

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

MAY 11 2015

JAMES M. HATTEN, Clerk
By:  Deputy Clerk

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.,
and

JUNE FLEMING, individually and as an
officer of THE PRIMARY GROUP INC,

Defendants.

Case No. **15-CV-1645**

**COMPLAINT FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collections Practices Act, ("FDCPA"), 15 U.S.C. § 1692l, to obtain temporary,

preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. §§ 1692-1692p, in connection with Defendants' deceptive, abusive, and unfair debt collection practices.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), and 1692l.

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

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the FDCPA, 15 U.S.C. §§ 1692-1692p, which prohibits deceptive, abusive, and unfair debt collection practices and imposes duties upon debt collectors.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the FDCPA and to secure such

equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 1692l(a).

DEFENDANTS

6. Defendants are third-party debt collectors that collect consumer debt nationwide through the use of false, deceptive, and misleading tactics.

7. Defendant **The Primary Group Inc.**, formerly known as A Primary Systems Group Inc., and also doing business as Primary Solutions and PSA Investigations, is a Georgia corporation with its principal place of business at 11285 Elkins Road, Roswell, Georgia 30076. At times material to this Complaint, Primary Group has transacted business in this district and throughout the United States.

8. Defendant **Gail Daniels** is the CFO of Primary Group. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Primary Group, including the acts and practices set forth in this Complaint.

Defendant Gail Daniels resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant **June Fleming** is the CEO of Primary Group. At times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Primary Group, including the acts and practices set forth in this Complaint.

Defendant Gail Daniels resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendants are “debt collectors” as defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

COMMERCE

11. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

12. Defendants’ debt collection business is founded on the practice of falsely convincing consumers that a debt collection lawsuit has been, or will soon be, filed against them and will result in dire consequences unless the consumer pays Defendants promptly.

13. Since at least April 2012, Defendants have engaged in deceptive and unfair practices in almost every facet of their dealings with consumers and third parties. From their offices in Georgia, Defendants attempt to collect debts from consumers across the United States via telephone calls and text messages to mobile phones. In their collection efforts, Defendants have regularly: (1) falsely represented or implied that Defendants' collectors are agents, inspectors, or legal staff; (2) falsely threatened consumers with legal action or arrest; (3) failed to provide required disclosures in text messages and calls directed to consumers; (4) unlawfully communicated with third parties, including consumers' family members, co-workers and employers; and (5) failed to provide statutorily-required validation notices to consumers.

False Claims About Defendants' Identity

14. Defendants' representatives frequently use titles that falsely represent or imply that they are legal staff. For example, in numerous instances, when contacting persons to collect debts, Defendants have identified themselves as "Agent," "Inspector," or "process server."

15. In fact, Defendants are third-party debt collectors and not agents, inspectors, or process servers.

Threats Regarding Phony Lawsuits

16. Defendants also have threatened to take legal action against consumers—including litigation and arrest—without the intention or ability to take that action. In numerous instances, Defendants have represented to consumers that: (1) there is a pending legal action against them that can be stopped only by immediate payment on a debt; (2) the company already has initiated a lawsuit or will initiate a lawsuit unless the consumer makes an immediate payment on a debt; or (3) Defendants will obtain a default judgment against consumers. Defendants frequently include phony case numbers in their communications with consumers to indicate they have initiated legal process regarding a purported debt.

17. In numerous instances, Defendants have sent a series of text messages to consumers' mobile phones, with individualized information in the bracketed fields, in an attempt to collect debts. The text messages fail to disclose that Primary Solutions is a debt collector trying to collect a debt, and typically state:

I'm a process server w/ Primary Solutions, appointed to serve you papers for case [eight digit number]. Would you like delivery at [consumer's home address]?

Please have proper ID and witness present who can provide a signature. If there's no reply I'll have to bring the document to your employer.

It*s already been verified this is a contact number for [consumer's name]. So I just need an appropriate time and place to serve the papers when ready.

Check your call records, a recorded call from [phone number], verified this as the correct number. Indicating otherwise will be proof of deceptive practices. CB#: [phone number].

18. In numerous instances, consumers were unable to find any legal case against them in the jurisdictions where they reside or work after researching the case numbers that purportedly pertained to these consumers in text messages from Defendants. Moreover, these consumers were never, in fact, sued or served with legal process for the purported underlying debts.

Defendants' Unlawful Contacts with Third Parties

19. In numerous instances, Defendants have communicated with consumers' co-workers, friends, family members, or other third parties to apply pressure and create a sense of urgency so the consumer or third party will pay them. For example, in many telephone calls to third parties, Defendants represent that they are agents, inspectors, or process servers, that the putative debtor owes a debt, and that Defendants will commence legal action against the putative debtor if the debt is not paid.

20. In some instances the third party has asked Defendants to cease all future contact. But in many of those instances, Defendants have refused to honor that request, continuing to contact the third party even though Defendants either do not need location information for the putative debtor or have no reason to believe the

third party has it or will give it to them. For example, in addition to repeatedly calling and texting one consumer with threats of a felony arrest if she did not pay, Defendants telephoned several of the consumer's co-workers claiming the consumer owed a debt and that it was a criminal matter.

