

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

(Smith), whom the FTC accused of violating the TSR and Section 5 of the FTC Act, 15 U.S.C. § 45. On November 18, the Court granted summary judgment in favor of the FTC and against UPS and Smith, (Doc. No. 208), and ordered the FTC to file motions for permanent injunctions and monetary relief in the form of a requested final judgment. The FTC did so on December 5.

II. LEGAL STANDARDS AND ANALYSIS

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), grants district courts the authority to order restitution and disgorgement for violations of the FTC Act and the TSR. *FTC v. Lalonde*, 545 F. App'x 825, 841 (11th Cir. 2013) (per curiam) (citing *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-70 (11th Cir. 1996)). “Disgorgement and restitution are measured by a defendant’s unjust enrichment,” which is the amount of “[n]et revenue (gross receipts minus refunds)” the defendants received. *Id.* (citing *FTC v. Wash. Data Res., Inc.*, 704 F.3d 1323, 1326-27 (11th Cir. 2013) (per curiam)).

The FTC seeks to obtain \$1,734,972 in equitable monetary relief from UPS, Smith, and Smith’s eponymous company, jointly and severally. This amount constitutes the undisputed net revenue of the TYS enterprise, and is based on UPS’ own records. Under Eleventh Circuit precedent, this the proper amount to be disgorged. Both UPS and Smith direct the Court’s attention to the Second Circuit’s decision in *FTC v. Verity International, Ltd.*, which holds that the amount of restitution must not exceed the amount that the actual defendants gained, even if consumers lost more because nonparty middlemen took some of the proceeds. 443 F.3d 48, 67-68 (2d Cir. 2006). The Eleventh Circuit has already distinguished *Verity International* such that it is of no moment in the instant dispute. In *FTC v. IAB Marketing Associates, LP*, the panel explained that the key issue in *Verity* “was the appropriate amount of restitution where multiple nonparty middlemen retained a significant portion of the total revenues.” 746 F.3d 1228, 1234 (11th Cir. 2014)

(emphasis added) (citing *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 68 (2d Cir. 2006)). In *IAB Marketing*, as is also the case here, the entities claiming to be “middlemen” were named parties in