

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NHS SYSTEMS, INC., et al.,

Defendants.

CIVIL ACTION

No. 08-2215

**MEMORANDUM**

On October 1, 2010, the FTC filed a Motion for Summary Judgment Against the NHS/PHS Defendants. Docket No. 136. That motion seeks judgment against ten entity defendants and seven individual defendants. To date, no defendant has responded to the motion, nor has any attorney entered an appearance on behalf of any of these defendants.<sup>1</sup>

Because of the complexity of the issues involved and the amount of monetary damages sought (\$6,879,162.22), the court finds it appropriate to send notice to these pro se defendants outlining (1) the requirements of the summary judgment rule and (2) the consequences of not responding. *See Ruotolo v. IRS*, 28 F.3d 6, 8 (2d Cir. 1994) (per curiam) (“[T]he failure of a district court to apprise pro se litigants of the consequences of failing to respond to a motion for summary judgment is ordinarily grounds for reversal.”); *Timms v. Frank*, 953 F.2d 281, 286 (7th Cir. 1992) (“[A]ll pro se litigants, not just

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<sup>1</sup> Cove & Associates, P.A. had previously represented defendants NHS Systems, Inc.; Physician Health Service, LLC; Harry Bell, Jr.; and Donna Newman. On July 23, 2009, this court granted Cove & Associates’ motion to withdraw as counsel. Docket No. 101.

prisoners, are entitled to notice of the consequences of failing to respond to a summary judgment motion. . . . [T]his notice should include both the text of Rule 56(e) and a short and plain statement in ordinary English that any factual assertion in the movant's affidavits will be taken as true by the district court unless the non-movant contradicts the movant with counter-affidavits or other documentary evidence.”)<sup>2</sup>

Accordingly, a notice and order shall be transmitted to each of the NHS/PHS defendants explaining the consequences of failing to respond to a summary judgment motion.

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<sup>2</sup> The Third Circuit has not taken a position either way on the necessity of providing such notice to pro se litigants.

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**NOTICE**

1. NHS Systems, Inc.; Harry F. Bell, Jr.; Physician Health Service, LLC; Donna Newman; Plus Health Savings, Inc.; Physicians Health Systems, Inc.; Health Management, LLC; 6676529 Canada, Inc.; Nicole Bertrand; Barry Kirstein; David James Greer, aka “Dannie Boie;” PHS Enterprises, Inc.; First Step Management, Inc.; Gold Dot, Inc.; Linke Jn Paul; Tasha Jn Paul; and Nevada Business Solutions, Inc.

2. The Federal Trade Commission (FTC) has filed a motion for summary judgment by which it seeks **(1) permanent injunctive relief, and (2) judgment against you in the amount of \$6,879,162.22.** This motion was filed under Rule 56 of the Federal Rules of Civil Procedure.

3. Rule 56(e) tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact: that is, where there is no real dispute about any fact that would affect the result of this case, the party who asked for summary judgment is entitled to judgment as a matter of law,

which will end the case. The FTC has set out numerous factual assertions in connection with its motion for summary judgment. These factual assertions will be taken as true by this court unless you contradict the FTC with counter-affidavits or other evidence to show that there is a genuine issue of material fact for trial. If you do not submit your own evidence contradicting one or more of the plaintiff's material factual allegations, summary judgment, if appropriate, may be entered against you.

**4. You are advised to respond promptly—if feasible, within THIRTY DAYS of the date of this notice. It is strongly recommended that you retain a lawyer in this matter.**

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**ORDER**

**AND NOW**, this 3 day of August, 2011, for the reasons discussed in the accompanying Memorandum, it is hereby **ORDERED** that:

1. The Clerk of Court shall send to all persons and entities listed in paragraph one of the accompanying Notice: (1) a copy of that Notice, and (2) a copy of the FTC's Motion for Summary Judgment (docket no. 136).
2. In performing the transmission specified in paragraph one of this Order, the Clerk shall, in addition to using the mailing addresses on file, use the following email addresses:
  - (i) **Recipient:** Nicole Bertrand      **Email Address:** nicolebertrand2@sympatico.ca
  - (ii) **Recipient:** Barry Kirstein      **Email Address:** barry.kirstein@sympatico.ca
  - (iii) **Recipient:** David James Greer      **Email Address:** dannieboie2009@gmail.com
  - (iv) **Recipient:** Tasha Jn Paul      **Email Address:** writetasha@yahoo.com

**BY THE COURT:**  
/s/ Louis H. Pollak  
Pollak, J.