**Defendants' Failure to Provide Statutorily-Required
Notices and Disclosures to Consumers**

21. Defendants also have often failed to provide consumers with statutorily-required disclosures, including disclosures identifying themselves as debt collectors and stating that the communication is an attempt to collect a debt and that any information provided by the consumer will be used for that purpose.

22. In numerous instances, Defendants also have failed to provide consumers with a statutorily-required notice, either orally in their initial communication with the consumer or in writing within five days of the initial communication, setting forth the following: (1) the amount of the alleged debt; (2) the name of the creditor to whom the purported debt is owed; (3) a statement that unless the consumer disputes the debt, the debt will be assumed valid; (4) a statement that if the consumer disputes all or part of the debt in writing within 30 days, the debt collector will obtain verification of the debt and mail it to the consumer; and (5) a statement that, upon the consumer's written request within the 30-day period, the debt collector will

provide the name and address of the original creditor, if different from the current creditor.

23. In numerous instances, Defendants have refused to provide consumers with this notice despite consumers' repeated requests, and as a result, consumers have been unable to exercise their rights under the FDCPA to make a cease-and-desist request or dispute formally the validity of a purported debt.

VIOLATIONS OF THE FTC ACT

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

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

COUNT I

False or Misleading Representations That Defendants Are Inspectors, Agents, or Legal Staff Who Will Sue or Arrest Consumers

26. In numerous instances, in connection with the collection of purported consumer debts, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. Defendants' debt collectors are agents, inspectors, or process servers;
- b. Defendants have filed, or intend to file, a lawsuit against the consumer for failure to pay a purported debt; or

c. Defendants will have the consumer arrested or imprisoned.

27. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 26 of this Complaint:

a. Defendants' debt collectors are not agents, inspectors, or process servers;

b. Defendants have not filed, and do not intend to file, a lawsuit against the consumer; and

c. Defendants have not had the consumer arrested or imprisoned.

28. Therefore, Defendants' representations as set forth in Paragraph 26 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FDCPA

29. In 1977, Congress passed the FDCPA, 15 U.S.C. §§ 1692 et seq., which became effective on March 20, 1978, and has been in force since that date. Under Section 814 of the FDCPA, 15 U.S.C. § 1692i, a violation of the FDCPA is deemed an unfair or deceptive act or practice in violation of the FTC Act. Further, the FTC is authorized to use all of its functions and powers under the FTC Act to enforce compliance with the FDCPA.

30. Throughout this Complaint, the term “consumer,” as defined in Section 803(3) of the FDCPA, 15 U.S.C. § 1692a(3), means “any natural person obligated or allegedly obligated to pay any debt.”

31. Throughout this Complaint, the term “debt,” as defined in Section 803(5) of the FDCPA, 15 U.S.C. § 1692a(5), means “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

32. Throughout this Complaint, the term “location information,” as defined in Section 803(7) of the FDCPA, 15 U.S.C. § 1692a(7), means “a consumer’s place of abode and his telephone number at such place, or his place of employment.”

COUNT II

Unlawful Communications with Third Parties

33. In numerous instances, in connection with the collection of debts, Defendants have communicated with persons other than the consumer, the consumer’s attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, the attorney of the debt collector, the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator for purposes other than acquiring location information about the consumer, without having obtained

directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b).

COUNT III
False, Deceptive, or Misleading Representations to Consumers

34. In numerous instances, in connection with the collection of debts, Defendants, directly or indirectly, expressly or by implication, have used false, deceptive, or misleading representations or means, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- a. Falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person, when such action is not lawful or when Defendants have no intention of taking such action, in violation of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);
- b. Threatening to take action that Defendants do not intend to take, such as filing a lawsuit, in violation of Section 807(5) of the FDCPA, 15 U.S.C. § 1692e(5);
- c. Using a false representation or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10),

including false representations that the debt collector is a process server; or

- d. Failing to disclose in the initial communication with a consumer that Defendants are debt collectors attempting to collect a debt and that any information obtained will be used for that purpose, or failing to disclose in subsequent communications that the communication is from a debt collector, in violation of Section 807(11) of the FDCPA, 15 U.S.C. § 1692e(11).

COUNT IV
Failure to Provide Statutorily-Required Notice

35. In numerous instances, in connection with the collection of debts, Defendants have failed to provide consumers, either in the initial communication or a written notice sent within five days after the initial communication, with information about the debt and the right to dispute the debt, in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

CONSUMER INJURY

36. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the FDCPA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), empower this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the FDCPA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the FDCPA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Dated: May 11, 2015

K. MICHELLE GRAJALES
COLIN HECTOR
Federal Trade Commission
600 Pennsylvania Ave., NW
Mail Stop CC-10232
Washington, DC 20580
T: 202-326-3172 (Grajales)
T: 202-326-3376 (Hector)
F: 202-326-3768
Email: mgrajales@ftc.gov; chector@ftc.gov

ROBIN L. ROCK
(Georgia Bar No. 629532)
Federal Trade Commission
Southeast Region
225 Peachtree Street, N.E., Ste 1500
Atlanta, GA 30303
T: 404-656-1368
F: 404-656-1379
Email: rock@ftc.gov

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION