

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE PRIMARY GROUP INC., a
corporation f/k/a A Primary Systems
Group Inc. also d/b/a Primary
Solutions and PSA Investigations,
GAIL DANIELS, individually and as
an officer of THE PRIMARY
GROUP INC.,

Defendants.

CIVIL ACTION FILE

NO. 15-CV-1645-MHC

ORDER

Presently pending before this Court are: (1) the FTC's Motion for Permission to File Motion for Entry of Default Judgment [Doc. 73]; (2) the FTC's Motion for Summary Judgment Against All Defendants¹ [Doc. 78]; (3) Defendant Gail Daniels' Motion for the Court to Correct its Ruling [Doc. 92]; and (4) the FTC's Motion to Extend the Preliminary Injunction [Doc. 110].

¹ On March 11, 2016, this Court granted the FTC's Motion to Dismiss June Fleming as a party defendant in this action [Doc. 108]. Accordingly, the FTC's Motion for Summary Judgment as to Ms. Fleming is **DENIED AS MOOT**.

I. PROCEDURAL HISTORY OF THIS LITIGATION

A. The Complaint and Temporary Restraining Orders

This litigation began on May 11, 2015, when Plaintiff Federal Trade Commission (“the FTC”) filed a Complaint under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692l (“FDCPA”), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for alleged deceptive acts or practices committed by Defendants as they engaged in the process of purported debt collection from consumers. Compl. for Permanent Inj. and Other Equitable Relief [Doc. 1]. The FTC also filed an *ex parte* Motion for Temporary Restraining Order (“TRO”) to, *inter alia*, temporarily freeze Defendants’ assets, enjoin Defendants from transferring, concealing, or disposing of assets, and require Defendants to make an accounting of their present financial condition.² Pl.’s *Ex Parte* Mot. for TRO [Doc. 5].

On May 11, 2015, this Court issued an *ex parte* TRO pursuant to Rule 65(b) of the Federal Rules of Civil Procedure upon the request of the FTC which, *inter alia*, froze a number of Defendants’ assets, provided the FTC with immediate

² An Order sealing the FTC’s filings was issued by the Court on May 11, 2015, and the seal entered by that Order dissolved on May 15, 2015. Order [Doc. 6].

access to Defendants' business premises, and granted expedited discovery to determine the existence and location of assets and documents pertinent to the allegations of the Complaint. TRO Order [Doc. 8]. The TRO also ordered Defendants to appear at a hearing on June 4, 2015, at 10:00 A.M. to show cause why the Court should not issue a preliminary injunction against Defendants until a final ruling is issued on the Complaint. *Id.* at 27. A stipulation modifying the terms of the TRO was filed on May 21, 2015, which lifted the freeze on two accounts belonging to then-Defendant June Fleming ("Ms. Fleming"). Stipulation Modifying TRO [Doc. 15]. Under the provisions of Rule 65(b), the original TRO expired on May 26, 2015.³ *See* Order of May 27, 2015 [Doc. 21]. Pursuant to the FTC's motion, the TRO was reinstated on May 28, 2015, with an expiration date of June 8, 2015. Order of May 28, 2015 [Doc. 24].

Prior to the June 4, 2015, hearing on the FTC's motion for a preliminary injunction, Defendant Gail Daniels ("Ms. Daniels"), acting *pro se*, began a series of filings in both this Court and in the Eleventh Circuit Court of Appeals in an effort to thwart the FTC and this Court from proceeding with the litigation. Ms. Daniels filed two "emergency motions" which sought to unfreeze funds from an

³ The TRO erroneously stated that the original *ex parte* TRO's duration would extend beyond the fourteen-day time limit imposed by Rule 65(b), and the Order entered May 27, 2015, corrected that error.

account in her husband's name and to complain about the FTC's conduct, a motion to dissolve the TRO, and a motion to recuse the undersigned. [Docs. 16-17, 23, 25.] Those motions were denied [Docs. 24, 31], but the Court advised Ms. Daniels that, to the extent she had evidence that she lacked sufficient funds to pay living expenses, she should bring that evidence with her to the preliminary hearing. Order of May 28, 2015 [Doc. 24] at 5-6.

Prior to the hearing, Ms. Daniels contacted the Court's staff to report that she may not attend. Because of Ms. Daniel's *pro se* status, and the Court's concern that she may not have been apprised of the adverse consequences of her failure to attend, the Court entered an Order on June 3, 2015, explaining the potential negative ramifications of her absence. Order of June 3, 2015 [Doc. 30].

Included in that Order was the following:

Because Defendant Daniels is proceeding *pro se*, this Court is taking the additional step of informing her of the potential negative consequences of her failing to appear at the hearing. In addition, Defendant Daniels should be aware that, under Local Rule 83.E(2)(b)(I) of this Court, a corporation cannot be represented in court by a corporate officer who is not an attorney licensed to practice law in Georgia and that failure to comply with this rule could result in a default being entered against the corporate party. So, while the individual Defendants have the right to represent themselves at the hearing in this matter, they cannot represent the interests of the corporate Defendant.

This Court again urges Defendant Daniels to appear at the hearing on the preliminary injunction and to retain counsel to represent

Defendants in the future. Defendant Daniels is instructed to refrain from continuing to attempt to contact this Court or its staff *ex parte*. If counsel or a *pro se* litigant seeks court action, the appropriate procedure is to put the request in writing, in the form of a motion, file the motion with the Clerk's office, and serve the opposing party or party's counsel. See FED. R. CIV. P. 5; LR 5.1 and 5.2, NDGa.; see also LR 7.4, NDGa. ("Communications to judges seeking a ruling or order, including an extension of time, shall be by motion and not by letter. A letter seeking such action ordinarily will not be treated as a motion. Counsel [and *pro se* litigants] shall not provide the Court with copies of correspondence among themselves relating to matters in dispute."). If Defendant Daniels desires a telephone conference with the Court, she must first contact counsel for Plaintiff and both sides together must be on the call before this Court will be able to address any immediate issue.

Order of June 3, 2015, at 3-4.

B. The Preliminary Injunction and Default of The Primary Group

On June 4, 2015, the Court conducted a full-day hearing on the FTC's motion for a preliminary injunction, at which the FTC was present and represented by counsel and Ms. Daniels appeared *pro se*. Tr. of Prelim. Inj. Hr'g [Doc. 47]. Both sides presented evidence by way of testimony and exhibits. Ms. Daniels was again advised by the Court that she could not represent The Primary Group, Inc., the corporate defendant, that she should retain counsel in this matter, and that the Court would unfreeze assets to enable her to retain an attorney. By Order dated June 5, 2015, this Court approved a stipulation that unfroze funds from a number

of accounts in order to enable Ms. Daniels and Ms. Fleming to have sufficient living expenses. Stipulation Modifying TRO [Doc. 35].

On June 8, 2015, the Court entered an Order granting the FTC's motion for preliminary injunction. Order [Doc. 36]. The Preliminary Injunction enjoined Defendants from engaging in conduct that violates the FDCPA, froze certain assets of Defendants (with the exception of the assets released from the prior freeze order), ordered the retention of certain of Defendants' assets and records by financial institutions and third parties, and ordered that Defendants prepare and deliver to the FTC completed financial statements and a full accounting of assets held outside the United States. Id. The Order was set to expire in ninety days unless extended by order of the Court upon consent of the parties or for good cause. Id.

On June 8, 2015, Ms. Daniels filed her Answer to the Complaint along with a Counterclaim against the FTC [Doc. 39]. Ms. Fleming filed her Answer to the Complaint the same day [Doc. 41].⁴ Another stipulation unfreezing certain assets

⁴ Ms. Fleming is the mother of Ms. Daniels. Although listed as a corporate officer for The Primary Group, it became evident to this Court that Ms. Fleming had no active role in the company or in any of the allegations that formed the basis for the complaint or the preliminary injunction in this case. Frankly, it appears that Ms. Daniels has used her mother's name in corporate documents without her mother's direct knowledge and certainly with no intention that her mother participate in the debt collection business. As the Court eventually relieved Ms. Fleming of any

of Ms. Daniels and Ms. Fleming was approved by the Court on June 19, 2015. Stipulation Modifying Permanent Inj. [Doc. 43]. Pursuant to the FTC's Motion for Clerk's Entry of Default as to The Primary Group [Doc. 55], the Clerk entered default as to The Primary Group on August 7, 2015.

C. Ms. Daniels' Refusal to Participate in the Discovery Process and Her Claims of Medical Incapacity

For the majority of this litigation, the FTC had difficulty engaging in discovery due to Ms. Daniels' continuing efforts to avoid responding to discovery requests. On June 24, 2015, the FTC filed its proposed Preliminary Report and Discovery Plan after numerous efforts to seek Ms. Daniels' input into the plan were unsuccessful. Pl.'s Prelim. Report & Disc. Plan [Doc. 45]. By Order dated August 19, 2015, the Court gave Ms. Daniels until August 31, 2015, to either file her own version of the report or to show cause in writing why the FTC's version should not be adopted. Order [Doc. 56]. Ms. Daniels failed to respond,⁵ so the Court adopted the FTC's report on September 2, 2015. Order [Doc. 59].

obligation to participate in discovery in this case and the FTC has now dismissed her as a party defendant, the Court will not refer to Ms. Fleming throughout the remainder of this Order.

⁵ On August 19, 2015, Ms. Daniels sent an email to the Court's courtroom deputy, with copies to the FTC's counsel, indicating that she was suffering from medical problems and would "get a note and forward it to the judge next week." She did not follow up within the promised time period with a note from a medical

On July 16, 2015, the FTC served three sets of interrogatories and one set of a request for production of documents on Ms. Daniels. Pl.'s Mot. to Compel [Doc. 63], Attach. A, ¶ 12. Ms. Daniels failed to respond to the discovery requests, citing health issues. Id. ¶¶ 12-14. On August 25, 2015, the FTC attempted to arrange the deposition of Ms. Daniels at a convenient time and offered to work around any of her health problems (*e.g.*, to conduct short deposition sessions or to work around any treatment schedules). Id. ¶ 15. Ms. Daniels responded that she was hospitalized. Id. On September 4, 2015, the FTC served a notice of deposition on Ms. Daniels, who indicated that she would not attend and would not discuss any alternative time when she could appear. Id. ¶ 16. The Court entered an order extending the preliminary injunction for an additional ninety days, in large measure due to the FTC's difficulty in obtaining discovery responses from Ms. Daniels.⁶ Order [Doc. 60].

professional indicating that she was physically unable to respond to this Court's Orders. Sept. 2, 2015, Order [Doc. 59] at 2, n.1.

⁶ At the same time that she was failing to comply with the FTC's discovery requests due to alleged health issues, Ms. Daniels actively pursued at least two appeals from this Court's orders: (1) a petition for a writ of mandamus to the Eleventh Circuit Court of Appeals asking that this Court's TRO and order denying recusal be voided, which petition was denied on July 27, 2015. Order, In re: Gail Daniels, 11th Cir. No. 15-12395 [Doc. 51]; (2) a Notice of Appeal of the Court's preliminary injunction order to the United States Court of Appeals for the Federal Circuit filed July 13, 2015 [Docs. 48, 49], which was transferred to the Eleventh

On September 18, 2015, the FTC filed a motion to compel disclosures, discovery responses, and deposition testimony [Doc. 63], and this Court ordered Ms. Daniels to respond by September 30, 2015, or the motion would be deemed unopposed. Order [Doc. 64]. It was further ordered that, if Ms. Daniels asserted that she had an existing medical condition that presented an inability to appear for a deposition or respond to the FTC's discovery requests, she should file a motion to stay these requirements with supporting documentation from a Georgia licensed medical professional that provides a medical basis for the inability to presently comply with any of these mandates, and to specify a date upon which responses could be made.⁷ Id.

On October 2, 2015, Ms. Daniels filed a "Motion of Notice of Medical Excuse for Gail Daniels and June Fleming and to Dismiss the Complaint Against June Fleming and a Demand for Jury Trial in All and Every Possible Hearing, and to Address Some New Concerns." [Doc. 65.] In her motion, Ms. Daniels

Circuit Court of Appeals, Order, FTC v. The Primary Group, Fed. Cir. No. 15-1820 [Docs. 52, 58], and subsequently dismissed by the Eleventh Circuit Court of Appeals for want of prosecution, Order, FTC v. The Primary Group, 11th Cir. No. 15-13947-F [Doc. 67].

⁷ Ms. Daniels was further advised that sending unsubstantiated emails to the Court's staff alleging that she had a medical condition that preclude her from complying with this Court's orders or the FTC's discovery requests were not sufficient to justify continued non-compliance.

contended that she suffers from several conditions, including iritis (which affects her vision), breathing problems, myasthenia gravis, and post-traumatic stress disorder, and that she suffered a recent stroke. Id. at 1-2. She attached a letter from Dr. Ajit Nemi, the Medical Director of Lotus Vision, who stated that Ms. Daniels is under his care for iritis in both eyes and the photophobia due to her eye condition “may cause difficulty reading or typing for extended period of time.” Id. at 4. However, Dr. Nemi provided no certification that Ms. Daniels could not attend a deposition or have someone assist her in responding to the FTC’s written discovery requests.

Ms. Daniels also attached a portion of her discharge information from a hospitalization at North Fulton Hospital from August 23-27, 2015, for a “transient ischemic attack,” which the discharge instructions defines as a “warning stroke” that does not cause lasting damage to the brain. Id. at 5-11. She was discharged to her home with a diagnosis of acute iritis in both eyes, including the following instructions: “resume home activity,” “avoid heavy, strenuous physical activity for 24 hours after [the catheter] is removed,” “avoid sports or activities that can cause injury or bleeding,” “stay active,” and “try to get at least 30 minutes of activity on most or all days.” Id. at 5-6, 10. Once again, there was nothing in any of the submissions that precluded Ms. Daniels from sitting in a deposition or from

responding to the FTC's written discovery requests with assistance from a reader and/or typist in the event her vision impedes her ability to read the requests and/or type responses to those requests. By Order dated October 2, 2015, the Court extended the discovery period until November 15, 2015; ordered Ms. Daniels to cooperate with the FTC and to appear for her deposition (and to allow her to bring an individual to assist with the reading of any documents); ordered Ms. Daniels to respond to the FTC's written discovery requests (providing her with alternatives for responding in the event she was unable to type her responses); and denied the motion for medical excuse. Order [Doc. 66].

On October 13-14, 2015, Ms. Daniels filed a second and third motion to provide medical excuse, a motion to dismiss the complaint, and a motion "ask[ing] the judge to review the transcripts to correct verbal damaging (sic) inaccuracies and to review the law and to read the FTC guidelines and cases with the FTC and collection agencies (sic) concerning adding and enjoining a personal defendant to a corporate lawsuit and what element of proof that must exist." [Docs. 69 & 70.] Once again, Ms. Daniels failed to provide a certification of a Georgia medical practitioner that she was unable to participate in this litigation. The only letters submitted were: (1) from Dr. Mary Cox, who stated that Ms. Daniels has been under her care, has chronic shortness of breath, and becomes frequently winded

after long monologues [Doc. 70 at 10]; and (2) from a nurse practitioner named Pamela Tinsley, who opined that Ms. Fleming could not “attend” a civil case at this time due to “multiple medical issues.” Id. at 7, 10. Ms. Daniels’ motions were denied on November 3, 2015. Order of Nov. 3, 2015 [Doc. 74].

On October 14, 2015, Ms. Daniels sat for her deposition. Dep. of Gail F. Daniels taken Oct. 14, 2015 [Docs. 79-1 & 79-2]. However, again in contravention of the Court’s prior order, Ms. Daniels made no effort to comply with the FTC’s written discovery requests and did not serve any discovery requests upon the FTC within the discovery period. The Court again extended the preliminary injunction for another ninety days. Order of Nov. 24, 2015 [Doc. 77]. That same day, the FTC filed its motion for summary judgment. Pl.’s Mot. for Summ. J. [Doc. 78].

On November 30, 2016, Ms. Daniels filed a number of motions: (1) “Motion to Temporarily Stay All Legal Action Against Defendants Because of Medical Problems the Defendant Not (sic) to Respond Properly” [Doc. 84] (“Motion to Stay”); (2) “Motion to Compel the Plaintiffs [sic] Attorney to Answer and the Court to Answer the Following Questions Concerning this Case Against All the Defendant (sic), So They Will Know How to Defend Themselves” [Doc. 81] (“Motion to Compel”); (3) “Motion to Set Emergency Hearing to Impeach the

Plaintiff's Expert Witness and Plaintiff's Attorney for Lying to the Court and for the Court to Look at the Surveillance (sic) with the Plaintiffs to Immediately Dismiss (sic) this Case, to Escalate These Finding to Plaintiffs (sic) Superiors" [Doc. 82] ("Motion for Hearing"); and (4) "Motion to Stay to Allow Defendant to Properly Defend Themselves By Allowing Them Time to Do Depositions if Necessary on Michael Goldstein Two Bank Employees and 2 of the Plaintiffs (sic) Witnesses. (sic) When Medically Able Before Any Judgement (sic) or Conclusion" [Doc. 83] ("Second Motion to Stay").

On December 16, 2015, pursuant to Ms. Daniels' email request, this Court conducted a conference call with Ms. Daniels and counsel for the FTC. Notwithstanding this Court's continual efforts, it was apparent both prior to the call and during the call that Ms. Daniels was unable or unwilling to understand that she has continually violated the orders of this Court. Although this Court does not doubt that Ms. Daniels suffers from one or more medical conditions and has had prior hospitalizations, aside from her own protestations of her inability to participate in this case, she failed to produce any independent medical evidence that her condition prevents her from responding to the FTC's motions or this Court's Orders.

Nevertheless, in continued recognition of Ms. Daniels' *pro se* status, and to provide her with one last opportunity to come into compliance with the Court's Orders, by Order dated December 18, 2015, the Court granted her an extension of time until January 22, 2016, to either: (1) file her response to the FTC's motion for summary judgment, or (2) file an opinion from an independent Georgia licensed medical professional that indicates that she suffers from a specific medical condition that prevents her from personally or with assistance responding to the FTC's motion for summary judgment and, if such is the case, state the date by when Daniels can prepare and file such a response. Order of Dec. 18, 2015 [Doc. 89]. Ms. Daniels was also instructed that a failure to respond to the FTC's Statement of Material Facts as to Which There is No Genuine Issue to be Tried [Doc. 78-2], supported either by specific citations to evidence, by a valid objection to the admissibility of the alleged fact, or by pointing out that the FTC's citation does not support the alleged fact, will result in such facts deemed as admitted by this Court in accordance with its local rules. Id.; see also LR 56.1(B)(2)(a)(2), NDGa. The Court denied the remainder of her motions and extended the preliminary injunction for an additional ninety days. Orders of Dec. 18, 2015 and Jan. 13, 2016 [Docs. 89, 91].

On January 14, 2016, Ms. Daniels filed another notice of appeal to the Eleventh Circuit Court of Appeals from the Court's most recent orders. Notice of Appeal [Doc. 93]. That appeal was later dismissed for want of prosecution. 11th Cir. No. 16-10194-F, Order of Apr. 4, 2016 [Doc. 109].

On January 25, 2016, Ms. Daniels filed a "Medical Document for Gail Daniels and June Fleming with statement from family members to the judge." [Doc. 100.] For the most part, the "statement" constituted a criticism of the actions of the FTC⁸ and attached three summary statements by physicians as to Defendant Daniels' medical condition:

- (1) A letter from Dr. C. Dirk Williams, stating that Ms. Daniels suffers from "ongoing medical problems including Parkinson's disease and Major Depression and PTSD" and "is unable to perform any tasks regarding representation [sic] in court and answering any questions." [Doc. 100 at 4.]

⁸ The "statement" also contained the following: "I am begging you to examine your behavior as a judge and recuse yourself [sic] it is more clear that you are against my family and doing everything unlawfull [sic] to fulfill the FTC screw up. It is your job to be impartial" [Doc. 100 at 2 (capitalization omitted).] The Court denied this second motion to recuse on February 12, 2016 [Doc. 104].

- (2) A letter from Dr. R. Ahmad stating that Ms. Daniels has been a patient since 2007, is seeking treatment for Major Depression and PTSD, has “Parkinsonism” disease and other health issues, and has problems with short-term memory loss. [Doc. 100 at 5.]
- (3) A letter from Dr. Ajit Nemi stating that Ms. Daniels was last seen on November 24, 2015, has iritis in both eyes, has had decreased visual acuity, and is under the care of a retina specialist. [Doc. 100 at 6.]

None of these physicians indicated that Ms. Daniels suffers from “a specific medical condition that prevents her from personally or with assistance responding to the FTC’s motion for summary judgment” and, if such was the case, “the date by when Daniels can prepare and file such a response.” See Order of Dec. 18, 2015 [Doc. 89], at 10. Indeed, notwithstanding her purported medical conditions, Ms. Daniels continued to file appeals from this Court’s orders.

On February 5, 2016, the Court received an email request from Ms. Daniels requesting an “immediate court hearing or phone conversation” relating to her medical situation. On February 5, 2016, this Court entered an Order scheduling a hearing for February 22, 2016, directing Ms. Daniels to personally appear at the hearing, and permitting her to appear with a relative or family member to assist her. Order of Feb. 5, 2016 [Doc. 103].

On February 22, 2016, this Court conducted a hearing. Contrary to the Court's Order, Ms. Daniels did not personally appear at the hearing. The Court called Ms. Daniels so that she could appear by telephone conference. Ms. Daniels simultaneously requested more time in which to respond to the allegations against her in this case and relief from filing any response due to her various medical conditions.

In one last effort to provide Ms. Daniels with the opportunity to file any documents or other evidence she may have to contest the FTC's motion for summary judgment and the allegations made against her in this case, this Court, by Order dated February 22, 2016, granted Ms. Daniels an additional fourteen (14) days, to and through March 7, 2016, to file any additional evidence she may have in support of her contentions. Order of Feb. 22, 2016 [Doc. 106]. It has been nearly three months since that order, and Ms. Daniels has failed to file anything further in support of her claims.

II. THE FTC'S MOTION FOR PERMISSION TO FILE A MOTION FOR ENTRY OF DEFAULT JUDGMENT [Doc. 73]

Prior to filing its motion for summary judgment as to all Defendants, the FTC sought permission to file a motion for default judgment against Defendant The Primary Group [Doc. 73]. A corporation may not appear in Court unless it is represented by counsel. Rowland v. Cal. Men's Colony, Unit II Men's Advisory

Council, 506 U.S. 194, 202 (1993); see also LR 81.3E(2)(I), NDGa. (“If the client is a corporation, that [] corporation may only be represented in court by an attorney”). This Court on more than one occasion advised Ms. Daniels that she could not represent The Primary Group herself and that the Court would release funds to enable her to retain an attorney for the corporation. Ms. Daniels has not followed up on the Court’s direction and has not retained separate counsel for The Primary Group.

However, given that the Court is granting the FTC’s Motion for Summary Judgment as against The Primary Group and entering a Permanent Injunction against all remaining Defendants, and the fact that The Primary Group is in essence the alter ego of Ms. Daniels in operating a debt collection business, the Court **DENIES AS MOOT** the FTC’s motion for permission to file a motion for entry of default judgment as to The Primary Group. See, e.g., Solis v. Supporting Hands, LLC, No. CIV 11-0406 JB/KBM, 2013 WL 1897822, at *11 (D.N.M. Apr. 30, 2013) (denying as moot motion for default judgment when Court simultaneously grants summary judgment against the same party); Waco Scaffolding-Columbus v. Kastr Painting, Inc., No. 2:11-cv-116, 2012 WL 1229937, at *4 (S.D. Ohio Apr. 12, 2012) (same); Burrell v. James River Bus

Lines, Inc., No. Civ.A. 3:01CV652, 2002 WL 32366011, at *4 (E.D. Va. May 29, 2002) (same).

III. MS. DANIELS' MOTION FOR THE COURT TO CORRECT ITS RULING [Doc. 92]

Ms. Daniels' motion filed January 14, 2016 [Doc. 92], seeks two remedies. First, she again attempts to have this litigation stayed because of her eye condition and prior hospitalizations, attaching the same physician summary letters that were attached in previous unsuccessful motions. As stated above, Ms. Daniels has provided no medical records accompanied by physician certification that establish that she cannot participate in this case by responding to court orders or to the FTC's multiple requests for discovery. Second, Ms. Daniels requests that the discovery period be reinstated so that she can serve discovery requests upon FTC investigator Michael Goldstein. Again, Ms. Daniels has been given numerous opportunities to both serve discovery upon the FTC in this case as well as present documents supporting her own legal position.

Consequently, Ms. Daniels' Motion for the Court to Correct Its Ruling [Doc. 92] is **DENIED**.

IV. THE FTC'S MOTION FOR SUMMARY JUDGMENT [Doc. 78]

A. FINDINGS OF FACT⁹

1. Defendant Gail Daniels started the business of The Primary Group under the trade name Primary Solutions in 2012 based on a friend's recommendation, although she had no prior experience with the business of debt collection. Tr. of Prelim. Inj. Hr'g held June 4, 2015 [Doc. 47] ("Tr.") at 141.
2. On April 25, 2012, Ms. Daniels filed Articles of Incorporation for A Primary Systems Group Inc., which entity was incorporated that day by the Georgia Secretary of State. Decl. of Michael B. Goldstein, attached as FTC Ex. PX01 [Doc. 5-3] ("Goldstein Decl.") ¶ 15 & Attach. A. On August 17,

⁹ At the outset, the Court notes that, as this case is before the Court on the FTC's Motion for Summary Judgment, the Court views the evidence presented by the parties in the light most favorable to the non-moving party and has drawn all justifiable inferences in favor of the non-moving party. Matshushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Sunbeam TV Corp. v. Nielsen Media Research, Inc., 711 F.3d 1264, 1270 (11th Cir. 2013). In addition, the Court has excluded assertions of facts by either party that are immaterial or presented as arguments or legal conclusions or any fact not supported by citation to evidence (including page or paragraph number). LR 56.1B(1), NDGa. Further, the Court accepts as admitted those facts in the moving party's statement of material facts that have not been specifically controverted with citation to the relevant portions of the record by the opposing party. LR 56.1B(2), NDGa. As stated above, despite the Court having provided her with numerous opportunities to present evidence in this case and to refute the FTC's Statement of Material Facts as to Which There is No Genuine Issue to Be Tried [Doc. 78-2], Ms. Daniels has declined those opportunities.

2012, Ms. Daniels filed a trade name application with Cobb County, Georgia, to use the name “Primary Solutions Investigations.” Id.

3. Ms. Daniels has held herself out as the Chief Financial Officer and Secretary of The Primary Group and as Manager, Vice President, and Treasurer of The Primary Group in applying for corporate bank accounts. Goldstein Decl. ¶¶ 16-19, 46 & Attachs. B, D, E, R, & V. Ms. Daniels considers herself as the President of the company. Dep. of Gail Daniels taken Oct. 14, 2015 [Docs. 79-1 & 79-2] (“Daniels Dep.”) at 10-11.
4. Ms. Daniels controlled the finances of The Primary Group and had signatory authority over its bank accounts. Goldstein Decl. ¶¶ 34-62 & Attachs. O-P, R, V, & Y-Z.
5. Ms. Daniels drew approximately \$6,500 per month from the revenues of The Primary Group as compensation for her personal expenses. Tr. 143, 165-66.
6. During the operation of The Primary Group, Ms. Daniels was directly involved in the financial aspects of the business and in monitoring the actions of her employees, including retaining the power to hire and fire them, and was kept apprised of problems with the business. Id. at 144-48, 165.

7. Because Ms. Daniels refused to cooperate in responding to discovery requests from the FTC, the precise total amount of revenues received by The Primary Group is unknown.
8. During the period from May 28, 2014, until May 14, 2015, it is known that The Primary Group's payment processor received revenues of \$586,000 for processing 8,053 payments. Id. at 177-78; Third Supp. Decl. of Michael B. Goldstein [Doc. 78-11] ("Third Goldstein Decl.") at ¶ 5.
9. Ms. Daniels testified that the revenues of The Primary Group since 2012 totaled \$980,000. Daniels Dep. at 72-73; see also Financial Statement of Corporate Def., attached as Ex. 7 to the FTC's Mot. for Summ. J. [Doc. 78-7] at 3.
10. Although Ms. Daniels also testified that her company refunded monies to consumers "all the time," she could not recall how much money was in fact refunded to consumers. Daniels Dep. at 71. There is no evidence in the record of any consumer refunds.
11. Ms. Daniels hired a manager with prior debt collection experience who in turn employed Cecil Presley ("Mr. Presley") and others as collection agents. Tr. 65, 142-43.

12. According to Mr. Presley, The Primary Group originally had an office on Johnson Ferry Road where there were about four collection agents, but many of the employees were terminated because of “poor debt collection practices.” Id. at 68, 128-29.
13. The business then moved to an office on Elkins Road and Mr. Presley was promoted to Assistant Manager in charge of the initial and rebuttal scripts that were used by approximately eight collection agents who made contact with consumers. Id. at 129.
14. Because business was expanding, a move was made to offices at Cambridge Square, where there were at least seventeen actual collection agents. Tr. 129. Once again, some agents were terminated for conducting improper collection practices. Id.
15. The Primary Group’s collection agents accessed scripts on an electronic computer screen for use in conversations with consumers; the hard copies of those scripts were found at the company’s business premises. Id. at 52, 54; Second Supp. Decl. of Michael B. Goldstein [Doc. 28-2] (“Second Goldstein Decl.”) ¶¶ 9-23.
16. In none of the electronic or hard copy scripts used by collection agents in discussions with consumers, nor in any of the digital recordings captured on

The Primary Group's computers, was there an identification of The Primary Group as a debt collector attempting to collect a debt. Second Goldstein Decl. ¶¶ 10-17, 28, 31-35 & Attachs. B, C, & R-T; Decl. of Gailyn Portelance [Doc. 78-8] ¶ 9.

17. The Court has reviewed fourteen declarations of consumers who were contacted by representatives of The Primary Group either by telephone or through text messages during the period from May 2013 through April 2015. Consumer Decls. [Docs. 5-31 through 5-44]. The Court has also reviewed the hard copy and electronic scripts and instructions to collection agents found at The Primary Group business premises. Second Goldstein Decl., Attachs. B-F, L-P, R-X. These declarations and scripts reveal the following false and deceptive practices committed by agents of The Primary Group:
 - a. Misrepresentations that the representatives of The Primary Group are agents, inspectors, investigators, or process servers.
 - b. Misrepresentations that the consumer has committed a crime or that a pending legal action existed against the consumer.
 - c. Misrepresentations concerning the consequences of failing to pay a debt, including the threat of civil litigation or criminal prosecution.

- d. Threats made to consumers to have their wages garnished or their property seized.
 - e. Improper contacts with consumers' family members or third parties such as employers or co-workers in an effort to pressure the consumers to pay off their alleged debt.
 - f. Failure to make required disclosures under the FDCPA, including failure to disclose that the caller or texter is attempting to collect a debt (or that any information obtained will be used for that purpose), and failure to provide the debtor with the proper validation notice to verify the existence of the debt.
18. Representatives of The Primary Group were also trained in how to rebut inquiries and questions from consumers; the scripts used to do so also contained misrepresentations about pending judicial proceedings. Second Goldstein Decl., Attachs. B, K, S, T, W.
19. There is no evidence in the record that The Primary Group ever filed a lawsuit against a consumer or had a reasonable basis for claiming that any creditor would file such a lawsuit.

20. The Primary Group also never provided consumers with written information concerning the procedure by which consumers could dispute purported debts.
21. During her testimony at the preliminary injunction hearing, Ms. Daniels contended that the majority of the consumers who completed sworn declarations were lying about the contacts received from The Primary Group; however, Ms. Daniels has presented no evidence to contradict those declarations during the course of this litigation.¹⁰
22. None of the consumers who submitted declarations indicated that they actually sent funds to The Primary Group for the payment of any debt.

B. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). A party seeking summary judgment has the burden of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material

¹⁰ Mere assertions that the declarations supporting the FTC’s motion are not credible cannot defeat the FTC’s motion for summary judgment. FTC v. Instant Resp. Systems, LLC, No. 13 Civ. 00976(ILG)(VMS), 2015 WL 1650914, at *6 (E.D.N.Y. Apr. 14, 2015) (citation omitted).

fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions,” and cannot be made by the district court in considering whether to grant summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1282 (11th Cir. 1999).

If a movant meets its burden, the party opposing summary judgment must present evidence that shows there is a genuine issue of material fact or that the movant is not entitled to judgment as a matter of law. Celotex, 477 U.S. at 324. In determining whether a genuine issue of material fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, “and all justifiable inferences are to be drawn” in favor of that opposing party. Anderson, 477 U.S. at 255; see also Herzog v. Castle Rock Entm’t, 193 F.3d 1241, 1246 (11th Cir. 1999). A fact is “material” only if it can affect the outcome of the lawsuit under the governing legal principles. Anderson, 477 U.S. at 248. A factual dispute is “genuine” if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Id.

“If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial.” Herzog, 193 F.3d at 1246. But, “[w]here

the record taken as a whole could not lead a rational trier of fact to find for the non-moving party,” summary judgment for the moving party is proper.

Matsushita, 475 U.S. at 587.

C. DISCUSSION

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1). To establish Section 5 liability, the FTC must prove that “(1) there was a representation; (2) the representation was likely to mislead customers acting reasonably under the circumstances, and (3) the representation was material.” FTC v. Tashman, 318 F.3d 1273, 1277 (11th Cir. 2003).

Because the primary purpose of § 5 is to protect the consumer public rather than to punish the wrongdoer, the intent to deceive the consumer is not an element of a § 5 violation. . . . Instead, the “cardinal factor” in determining whether an act or practice is deceptive under § 5 is the likely effect the promoter’s handiwork will have on the mind of the ordinary consumer.

FTC v. Freecom Commc’ns, Inc., 401 F.3d 1192, 1202 (10th Cir. 2005) (citations omitted).

In enacting the FDCPA, Congress sought “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against

debt collection abuses.” 15 U.S.C. § 1692(e). The FDCPA applies to “debt collectors,” defined as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). Accordingly, the FDCPA prohibits debt collectors from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. In determining whether a debt collector’s communication is deceptive, the Eleventh Circuit has adopted the “least-sophisticated consumer” standard “to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.” LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1194 (11th Cir. 2010) (citations omitted). A violation of the FDCPA is deemed an unfair or deceptive act or practice in violation of the FTC Act. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573, 577 (2010).

Section 13(b) of the FTC Act provides that “in proper cases the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction” for violations of “any provision of law enforced by the FTC.” 15 U.S.C. § 53(b). Even if a defendant’s unlawful conduct has ceased, a permanent injunction may

still be appropriate “if the defendant’s past conduct indicates that there is a reasonable likelihood of further violations in the future.” FTC v. USA Fin., LLC, 415 F. App’x 970, 975 (11th Cir. 2011) (citation omitted). The injunction must bear a reasonable relation to the defendant’s unlawful practices. Litton Indus., Inc. v. FTC, 676 F.2d 364, 370 (9th Cir. 1982).

After a careful review of the record evidence in this case, it is clear that the overwhelming and uncontroverted evidence establishes as a matter of law that Ms. Daniels, through The Primary Group, made material false and deceptive representations likely to mislead consumers about the nature of the debts allegedly owed to creditors and failed to provide consumers with disclosures required under the FDCPA. The evidence supporting the entry of a permanent injunction to bar The Primary Group and Ms. Daniels from participating in the debt collection business is undisputed.

The monetary penalty requested by the FTC in this case is \$980,000, the total amount of revenues Ms. Daniels has admitted The Primary Group received in this case. The Court notes that the FTC has presented no evidence of even one consumer who actually remitted funds to The Primary Group for the payment of monies owed to creditors and whose debts were not reduced or paid off. The Court expressed its concern about the absence of evidence on the monetary penalty issue

at the preliminary injunction hearing to the FTC's counsel, who responded that the FTC was still developing evidence in this regard. See Tr. 25-27. Indeed, none of the fourteen consumers who submitted declarations in this case complain of any personal funds sent to The Primary Group and the Court assumes that, if there were additional complaints filed against Defendants by consumers who lost money through funds transmitted to Defendants, the FTC would have brought this to the Court's attention.

Nevertheless, this Court is well aware that the FTC's efforts at further exploration of the monetary harm imposed upon consumers based upon Ms. Daniels' unlawful conduct were thwarted in substantial part by her unwillingness to participate in discovery. Moreover, given Ms. Daniels' representation in her deposition that all of the corporate documents have "disappeared," Daniels Dep. at 115, the failure to award monetary relief as a part of any permanent injunction would permit Defendants to profit from their own misconduct and their failure to retain or identify relevant documents. In addition, given Ms. Daniels' failure to comply with the preliminary injunction order for a full accounting of assets outside the United States, it is unknown whether all accounts that may have revenue from the business of The Primary Group have been located.

The Eleventh Circuit has held that the district court's range of equitable powers under section 13(b) of the FTC Act includes the power to grant both restitution and disgorgement of ill-gotten gains. FTC v. Gem Merchandising Corp., 87 F.3d 466, 469 (11th Cir. 1996). The purpose of disgorgement is "not to compensate the victims of fraud, but to deprive the wrongdoer of his ill-gotten gain." Id. at 470 (quoting SEC v. Blatt, 583 F.2d 1325, 1335 (5th Cir. 1978)).¹¹ "We conclude that section 13(b) permits a district court to order a defendant to disgorge illegally obtained funds. To hold otherwise would permit a defendant to retain such funds simply by keeping poor records. Such a result would permit unjust enrichment and undermine the deterrence function of section 13(b)." Id.

In FTC v. Washington Data Resources, Inc., 704 F.3d 1323 (11th Cir. 2013), the Eleventh Circuit adopted the holding of a number of other circuits that have found a damages award based upon net revenue rather than profit proper under section 13(b).

We agree with our sister circuits and today hold that the amount of net revenue (gross receipts minus refunds) rather than the amount of profit (net revenue minus expenses) is the correct measure of unjust gains under section 13(b). We echo the Second Circuit's sentiment

¹¹ In Bonner v. City of Pritchard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

that “defendants in a disgorgement action are not entitled to deduct costs associated with committing their illegal acts.”

Id. at 1327 (quoting FTC v. Bronson Partners, LLC, 654 F.3d 359, 375 (2d Cir. 2011)); see also FTC v. Direct Mkg. Concepts, Inc., 624 F.3d 1, 14-16 (1st Cir. 2010); FTC v. Kuykendall, 371 F.3d 745, 765-67 (10th Cir. 2004); FTC v. Febre, 128 F.2d 530, 536 (7th Cir. 1997). Therefore, based upon precedent in this Circuit, the Court will order judgment against Defendants in the amount of \$980,000, which represents the amount of known revenue received by Defendants as a result of their illegal activity.

Accordingly, this Court **GRANTS** the FTC’s Motion for Summary Judgment [Doc. 78] and enters a Permanent Injunction against Defendants The Primary Group and Gail Daniels as set forth in detail below.¹²

V. CONCLUSION

Accordingly, for the above reasons, **IT IS HEREBY ORDERED** as follows:

- (1) The FTC’s Motion for Leave to File Motion for Default Judgment [Doc. 73] is **DENIED AS MOOT**;

¹² Given the entry of a Permanent Injunction, the FTC’s Fourth Motion to Extend the Preliminary Injunction [Doc. 110] is **DENIED AS MOOT**.

- (2) Ms. Daniels' Motion for the Court to Correct Its Ruling [Doc. 92] is **DENIED**;
- (3) The FTC's Fourth Motion to Extend the Preliminary Injunction [Doc. 110] is **DENIED AS MOOT**;
- (4) The FTC's Motion for Summary Judgment [Doc. 78] as to former Defendant June Fleming is **DENIED AS MOOT**; and
- (5) The FTC's Motion for Summary Judgment [Doc. 78] as to Defendants The Primary Group and Gail Daniels is **GRANTED**, and the following **PERMANENT INJUNCTION AND EQUITABLE RELIEF** shall issue forthwith against Defendants The Primary Group and Gail Daniels:

PERMANENT INJUNCTION AND EQUITABLE RELIEF

I. DEFINITIONS

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

- A. **"Consumer"** means any person.
- B. **"Debt"** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

- C. **“Debt collection activities”** means any activities of a debt collector to collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due, another.
- D. **“Debt collector”** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.
- E. **“Defendants”** means The Primary Group and Gail Daniels, individually, collectively, or in combination.
- F. **“Financial-related product or service”** means any product, service, plan, or program represented, expressly or by implication, to:

1. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, an extension of consumer credit;
2. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit repair services; or
3. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any secured or unsecured debt relief product or service.

G. **“FTC”** means the Federal Trade Commission.

H. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

I. **“Secured or unsecured debt relief product or service”** means, with respect to any mortgage, loan, debt, or obligation between a person and one or more secured or unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication, to:

1. negotiate, settle, or in any way alter the terms of payment or other terms of the mortgage, loan, debt, or obligation, including but not limited to, a reduction in the amount of interest, principal balance, monthly payments, or fees owed by a person to a secured or unsecured creditor or debt collector;
2. stop, prevent, or postpone any mortgage or deed of foreclosure sale for a person's dwelling, any other sale or other collateral, or otherwise save a person's dwelling or other collateral from foreclosure or repossession;
3. obtain any forbearance or modification in the timing of payments from any secured or unsecured holder of any mortgage, loan, debt, or obligation;
4. negotiate, obtain, or arrange any extension of the period of time within which the person may
 - (a) cure his or her default on the mortgage, loan, debt, or obligation;
 - (b) reinstate his or her mortgage, loan, debt, or obligation;
 - (c) redeem a dwelling or other collateral; or

- (d) exercise any right to reinstate the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;
- 5. obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other collateral; or
- 6. negotiate, obtain, or arrange
 - (a) a short sale of a dwelling or other collateral;
 - (b) a deed-in-lieu of foreclosure; or
 - (c) any other disposition of a mortgage, loan, debt, or obligation other than a sale to a third party that is not the secured or unsecured loan holder.

The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a person's application for the mortgage, loan, debt, or obligation.

II. ORDER

A. BAN ON DEBT COLLECTION ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, whether acting directly or through any other person, are permanently restrained and enjoined from:

- 1. Participating in debt collection activities; and

2. Advertising, marketing, promoting, offering for sale, selling, or buying, any consumer or commercial debt or any consumer information relating to a debt.

B. PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial-related product or service, are hereby permanently restrained and enjoined from:

1. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:
 - a. The terms or rates that are available for any loan or other extension of credit;
 - b. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;

- c. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;
- d. Any aspect of any secured or unsecured debt relief product of service, including but not limited to, the amount of savings a consumer will receive from purchasing, using, or enrolling in such secured or unsecured debt relief product or service; the amount of time before which a consumer will receive settlement of the consumer's debts; or the reduction or cessation of collection calls;
- e. That a consumer will receive legal representation;
- f. That a particular outcome or result from a financial-related product or service is guaranteed, assured, highly likely or probable, or very likely or probable;
- g. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited

to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer; and

- h. Any other fact material to consumers concerning any financial-related product or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature or central characteristics; and

- 2. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

C. PROHIBITION AGAINST DISCLOSING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from directly or indirectly:

1. Failing to provide sufficient consumer information to enable the FTC to administer efficiently consumer redress. If a representative of the FTC requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the FTC, within fourteen (14) days.
2. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) of any person that any Defendant obtained prior to entry of this Order in connection with the collection of attempted collection of any debt.
3. Failing to destroy such consumer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the FTC.
4. **Provided, however,** that consumer information need not be disposed of, and may be disclosed, to the extent requested by a

government agency or required by a law, regulation, or court order.

D. MONETARY RELIEF

IT IS FURTHER ORDERED that Judgment in the amount of nine hundred eighty thousand dollars (\$980,000.00) is entered in favor of the FTC and against Defendants The Primary Group and Gail Daniels, jointly and severally, as equitable monetary relief, with post-judgment interest at the legal rate.

The monetary judgment set forth in Section II.D is enforceable against any asset owned jointly by, on behalf of, for the benefit of, or in trust by or for, any Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and or community property.

All money paid pursuant to this Order shall be deposited into a fund administered by the FTC or its agents to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of any redress fund. If a representative of the FTC decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the FTC may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for

such equitable relief shall be deposited to the United States Treasury as equitable disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies under this Section and shall have no right to contest the manner of distribution chosen by the FTC.

The judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.

Defendants are hereby required, unless they have done so already, to furnish the FTC with their taxpayer identifying number and/or social security number, which may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

E. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order as follows:

1. Defendant Gail Daniels, within seven (7) days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
2. For ten (10) years after entry of this Order, Defendant Gail Daniels, for any business that such Defendant, individually or collectively with any other person, is the majority owner or

controls directly or indirectly, and Defendant The Primary Group, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

3. From each individual or entity to which Defendants deliver a copy of this Order, Defendants must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

F. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the FTC:

1. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

- a. Defendant The Primary Group must: (i) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the FTC may use to communicate with such Defendant; (ii) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (iii) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of such Defendant; (iv) describe in detail whether and how such Defendant is in compliance with each Section of this Order; and (v) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC;
- b. Additionally, Defendant Gail Daniels must: (i) identify all telephone numbers and physical, postal, email, and Internet addresses, including all residences, which representatives of the FTC may use to communicate with

such Defendant; (ii) identify all business activities, including any business for which Defendant Daniels performs services whether as an employee or otherwise and any entity in which Defendant Daniels has any ownership interest; and describe in detail Defendant Daniels' involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

2. For ten (10) years after entry of this Order, Defendant Daniels must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
 - a. Defendant Daniels must report any change in (i) any designated point of contact; or (2) the structure of The Primary Group or any entity that Defendant Daniels has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of

the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

- b. Additionally, Defendant Daniels must report any change in: (i) name, including aliases or fictitious name, or residence address; or (ii) title or role in any business activity, including any business for which Defendant Daniels performs services whether as an employee or otherwise and any entity in which Defendant Daniels has any ownership interest, and identify its name, physical address, and Internet address, if any.
3. Each Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against it within fourteen (14) days of its filing.
4. Any submission to the FTC required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed

on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

5. Unless otherwise directed by a FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. The Primary Group, et al.*, FTC Matter No. X150046.

G. RECORDKEEPING

IT IS FURTHER ORDERED that each Defendant must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years. Specifically, Defendant The Primary Group and Defendant Gail Daniels, for any business in which Defendant Daniels is a majority owner or directly or indirectly controls, must maintain the following records:

1. Accounting records showing the revenues from all products or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

2. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
3. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
4. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
5. A copy of each unique advertisement or other marketing material.

H. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

1. Within fourteen (14) days of receipt of a written request from a representative of the FTC, Defendant Daniels must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for

depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

2. For matters concerning this Order, the FTC is authorized to communicate directly with Defendant Daniels. Defendant Daniels must permit representatives of the FTC to interview any employee or other person affiliated with The Primary Group or Defendant Daniels who has agreed to such an interview. The person interviewed may have counsel present.
3. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

4. Upon written request from a representative of the FTC, any consumer reporting agency must furnish consumer reports concerning Defendant Daniels, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

I. ENTRY OF JUDGMENT

IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to Defendants The Primary Group and Gail Daniels.

J. RETENTION OF JURISDICTION AND CLOSURE OF CASE FILE

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

The Clerk is **DIRECTED** to close the file of this case.

IT IS SO ORDERED this 19th day of May, 2016.



MARK H. COHEN
United States District Judge