, evade law enforcement detection, and maintain control of victims by transporting them quickly within and between states.

B. Commercial Sex Advertising and Backpage.com

Sex traffickers have made extensive use of websites that serve as marketplaces for ordinary commercial sex and escort services. These sites facilitate the sex trade by providing an easily accessible forum that matches buyers of sex with traffickers selling minors and adults.

One such site, Backpage.com, is similar in look and layout to the online marketplace Craigslist.com, and contains links to advertisements in sections such as “community,” “buy/sell/trade,” “jobs,” as well as “adult.” Advertisements in the

¹⁷ Email from Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children to Permanent Subcommittee on Investigations (Jan. 5, 2017).

¹⁸ Urban Institute, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, at 234 (Mar. 2014) (“The overall sex market has expanded . . . and law enforcement detection has been reduced.”), <http://www.urban.org/uploadedpdf/413047-underground-commercialsex-economy.pdf>; *id.* at 237-38 (“The results presented here corroborate [previous] findings that the use of the Internet is not necessarily displacing street-based sex work, but is likely helping to expand the underground commercial sex market by providing a new venue to solicit sex work.”).

¹⁹ *Aff. of Staca Shehan, Backpage.com, LLC v. Dart*, No. 15-cv-6340, Doc. 88-4, ¶ 17 (N.D. Ill. Oct. 6, 2015).

²⁰ Urban Institute, *supra* n.15, at 218 (reporting on multiple studies concluding Internet-facilitated commercial sex transactions are “not as easily detected by law enforcement”); U.S. Dep’t of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, at 33 (Aug. 2010) (noting the increase in profitability of trafficking children with the aid of the Internet and explaining how the movement of sex trafficking victims from city to city, with the help of online advertisements, makes building criminal cases more difficult), <http://www.justice.gov/psc/docs/natstrategyreport.pdf>; Michael Latonero, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, at 13 (Sept. 2011) (quoting former NCMEC president and CEO Ernie Allen as stating, “[o]nline classified ads make it possible to pimp these kids to prospective customers with little risk”), https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf.

“adult” section typically consist of a headline, a photo or photos, video, and a brief description of the services being offered. Backpage’s classified listings are localized by city or region; as of January 2017, Backpage had sites in 437 locations in the United States and 506 other locations around the world.²¹

Backpage is a market leader: In 2013, it reportedly net more than 80% of all revenue from online commercial sex advertising in the United States.²² According to the latest report from NCMEC, 73% of the suspected child trafficking reports it receives from the public involve Backpage.²³ According to the Massachusetts Attorney General, “[t]he vast majority of prosecutions for sex trafficking now involve online advertising, and most of those advertisements appear on Backpage.”²⁴

The National Association of Attorneys General has sounded similar alarms concerning Backpage’s facilitation of sex trafficking. On August 31, 2011, 45 state attorneys general sent a letter in which they described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.”²⁵ Pointing to more than 50 cases over the previous three years involving individuals trafficking or attempting to traffic minors on Backpage, the attorneys general argued that Backpage’s screening efforts were “ineffective.” They requested documents from Backpage concerning the company’s public claims that it screens and removes advertisements

²¹ Backpage’s predecessor company was an alternative news weekly, The New Times, founded in 1970 in Phoenix by James Larkin and Michael Lacey. In 2005, New Times Media acquired *The Village Voice*, based in New York, and the new entity, still owned by Larkin and Lacey, renamed itself Village Voice Media. Richard Siklos, *The Village Voice, Pushing 50, Prepares to Be Sold to a Chain of Weeklies*, *The New York Times* (Oct. 24, 2005), available at http://www.nytimes.com/2005/10/24/business/the-village-voice-pushing-50-prepares-to-be-sold-to-a-chain-of-weeklies.html?_r=0. In response to public pressure regarding its adult advertisements and the alleged connection to sex trafficking, Village Voice Media is reported to have spun off its media holdings into Voice Media Group. In the wake of that spinoff, Village Voice Media, and its owners Larkin and Lacey, retained ownership of Backpage. Mallory Russell, *Village Voice Management Buyout Leaves Backpage.com Behind*, *Advertising Age* (Sept. 24, 2012), available at <http://adage.com/article/media/village-voice-management-buyout-leaves-backpage/237371/>.

²² Advanced Interactive Media Group, *Prostitution-ad revenue up 9.8 percent from year ago* (Mar. 22, 2013), <http://aimgroup.com/2012/03/22/prostitution-ad-revenue-up-9-8-percent-from-year-ago/>.

²³ Email from Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children to Permanent Subcommittee on Investigations (Jan. 5, 2017). This 73% figure does not include reports to the cyber tipline made by Backpage itself.

²⁴ Br. of Commonwealth of Massachusetts, *Doe ex rel. Roe v. Backpage.com, LLC et al.*, No. 14cv-13870-RGS, Doc. No. 30, at 7 (D. Mass. Feb. 20, 2015) (“In Massachusetts, seventy-five percent of the cases that the Attorney General has prosecuted under our state human trafficking law, plus a number of additional investigations, involve advertising on Backpage.”).

²⁵ Letter from the Nat’l Ass’n of Attorneys General to Samuel Fifer, Esq., Counsel for Backpage.com LLC (Aug. 31, 2011), http://www.ct.gov/ag/lib/ag/press_releases/2011/083111backpageletter.pdf.

linked to sex trafficking.²⁶ Backpage provided no substantive response to that request.

C. Backpage and Section 230 of the Communications Decency Act

In 1996, Congress enacted the Communications Decency Act (CDA) in an attempt to regulate the distribution of obscene or indecent material to children.²⁷ Section 230 of the CDA provides broad immunity to Internet Service Providers (ISPs) that republish content online: The statute provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”²⁸ Section 230 provides protection against all liability, civil and criminal, except liability under federal criminal law and intellectual property law.²⁹ The CDA further provides certain protections for ISPs engaged in good-faith screening or blocking of offensive material; an ISP cannot be held liable for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³⁰

Most courts have broadly construed Section 230 to provide near complete criminal and civil immunity for ISPs when they publish content website users have created.³¹ The U.S. Court of Appeals for the Ninth Circuit, however, has suggested that ISPs that edit user-created content can sometimes lose their CDA immunity. In *Fair Hous. Council of San Fernando Valley v. Roommates.com*, 521 F.3d 1157 (2008), the court wrote that Section 230 “was not meant to create a lawless no-man’s-land on the internet,”³² and that

a website operator who edits user-created content . . . retains his immunity for any illegality in the user-created content, provided that the edits are unrelated to the illegality.

²⁶ *Id.*

²⁷ Title V of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56. The Supreme Court held the anti-indecency provisions of the CDA unconstitutional in *Reno v. ACLU*, 521 U.S. 844 (1997).

²⁸ 47 U.S.C. § 230(c)(1).

²⁹ *See* 47 U.S.C § 230(e).

³⁰ 47 U.S.C. § 230(c)(2)(A).

³¹ *Hill v. Stubhub, Inc.*, 727 S.E.2d 550, 558 (N.C. Ct. App. 2012) (“According to our research, there have been approximately 300 reported decisions addressing immunity claims advanced under 47 U.S.C. § 230 in the lower federal and state courts. All but a handful of these decisions find that the website is entitled to immunity from liability.”); *cf.* Brief for Legal Momentum, et al., as Amicus Curiae, *Jane Doe No. 1 v. Backpage.com, LLC*, No. 16-276 (U.S. Oct. 27, 2016) (arguing that courts have wrongly extended Section 230 beyond congressional intent).

³² 521 F.3d at 1164.

However, a website operator who edits in a manner that contributes to the alleged illegality . . . is directly involved in the alleged illegality and thus not immune.³³

Other courts—in cases involving Backpage itself—have differed about how far ISPs may go in guiding or incentivizing users to create unlawful content. In 2015, for example, the Supreme Court of Washington allowed a suit brought by underage sex trafficking survivors against Backpage to proceed. Relying on the Ninth Circuit’s decision, it held that Backpage would lose its immunity under Section 230 if, as the plaintiffs alleged, the company “helped develop the content of [the offending] advertisements” through its posting rules, screening process, and content requirements.³⁴ The court explained that

[i]t is important to ascertain whether in fact Backpage designed its posting rules to induce sex trafficking to determine whether Backpage is subject to suit under the CDA because “a website helps to develop unlawful content, and thus falls within the exception to [CDA immunity], if it contributes materially to the alleged illegality of the conduct.”³⁵

By contrast, the U.S Court of Appeals for the First Circuit recently rejected a similar theory in a separate lawsuit against Backpage. In *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12 (2016), the plaintiffs alleged that Backpage’s platform, categories, and filters “assist[ed] in the crafting, placement, and promotion of illegal advertisements offering plaintiffs for sale.”³⁶ Although the court concluded that the plaintiffs “ha[d] made a persuasive case” that “Backpage has tailored its website to make sex trafficking easier,”³⁷ it nevertheless upheld the dismissal of the suit under Section 230 on the ground that the site’s features did not render Backpage a content-creator.³⁸ The court noted that “[i]f the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through litigation.”³⁹

³³ *Id.* at 1169.

³⁴ *J.S. v. Village Voice Media Holdings*, 184 Wash. 2d 95 (Sept. 3, 2015).

³⁵ *Id.* at 103 (citing *Roommates.com*, 521 F.3d at 1164).

³⁶ Amended Complaint, *Doe ex rel. Roe v. Backpage.com, LLC*, No. 14-cv-13870, Doc. No. 9, ¶ 4 (D. Mass. Nov. 6, 2014).

³⁷ 817 F.3d 12 at 29.

³⁸ *Id.* at 21.

³⁹ *Id.* at 29.

Backpage and its officers have successfully invoked Section 230 in at least two other cases to avoid criminal or civil responsibility for activities on the site.⁴⁰ In neither case, however, did the court have before it evidence that Backpage had moved beyond passive publication of third-party content to editing content to conceal illegality. In a 2010 civil suit against Backpage by a child-trafficking survivor, the U.S. District Court for the Eastern District of Missouri upheld Backpage’s CDA immunity, in part because the plaintiff failed to allege that the company “specifically encouraged the development of the offensive nature of [the] content” of the ads.⁴¹ In that case, Backpage explained that the appearance of any “improper advertisements” on the site was due to the “volume and the difficulty of reviewing and editing the advertisements,” not “because of a nefarious desire by Backpage to aid and abet prostitution.”⁴²

In December 2016, a California state court dismissed felony pimping and conspiracy charges against Backpage CEO Carl Ferrer and the company’s founders, Michael Lacey and James Larkin, on CDA grounds.⁴³ In considering the key question of whether the defendants had “crossed the line of merely providing a forum for speech to become actual creators of speech, and thus not entitled to immunity under the CDA,”⁴⁴ the court concluded that Backpage’s “traditional publishing decisions [were] generally immunized under the CDA.”⁴⁵ Echoing the First Circuit, the court noted that “it is for Congress, not this Court, to revisit” the scope of CDA protection.⁴⁶ On December 23, 2016, California filed new charges against Ferrer, Lacey, and Larkin, including 26 counts of money laundering and 13 counts of pimping and conspiracy to commit pimping.⁴⁷

Backpage has also successfully invoked Section 230 in federal-preemption challenges to state laws in Washington, Tennessee, and New Jersey criminalizing the advertisement of minors for sex.⁴⁸ During its litigation challenges to these laws,

⁴⁰ *M.A. ex rel. P.K. v. Village Voice Media Holdings*, 809 F. Supp. 2d 1041 (E.D. Mo. 2011); Court’s Final Ruling on Demurrer, *The People of California v. Ferrer, et al.*, No. 16FE019224 (Cal. Super. Ct. Dec. 9, 2016).

⁴¹ *M.A. ex rel. P.K. v. Village Voice Media Holdings*, 809 F. Supp. 2d 1041, 1052 (E.D. Mo. 2011).

⁴² Memorandum of Law in Support of Motion to Dismiss, *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC.*, No. 10-cv-01740-TCM, Doc. No. 18, n.5 (E.D. Mo. Nov. 22, 2010).

⁴³ Court’s Final Ruling on Demurrer, *The People of California v. Ferrer, et al.*, No. 16FE019224, 2 (Cal. Super. Ct. Dec. 9, 2016).

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 14.

⁴⁶ *Id.* at 15.

⁴⁷ Criminal Complaint, *The People of California v. Ferrer, et al.*, No. 16FE024013 (Cal. Super. Ct. Dec. 23, 2016).

⁴⁸ *Backpage.com LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012); *Backpage.com LLC v. Cooper*, 939 F. Supp. 2d 805 (M.D. Tenn. 2013); *Backpage.co, LLC v. Hoffman*, No. 2:13-cv-03952,

Backpage represented that it was a mere “conduit” for third-party content created by others.⁴⁹ It did not disclose its extensive editing practices. In each case, the court held that the CDA preempted the state statute.⁵⁰

D. The Subcommittee’s Investigation

The Subcommittee first contacted Backpage on April 15, 2015, to request an interview to discuss Backpage’s business practices. On June 19, 2015, after nearly two months of extensive communication with Backpage’s outside counsel regarding the specific topics the Subcommittee wished to discuss, the Subcommittee conducted an interview with Backpage general counsel Elizabeth McDougall. During that interview, McDougall would not answer several critical questions about the Subcommittee’s main areas of interest, including basic questions about Backpage’s ownership and the details of its much-touted procedures for screening advertisements for illegal content.

On July 7, 2015, the Subcommittee issued a subpoena to Backpage requesting documents related to the company’s basic corporate structure, the steps it takes to review advertisements for illegal activity, its interaction with law enforcement, and its data retention policies, among other relevant subjects.⁵¹ The subpoena was returnable August 7, 2015. On August 6, Backpage informed the Subcommittee by letter that it would not produce *any* documents in response to the subpoena.⁵²

Meanwhile, in an attempt to continue its fact-finding, the Subcommittee issued subpoenas for the depositions of two Backpage employees to discuss their job

2013 WL 4502097 (D.N.J. Aug. 20, 2013); *cf.* SB 6251, Wash. Leg. 2011-2012, Reg. Sess. (Wash. 2012); Tenn. Code Ann. § 39-13-314; N.J. Stat. Ann., § 2C:13-10.

⁴⁹ Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. Hoffman*, No. 2:13-cv-03952, Doc. No. 1-8, 21 (D.N.J. June 26, 2013) (arguing that the New Jersey statute “target[ed] content created by third parties, for which websites like Backpage.com are mere conduits”); Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. Cooper*, No. 3:12-cv-00654, Doc. No. 4, 12 (M.D. Tenn. June 27, 2012) (“[S]ites like Backpage.com do not create [third-party] content; millions of users across the country do.”); Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. McKenna*, No. 2:12-cv-00954, Doc. No. 11 (W.D. Wash. June 4, 2012) (arguing that “websites like Backpage.com are mere conduits” for third-party ads and thus immune from liability under the CDA).

⁵⁰ *McKenna*, 881 F. Supp. 2d at 1274; *Cooper*, 939 F. Supp. 2d at 823-824; *Hoffman*, 2013 WL 4502097 at *5.

⁵¹ See Letter and Subpoena from Senate Permanent Subcommittee on Investigations to Carl Ferrer (July 7, 2015).

⁵² Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Aug. 6, 2016).

duties.⁵³ The two employees—Andrew Padilla (the head of Backpage’s moderation department) and Joye Vaught (the supervisor in charge of training Backpage’s roughly 80 moderators)—retained individual counsel and, invoking their Fifth Amendment privilege, declined to testify on the ground that it might tend to incriminate them.⁵⁴ Ferrer also declined to be voluntarily interviewed by Subcommittee staff.

On October 1, 2015, the Subcommittee withdrew its original subpoena and issued a new, more targeted subpoena focused on its areas of principal interest.⁵⁵ This subpoena requested, among other items, documents concerning Backpage’s moderation efforts, including information related to editing or modifying ads before publication. The subpoena also requested documents concerning metadata, document retention, basic corporate information, and revenue derived from adult advertisements.

On the return date, Backpage produced 21 pages of publicly available documents and submitted a letter objecting to certain document requests in the subpoena (Requests One, Two, Three, Five, and Eight) on the grounds that they violated the First Amendment and were not pertinent to a proper legislative investigation.⁵⁶ In particular, Backpage objected that “First Amendment tensions” inherent in requesting information from a “publisher” counseled in favor of reading the Subcommittee’s authorizing resolution not to encompass the power to issue the subpoena.⁵⁷

On November 3, on behalf of the Subcommittee, the Chairman and Ranking Member overruled Backpage’s objections.⁵⁸ They explained that Backpage’s vague and undeveloped First Amendment arguments lacked merit. Unlike the subpoenas or other investigatory tools in the cases Backpage cited, which furthered the official suppression of ideas, the Subcommittee’s subpoena did not infringe the First

⁵³ See Letters and Subpoenas from the Senate Permanent Subcommittee on Investigations to Steven Ryan (Aug. 13, 2015).

⁵⁴ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Sept. 3, 2015).

⁵⁵ In the letter accompanying the October 1 subpoena, PSI explained that “we continue to see no legal merit in Backpage’s explanation for its categorical refusal to comply with the Subcommittee’s subpoena” and that withdrawal of the earlier subpoena “does not reflect, in any way, our agreement with the merits of Backpage’s expansive claim of privilege; rather, it represents a good-faith effort to address Backpage’s expressed concerns.” Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage, at 2 (Oct. 1, 2015).

⁵⁶ See Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 13, 2015).

⁵⁷ *Id.*

⁵⁸ See Ruling from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Nov. 3, 2015).

Amendment rights of any company or individual. Senators Portman and McCaskill further rejected Backpage’s unexplained contention that the document requests in the October 1 subpoena were not pertinent to a proper investigation. The Subcommittee’s ruling articulated in detail why each request related to PSI’s efforts to understand online sex trafficking, the steps companies like Backpage can take to prevent it, and further action the government might take to combat it.⁵⁹ The Subcommittee ordered and directed Backpage to comply with the subpoena by November 12, 2015.

Ferrer’s personal appearance under the subpoena was continued until the hearing date and time of November 19, 2015 at 10:00 a.m. At that hearing, the Subcommittee received testimony from NCMEC and the Washington State Attorney General’s Office. The Subcommittee also received written testimony from the Director of the Crimes Against Children Initiative with the Office of the Ohio Attorney General and the New York County District Attorney. Ferrer defaulted on his obligation under the subpoena and failed to appear for the hearing. Through counsel, he informed the Subcommittee on November 16, 2015, that he would not appear due to foreign business travel.⁶⁰

1. Litigation in D.C. Federal Courts

Following Backpage’s continuing non-compliance with the October 1, 2015 subpoena, on February 29, 2016, the Subcommittee presented a resolution to the Homeland Security and Governmental Affairs Committee authorizing and directing Senate Legal Counsel to bring a civil action under 28 U.S.C. § 1365 to enforce subpoena Requests 1, 2, and 3.⁶¹ On March 17, 2016, the Senate—by a vote of 96-0—adopted the resolution.⁶² In the 40 years since the enactment of 28 U.S.C. § 1365, the Senate has sought to enforce a subpoena only five times prior to the Subcommittee’s 2016 action.⁶³

On March 29, 2016, the Subcommittee filed its Application to Enforce Subpoena Duces Tecum with the U.S. District Court for the District of Columbia,

⁵⁹ *Id.*

⁶⁰ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 16, 2015).

⁶¹ S. Rep. No. 114-214 (2016).

⁶² 162 Cong. Rec. S1561 (daily ed. Mar. 17, 2016).

⁶³ *See, e.g., In re Application of U.S. Senate Permanent Subcomm. on Investigations (Cammisano)*, 655 F.2d 1232, 1238-39 (D.C. Cir. 1981); *Senate Permanent Subcomm. on Investigations v. Accardo*, Misc. No. 84-53 (D.D.C. Mar. 29, 1984 amended Mar. 30, 1984); *Senate Select Committee on Secret Military Assistance to Iran v. Secord*, 664 F. Supp. 562, 566 (D.D.C. 1987), *appeal dismissed as moot* Order, No. 87-5177 (D.C. Cir. Oct. 9, 1987); *Impeachment Trial Committee on Articles Against Judge Alcee L. Hastings v. Borders*, Misc. No. 89-129 (D.D.C. Aug. 17, 1989); *Senate Select Committee on Ethics v. Packwood*, 845 F. Supp. 17 (D.D.C.), *stay denied*, 510 U.S. 1319 (1994).

and Backpage responded with its Opposition on April 26, 2016.⁶⁴ On August 5, 2016, the district court granted the Subcommittee's application, roundly rejecting the same First Amendment arguments Backpage had previously asserted in correspondence with the Subcommittee.⁶⁵ Following the ruling, Backpage filed a notice of appeal and moved for a stay pending appeal in the D.C. district court, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court, all of which denied the stay requests.⁶⁶ Backpage then moved the district court for a six-week extension of its August 15, 2016, production deadline, and on September 16, 2016, the court granted an extension to October 10, 2016.⁶⁷ Importantly, the court also rejected Backpage's untimely attempt to assert the attorney-client and work-product privileges and instead ordered the company to produce "all" responsive documents.⁶⁸

On September 20, 2016, Backpage filed a notice of appeal from the district court's September 16, 2016 order, along with a motion for stay pending appeal, and on October 10, 2016, the company also moved the district court for a second extension of its production deadline to November 18, 2016—an additional five weeks.⁶⁹ On October 17, 2016, the U.S. Court of Appeals for the D.C. Circuit granted Backpage's motion for stay pending appeal to the extent the district court's order required Backpage to produce privileged documents.⁷⁰ Regarding Backpage's

⁶⁴ Application to Enforce Subpoena Duces Tecum of Senate Permanent Subcommittee on Investigations, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. March 29, 2016); Memorandum of Points and Authorities in Opposition to Application of Senate Permanent Subcommittee on Investigations to Enforce Subpoena Duces Tecum, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Apr. 26, 2016).

⁶⁵ *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Aug. 5, 2016).

⁶⁶ Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Aug. 12, 2016); Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, No. 16-5232 (D.C. Cir. Sept. 2, 2016) (denying motion for stay and resetting date for production of documents to September 12, 2016); *Ferrer v. Senate Permanent Subcommittee on Investigations*, No. 16A236, 2016 WL 4740416 (S. Ct. Sept. 13, 2016) (mem.).

⁶⁷ Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, No. 16-5232 (D.C. Cir. Sept. 16, 2016).

⁶⁸ *Id.*

⁶⁹ Notice of Appeal, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Sept. 20, 2016); *Motion for Extension of Time to Comply with the Court's Order Enforcing Subpoena Duces Tecum and Response to the Court's September 16, 2016 Order*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Oct. 10, 2016).

⁷⁰ Order, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, No. 16-5232 (D.C. Cir. Oct. 17, 2016).

appeals from the August 5 and September 16 orders, the court of appeals set a briefing schedule ending in mid-January.⁷¹

The court of appeals also extended Backpage’s production deadline for non-privileged documents to November 10, 2016.⁷² On November 16, 2016, the U.S. District Court for the District of Columbia granted Backpage’s request for an extension until November 30 to complete its full document production, contingent on a certification from the company by November 18 that it had already produced documents for Carl Ferrer, other senior executives, and senior moderators.⁷³ Backpage made this certification on November 18, 2016.⁷⁴

2. Document Productions

As the litigation was proceeding in D.C. federal courts, Backpage made a series of document productions to the Subcommittee from September 2016 through November 2016. On September 13, 2016, the Subcommittee received a production from Backpage of approximately 110,000 pages of documents. According to Backpage, this production included “nearly all responsive non-privileged corporate documents” from Ferrer, Chief Operations Officer Andrew Padilla, and moderation supervisor Joye Vaught.⁷⁵ On October 10, 2016, Backpage made a further production of approximately 195,000 pages of documents. Along with this production, Backpage attached a declaration from the law firm Perkins Coie LLP, that stated that Backpage used a prior document production made in a Washington State court case as the basis for its production of documents from 2010 to 2011, and that the company had conducted new collections and searches for documents between 2012 and 2016.⁷⁶ The declaration also stated that Backpage had collected emails from accounts belonging to Michael Lacey and James Larkin, a personal email account for Elizabeth McDougall, and certain Backpage task management systems.⁷⁷

Despite these claims, the Subcommittee continued to express concerns regarding Backpage’s document collection and review—specifically, its efforts to preserve responsive documents, collect documents from non-work email accounts,

⁷¹ *Id.*

⁷² *Id.*

⁷³ Order, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 16, 2016).

⁷⁴ Response to Order of November 16, 2016, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Nov. 18, 2016).

⁷⁵ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Sept. 13, 2016).

⁷⁶ Declaration of Breena M. Roos, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 18, 2016).

⁷⁷ *Id.*

collect documents from Backpage-related corporate entities, identify relevant custodians, and employ adequate search terms.⁷⁸ The Subcommittee also attempted to hold a custodial deposition of Elizabeth McDougall, who apparently served a central role in the discovery process, but her attorney indicated she would assert her Fifth Amendment privilege in response to any questioning.⁷⁹ In an October 18, 2016 response to the concerns the Subcommittee raised, Backpage described the search terms it had employed in the document collection in the Washington case.⁸⁰ Backpage stated in a supplemental response that it collected documents from relevant non-work accounts for Ferrer and McDougall, but could not collect from the non-work accounts of Lacey and Larkin because “these personal email accounts are not within the company’s possession, custody, or control,” as Lacey and Larkin “ceased to be Backpage.com employees or officers” before the time period covered by the Subcommittee’s subpoena.⁸¹

In response, the Subcommittee wrote to Backpage on November 4, 2016, and raised a number of additional concerns with the company’s document productions.⁸² Specifically, the Subcommittee noted that it was unclear whether Backpage had taken all necessary steps to preserve responsive documents; had not explained its efforts to collect documents from non-work email accounts or listed email accounts used by key custodians; had not provided a complete list of Backpage-related corporations being searched for documents; had not identified the complete list of custodians searched; and finally, the company had not specified the search terms it used and the sources to which they applied.⁸³

Backpage made a further production of approximately 250,000 pages of documents on November 10, 2016, and then responded with a November 14, 2016, letter that largely sidestepped the Subcommittee’s questions and referred Subcommittee staff to previous declarations.⁸⁴ Backpage provided certain additional details concerning the document collection and review process in communications with the Subcommittee on November 20, 2016, and December 11,

⁷⁸ Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Oct. 5, 2016).

⁷⁹ Letter from Stephen M. Ryan, Counsel for Elizabeth McDougall, to the Permanent Subcommittee on Investigations (Oct. 7, 2016).

⁸⁰ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Oct. 18, 2016).

⁸¹ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Oct. 20, 2016).

⁸² Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Nov. 4, 2016).

⁸³ *Id.*

⁸⁴ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 14, 2016).

2016.⁸⁵ Backpage later made a final production of 160,000 pages of responsive, non-privileged documents to the Subcommittee on November 30, 2016.⁸⁶ Since August 2016, Backpage has produced a total of 552,983 documents, comprising 1,112,826 pages, to the Subcommittee in response to the October 2015 subpoena.⁸⁷

3. Other Investigative Efforts

In addition to its review of Backpage document productions, since the November 19, 2015 hearing the Subcommittee has issued subpoenas for Backpage account information to numerous banks and requested information related to Backpage valuations and tax returns from an independent financial firm retained by Backpage. The Subcommittee also reviewed documents produced during discovery in litigation involving Backpage in Washington state court, as well as filings and analyses relating to the California criminal proceeding against Ferrer, Lacey, and Larkin.

Over the course of this investigation, the Subcommittee has repeatedly sought testimony from Backpage executives and multiple current employees who developed, supervised, or implemented editing practices for adult ads. Each executive and employee indicated through counsel that he or she would refuse to answer any questions and would instead invoke the Fifth Amendment privilege against self-incrimination. The Subcommittee conducted voluntary telephonic interviews with two former Backpage moderators (“Backpage Employee A” and “Backpage Employee C”). After securing a judicial order of immunity compelling the witness to testify, the Subcommittee also conducted a deposition of one longstanding Backpage moderator (“Backpage Employee B”) who provided some additional details concerning the company’s moderation policies and practices. As a result of limited testimonial evidence, the Subcommittee’s findings are based primarily on documents obtained from Backpage and other parties during the course of the investigation.

FINDINGS

This report details three principal findings. *First*, Backpage has knowingly concealed evidence of criminality by systematically editing its adult ads. *Second*, the evidentiary record makes clear that Backpage executives knew their website

⁸⁵ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 20, 2016); Email from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Dec. 11, 2016).

⁸⁶ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 30, 2016).

⁸⁷ Declaration of Breena Roos, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 30, 2016).

facilitated illegal activity, including child sex trafficking. And *third*, despite reports that Backpage was sold to a Dutch entity, it was, in fact, purchased by CEO Carl Ferrer through a series of shell companies, the ultimate parent of which is based in the United States.

I. Backpage Has Knowingly Concealed Evidence of Criminality By Systematically Editing Its “Adult” Ads

Backpage has publicly touted its process for screening adult advertisements as an industry-leading effort to protect against criminal abuse, including sex trafficking.⁸⁸ A closer review of that “moderation” process reveals, however, that Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of an illegal transaction. Backpage has avoided revealing this information. On July 28, 2011, Backpage co-founder James Larkin wrote to Carl Ferrer cautioning him against Backpage’s moderation practices “being made public. We need to stay away from the very idea of ‘editing’ the posts, as you know.”⁸⁹ As the report explains below, Backpage had good reason to conceal its editing practices: Those practices served to sanitize the content of innumerable advertisements for illegal transactions—even as Backpage represented to the public and the courts that it merely hosted content created by others.

A. Backpage Began Editing “Adult” Ads On An *Ad Hoc* Basis

Backpage’s editing of language in its “adult” ad section began as early as 2006. A 2007 email from Village Voice executive Scott Spear to then-Backpage Vice President Carl Ferrer,⁹⁰ for example, includes a document titled “BACKPAGE.COM PERSONALS CRITERIA”—clearly referring to the “personals” subsection of Backpage’s adult section.⁹¹ Spear described the document as a “criteria memo[]”

⁸⁸ Backpage has publicly touted its moderation procedures as robust and effective. The company’s general counsel, Elizabeth McDougall, has testified that “Backpage leads the industry in” its moderation methods, which the company says are an effective way to exclude illegal activity from its site. Liz McDougall, Op-Ed, *Backpage.com is an Ally in the Fight Against Human Trafficking*, SEATTLE TIMES (May 6, 2012), <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>. The company has gone so far as to describe its moderation practices as the key countermeasure against human trafficking. In her testimony, McDougall asserted the company’s view that the “key to disrupting and eventually ending human trafficking via the World Wide Web is . . . an online-service-provider community — of businesses including Backpage — that aggressively monitors for and traces potential trafficking cases, and promptly reports to and cooperates with law enforcement.” *Id.*

⁸⁹ App. 000432.

⁹⁰ App. 000061 (identifying Ferrer as a “Founder and Vice President” of Backpage). Ferrer was later named Backpage CEO as early as February 2011. *See* App. 000764.

⁹¹ App. 000001-2.

from “last year” that was used for ads in “Phx [Phoenix] and KC [Kansas City].”⁹² The criteria include instructions on how to “edit ads.” Some instructions are innocuous: “The online ad may ramble on a bit. Feel free to edit that down.” But the memo also instructed moderators to “[e]dit ads for explicit sexual language” and “[t]ake out anything questionable.”⁹³

For a time, Backpage appears to have instructed moderators to delete an *entire* ad if it clearly referred to performing sex acts in exchange for money. The 2006 personals criteria, for example, stated that ads should not be printed if they have “anything to do with \$\$.”⁹⁴ Similarly, a “REVISED Adult Policy” implemented in March 2008 required Backpage employees to sign an agreement that provided in part that “any references to acts of prostitution or sex acts in exchange for money must result in an immediate rejection of any advertising or posting from such person or entity.”⁹⁵

To implement this policy throughout 2008 and 2009, Backpage used a combination of manual moderation and automated filtering. For manual review, Backpage maintained a list of “forbidden words” starting at least as early as 2009. For part of that year, moderators were instructed to delete an entire ad if certain forbidden terms appeared. These terms include the most unambiguous references to prostitution, such as “Full Service” or other “blatant sex act” terms.⁹⁶ In addition, company documents show that, as early as March 2008, Backpage employed an automated filter to delete ads containing a set of similar words.⁹⁷

By 2009, however, it became clear that this policy failed to block ads for illegal activity consistently. In one representative exchange, the manager of an alternative newspaper in Toronto, Joel Pollock, emailed Ferrer in February 2009 asking why Backpage advised users to post “legal” ads and to “not suggest an exchange of sexual favors for money.” Pollock explained that “[c]learly everyone on the entire backpage network breaks” those rules.⁹⁸ Ferrer did not disagree. Instead he replied that the public posting rules are “about CDA protection per our attorney.”⁹⁹

By May 2009, Ferrer was moving toward a new solution: directing Backpage employees to manually *edit* the language of adult ads to conceal the nature of the

⁹² App. 000001.

⁹³ App. 000002.

⁹⁴ *Id.*

⁹⁵ App. 000005.

⁹⁶ App. 000018-19; *see also* App. 000020.

⁹⁷ App. 000008.

⁹⁸ App. 000014.

⁹⁹ *Id.*

underlying transaction. The policy was first introduced on an *ad hoc* basis. In response to a news article regarding a potential criminal investigation of Craigslist in South Carolina, Ferrer instructed the company's Operations and Abuse Manager Andrew Padilla to scrub local Backpage ads that South Carolina authorities might review: "Sex act pics remove ... In South Carolina, we need to remove any sex for money language also."¹⁰⁰ (Sex for money is, of course, illegal prostitution in every jurisdiction in the United States, except some Nevada counties.¹⁰¹) Significantly, Ferrer did not direct employees to *reject* "sex for money" ads in South Carolina, but rather to sanitize those ads to give them a veneer of lawfulness. Padilla replied to Ferrer that he would "implement the text and pic cleanup in South Carolina only."¹⁰²

Editing practices that Backpage introduced in an *ad hoc* manner soon developed into a systematic process. By December 2009, Backpage executives prepared a training session for their team of moderators. The PowerPoint presentation prepared for the session indicates that the "Adult Moderation pre-posting review queue" would be "fully implemented by Jan. 1[, 2010]."¹⁰³ The presentation reiterated Backpage's "Terms of Use," including the rule against "[p]osting any solicitation directly or in 'coded' fashion for any illegal service exchanging sexual favors for money or other valuable consideration."¹⁰⁴ Importantly, however, the presentation explained that "Terms and code words indicating illegal activities require removal of *ad or words*."¹⁰⁵ One slide of the presentation posed several questions including: "Can you eliminate some words and not others?"¹⁰⁶ Internal company documents confirm that the answer was *yes*: Backpage executives soon began instructing all moderators to manually remove words, phrases, and images that indicated an illegal transaction was being offered—and then publish the edited ads.

Backpage began to formalize these new instructions on manual editing of content in early 2010.¹⁰⁷ A January 2010 document, for example, addresses terms-of-use violations in "personal ads" stating: "PERSONAL TOU [terms of use]

¹⁰⁰ App. 000015.

¹⁰¹ See *Coyote Pub., Inc. v. Miller*, 598 F.3d 592, 604 (9th Cir. 2010) (noting that "every state but Nevada" has outlawed the sale of sex, "including the proposing of such transactions through advertising").

¹⁰² App. 000015.

¹⁰³ App. 000042.

¹⁰⁴ App. 000043.

¹⁰⁵ App. 000045 (emphasis added).

¹⁰⁶ App. 000047.

¹⁰⁷ App. 000064; see also App. 000070.

VIOLATIONS – EDIT OUT BAD CONTENT.”¹⁰⁸ At the time, terms of use prohibited advertisements of sex for money.¹⁰⁹

In an April 2010 email note to himself with the subject line “Adult clean up tasks,” Ferrer confirmed that, as of April 2010, staff were “moderating ads on a 24/7 basis.”¹¹⁰ In a section of the note on “[c]urrent” practices, Ferrer noted that “Ads with bad images or bad text [sic – text] will have the image removed or the offending text removed.”¹¹¹ In a section titled “Additional Steps,” he noted that “text could be cleaned up more as users become more creative.”¹¹²

By July 2010, Backpage executives were praising moderation staff for their editing efforts. Ferrer circulated an agenda for a July 2010 meeting of Backpage’s Phoenix staff that applauded moderators for their work on “Adult content”: “Keep up the good work removing bad content,” the agenda read. Ferrer elaborated in an August 2010 email to an outside vendor: “We currently staff 20 moderators 24/7 who do the following: *Remove any sex act pics in escorts *Remove any illegal text in escorts to include code words for sex for money.”¹¹³

For a brief period, however, Backpage executives appear to have had second thoughts about editing the content of ads. In September 2010, in response to pressure from Village Voice executives to “get the site as clean as possible,” Backpage “empower[ed]” Phoenix-based moderators “to start deleting ads when the violations are extreme and repeated offenses.”¹¹⁴ On September 4, 2010, when Craigslist, the company’s chief competitor, shut down its entire adult section, Backpage executives recognized it was “an opportunity” and “[a]lso a time when we need to make sure our content is not illegal”¹¹⁵ due to expected public scrutiny. Backpage executives initially responded by expanding the list of forbidden terms that could trigger the complete deletion of an entire ad—whether by operation of an automated filter or by moderators.¹¹⁶

But Backpage executives soon began to recognize that the deletion of ads with illegal content was bad for business. Ferrer explained his rationale to the company’s outside technology consultant, DesertNet:

¹⁰⁸ App. 000064.

¹⁰⁹ App. 000028.

¹¹⁰ App. 000070.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ App. 000071-72.

¹¹⁴ App. 000073.

¹¹⁵ App. 000074.

¹¹⁶ App. 000795-97 (email & attached document).

We are in the process of removing ads and pissing off a lot of users who will migrate elsewhere. I would like to go back to having our moderators remove bad content in a post and then locking the post from being edited.¹¹⁷

The more “[c]onsumer friendly” approach, Ferrer concluded, was to “[r]emove bad content in the post” and allow moderators “to be subjective and not cause too much damage.”¹¹⁸ By contrast, removing the *entire* post “[h]urts [the] user financially” and does not teach the user “what they did wrong.”¹¹⁹ Backpage decided to focus on ad editing—both automatic and manual.

B. Backpage Automatically Deleted Incriminating Words From Sex Ads Prior to Publication.

Before September 2010, Backpage’s automated filters performed one of two actions depending on the type of term detected: an ad could be removed (“banned”), or it could be flagged as spam.¹²⁰ Starting in late September 2010, Backpage added a third function to its filters: “Strip Term From Ad.”¹²¹ By operation of this new filter, most of the “banned” words that previously resulted in rejection of the *entire* ad would simply be “stripped”—that is, deleted—before publication.¹²²

The Strip Term From Ad filter soon became Backpage’s most important tool for sanitizing ads that contained language suggestive of illegality. As originally configured, the filter stripped out offending terms only after moderators had reviewed the ad—at least giving moderators an opportunity to review the original ad.¹²³ But within two months, Ferrer concluded that it would be more efficient to “strip out a term after the customer submits the ad and before the ad appears in the moderation queue”¹²⁴ so that the unedited version of the ad would “not appear in moderation view.”¹²⁵ By November 2010, Backpage had implemented this change, with the result that deletions applied instantly—*before* any moderator screening.¹²⁶

¹¹⁷ App. 000096.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ App. 000085.

¹²¹ App. 000098.

¹²² App. 000087 (Padilla: “I just switched over the action on a lot of terms”).

¹²³ App. 000085.

¹²⁴ App. 000087.

¹²⁵ *Id.* Backpage considered having stripped terms highlighted for moderators to view. *See* App. 000142. The concern, however, was that this “means our moderators are looking at something that should be gone already.” App. 000144. The solution was to “add a list of terms to the filter that should not be stripped out, but could be highlighted in moderation and admin view,” as Ferrer suggested. “The terms are possible violation of TOU but are too short to strip out like BJ or ASP,” he

The Strip Term From Ad filter concealed the illegal nature of countless ads and systematically deleted words indicative of criminality, including child sex trafficking and prostitution of minors. In a December 1, 2010 email addressed to Backpage moderators and copying Ferrer, Padilla touted the success of the Strip Term from Ad Filter, solicited ideas for additional words to be stripped, and attached the list of words then-programmed to be stripped. Padilla wrote:

Between everyone’s manual moderation, both in the queue and on the site, and the Strip Term From Ads Filters, things are cleaner than ever in the Adult section.

In an effort to strengthen the filters even more and avoid the repetitive task of manually removing the same phrases everyday, can every moderator start making a list of phrases you manually remove on a regular basis? ...

Included in your lists should be popular misspellings of previously banned terms that are still slipping by.

To avoid unnecessary duplicates, I'm attaching a spreadsheet with the most current list of coded terms set to be stripped out.¹²⁷

The spreadsheet attached to Padilla’s email indicates that the following words (among others) were automatically deleted from adult ads by the Strip Term From Ad filter before ads were published:

- “lolita” (and its misspelled variant, “lollita”)
- “teenage”
- “rape”
- “young”¹²⁸

explained, “[o]r, the terms require context of the entire ad to see if they are bad.” *Id.* Ultimately the company settled on highlighting only terms that “might lead to an ad being removed but ... are too short to strip out.” App. 000148; *see* App. 000192 (listing terms to be highlights such as “top, bottom, AJB, ATF, BL, FIV,” etc.).

¹²⁶ *See* App. 000087 (“We’re also working on moving where the [strip term] process is located so it can happen at the moment of the edit/post and therefore be instant”); App. 000088 (“This modification is now in place”).

¹²⁷ App. 000158 (emphasis added).

¹²⁸ *Id.*

Multiple Backpage documents and communications confirm the inclusion of these and other terms in the Strip Term From Ad filter.¹²⁹ Over the course of the next several months, Backpage added additional words to the Strip Term From Ad filter, including:

- “amber alert” (the name of the national child abduction emergency broadcast system)¹³⁰
- “little girl”¹³¹
- “teen”¹³²
- “fresh”¹³³
- “innocent”¹³⁴ and
- “school girl.”¹³⁵

When a user submitted an adult ad containing one of the above forbidden words, Backpage’s filter would immediately delete the discrete word and the remainder of the ad *would be published* after moderator review. Of course, the Strip Term From Ad filter changed nothing about the real age of the person being sold for sex or the real nature of the advertised transaction. But as Padilla explained, thanks to the filter, Backpage’s adult ads looked “cleaner than ever.”¹³⁶

¹²⁹ See App. 000322 (email and attached spreadsheet); See also App. 000329-53 (email and spreadsheet). In addition, records of Ferrer’s online chat with DesertNet confirm that these words were stripped out from new ads before posting *and* deleted from old ads. See App. 000198. On December 2, 2010, Ferrer instructed DesertNet to remove dozens of terms (including “lolita,” “teenage,” “rape,” and “young”) “from every old ad in the database.” In the same online chat, Padilla confirmed that the same terms “are already set as Strip From Ad filters” for new ads. App. 000148; see also App. 000117 (Padilla: “If [contract moderators are] failing ads, it makes more work for us.”). In-house moderators were instructed to edit out “offending” language before contract moderators were authorized to do so. See, e.g., App. 000070 (“Staff is moderating ads on a 24/7 basis[.] Ads with bad images or bad test [sic] will have the image removed or the offending text removed.”); App. 000080 (“These additional [banned] terms are currently filtered in their common forms and removed manually in their variations.”).

¹³⁰ App. 000280; see also App. 000337 (email and spreadsheet).

¹³¹ App. 000204; see also App. 000269.

¹³² App. 000301; see also App. 000329-53 (email and spreadsheet).

¹³³ App. 000213; see also App. 000266 (attachment).

¹³⁴ App. 000213; see also App. 000269 (attachment).

¹³⁵ App. 000213; see also App. 000272 (attachment).

¹³⁶ App. 000157.

Ferrer personally directed or approved the addition of new words to the Strip Term From Ad Filter,¹³⁷ and Backpage documents clearly show he understood their implications for child exploitation. For example, Ferrer told Padilla in a November 17, 2010 email that the word “Lolita” “is code for under aged girl [sic].”¹³⁸ A similar understanding led Ferrer to add the words “daddy” and “little girl” to the Strip Term From Ad filter. In February 2011, CNN ran a story about a 13-year-old girl named Selena who was sold for sex on Backpage.¹³⁹ The report noted that “suspect ads with taglines such as ‘Daddy’s Little Girl’ are common” on Backpage.com.¹⁴⁰ Ferrer’s remedy was to email the CNN story to Padilla and instruct him to add “daddy” and “little girl” to the “strip out” filter.¹⁴¹ Similarly, in a June 7, 2011 email, Ferrer told a Texas law enforcement official that a word found in one Backpage ad, “amber alert,” “is either a horrible marketing ploy *or some kind of bizarre new code word for an under aged person.*”¹⁴² He told the official that he would “forbid[]” that phrase—without explaining that, inside Backpage, this meant filters would simply conceal the phrase through automatic deletion.¹⁴³ Ferrer forwarded the same email chain to Padilla and noted that he had instructed a staff member to “add [amber alert] to strip out.”¹⁴⁴ A June 11, 2012 version of the filter word list indicates that “amber alert” was indeed deleted by the Strip Term From Ad filter.¹⁴⁵ In short, Backpage added such terms with full awareness of their implications for child exploitation.

Backpage also programmed the Strip Term From Ad filter to strip scores of words indicative of prostitution from ads before publication. For ads submitted to the section advertising escorts-for-hire, the filter deleted words describing every imaginable sex act.¹⁴⁶ Common terms of the trade such as “full service,”¹⁴⁷ “you

¹³⁷ See, e.g., App. 000156; App. 000213. Ferrer also personally supervised multiple “deep cleans” of previously published Backpage ads to scrub them of suspect words. At his direction, words indicative of underage prostitution and other crimes were stripped out from all ads. See App. 000754; App. 000213. On February 4, 2011, for example, Ferrer directed DesertNet to go through “all adult and personal ads and remove” words including “innocent, tight, fresh” and “schoolgirl, school girl, highschool, high school, cheerleader.” *Id.*; see also App. 000145; App. 000195.

¹³⁸ App. 000156. Ferrer initially debated whether to “ban or strip out” the word “lolita.” Padilla’s December 1, 2010 email and accompanying Strip Term From Ad spreadsheet confirms that Backpage did, in fact, strip the term from ads. See App. 000157.

¹³⁹ Amber Lyon & Steve Turnham, *Underage Sex Trade Still Flourishing Online*, CNN (Feb. 5, 2011), <http://www.cnn.com/2011/CRIME/01/20/siu.selling.girl.next.door.backpage/>.

¹⁴⁰ *Id.*

¹⁴¹ App. 000204.

¹⁴² App. 000280 (emphasis added).

¹⁴³ App. 000281.

¹⁴⁴ App. 000280.

¹⁴⁵ App. 000801 (email and attached spreadsheet).

¹⁴⁶ See, e.g., App. 000158 (email and attached spreadsheet); App. 000322 (email and attached spreadsheet).

PAY 2 PLAY,” and “no limits”¹⁴⁸ were likewise stripped from adult ads. In addition, Backpage programmed the filter to edit obvious prostitution price lists by deleting any time increments less than an hour (e.g., \$50 for 15 minutes)¹⁴⁹ and to strip references to a website called “The Erotic Review” or “TER”—a prominent online review site for prostitution.¹⁵⁰ Backpage thus designed the Strip Term From Ad filter to delete, without a trace, hundreds of words and phrases indicative of prostitution from ads before their publication.

To the extent Backpage still permitted moderators to reject entire ads due to indications of prostitution, it appears to have limited those rejections to (at most) egregious, literal sex-for-money offers. One current moderator, Backpage Employee B, stated that she personally removed rather than edited ads “[i]f anything [in the ad] was like blatantly, like, ‘I’m going to have sex for money,’” but that she could not speak for other moderators.¹⁵¹ Backpage documents indicate that the company permitted moderators to delete only a *de minimis* share of adult ads in their entirety. In January 2011, for example, Ferrer estimated that “[a]bout 5 [adult] postings are removed ‘sex for money’ aka illegal ads out of a 1000 [sic]”¹⁵²—that is, 0.5% of ads.

In fact, Backpage edited the language of the vast majority of ads in its adult section. On October 27, 2010, Sales and Marketing Director Dan Hyer wrote that “[w]ith the new changes, we are editing 70 to 80% of ads.”¹⁵³ By February 2011, Ferrer was boasting that “strip out affects almost every adult ad.”¹⁵⁴ “That’s pretty cool,” he continued, “to see how aggressive we are in using strip out.”¹⁵⁵ Backpage executives were pleased with the results of this extensive content-editing effort: “[T]he consensus is that we took a big step in the right direction,” Ferrer told Padilla and Hyer.¹⁵⁶ “The content looks great,” he continued, and the goal should be “to tame the content down even further while keeping good content and users.”¹⁵⁷

In some internal Backpage communications, company executives were candid about the purpose of their systematic editing. As Padilla explained in an October 10, 2010 email to moderators regarding editing of ads, “it’s the language in ads that

¹⁴⁷ App. 000158 (spreadsheet).

¹⁴⁸ App. 000322 (spreadsheet).

¹⁴⁹ App. 000188 (Padilla describing how the filter strips out rates for less than an hour).

¹⁵⁰ App. 000260 (Padilla: “We’ve been filtering out the terms ‘TER’ and ‘The Erotic Review.’”).

¹⁵¹ Employee B Dep. Tr. 109:21-25.

¹⁵² App. 000205.

¹⁵³ App. 000133.

¹⁵⁴ App. 000248.

¹⁵⁵ *Id.*

¹⁵⁶ App. 000156.

¹⁵⁷ *Id.*

is really killing us with the [state] Attorneys General.”¹⁵⁸ Similarly, Ferrer explained the need for a special “Clean up” in advance of a day on which he expected “AG [Attorney General] investigators will be browsing escorts.”¹⁵⁹ Moreover, Backpage designed its editing to conceal the true nature of ads, while leaving no record behind; the filter was structured in such a way that Backpage “wouldn’t run the risk of caching stripped terms,” as Padilla put it.¹⁶⁰ And Backpage did not save the original version of ads it edited.¹⁶¹

This practice raises questions about Backpage’s purported cooperation with law enforcement.¹⁶² Although Backpage often responds to grand jury subpoenas and other law enforcement requests for documents about criminal activity, including by providing copies of advertisements in the adult section, it may well have provided only the *edited* version of certain ads—without providing the original user-submitted content or disclosing that an ad may have been altered. Even if the original text of the advertisement was not retained, documents indicate that Backpage *did* keep records tracking each time a Backpage moderator viewed and/or edited an ad.¹⁶³ There is no indication, however, that Backpage has included such information in subpoena responses. And in general, the record indicates that

¹⁵⁸ App. 000799-800. To this email, Padilla attached a list of words that he stated were being banned or stripped. The list did not distinguish between banned and stripped terms. Padilla’s December 1, 2010 email was more specific. As explained above, that email included an attachment of terms being *stripped*, not banned.

¹⁵⁹ App. 000752.

¹⁶⁰ App. 000143.

¹⁶¹ See App. 000188-89 (internal correspondence indicating that Backpage did not have “any way of knowing what [an edited] ad looks like originally”); see also App. 000141 (“[W]ith an Edit we can only see what [the moderators have] left behind.”). It is important to note that Backpage’s list of filtered terms has changed over time. As noted above, Backpage converted words that were previously “banned”—that is, those that triggered rejection of an ad—to “stripped” terms starting in 2010. Later, starting in mid-2012, Backpage converted some previously stripped terms (such as “full service”) back to “banned.” See App. 000327; App. 000330. Backpage later added an “alert” feature for a small fraction of stripped terms, including “young,” “innocent,” “little girl,” and “lolita.” See App. 000261-75. This feature permitted moderators to review an ad using such terms before deleting the terms and publishing the ad. See App. 000354-57; see also App. 000289-90. Critically, however, as explained in Part I.D. below, Backpage executives ensured that even the use of a genuinely “banned” term would result in an error message instructing the user how to evade the company’s filters by rewriting the ad. See *infra* Part I.D.

¹⁶² See Liz McDougall, Op-Ed, *Backpage.com is an Ally in the Fight Against Human Trafficking*, SEATTLE TIMES (May 6, 2012), <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>.

¹⁶³ See App. 000785-91.

Backpage avoided providing law enforcement a clear view of its activities in documents it knew would be subpoenaed.¹⁶⁴

It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter. But emails indicate that the company still used the filter to some extent as of April 25, 2014.¹⁶⁵ Although Backpage appears to have discontinued most *manual* editing sometime in late 2012, *see* Part I.C., *infra*, the documents that Backpage has produced do not indicate that it similarly ended its use of the Strip Term From Ad filter.¹⁶⁶ The Backpage employees the Subcommittee interviewed stated that they did not know if or when the filter was discontinued,¹⁶⁷ and senior Backpage executives who might know have indicated through counsel that they will assert their right against self-incrimination to avoid answering Subcommittee questions.¹⁶⁸

C. Backpage Moderators Manually Deleted Incriminating Language That Company Filters Missed.

Backpage's shift to automated deletion of words was accompanied by more far-reaching manual editing. The September 2010 closure of Craigslist's adult section prompted Backpage executives to briefly adopt a stricter policy against ads

¹⁶⁴ Ferrer took affirmative steps to ensure that subpoena responses did not disclose too much information about Backpage's moderation practices. He instructed that the administrative page view for ads should not contain moderation logs showing that a particular moderator "failed" or "approved" an ad because he "would rather not testify in court as to why my staff 'approved' a postings [sic]." App. 000201. Ferrer once explained that "[i]f I have a moderation log appear in the admin data box of an ad that I pull for a subpoena, it might say 'approved by BP31' and if the ad is illegal, I may find myself needlessly in the position of explaining that our admin users make mistakes." App. 000784; *see also* App. 000405 (undated and unsourced moderation guidelines stating: "when browsing please clean up the front page [of a particular city or category] –law enforcement rarely goes past page 2"); App. 000406 (Vaught asking whether subpoena response team "normally send[s] out evil empire and naked city links when [they] reply to cops? If you do, can you stop? We own those sites too.").

¹⁶⁵ App. 000384 (describing process for creating filters for links containing "porn, sex for money[,] etc.").

¹⁶⁶ *See, e.g.*, App. 000376 (email from user to Backpage about the word "daddy" being stripped from an ad title in December of 2012).

¹⁶⁷ *See* Interview with Backpage Employee C (Feb. 25, 2016); Interview with Backpage Employee A (Feb. 27, 2016); Backpage Employee B Dep. Tr. 159:10-160:15 (Oct. 18, 2016).

¹⁶⁸ *See* Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 16, 2015); Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Dec. 30, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Dec. 30, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Aug. 31, 2015); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Oct. 7, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Apr. 28, 2016).

proposing illegal transactions. The company’s “Adult Advertising and Posting Policy” instructed moderators that “any discussion about [sex for money] must result in an immediate rejection of any advertising or posting from such person or entity.”¹⁶⁹ As of October 5, 2010, Backpage was still instructing its contract moderators to “Fail’ an[y] ads with text that suggest sex for money.”¹⁷⁰ Ads failed by contract moderators would then go to in-house moderators for additional review and potential editing.¹⁷¹ Padilla instructed in-house moderators to “still avoid Deleting ads when possible” but delete ads that “make[] a clear reference to sex for money.”¹⁷² Less glaring violations should simply be edited out, moderators were told.¹⁷³

But that policy soon collided with the company’s profit motives, and Backpage abandoned it.¹⁷⁴ By late October 2010, the new default response to ads proposing illegal transactions was simply to edit out the evidence of illegality and approve the ad. On October 25, 2010, Padilla emailed the supervisor of Backpage’s contract moderators to inform her of the editing policy. The email subject line was “your crew can edit” and it read in relevant part:

[Your team] should *stop Failing ads and begin Editing*...As long as your crew is editing and not removing the ad entirely, we shouldn’t upset too many users. Your crew has permission to edit out text violations and images and then approve the ad.¹⁷⁵

Notably, as with ads altered through the Strip Term From Ad filter, manual editing caused the original version of the ad to be lost.¹⁷⁶

Manual editing involved the deletion of language similar to the words and phrases that the Strip Term From Ad filter automatically deleted—including words and phrases indicative of criminality. Padilla outlined some of the types of words and images that moderators should delete in an October 26, 2010 email to a moderation supervisor, copying Ferrer and Vaught.¹⁷⁷ In the personals section,

¹⁶⁹ App. 000005.

¹⁷⁰ App. 000105.

¹⁷¹ App. 000106 (Ferrer wrote to the contract moderators: “If you [sic] staff finds something violating our rules, they will click fail. It will move to a US Staff who will determine what to do (edit, reduce user’s rights, or remove ad)[.]”).

¹⁷² App. 000124.

¹⁷³ *Id.*

¹⁷⁴ See Padilla Dep. Tr. 48:17-24.

¹⁷⁵ App. 000132 (emphasis added).

¹⁷⁶ See App. 000141 (“[W]ith an Edit we can only see what [the moderators have] left behind.”).

¹⁷⁷ See App. 000129.

moderators were to delete “rates for service” and “mention[s] of money.”¹⁷⁸ In the “Adult jobs” section, moderators were to delete indications of “sex act[s] for money.”¹⁷⁹ This understanding is confirmed by a December 2010 list of phrases regularly deleted by moderators. On December 1, 2010, Padilla asked all in-house moderators to send him a list of words that they “manually remove on a regular basis” so that he could add those words to the Strip Term From Ad filter and help “avoid the repetitive task of manually removing the same phrases every day.”¹⁸⁰ The list of regularly removed words confirms that moderators were deleting exactly the types of words Padilla had listed on October 26, 2010, including evidence of prostitution and (to a lesser degree) sex with minors.¹⁸¹ The terms regularly deleted by moderators before approving ads included:

- “\$\$\$j,” “\$\$j,” “\$j,” “bang for your buck,” and other terms indicative of prostitution;
- “all access,” “all inclusive,” “full service”;
- “yung”;¹⁸² and
- numerous blatant sex act terms.¹⁸³

As Padilla explained to Ferrer, these words were among the terms regularly deleted by moderators in Backpage’s Phoenix and Dallas offices.¹⁸⁴ Ferrer and Padilla evidently approved of moderators’ deletion of these words; they quickly added all of the words above (and dozens more) to the Strip Term From Ad filter to ensure automatic deletion.¹⁸⁵ Ferrer also personally directed the deletion of the word “teen” from new ads in November 2011.¹⁸⁶

¹⁷⁸ *Id.*

¹⁷⁹ *See id.*

¹⁸⁰ App. 000157.

¹⁸¹ Meanwhile, Ferrer was conveying a different explanation about moderation to Village Voice executive Scott Spear—who had expressed concerns about stopping illegal ads. An October 26, 2010 email from Ferrer to Padilla indicates that Ferrer told Spear that “sex act for money ads are deleted[.]” App. 000130-31. That was not true.

¹⁸² App. 000186 (parent email) & App. 000168-76 (attached spreadsheet).

¹⁸³ *Id.*

¹⁸⁴ App. 000753.

¹⁸⁵ App. 000186 (parent email) & App. 000168-76 (attached spreadsheet). In February 2011, Backpage executives appear to have considered whether certain terms should result in deletion of an entire ad, rather than the ad being edited and posted to the site. *See* App. 000252. For example, on February 16, 2011, Ferrer sent Padilla a potential “delete whole ad terms” list and asked if Padilla agreed that certain terms should be removed from the list “because they are not prostitution terms.” *Id.* The list included terms such as “barely legal,” full service,” “GFE,” “little girl,” and “lolilta.” *See*

The Strip Term From Ad filter appears to have been ineffective at deleting suspicious pricing due to the many possible variations involved. Accordingly, Backpage instructed moderators to edit price lists for adult services by deleting rates indicative of sex-for-money transactions.¹⁸⁷ On October 26, 2010, Ferrer explained that moderators “will not remove ads with rates under an hour, just the text with minimum rates.”¹⁸⁸ Ferrer repeatedly instructed the supervisor for Backpage’s contract moderators to remove rates for less than an hour, such as “15 minute and 30 minute pricing.”¹⁸⁹ In addition, Backpage instructed moderators to manually strip out references to the prostitution-review site “TER,” as described above.¹⁹⁰

Backpage’s instruction regarding its “edit lock out” feature further confirms the company’s routine deletion of sex-for-money references. The site’s default setting permitted users to edit their own live ads after publication. But Backpage executives instructed moderators to “lock” any ads that had been edited by moderators, to prevent users from re-entering the language removed during moderation.¹⁹¹ This allowed moderators to edit and release an ad to the site and then block the user from any further editing.¹⁹² In a February 16, 2011 email titled “locking ads from editing,” Padilla instructed a moderation supervisor to “reserve locking ads to instances where *there is a clear offer of sex-for-money* or graphic

id. The next day, Padilla sent the list (which included the terms Ferrer raised in his email to Padilla) to Scott Spear, noting that they “are the terms we would delete an ad for rather than edit.” App. 000256-58 (email and attachment). It does not appear that such a change was made at that time. *See, e.g.*, App. 000293 (Padilla noting in October 2011 that “barely legal” still was a “strip out” term).

¹⁸⁶ App. 000300-01 (Ferrer: “Remove ads with teens or remove the text teen from an ads [sic].” Padilla: “I [deleted] anything older than two months and edited the rest.”). Padilla had earlier told a Backpage moderator that he was “not comfortable editing the word ‘teen.’” App. 000287. But in January 2012, Padilla signed off on the practice of editing out “tean” from an ad and allowing the ad to post. *See* App. 000305.

¹⁸⁷ *See* App. 000137.

¹⁸⁸ *Id.* Backpage moderators routinely deleted pricing, including when prices were not attached to time increments. *See* App. 000188 (“[I]f they’re putting rates for less than an hour and a filter catches it, they wind up with an ad that effectively has blank pricing. [A]nd then a moderator browsing the site is going to pull the numbers left behind in the menu.”).

¹⁸⁹ App. 000153; *see also* App. 000139.

¹⁹⁰ App. 000260 (Padilla: “Effective immediately, any variation of, or reference to, TER is banned. If you find it in an ad, remove the phrase and update the ad[.]”).

¹⁹¹ *See* App. 000124 (Padilla: “To make your [moderation] efforts count, you’ll want to lock any ad you have to edit.”); *see also* App. 000089-95.

¹⁹² *See* App. 000089-95; *see also* App. 000127 (“We want to edit some ads and immediate [sic] lock the ad from being re-edited by the user.”). Users who were blocked from editing received an error message: “We’re sorry! You can not [sic] edit the post at this time since this post had previously violated our terms of use[.]” App. 000093.

images of sex act.”¹⁹³ The plain implication of this instruction is that moderators routinely edited out “clear offer[s] of sex for money,” locked out further editing, and allowed the ad to go live.¹⁹⁴ (By definition, locked ads were approved to go live, *not* rejected.) Padilla recognized that these instructions were too candid to convey directly to rank-and-file moderators. Instead, he suggested that this “more lenient policy can’t necessarily be easily conveyed to our moderation crews but I feel the general attitude change should be communicated in some form.”¹⁹⁵

Moderators appear to have received the message loud and clear. Testimony by two former moderators and one current moderator corroborates the fact that Backpage instructed moderators to systematically remove words indicative of criminality before publishing an ad. Backpage Employee A, who worked as a Backpage moderator from 2009 through 2015,¹⁹⁶ stated that moderators “remov[ed] key phrases that made it sound like a prostitute ad rather than an escort ad, dancing around the legality of the ad.”¹⁹⁷ The goal was to delete “any words that sounded like it made the ad into a prostitution ad. No sex for money, no slang referring to sex[.]”¹⁹⁸ “[W]e were just to delete the sex for money information but keep the ads,” Backpage Employee A explained.¹⁹⁹

Testimony under oath by former Backpage moderator Adam Padilla, brother of Backpage executive Andrew Padilla, tracks Backpage Employee A’s account. In an August 2, 2016 deposition, Adam Padilla testified that he removed words that “clearly stated that that person wanted to have sex with somebody for money.”²⁰⁰ According to Padilla, the company instructs moderators during training that “those are the words you need to pull.”²⁰¹ Asked if he was told why he should remove those terms, he explained that “those terms made it clear that the person was asking for, you know, money for prostitution.”²⁰² Padilla further explained that deleting ads for illegal conduct, rather than editing out the indicia of illegality, would have cut into company profits:

¹⁹³ App. 000250 (emphasis added).

¹⁹⁴ *See id.*

¹⁹⁵ *Id.*

¹⁹⁶ Interview with Backpage Employee A (Feb. 27, 2016).

¹⁹⁷ Correspondence with Backpage Employee A (Sept. 29, 2016).

¹⁹⁸ Correspondence with Backpage Employee A (Nov. 16, 2016).

¹⁹⁹ *Id.*

²⁰⁰ Padilla Dep. Tr. 17:8-9; *see also id.* at 49:7-12 (“Q: What is the basis for your belief that your job at Backpage.com was to make sure that the ads were okay to run live rather than simply deleting ads that had images or content that suggested the ad was an advertisement for sex for money? A: Because the supervisors told us.”).

²⁰¹ Padilla Dep. Tr. 17:14-16.

²⁰² *Id.* at 17:22-23.

A: [M]y responsibility was to make the ads okay to run live on the site, because having to get rid of the ad altogether was bad for business. And so you would want to, you know, make it — take out any of the bad stuff in the ad so that it could still run....

Q: When you say that you viewed your job responsibility to be to take out the bad stuff in ads, you're referring to what we discussed earlier with regard to images that suggested that the ad was advertising money for sex or content that suggested the ad was for an advertisement for money for sex, correct?

A: That is exactly correct.²⁰³

Padilla further testified that moderators even edited live ads that were reported for “Inappropriate Content” by users. According to Padilla, if moderators saw “an ad that had inappropriate content that suggested sex for money or images that suggested sex for money,” they would remove the offending language and repost the ad.²⁰⁴

Padilla testified that it was “common knowledge” that removing sex-for-money language before posting does not change the illegal nature of the advertised transaction:

A: [I]t would be pretty much common knowledge that it's still going to run. So a person is still going to ... do what they wanted to do, regardless.

Q: And do you agree with me if you removed language from an ad that blatantly sells—or says that “I'm willing to have sex with you for money,” and then you post the remainder, you know as the person who edited the ad, that the ad is someone who is trying to sell sex for money, correct?

A: Yes.²⁰⁵

When asked whether his “job as a moderator for Backpage.com was to basically sanitize ads for prostitution, to remove terms or images that suggested the ads were advertisements for sex for money,” Adam Padilla agreed: “Yeah.”²⁰⁶

²⁰³ *Id.* at 48:3-16.

²⁰⁴ *Id.* at 84:12-85:8.

²⁰⁵ *Id.* at 72:13-23.

²⁰⁶ *Id.* at 80:2-6.

Current Backpage moderator Backpage Employee B provided testimony that substantially tracks the testimony of Adam Padilla and Backpage Employee A. In an October 18, 2016 deposition, Backpage Employee B testified that, for a limited period from 2010 through 2012, Backpage moderators were instructed to edit out indicia of illegality.²⁰⁷ Backpage Employee B further stated that she deleted “Banned terms” from ads before their publication.²⁰⁸ A long list of words referring to prostitution and youth comprised Backpage’s “banned terms” list from 2010 through 2012.²⁰⁹ Backpage Employee B further explained that, beyond the banned terms list, moderators used their judgment to delete other terms that in “context” “show[] any sort of prostitution.”²¹⁰ “[I]f there’s, you know, money signs, stuff like that, I would delete it,” she explained, and then the ad would post.²¹¹ She testified that even a phrase as literal and explicit as “sex for money” “would be deleted” by moderators before posting the ad,²¹² elaborating that “[a]s long as [the terms in an ad were] not anything underage, if it had anything of illegal activity, we could remove it.”²¹³ Backpage Employee B repeatedly stated that she entirely deleted ads that she believed were for an underage person,²¹⁴ but she also stated that she would not know if a word had been removed by the Strip Term From Ad filter before it reached her screen.²¹⁵

Later in her deposition, Backpage Employee B sought to “clarify” her testimony on several points. Specifically, she stated that while she edited out words suggestive of prostitution, her practice was to remove an entire ad “[i]f anything [in the ad] was like blatantly, like, ‘I’m going to have sex for money’ or ‘I am a prostitute, I am going to have sex with [sic] money.’”²¹⁶ She stated that this was her personal approach to moderation but she could not speak for other moderators.²¹⁷

²⁰⁷ Backpage Employee B Dep. Tr. 49:20-50:4; 59:12-60:14.

²⁰⁸ *Id.* at 47:7-48:13.

²⁰⁹ *See* App. 0000795-97 (“quickie,” “happy ending,” “full service”); App. 000125; App. 000196; App. 000138; App. 000157; App. 000177; App. 000261-62; App. 000323-26; App. 000359-67; App. 000368-70.

²¹⁰ Backpage Employee B Dep. Tr. 105:22-106:1. Backpage Employee B further testified that Backpage deleted “any sort of terms of illegal activity” from ads prior to posting. *Id.* at 60:8-15.

²¹¹ *Id.* at 105:21-106:19.

²¹² *Id.* at 76:13-21.

²¹³ *Id.* at 70:11-17. Regarding underage terms, Backpage Employee B testified that she was unfamiliar with the Strip Term From Ad filter, which as described above stripped terms such as “lolita” and “little girl” from ads *before* moderator review. Backpage Employee B testified that upon reviewing ads, she did not know what words had been stripped. *Id.* at 65:13-17.

²¹⁴ *See, e.g., id.* at 51:16-17.

²¹⁵ *Id.* at 83:9-19.

²¹⁶ *Id.* at 109:24-111:5.

²¹⁷ *See id.* at 111:17-25.

Documents and testimony conflict regarding when moderators stopped their editing of evidence of illegality. The record suggests that Backpage *has* ended the most egregious manual editing of its ads, but it is unclear when this policy change occurred. For example, Backpage Employee A told the Subcommittee that editing out words suggestive of illegality continued through approximately November 2014.²¹⁸ In contrast, Backpage Employee B testified that she “believ[ed]” manual editing of ads ended sometime in 2012, but she was “not positive.”²¹⁹ Documents suggest that most manual editing by rank-and-file moderators ended by late 2012. On April 5, 2012, for example, Padilla instructed moderators to stop editing and start failing ads that contain certain banned terms—120 of the most egregious words indicating sex for money or child exploitation.²²⁰ Manual editing appears to have been further curtailed by fall of 2012. An October 13, 2012 email from one moderator to another suggests that Backpage had ended manual editing “except in the case of a bad link or picture,”²²¹ and that is broadly consistent with the absence of discussion of manual editing in documents from 2013 through the present. Without testimony from Backpage executives, however, it is impossible to state with certainty when or if (and to what extent) manual editing ended.

D. Backpage Coached Its Users On How To Post “Clean” Ads for Illegal Transactions.

While Backpage claims its filters and moderation policies actively prohibit and combat illegal content, the company guided its users on how to easily circumvent those measures and post “clean” ads. In a 2012 email, Ferrer complained to Padilla that a user was not properly informed which term in his ad prompted its rejection: “[The website] did not give the user a message. So, [the offending term] results in the user getting an error message *with no help*. I would like to verify all ban messages have errors that say, ‘Sorry this term ‘xxxxxxx’ is a banned term.’”²²²

At Ferrer’s instruction, when a user attempted to post ads with even the most egregious banned words, the user would receive an error message identifying the problematic word choice. For example, in 2012, a user advertising sex with a “teen” would get the error message: “Sorry, ‘teen’ is a banned term.”²²³ Through simply

²¹⁸ Correspondence with Backpage Employee A (Nov. 16, 2016).

²¹⁹ Backpage Employee B Dep. Tr. 136:2-13.

²²⁰ App. 000312.

²²¹ App. 000371.

²²² App. 000328 (emphasis added).

²²³ App. 000801 (Forbidden Term List attachment and accompanying email of the same date).

redrafting the ad, the user would be permitted to post a sanitized offer. Documents from as recently as 2014 confirm the continued use of these same error messages.²²⁴

Backpage employed a similarly helpful error message in its “age verification” process for adult ads. In October 2011, Ferrer directed DesertNet to create an error message when a user supplied an age under 18. He stated that, “An error could pop up on the page: ‘Oops! Sorry, the ad poster must be over 18 years of age.’”²²⁵ With a quick adjustment to the poster’s putative age, the ad would post.²²⁶

Backpage executives recognized that their filter would alert users to the use of a banned word and alter their future word choice, thereby resulting in a clean ad. In 2012, for example, Ferrer stated, “Many of these banned terms [e.g. first time, pure, innocent, school girl, etc.] are stripped out or banned so users can just modify their postings.”²²⁷

Backpage also worked directly with users whose ads were rejected or whose text was deleted. As early as 2007, users contacted Ferrer himself regarding content removal. In a November 6, 2007 email with the subject line “Your ads on backpage.com,” Ferrer explained to a user that the site’s terms of use prohibited “any illegal service exchanging sexual favors for money.”²²⁸ He wrote, “Could you please clean up the language of your ads before our abuse team removes the postings?”²²⁹ Likewise, in June 2009, Ferrer instructed a user that she should stop posting “sex act pics” to avoid having her ads removed.²³⁰

This direct contact with users—much like the automatic filtering process—was also successful in helping users post “clean” content despite the illegality of the underlying transactions. According to a December 2010 email written from “sales@backpage.com” to Ferrer, roughly “75% of the users we contact are converted to compliant.”²³¹

Finally, as Backpage changed its content guidelines, the company recognized that users would need time to adjust their word choice and therefore refrained from

²²⁴ App. 000397.

²²⁵ App. 000297.

²²⁶ Yiota Souras, NCMEC General Counsel, testified at the Subcommittee’s 2015 hearing that Backpage also has “more stringent rules to post an ad to sell a pet, a motorcycle, or a boat. For these ads, you are required to provide a verified phone number.” Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations (Nov. 19, 2015).

²²⁷ App. 000302.

²²⁸ App. 000004.

²²⁹ *Id.*

²³⁰ App. 000017.

²³¹ App. 000187.

removing ads or blocking users for failing to immediately comply. For example, after prohibiting users from posting rates for services lasting under one hour in 2010, Backpage stated that it would only be editing the offending text and not removing ads altogether.²³² Padilla explained to the moderators, “We have to be fair to the users and give them time to adapt.”²³³ Ferrer also agreed that “[u]sers need time to react to this change” and that the offending ads should not be removed.²³⁴ Backpage recognized that its users would need time to learn how to write ads for illegal transactions that appeared “clean.”

II. Backpage Knows That It Facilitates Prostitution and Child Sex Trafficking.

The editing and moderation practices described above make clear that Backpage knew of, and facilitated, illegal activity taking place on its website. But in addition, the Subcommittee’s investigation has revealed additional evidence showing that Backpage is acutely aware that its website facilitates prostitution and child sex trafficking.

A. Backpage Knows Its Site Facilitates Prostitution.

Information the Subcommittee has reviewed demonstrates that senior Backpage executives are aware that the site’s adult section is used extensively to advertise prostitution. On March 1, 2011, for example, Ernie Allen, NCMEC’s then-President and CEO, met with Village Voice and Backpage representatives, including James Larkin, Scott Spear, Michael Lacey, and Carl Ferrer.²³⁵ Allen’s notes summarizing this meeting, produced to the Subcommittee, reflect that when Allen asked about adult prostitution, Michael Lacey “lit into me with a vengeance.... He said that his company agreed to eliminate underage kids on their site being sold for sex.... However, he said that adult prostitution is none of my business.”²³⁶

The Subcommittee’s investigation has also revealed that lower level Backpage employees know about the site’s role in facilitating prostitution. Backpage Employee C, a former moderator, told Subcommittee staff that all employees involved in adult moderation knew that the ads they reviewed offered sex for money.²³⁷ According to her, moderators “went through the motions of

²³² App. 000138.

²³³ *Id.*

²³⁴ App. 000137.

²³⁵ See PSI-000004 (on file with the Subcommittee).

²³⁶ PSI-000005 (on file with the Subcommittee).

²³⁷ Interview with Backpage Employee C (Feb. 25, 2016).

putting lipstick on a pig, because when it came down to it, it was what the business was about”—that is, moderating ads for prostitution.²³⁸

Another former Backpage moderator, Backpage Employee A, similarly told the Subcommittee that “everyone” knew that the Backpage adult advertisements were for prostitution, adding that “[a]nyone who says [they] w[ere]n’t, that’s bullshit.”²³⁹ Backpage Employee A also explained that Backpage wanted everyone to use the term “escort,” even though the individuals placing the ads were clearly prostitutes.²⁴⁰ According to this moderator, Backpage moderators did not voice concerns about the adult ads for fear of losing their jobs.²⁴¹

Both Backpage Employee A and Backpage Employee C also told the Subcommittee that Backpage employees sometimes used prostitution services advertised on Backpage. Backpage Employee C explained that at least one of her coworkers contacted and visited prostitutes using Backpage ads and told his colleagues about the encounters.²⁴² Similarly, Backpage Employee A told Subcommittee staff that some Backpage moderators visited massage parlors that advertised on Backpage and provided sexual favors to clients.²⁴³

Although Backpage’s role in facilitating prostitution was apparent to its employees, company management reprimanded employees who memorialized this role in writing. An October 8, 2010 email exchange between Padilla and a Backpage moderator makes that point clear.²⁴⁴ The exchange concerns a moderator who had placed a note in the account of a user who had been a “long time TOU [*i.e.*, Terms of Use] violator” after concluding that she was evading content restrictions; the note apparently suggested the user was a prostitute.²⁴⁵ In response, Padilla rebuked the moderator:

Until further notice, DO NOT LEAVE NOTES IN USER ACCOUNTS.

Backpage, and you in particular, cannot determine if any user on the site in [sic] involved with prostitution. Leaving notes on our site that *imply that we’re aware of prostitution*, or in any position to define it, *is enough to lose your job over*.

²³⁸ *Id.*

²³⁹ Interview with Backpage Employee A (Feb. 27, 2016).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Interview with Backpage Employee C (Feb. 25, 2016).

²⁴³ *See* Interview with Backpage Employee A (Feb. 27, 2016).

²⁴⁴ App. 000111.

²⁴⁵ *Id.*

There was not one mention of prostitution in the power point presentation. That was a presentation designed to create a standard for what images are allowed and not allowed on the site. If you need a definition of “prostitution,” get a dictionary. Backpage and you are in no position to re-define it.

This isn’t open for discussion. If you don’t agree with what I’m saying completely, you need to find another job.²⁴⁶

In January 2013, a moderator copied similar notes into an email to a supervisor: “Could not delete ad. An escort ad suggested that they don’t want a non GFE²⁴⁷ so I am assuming they are promote [sic] prostitution.”²⁴⁸ After an apparent telephone discussion, the moderator wrote the supervisor to “apologize,” saying that she had to remove the offending picture and “didn’t want to lose the notes.”²⁴⁹ The supervisor suggested that “this one you could of [sic] just sent it to me in gtalk.”²⁵⁰ Within an hour of that exchange, another supervisor sent an email to moderators “stress[ing]” that emails “follow the protocol” of only listing the specific “key word” or “alert term” leading to deletion.²⁵¹ The supervisor instructed that moderators “[p]lease do not go into detailed explanation [sic].”²⁵² And as recently as August 2016, moderation supervisor Vaught requested that contract moderators “not use the phrase ‘promoting sex’ they should say ‘adult ad’ instead. There is a big difference.”²⁵³

Despite these admonitions, the language of adult ads (both edited and unedited) leave little doubt that the underlying transactions involve prostitution.²⁵⁴ For example, a March 2016 internal email reminded moderation supervisors that the following terms “are allowed” but were being wrongly removed: “PSE (porn star experience)[,] Porn Star[,], Full Pleasure[,], Full Satisfaction[,], Full Hour.”²⁵⁵ In

²⁴⁶ *Id.* (italicized emphasis added).

²⁴⁷ “GFE” means “girlfriend experience.” App. 000316.

²⁴⁸ App. 000377.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ App. 000379.

²⁵² *Id.*

²⁵³ App. 000431.

²⁵⁴ Some examples of ad titles that apparently were approved for posting include: “My Mouth Says I Am The Best At Qvs Special This Week, 30 Incall Safe, Clean, Private, Discrete”; “Ftish and fanay prostate massage, sensual relaxation, and more toys available”; “1 mouth therapist highly addictive”; “80 car visit come pick me up 30 minutes of ecstasy”; and “down for whatever long as u got tha cash.” App. 000424-28. In October 2015, moderators also approved an ad in which the poster explained, “His disinterest in sex just isn’t cutting it anymore so I am working a side job, if you know what I mean.” App. 000411.

²⁵⁵ App. 000419.

March 2016, Backpage also decided to begin allowing users to use a term—“GFE,” which stands for “girlfriend experience”—it had previously identified as a code word for prostitution.²⁵⁶ Another March 2016 email clarified that the term “quickie”—which Ferrer, in a 2010 email, called a “code” for a sex act²⁵⁷—“is ok to leave [live on the site] even with a price” accompanying it.²⁵⁸

B. Backpage Knows Its Site Facilitates Child Sex Trafficking

The Subcommittee’s investigation reveals that Backpage clearly understands that a substantial amount of child sex trafficking takes place on its website. Backpage itself reports cases of suspected child exploitation to the National Center for Missing and Exploited Children; in some months Backpage has transmitted hundreds of such reports to NCMEC.²⁵⁹

Backpage is also aware of its inability to detect the full extent of child exploitation occurring on the website. In 2011, for example, NCMEC engaged in a test of what it called Backpage’s “Ineffective Image Safeguarding.”²⁶⁰ NCMEC paid Backpage \$3000 to host ads for eight underage girls, including one 13-year-old girl advertised in hundreds of cities across the United States; NCMEC later claimed that the image of the 13-year-old was posted online instantly and received over 30 calls within seven minutes of going live.²⁶¹ Although Ferrer disputed NCMEC’s claim in an internal email a week later, asserting that the ad triggered a fraud alert and was removed from the site in less than two minutes, he admitted: “NCMEC posted 8 underage pics. We have not found all of them.”²⁶²

Internal correspondence also suggests Backpage believes it is better that child sex trafficking take place on its website than elsewhere. In 2011, in response to a request from the Seattle Police Chief to require photo ID whenever a user submits a photo for an ad, Padilla expressed doubt to Ferrer and Hyer that such a system would be useful—it might create a “false sense of security.”²⁶³ But he went on to add the following:

²⁵⁶ App. 000423; App. 000136.

²⁵⁷ App. 000792.

²⁵⁸ App. 000418. The record contains many other examples. *See, e.g.*, App. 000409 (supervisor instructing moderator not to remove certain terms that the moderator considered to be “plain English” for sex acts).

²⁵⁹ *See, e.g.*, App. 000769 (Backpage reported 214 ads to NCMEC in May 2011); App. 000781 (Backpage reported 508 ads to NCMEC in January 2012).

²⁶⁰ App. 000793-94.

²⁶¹ *Id.*

²⁶² App. 000794.

²⁶³ App. 000286.

And even if an age verification was a deterrent to someone hoping to post an ad on Backpage to traffic a minor, it doesn't mean they're going to stop trying to traffic a minor. It only means they won't be doing it on our site, where Backpage, NCMEC and law enforcement are in the best position to put an actual stop to the crime.²⁶⁴

The record also contains substantial evidence that, as a matter of policy, Backpage often chose to err against reporting potential child exploitation. As the Subcommittee reported in connection with its November 2015 hearing, in June 2012 Backpage instructed its outsourced third-party moderators only to delete suspected child-sex advertisements “**IF YOU REALLY VERY SURE THE PERSON IS UNDERAGE.**”²⁶⁵ In a similar email, a Backpage supervisor instructed internal moderation staff: “**Young ads do not get deleted unless they are clearly a child.**”²⁶⁶

In a similar exchange dated July 11, 2013, Vaught took issue with a moderator's decision to report an ad to NCMEC due to “inappropriate content” and the moderator's belief that the person in the ad “look[ed] young.”²⁶⁷ Vaught explained that she “probably wouldn't have reported this one.”²⁶⁸ The moderator responded that the girl or woman in the ad “looked drugged and has bruises”—obvious indications of trafficking—which led her to send the report.²⁶⁹ Vaught replied that the person in the ad did not look under 18 years old, adding that “[t]hese are the kind of reports the cops question us about. I find them all the time, it's just usually you who sends them [(to NCMEC)].”²⁷⁰ Basing reporting on the appearance of the individual advertised, alone, may result in underreporting, however; as NCMEC has noted, “it is virtually impossible to determine how old the young women in these ads are without an in-depth criminal investigation. The pimps try to make the 15 year olds look 23. And the distinction of whether the person in the ad is 17 or 18 is pretty arbitrary.”²⁷¹

Relatedly, Backpage executives also apparently hesitated to accept at face value reports from third parties that an advertised escort was a minor. For example, in April 2012, a woman complained to Backpage that individuals in a particular ad “are only 17 n [sic] 16 years of age they have been trying to recruite

²⁶⁴ *Id.*

²⁶⁵ Nov. 2015 Staff Report at 20.

²⁶⁶ App. 000319.

²⁶⁷ App. 000381.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ PSI-000005 (on file with the Subcommittee).

[sic] my 15 yr old daughter I do not like this if it continues I will take this to the news...”²⁷² Padilla told the moderator to not “worry about expediting the [complaint]. she isn’t claiming her own daughter is in the ad.”²⁷³ And in February 2010, a detective emailed Backpage to alert the company that a 17-year-old girl who tried to get Backpage to take down an advertisement *of herself* had been rebuffed: According to the detective, the girl “tried asking for [the ads] to be removed but was told they couldnt [sic] be until enough people reported her as potentially underage.”²⁷⁴

Part of Backpage’s reluctance to act on reports of underage advertisements may have stemmed from concerns about escorts submitting false or fraudulent complaints of child exploitation to interfere with the business of their competitors. In a 2009 email exchange, for example, after receiving “numerous complaints about the client posting minors,” Ferrer wrote: “I need verification like law enforcement or multiple complaints from trusted sources. It probably was a competitor trying to punish them so one anonymous email to support means we look at the pic and make a judgement [sic] call.”²⁷⁵ Ferrer went on to instruct an employee to restore the client’s ads if the individuals in the picture “don’t look like minors” and to “set one of their ads at the top today.”²⁷⁶

Backpage documents also suggest the company failed to use its evaluation and training procedures to impress the seriousness of child exploitation upon its employees. As part of its investigation, Subcommittee staff examined several performance reviews for Backpage moderators. Three of those reviews listed as “cons” that the moderator “does not report young looking escorts,” but nevertheless provided a positive overall evaluation.²⁷⁷ Two of those moderators were declared “very good moderator[s]” and told “Great Job.”²⁷⁸ The overall review of the third moderator was more critical—but only because “[h]e could use additional training on the pricing standards and user’s links”; the final summary of his performance did not mention his failure to report young escorts.²⁷⁹ Employees also received training instructions that suggested a surprising lack of urgency in response to reports of child exploitation. An internal training guide, for example, explains that Backpage will “escalate” review of an advertisement for child exploitation when “users claim their underage *immediate* family member is being exploited” and when “users claim

²⁷² App. 000318.

²⁷³ *Id.*

²⁷⁴ App. 000069.

²⁷⁵ App. 000023-24.

²⁷⁶ *Id.*

²⁷⁷ App. 000779; App. 000307-08; App. 000310.

²⁷⁸ App. 000307; App. 000310-11.

²⁷⁹ App. 000779.

they are a minor being exploited.”²⁸⁰ The guide clarifies that it will not escalate claims that a slightly less immediate minor relative is being exploited: “Neice [sic], nephew, grandchild, cousin, etc. doesn’t count.”²⁸¹

Finally, even when Backpage identifies instances of child exploitation, an internal company email suggests Backpage may artificially limit the number of ads it sends to NCMEC each month.²⁸² In an email to Vaught, Padilla wrote, “if we don’t want to blow past 500 [reports] this month, we shouldn’t be doing more than 16 a day. [W]e can’t ignore the ones that seem like trouble but if we start counting now it might help us on the ones where we’re being liberal with moderator reports.”²⁸³

III. Backpage Was Sold to its CEO Carl Ferrer Through Foreign Shell Companies.

In December 2014, the *Dallas Business Journal* reported that Backpage had been sold to a Dutch company for an undisclosed amount.²⁸⁴ The Subcommittee’s investigation reveals, however, that the company’s true beneficial owners are James Larkin, Michael Lacey, and Carl Ferrer. Acting through a series of domestic and international shell companies, Lacey and Larkin loaned Ferrer over \$600 million for the purchase. While Ferrer is now the nominal owner of Backpage, Lacey and Larkin retain near-total debt equity in the company, continue to reap Backpage profits in the form of loan repayments, and can exert control over Backpage’s operations and financial affairs pursuant to loan agreements that financed the sale and other agreements. Meanwhile, the company’s elaborate corporate structure—under which Ferrer purchased Backpage through a series of foreign entities—appears to provide no tax benefit and serves only to obscure Ferrer’s U.S.-based ownership.

A. Corporate Origins of Backpage

In 1970, James Larkin and Michael Lacey founded the *Phoenix New Times*, an alternative newsweekly, and subsequently grew the company “into the largest group of newsweeklies in the United States.”²⁸⁵ In 1991, Larkin became CEO of New Times Media, and he retained this position after the company purchased *The*

²⁸⁰ App. 000416 (emphasis added).

²⁸¹ *Id.*

²⁸² *See* App. 000309.

²⁸³ *Id.*

²⁸⁴ Korri Kezar, *Backpage.com Sold to Dutch Company for Undisclosed Amount*, DALLAS BUSINESS JOURNAL (Dec. 30, 2014), <http://www.bizjournals.com/dallas/news/2014/12/30/backpage-com-sold-to-dutch-company-for-undisclosed.html>.

²⁸⁵ App. 000725.

Village Voice weekly newspaper in 2006 and renamed itself Village Voice Media Holdings.²⁸⁶ Village Voice Media Holdings' portfolio included over a dozen newsweeklies, including *LA Weekly*, *The Village Voice*, *Denver Westward*, and *Miami New Times*.²⁸⁷

Carl Ferrer began working in the classified advertising industry in 1987 and joined Village Voice Media Holdings in 1996 as the *Dallas Observer's* director of classified advertising.²⁸⁸ In 2003, Ferrer "lobbied" Village Voice Media Holdings to diversify its print classified advertising business into an online model.²⁸⁹ The following year, Village Voice founded Backpage.com "to counter the loss of print classified advertising to Craigslist."²⁹⁰ Backpage.com was named after the classified advertisements, including those involving adult subject matter, which appeared on the "back page" of Village Voice Media print publications.²⁹¹

From its inception in 2004, Backpage.com "seeded" its content with print classified ads from Village Voice publications.²⁹² From 2004 to 2006, the site's traffic was "driven by referrals from search engines and Village Voice newspaper sites."²⁹³ According to a management presentation from 2011, the company experienced "steady growth" from 2006 to 2008, as its expansion was "driven by [a] growing city site portfolio" and the launch of "Owned and Operated city sites," referring to Backpage's various sites devoted to classified ads in a given geographical area.²⁹⁴

Beginning in 2008, Backpage experienced a period of "explosive growth" by "[o]ptimizing [its] geographic strategy" and "capitalizing on displaced Craigslist ad volume."²⁹⁵ Gross revenue increased from \$5.3 million in 2008, to \$11.7 million in 2009, and to \$29 million in 2010.²⁹⁶ Revenue continued to grow significantly in the next decade, from \$71.2 million in 2012, to \$112.7 million in 2013, to \$135 million in 2014.²⁹⁷ Due to its "highly profitable and scalable platform," Backpage's EBITDA

²⁸⁶ App. 000715.

²⁸⁷ App. 000725.

²⁸⁸ App. 000715.

²⁸⁹ App. 000659. Village Voice Media Holdings, like many other newspaper companies, entered a period of declining revenues that continues to the present. *See infra* (sale of VVMH and declining revenue).

²⁹⁰ App. 000750.

²⁹¹ App. 000725.

²⁹² App. 000715.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ App. 000727.

²⁹⁶ App. 000654.

²⁹⁷ App. 000638.

margin (a measurement of operating profitability) was an enviable 69% in 2011²⁹⁸ and a staggering 82% in 2014.²⁹⁹

Internal Backpage documents make clear that this growth was attributable to “adult” advertisements. In a 2011 internal memorandum, for example, the company stated that it “possesse[d] the most popular adult online classified site on the Internet” and that it “use[d] the Adult categories to drive traffic to other categories [of classified ads].”³⁰⁰ According to internal documents, Backpage reported that although ads in the adult section represented only 15.5% of total ad volume in 2011, the company generated 93.4% of its average weekly paid ad revenue from adult ads.³⁰¹ Backpage’s adult section dwarfed other categories on the site in the number of paid ads, with over 700,000 as of May 2011, compared to just over 3,000 for “Jobs” and 429 for “Automotive.”³⁰² Adult ads also received significantly more page views than the ads in other categories: As of May 2011, ads in the “Jobs” section had approximately 2 million page views and “Automotive” had approximately 580,000.³⁰³ By contrast, adult ads had over one *billion* page views, and no other single category had more than 16 *million* page views.³⁰⁴

As its revenue grew, Backpage changed and expanded its operations in other ways. The company’s center of operations migrated from Arizona to Dallas, reflecting a shift in control from Lacey and Larkin (who operated New Times Media and Village Voice Media Holdings from Phoenix) to Ferrer (who lived near Dallas).³⁰⁵ Backpage also established a management structure, led by Ferrer as President/CEO, that included a Chief Financial Officer, Director of Sales and Marketing, Director of Operations, and Chief Technology Officer.³⁰⁶ Meanwhile, Backpage’s employee headcount increased significantly, from 73 employees in 2011³⁰⁷ to 180 employees—120 of whom were devoted to moderation alone—in June 2015.³⁰⁸ And Backpage began operating additional commercial-advertising websites, including several—Evilempire.com, Bigcity.com, and Nakedcity.com—

²⁹⁸ App. 000654.

²⁹⁹ App. 000639.

³⁰⁰ App. 000839.

³⁰¹ App. 000664.

³⁰² App. 000719.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ App. 000740 (internal memorandum noting that the “team is mainly in Dallas but we have some moderators working from home in Phoenix”).

³⁰⁶ *Id.*

³⁰⁷ App. 000695.

³⁰⁸ Interview of Elizabeth McDougall (June 19, 2015).

whose content consisted solely of escort ads containing photos, videos, and text.³⁰⁹ Backpage also expanded into international markets: As of January 2017, Backpage had 943 location sites on 6 continents and operated in 97 countries in 17 languages.³¹⁰

B. Corporate Ownership and Valuation Prior to Sale

By 2012, Village Voice Media Holdings had changed into Medalist Holdings LLC,³¹¹ a privately-held Delaware entity owned by Lacey, Larkin, Scott Spear, John “Jed” Brunst, and two of Larkin’s children.³¹² A February 2015 Agreement and Plan of Recapitalization for Medalist stated that Larkin served as CEO of the company, and Larkin and Lacey retained 42.76% and 45.12% of Medalist shares, respectively.³¹³ Brunst, who served as CFO, owned 5.67% of the company, and Spear owned 4.09%.³¹⁴

At the time, Medalist was Backpage.com LLC’s ultimate corporate parent—five layers removed. Medalist owned Leeward Holdings LLC, which owned Camarillo Holdings LLC, which owned Dartmoor Holdings LLC, which owned IC Holdings LLC, which owned Backpage.com LLC.³¹⁵ (According to Backpage’s tax accountant, Medalist and all its subsidiaries filed a single corporate tax return.³¹⁶) In addition, Backpage.com LLC had a service agreement with another of Medalist’s ultimate subsidiaries, Website Technologies LLC, under which Website Technologies performed most of Backpage’s outward-facing operations through “[a]n arm-length business contract.”³¹⁷ Below is an organizational chart of Backpage’s corporate structure prior to its sale:³¹⁸

³⁰⁹ See Permanent Subcommittee on Investigations, *Recommendation To Enforce Subpoena Issued to the CEO of Backpage.com, LLC*, at 26-28 (November 20, 2016) (discussion of BigCity.com, EvilEmpire.com, and NakedCity.com).

³¹⁰ App. 000733; <http://www.backpage.com/>.

³¹¹ App. 000438.

³¹² *Id.*

³¹³ App. 000469.

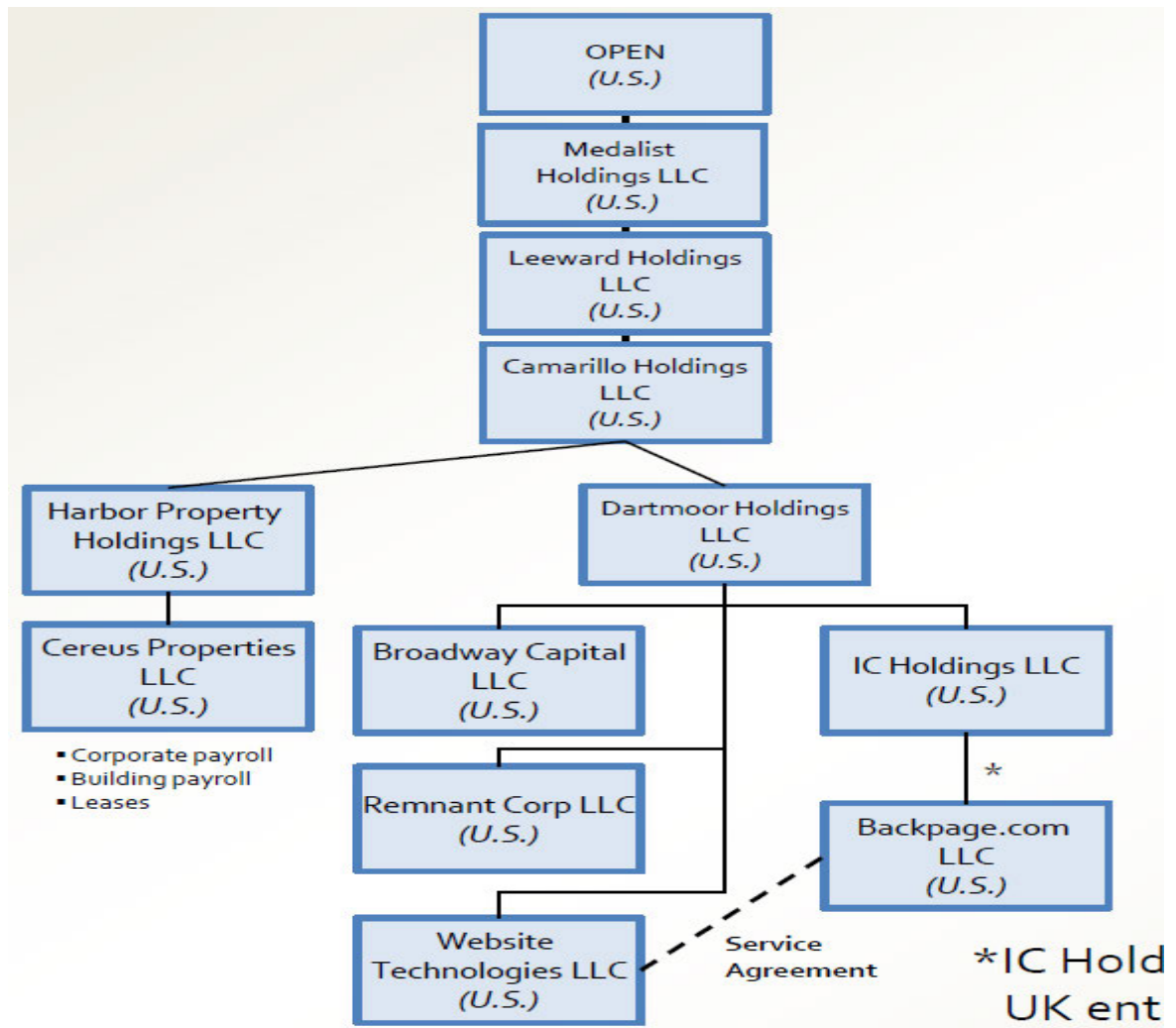
³¹⁴ *Id.*

³¹⁵ App. 000633; App. 000441.

³¹⁶ Interview with Backpage Consulting Firm (Aug. 2, 2016).

³¹⁷ App. 000441.

³¹⁸ App. 000633.



C. Lacey and Larkin Finance Ferrer’s Buyout of Backpage

On December 29, 2014, Medalist entered into a Letter of Intent for the sale of Backpage for \$600 million to a Dutch corporation.³¹⁹ Backpage has long sought to obscure the identity of the purchaser. According to a contemporaneous report in the *Dallas Business Journal*, the “purchasing company’s name was not disclosed, pending regulatory filings in the European Union.”³²⁰ And when questioned about the sale in a June 19, 2015 interview with the Subcommittee, Backpage General

³¹⁹ App. 000455-56.

³²⁰ Korri Kezar, *Backpage.com Sold to Dutch Company for Undisclosed Amount*, DALLAS BUSINESS JOURNAL (Dec. 30, 2014), <http://www.bizjournals.com/dallas/news/2014/12/30/backpage-com-sold-to-dutch-company-for-undisclosed.html>.

Counsel Elizabeth McDougall claimed she had no information about the transaction except that Backpage had been sold to a Dutch entity.³²¹ McDougall added that she did not even know the name of the new holding company.³²²

In fact, the purchaser was McDougall's boss, CEO Carl Ferrer. The December 2014 Letter of Intent listed the buyer as UGC Tech Group C.V., a Dutch company domiciled in Curacao and headed by Ferrer, and the seller as the intermediate holding company Camarillo Holdings, a Delaware-based limited liability company.³²³ The transaction was styled as a sale of the membership interests in Dartmoor Holdings, another holding company that owned Backpage.com, as well as Website Technologies.³²⁴ The signatories on the Letter of Intent were Brunst, named as "CFO" of Camarillo Holdings, and Ferrer, acting as "Director" of UGC Tech Group C.V.³²⁵ The sale was to be financed with a five-year loan at 7% interest from the seller to the buyer for the full amount of the \$600 million purchase price.³²⁶

A consulting firm engaged by Medalist concluded, however, that the sale was not an arms-length transaction.³²⁷ Rather, Lacey and Larkin loaned Ferrer, as Backpage CEO, hundreds of millions of dollars in an entirely seller-financed employee buyout.³²⁸ Under the Letter of Intent, moreover, Lacey and Larkin retained significant financial and operational control over Backpage.³²⁹ The pair, for example, are entitled to amortized loan repayments, earn-outs on future profits, and a 30% participation in any future sale of the company in excess of the purchase price.³³⁰ And they retained a security interest over all Backpage assets, all membership and stock interests in Backpage, and all Backpage bank accounts.³³¹

³²¹ Interview of Elizabeth McDougall (June 19, 2015).

³²² *Id.*

³²³ App. 000455. As explained below, the buyer of Backpage's U.S. operations was ultimately Atlantische Bedrijven C.V., another Dutch entity domiciled in Curacao. UGC Tech Group C.V. purchased only Backpage's foreign operations.

³²⁴ App. 000455.

³²⁵ App. 000465.

³²⁶ App. 000458.

³²⁷ The consulting firm noted in a subsequent valuation of Medalist: "Given that the anticipated transaction is between the Company and its existing employee (or a related party) where the Company will be providing financing for the full amount of the purchase price, it would not be classified as an arm's length transaction for purposes of the fair market value analysis." App. 000637

³²⁸ App. 000478; App. 000457.

³²⁹ App. 000461 (For example, the Letter of Intent provided that Backpage's annual business plan and annual budget is to be approved by the lenders, Lacey and Larkin, who must also consent before any changes in organizational structure take place.).

³³⁰ App. 000478.

³³¹ *Id.*

The Letter of Intent subjects Ferrer to significant restrictions on his management of the company until the loan is repaid. He cannot sell Backpage, assign the loan to another borrower, or even change accountants or outside counsel without approval from Lacey and Larkin.³³² The sale was conditional on Ferrer providing a “five-year business plan satisfactory to Seller in its sole and absolute discretion,”³³³ and Ferrer also committed to submit to Lacey and Larkin for approval an annual budget, monthly and quarterly balance sheets, and annual audited financial statements.³³⁴ Ferrer also made covenants to give Lacey and Larkin electronic access to Backpage’s bank accounts and full access to its books and records.³³⁵ In addition, Ferrer could not without approval change the company’s organizational structure, salaries, banking relationships, or place of domicile.³³⁶ Moreover, according to a loan agreement later executed in connection with the sale, Ferrer could not “engage in any line of business other than the businesses engaged in on the date” of the sale.³³⁷

Subsequent reports appear to confirm the significant level of operational control—as well as financial interest—Lacey and Larkin retain over Backpage. The declaration supporting the September 2016 California arrest warrants for Lacey, Larkin, and Ferrer, for example, states that “[w]hile FERRER currently runs the day-to-day operations for BACKPAGE, he and other high level personnel in BACKPAGE’s structure report regularly to LARKIN and LACEY.”³³⁸ According to the declaration, moreover, Lacey and Larkin also “regularly receive ‘bonuses’ from BACKPAGE’s bank accounts. For instance, in September 2014, LACEY and LARKIN each received a \$10 million bonus.”³³⁹

D. The Transaction Results in Ferrer Owning Backpage Through U.S. Entities.

The sale contemplated in the December 29, 2014 Letter of Intent was executed in a series of transactions on April 22, 2015 for a total purchase price of \$603 million.³⁴⁰ With the help of a consultant called the Corpag Group, a fiduciary

³³² App. 000461.

³³³ App. 000457.

³³⁴ App. 000461.

³³⁵ *Id.*

³³⁶ App. 000462.

³³⁷ App. 000515.

³³⁸ Declaration in Support of Arrest Warrant and Warrant, *The People of the State of California v. Carl Ferrer, Michael Lacey, and James Larkin*, Case No. 16FE019224 (Cal. Super. Ct. Sept. 26, 2016).

³³⁹ *Id.*

³⁴⁰ See App. 000550; App. 000583. The sale documents, which have been obtained by the Subcommittee from sources other than Backpage itself, included a Membership Interest Purchase

and trust company based in Curacao,³⁴¹ Ferrer actually created two entities to serve as the direct buyers of Backpage’s domestic and foreign operations, respectively: Atlantische Bedrijven C.V. (which purchased Backpage’s U.S. operations) and UGC Tech Group C.V. (which purchased its foreign operations).³⁴² Each was a Dutch limited partnership domiciled in Curacao³⁴³ and ultimately owned and controlled by Ferrer through five Delaware-based parent companies: Amstel River Holdings, Lupine Holdings, Kickapoo River Investments, CF Holdings GP, and CF Acquisitions.³⁴⁴

Atlantische Bedrijven bought Backpage’s domestic operations for \$526 million by purchasing the assets of Dartmoor Holdings LLC (one of Backpage’s layered corporate parents) from Delaware-based Vermillion Holdings LLC, which also loaned it the money for the purchase.³⁴⁵ As a consequence, Atlantische Bedrijven now owns Backpage and Website Technologies, among other entities.³⁴⁶ For the sale of Backpage’s foreign operations, the parties executed a similar series of transactions, involving slightly different corporate entities on the buyer’s side, for a purchase price of approximately \$77 million.³⁴⁷ For purposes of these transactions, the buyer and borrower was UGC Tech Group, whose sole general partner was CF Holdings GP, a Delaware-based limited liability company.³⁴⁸ Ferrer is UGC Tech Group’s Chief Executive Officer.³⁴⁹

According to a tax partner at a consulting firm engaged on Backpage-related matters, this unusual structure—involving multiple layers of holding companies, both domestic and foreign—provided no tax benefit to Backpage.³⁵⁰ In fact, all profits within this corporate structure flow up to the U.S.-based Amstel River Holdings (which is 100% owned by Ferrer) for tax purposes; all Dutch entities are ignored.³⁵¹ Brunst confirmed in an email to the consulting firm, obtained by the Subcommittee, that Atlantische Bedrijven is subject to U.S. tax on its earnings and

Agreement, a Membership Interest Assignment Agreement (transferring the interest in the loan to yet another corporate entity controlled by Lacey and Larkin), a Loan Agreement, a Promissory Note, an Earn-Out Agreement, and an Employment and Non-compete Agreement executed by Ferrer.

³⁴¹ Email from the Corpag Group to the Permanent Subcommittee on Investigations (Apr. 12, 2016).

³⁴² See App. 000550; App. 000582.

³⁴³ App. 000455.

³⁴⁴ See Corporate Disclosure Statement, *Jane Doe No. 1 v. Backpage.com, LLC*, No. 14-13870-RGS, ECF No. 18 (D. Mass. Nov. 25, 2014); see also App. 000485.

³⁴⁵ App. 000550.

³⁴⁶ App. 000551.

³⁴⁷ App. 000582.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Interview with Backpage Consulting Firm (Aug. 2, 2016).

³⁵¹ *Id.*

serves merely as a “pass through” entity “owned indirectly by Carl Ferrer, a U.S. citizen.”³⁵²

³⁵² App. 000580.