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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel. THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA, Plaintiff, **ALPHONSO WADE BARNUM; ALPHONSO WADE BARNUM d/b/a XPRESHION MULTIMEDIA; LAFAYIA KAY BARNUM; WILLIE C. NANCE; KELSEY J. PATTERSON a/k/a KELSEY J. SAGERS; GREATER SOLUTIONS LIMITED LIABILITY COMPANY; TOP FAITH SOLUTIONS, LLC., TOP FAITH SOLUTIONS, LLC. d/b/a/ TFS, LLC; CITY WIDE PROMOTIONS, LLC; CITY WIDE PROMOTIONS; LLC d/b/a CW PROMOTIONS, LLC; NEW START MEDIA, LLC; NEW START MEDIA, LLC d/b/a ALUMNI SPORTS, LLC and d/b/a NEW START MARKETING,** Defendants.	Case No. **EQCE083843** **RULING ON MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on January 17, 2020, for a hearing on the plaintiff's Motion for Summary Judgment. Plaintiff, The State of Iowa ("State"), was represented by attorneys Mariclare Culver and William Pearson. Defendants, Alphonso Barnum ("Barnum"), Lafayia Kay Barnum ("L. Barnum"), and Willie C. Nance ("Nance") appeared pro se. No other defendants appeared in person or though counsel. Having entertained the arguments of the parties, reviewed the court file, and being otherwise fully advised in the premises, the court now rules on said motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This is a case by the State against several defendants pursuant to Iowa Code Section 714.16, the Iowa Consumer Fraud Act. The petition seeks monetary relief, civil penalties, and permanent injunctive relief for the defendants' alleged violations of the Iowa Consumer Fraud Act. On December 18, 2019, the State filed its Motion for Summary Judgment in this matter. The defendants did not file any written resistance to the State's motion. Defendants Barnum, L. Barnum, and Nance did personally appear at the hearing and made argument to the court.

The following facts are undisputed or viewed in the light most favorable to the defendants for purposes of this summary judgment motion. Defendants Barnum, L. Barnum, and Kelsey Sagers are all residents of the State of Iowa. See Pl. SUMF ¶5-6; 8. Defendant Nance is a resident of the state of Illinois. See Pl. SUMF ¶7. With the exception of Greater Solutions, LLC, the remaining defendants are Iowa limited liability companies. See Pl. SUMF ¶9-10; 12; 15. Greater Solutions, LLC is an Illinois limited liability company. See Pl. SUMF ¶20. Each of the limited liability companies are owned and were organized by one or more of the individual defendants, Barnum, L. Barnum, and Nance. See Pl. SUMF ¶9-20. The businesses were engaged in the nationwide sale of advertising space on promotional items. See Pl. SUMF ¶9-23. One or more of the individual defendants opened bank accounts and credit card processing accounts for each of the limited liability companies. See Pl. SUMF ¶9-23. Defendant Sagers held herself out to be the manager of Greater Solutions, LLC. See Pl. SUMF ¶21.

The defendants contacted consumers, offering to sell them advertising space on paper promotional items, such as high school sports calendars, business brochures direct

mailers and city guides. See Pl. SUMF ¶24. The defendants falsely told the consumers that they were associated or contracted with the consumer's local schools or Chamber of Commerce. See Pl. SUMF ¶30. They promised the consumers that the paper promotional items would be widely distributed throughout the consumers' local community. See Pl. SUMF ¶26. When speaking with consumers, the defendants would utilize fake names and refer to nonexistent company departments to give consumers the impression they were calling on behalf of legitimate businesses. See Pl. SUMF ¶31. During their contact with consumers, the defendants would make false representations and statements to consumers that they would make or manufacture promotional items for the consumers. See Pl. SUMF ¶32. The defendants would falsely tell the consumers that 5,000, or thousands of the promotional items would be distributed throughout the community, including representing that 5,000 high school sports calendars would be distributed through their towns. See Pl. SUMF ¶33-34. The defendants often told the consumers that they would send 25-50 courtesy copies of the promotional items to the consumers, but often those items were never sent. See Pl. SUMF ¶41-42. The defendants never made, manufactured or sent any of the thousands of promotional items promised to the consumers. See Pl. SUMF ¶51-52.

When the consumers agree to purchase the promotional items from the defendants, the defendants pressure the consumers to pay for the items immediately by credit card, with the assistance of the credit card processing accounts opened and contracted by the defendants. See Pl. SUMF ¶46; 71-72. The cost of the advertisements paid for by consumers' credit cards cost between a few hundred dollars to more than $1000.00 depending on the size and number of advertisements purchased. See Pl.

SUMF ¶47. If consumers will not pay for the promised advertisements by credit card, the defendants obtained the consumers' bank account information and created paper checks drawn on the consumers' accounts with one or more of the defendants as the payee. See Pl. SUMF ¶48; 73.

Although the consumers who agreed to purchase the promised promotional items initial authorized payment for those items, the consumers never received what the defendants promised to deliver. See Pl. SUMF ¶51-52. Additionally, days and months after receiving the consumers' bank information, the defendants would create additional remotely-created checks on the consumers' bank accounts "paying" themselves additional moneys they were not entitled to. See Pl. SUMF ¶54-55; 73.

The defendants would also contact consumers, threatening them with collection referrals, and falsely telling the consumers that they owed money for previously ordered items. See Pl. SUMF ¶56. The defendants would tell consumers that they previously agreed to order and pay for these items, indicating they had notes and recordings of the consumers' conversations. Id. While some of these consumers were ones the defendants had previously spoken with, some had never had any contact with the defendants, despite the defendants' assertions these consumers owed a past-due debt. See Pl. SUMF ¶57.

The defendants received customer complaints by email, telephone, and through the Better Business Bureau. When enough complaints came through, Defendant Barnum would set up a new limited liability company to continue the same practices. See Pl. SUMF ¶53. Defendant Barnum's practice of opening new limited liability companies continued, even after the State initiated this lawsuit. See Pl. SUMF ¶58.

Between January 2016 and January 2019, the limited liability companies' bank accounts received $1,940,335.41 in deposits from money taken from consumers. See Pl. SUMF ¶74. Seven individual consumers cooperated with the State during their investigation. Those seven consumers lost a total of $203,184.00 because of the defendants' conduct. See Pl. SUMF ¶75.

Additional facts will be set forth in the discussion below.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); Parish v. Jumpking, Inc., 719 N.W.2d 540, 543 (Iowa 2006). When the only conflict concerns the legal consequences of undisputed facts, summary judgment is appropriate. Wilson v. Farm Bureau Mut. Ins. Co., 714 N.W.2d 250, 255 (Iowa 2006) (citing Farms Nat'l Bank of Winfield v. Winfield Implement Co., 702 N.W.2d 465, 466 (Iowa 2005)). A party is entitled to summary judgment only if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Ratcliff v. Graether, 697 N.W.2d 119, 123 (Iowa 2005) (citing Berte v. Bode, 692 N.W.2d 368, 370 (Iowa 2005)).

An issue of fact exists if reasonable minds can differ on how an issue should be resolved, but "if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper." Kilts, 581 N.W.2d at 191 (Iowa Ct. App. 1998) (quoting Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423

(Iowa 1988)). An issue of fact is material only when it will affect the outcome of the case, in light of the applicable law. Des Moines Register v. Dwyer, 542 N.W.2d 491, 495 (Iowa 1996). A genuine issue of fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The party requesting summary judgment bears the burden to prove no genuine issue of material fact exists. Varnum v. Brien, 763 N.W.2d 862, 874 (Iowa 2009) (citing Hunter v. City of Des Moines Mun. Hous. Auth., 742 N.W.2d 578, 584 (Iowa 2007)). At the summary judgment stage, the court is to draw all reasonable inferences, without resort to speculation, in favor of the nonmoving party. Walderbach v. Archdiocese of Dubuque, Inc., 730 N.W.2d 198,199-200 (Iowa 2007). To resist the motion, the nonmoving party must set forth facts that constitute competent evidence showing a prima facie claim. Hoefer v. Wisconsin Educ. Ass'n Ins. Trust, 470 N.W.2d 336, 339 (Iowa 1991) (citing Fogel v. Trustees of Iowa Coll., 446 N.W.2d 451, 454 (Iowa 1989)).

ANALYSIS

The State argues that it is entitled to judgment as a matter of law on each of its claims. After a careful review of the record, the court concludes that summary judgment is appropriate.

A. Undisputed Facts in the Summary Judgment Record.

Iowa Rule of Civil Procedure 1.981 governs motions for summary judgment. It sets forth the requirements for both the motion and any resistance. With respect to the resistance, the rule provides, "[w]hen a motion for summary judgment is made and

supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered." Iowa R. Civ. P. 1.981.

In this case, the State filed a lengthy Statement of Undisputed Facts in support of its motion for summary judgment. None of the defendants properly resisted the State's motion. They did not dispute the State's Statement of Undisputed Facts, and they did not provide the court with their own statements of disputed or undisputed facts. Barnum, L. Barnum, and Nance did personally appear at the summary judgment hearing. L. Barnum and Nance denied any knowledge of the facts underlying this lawsuit. Barnum acknowledged he had made mistakes in the handling of his businesses, asserted his belief that the State was vindictive in its prosecution of this case, and asked for leniency from the court. The defendants' statements at the hearing are mere allegations and are not sufficient to create a genuine issue of material fact on their own. The court, therefore, will enter summary judgment on the State's claims against all defendants, if summary judgment is supported by the record.

With respect to Barnum, L. Barnum, and Nance, however, there is one more layer the court is required to consider. Each of these defendants invoked their Fifth Amendment right against self-incrimination during discovery. Specifically, they elected to invoke this privilege to every deposition question asked to them, with the exception of their names and addresses. For each of these deposition questions, the court may infer that the answer to each of these questions is adverse to them. See e.g. Craig Foster

Ford v. Dept. of Transp., 562 N.W.2d 618, 623-24 (Iowa 1997) (holding "a trial court may infer in a civil case from a party's refusal to answer based on a claim of privilege against self-incrimination that the answer would be adverse to the party.")

Additionally, while Barnum, L. Barnum, and Nance have the right to invoke their Fifth Amendment privileges against self-incrimination, their refusal to answer deposition questions cannot in and of itself prevent entry of summary judgment. See e.g. Bauer v. Stern Finance Company, 169 N.W.2d 850, 854 (Iowa 1969) (stating "the absence of a genuine issue of fact—from whatever cause—justifies in appropriate cases the entry of summary judgment. The Reason for such absence is incidental; the Fact of the absence is determinative.") When the defendants fail to answer questions involving material facts, the plaintiff's evidence is to be taken as conclusive on those issues, and summary judgment is appropriate if no genuine facts exist in the remainder of the record. Bauer, 169 N.W.2d at 854. The court, accordingly, draws an adverse inference from each of the questions Barnum, L. Barnum, and Nance refused to answer during the discovery phase of this lawsuit.

B. Evidence of Unfair Practices, Fraud, Misrepresentation, Deception, and False Promises in the Record.

The State brought this lawsuit under the Iowa Consumer Fraud Act. The Consumer Fraud Act exists to protect consumers from deceptive and unfair business practices. See State ex rel. Miller v. Hydro Mag, Ltd., 436 N.W.2d 617, 620 (Iowa 1989). Upon a preponderance of clear, convincing, and satisfactory evidence, the Act allows the court to enter orders "to prevent fraudulent acts and to restore any person [the] money or property taken by unlawful acts." Hydro Mag, 436 N.W.2d at 620. Those orders may

prohibit "any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, [or] trustee…" from engaging in unlawful acts. Iowa Code § 714.16(1)(j) (2019). The court's authority to issue orders is not restricted solely to merchandise sellers. Those orders may be directed to any person or entity used in connection with the unlawful practice, including those used in post-sale conduct. See State ex rel, Miller v. Cutty's Des Moines Camping Club, Inc., 694 N.W.2d 518, 530-31 (Iowa 2005).

The Iowa Consumer Fraud Act defines unlawful practice as:

> The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged…

Iowa Code § 714.16(2)(a) (2019). "Unfair practice" is defined as an "act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces." Iowa Code §714.16(1)(n) (2019). "Deception" is an "act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts." Iowa Code §714.16(1)(f) (2019). These provisions are to be interpreted broadly and are designed "to infuse flexible equitable principles into consumer protection law so that it may respond to the myriad of unscrupulous business practices modern consumers face." State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 13, 34 (Iowa 2013).

When determining whether the defendants committed violations of the Iowa Consumer Fraud Act, the court is required to determine the defendants' solicitations and business practices to determine whether they are unfair or deceptive. Vertue, 834 N.W.2d at 33. In so doing, the court must determine if the practices are likely to mislead consumers. Id. at 34. Solicitations and business practices are misleading if their "'overall or 'net impression[s]'" are misleading, even if they include some truthful information. Id. Unlike common law fraud cases, the State is not required to prove the victims relied on the misleading elements or that they were damaged by them. Id. at 30-31. The State is also not required to prove the defendants had an intent to deceive the victims, that they had knowledge of the falsities or that they were ignorant of the truth. Id. The State is only required to prove the defendants committed the "unlawful practices" alleged in its petition[1].

In this case, there are no genuine issues of material fact to prevent summary judgment. The State has proven by a preponderance of clear, convincing and satisfactory evidence that the defendants engaged in unfair practices, deception, fraud and other unlawful acts. The defendants solicited consumers by email and telephone, indicating that they would make and/or manufacture paper promotional items for the consumers. See Pl. SUMF ¶ 24; 30; 32. The defendants, both verbally and in writing told consumers they would create and place an advertisement for the consumer's business on a paper promotional item. See Pl. SUMF ¶32; 34-38. By email and telephone, the defendants represented that they would widely distribute the promotional materials throughout the

[1] / The only exception to the elimination of these common law fraud elements is when the State is seeking to prove the concealment, suppression or omission of a material fact. Vertrue, 834 N.W.2d at 30-31. That exception is not relelvant in this case.

consumers' local communities. See Pl. SUMF ¶ 35; 34-38. During these written and verbal solicitations, the defendants falsely represented to the consumers that they were a faith-based organization. See Pl. SUMF ¶39.

The defendants failed, however, to make or produce the paper promotional items containing the consumers' advertisements. See Pl. SUMF ¶51. They also failed to distribute any paper promotional items containing the consumers' advertisements as promised. See Pl. SUMF ¶52. Despite these failures, the defendants obtained bank and credit card account information from the consumers. See Pl. SUMF ¶ 46-49; 55. The defendants ran unauthorized credit card charges on the consumers' accounts. See Pl. SUMF ¶61. They created and ran unauthorized electronic checks through the consumers' checking accounts. See Pl. SUMF ¶61 .

In other instances, the defendants falsely told consumers they had previously agreed to purchase advertising, when the consumers had not agreed to do so. See Pl. SUMF ¶61. They falsely told consumers that payments for advertising were past-due. See Pl. SUMF ¶61. Without any legitimate basis, the defendants told consumers that they would turn them over to a collection agency if they did not pay money for advertising. See Pl. SUMF ¶61. In the alternative, they offered to reduce the amount of money "owed" for advertising, if the consumers paid the "debt" immediately over the telephone. See Pl. SUMF ¶61. When the consumers told the defendants they had not entered into any such agreements for advertising, the defendants deceived and confused the consumers by telling them that the defendants had notes of prior conversations with the consumers. See Pl. SUMF ¶61.

Each of these behaviors is a violation of the Iowa Consumer Fraud Act. The defendants' statements in their verbal and written solicitations were false. The defendants unlawfully took money from the consumers, and the consumers did not obtain any benefit from the defendants. The defendants made unauthorized charges to the consumers' credit card accounts and unauthorized debits from the consumers' bank accounts. These actions are, accordingly, unfair practices within the meaning of the Iowa Consumer Fraud Act. Because no genuine issues of material fact exist on this record, summary judgment in favor of the State is appropriate.

C. Requested Remedies.

1. Permanent Injunction.

"If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain…[a] permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice." Iowa Code § 714.16(7) (2019). Here, the State requests and the court finds it appropriate to enter a permanent injunction. The court, accordingly, will convert the temporary injunction entered on July 26, 2019, into a permanent injunction[2].

2. Civil Penalties.

In addition to injunctive relief, the Iowa Consumer Fraud Act also authorizes the court to impose civil penalties for each violation of the Act. Iowa Code §714.16(7) (2019).

[2] / To the extent there is still a pending motion to reconsider the temporary injunction order, that request is DENIED.

For each such violation, the amount of the civil penalty must not exceed $40,000.00. Id. The State has identified sixteen (16) violations of the Consumer Fraud Act:

1. Representing in written email solicitations to consumers that defendants will or make or manufacture paper promotional items;

2. Verbally representing to consumers by telephone that defendants will make or manufacture paper promotional items;

3. Representing in written email solicitations to consumers that defendants will create and place an advertisement for the consumer's business on a paper promotional item;

4. Verbally representing to consumers by telephone that defendants will create and place an advertisement for the consumer's business on a paper promotional item;

5. Representing in written emails to consumers that the promotional items would be widely distributed in the consumer's local community;

6. Verbally representing to consumers by telephone that the promotional items would be widely distributed in the consumer's local community;

7. Falsely representing to consumers that defendants were a Christian or faith-based organization;

8. Failing to make or produce the paper promotional item containing the consumer's advertisement;

9. Failing to distribute the paper promotional item containing the consumer's advertisement in the consumer's local community as warranted;

10. Running unauthorized credit card charges on consumer's credit cards;

11. Creating and running unauthorized electronic or remotely-created checks through consumer's checking accounts;

12. Telling consumers that they had previously agreed to purchase advertising when no such agreement had been made;

13. Telling consumers that payment for the previously agreed-to advertising was past due and must be paid immediately;

14. Threatening consumers that if they did not immediately pay the fictitious debt for previously agreed-to advertising, that defendants would turn them over to a collection agency;

15. Deceiving and confusing consumers into believing they did in fact owe money for previously agreed-to advertising by telling consumers that defendants had notes of the conversations in which the consumer had agreed to purchase the advertising; and

16. Offering consumers debt relief by offering to reduce the fictitious debt owed by the consumer if the consumer paid a lesser amount that day, over the telephone.

There are no genuine issues of material fact in this record with respect to these violations. The State has proven each one by a preponderance of clear, convincing and satisfactory evidence. These violations occurred over a three-year period. The defendants received nearly two million dollars from consumers—all monies they were not entitled to receive. Even after the State initiated this lawsuit, the defendants continued to engage in unlawful practices. The undisputed summary judgment record shows that the

defendants engaged in intentional and purposeful conduct that damaged the consumers. Under the undisputed facts in this record, the maximum penalty of $40,000.00 for each violation is warranted to deter future violations of the Iowa Consumer Fraud Act.

3. Restitution.

In this case, the State has also proven by a preponderance of clear, convincing and satisfactory evidence that seven individual consumers lost a total of $203,184.00 because of the defendants' conduct. See Pl. SUMF ¶75. Restitution is an allowable remedy under the Iowa Consumer Fraud Statute and, therefore, is appropriately awarded as follows:

(1) an award of $115,334.00 in restitution to Alicia Gibbons;

(2) an award of $50,000.00 in restitution to Gary Mueller;

(3) an award of $7,400.00 in restitution to Amber James;

(4) an award of $20,000.00 in restitution to Michael Jordan;

(5) an award of $7,500 in restitution to Beckie Kukal;

(6) an award of $2,600.00 in restitution to JoAnn Riechers; and

(7) an award of $350.00 in restitution to James Parizek.

4. Disgorgement.

The Iowa Consumer Fraud Act allows the court to order disgorgement of "moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this action."

Iowa Code §714.16(7) (2019). Disgorgement is appropriate when the "consumers entitled to reimbursement cannot be located through reasonable efforts." Id. "Generally, disgorgement is a form of "[r]estitution measured by the defendant's wrongful gain." Kokesh v. S.E.C., 137 S. Ct. 1635, 1640, 198 L. Ed. 2d 86 (2017) (quoting Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment *a,* p. 204 (2010) (Restatement (Third)). It "requires that the defendant give up "those gains ... properly attributable to the defendant's interference with the claimant's legally protected rights." Id. Disgorgement is ordered to "deprive ... defendants of their profits in order to remove any monetary reward for violating [the] laws and to protect the…public by providing an effective deterrent to future violations." Kokesh, 137 S. Ct. at 1640 (internal citations omitted).

The court was unable to find any Iowa cases containing an in depth discussion of disgorgement under Iowa Code §714.16. It appears that disgorgement is an equitable remedy generally used by courts in securities cases. The court, accordingly, finds federal cases involving disgorgement to be instructive to the appropriateness of disgorgement in the current case. Those cases suggest that the State bears the initial burden of proving the amount of illicit profits. After the State makes its initial showing, the burden shifts to the defendants to prove the profits were obtained in a lawful manner. See e.g. S.E.C. v. First City Fin. Corp., 890 F.2d 1215, 1232 (D.C. Cir. 1989). Because of the burden shifting involved in making a disgorgement award, such an award would be rarely appropriate on summary judgment.

Under the unique facts of this case, the court finds a disgorgement award can be made on summary judgment, however. Here, defendants Barnum and Nance declined

to answer a written interrogatory that the defendant LLCs generated $1,940,335.41 in profits between January 2016 and January 209. See Pl. SUMF ¶74. In declining to answer this interrogatory, Barnum and Nance invoked their Fifth Amendment privilege against self-incrimination. Id. The court can, and does, draw an inference that the answer to this interrogatory would be adverse to them—that the LLCs did, in fact, generate $1,940,335.41 in profits during the time period at issue in this lawsuit. Similarly, Barnum and Nance invoked their Fifth Amendment privilege against self-incrimination and refused to answer interrogatories that asked Barnum and Nance to admit no promotional items were made or distributed by the defendants. See Pl. SUMF ¶51-52. Again, the court draws an inference that the answer to these interrogatories would be adverse—that no promotional materials were made or sent to the consumers. The State, therefore, has carried its initial burden that the $1,940,335.41 deposited into the defendants' bank accounts were profits from unlawful acts.

The burden now shifts to the defendants to prove some or all of these profits were from a legitimate source. The defendants cannot do so. Between the adverse inferences and the failure to present any additional disputed facts, the nature of the deposits into the defendants' bank accounts are undisputed in this summary judgment record. Even if trial is generally appropriate to allow the defendants a forum to attempt to carry their burden, it would be futile here. The defendants failed to provide the State with the required initial disclosure materials. The State moved to compel the materials, and even after receiving additional time from the court to respond, the defendants failed to do so. As a discovery sanction, the court limited the defendants' evidence at trial to the handful of documents they had produced prior to the court ordered deadline. If this case were to proceed to

trial on the State's disgorgement request, the defendants would be unable to present any evidence to rebut the summary judgment record. Proceeding to a trial would be futile. The court, accordingly, finds that the State's request for disgorgement is appropriate under the current summary judgment record and procedural history of this case.

5. Attorney Fees and Costs.

The Iowa Consumer Fraud Act allows the State to "recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees…" Iowa Code §714.16(11) (2019). The court finds that an award of costs and reasonable attorneys' fees is warranted in this case. Costs will be assessed against the defendant. The State shall have ten (10) days from the date of this order to submit an attorney fee affidavit. The defendants may file any resistance or response within seven (7) days after the State files its attorney fee affidavit. An order for attorneys' fees will be entered by separate order.

ORDER

IT IS THEREFORE ORDERED that the State's Motion for Summary Judgment is is **GRANTED.**

IT IS FURTHER ORDERED that Defendants and each of defendant's agents, employees, independent contractors, salespersons, servants, representatives, officers and directors, principals, partners, members, affiliates, predecessors, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations, and business entities acting in concert with or participating with defendants, including but not limited to Paul Barnes, Misty Barnes, Destiney Hurstrom,

Kelsey Sagers a/ka Kelsey Patterson, Henry Alexander Clark, Latosha Morrison, Joe Lewis, Joswa Lewis, and any other person who has actual or constructive notice of the court's injunction, individually, in conjunction with others, or directing others to do on their behalf, are permanently enjoined from:

1. Creating, incorporating, filing, employing, or using any LLC and any other form of business entity, for the purpose of conducting any business or activity involving:

A) telemarketing,

B) the sale of advertising,

C) the sale of promotional items, and

D) the sale of promotional items containing advertising;

2. Engaging in telemarketing, that is, the marketing of goods or services by means of telephone calls to potential customers;

3. Using electronic or digital means, including but not limited to emails and websites, to communicate with potential customers for the purpose of soliciting customers or sales;

4. Creating, endorsing, presenting, cashing, and/or depositing any check or draft, payable to any defendant, which has been electronically or remotely created by any defendant or at the direction of any defendant, on the account of any other person or business entity;

5. Applying for and/or using any merchant account, credit card processing account, and bank account for the purpose of conducting any business or activity involving:

A) telemarketing,

B) the sale of advertising,

C) the sale of promotional items, and

D) the sale of promotional items containing advertising.

Further, each defendant limited liability company is dissolved by this order, which dissolution shall be filed with the Iowa and Illinois Secretary of State's Corporation Divisions, and defendants are permanently enjoined from using those entities and business names.

IT IS FURTHER ORDERED that pursuant to Iowa Code §714.16(7), a civil penalty is imposed jointly and severally against the defendants in the following amounts:

1. $40,000.00 for representing in written email solicitations to consumers that defendants will make or manufacture paper promotional items;

2. $40,000.00 for verbally representing to consumers by telephone that defendants will make or manufacture paper promotional items;

3. $40,000.00 for representing in written email solicitations to consumers that defendants will create and place an advertisement for the consumer’s business on a paper promotional item;

4. $40,000.00 for verbally representing to consumers by telephone that defendants will create and place an advertisement for the consumer's business on a paper promotional item;

5. $40,000.00 for representing in written emails to consumers that the promotional items would be widely distributed in the consumer's local community;

6. $40,000.00 for verbally representing to consumers by telephone that the promotional items would be widely distributed in the consumer's local community;

7. $40,000.00 for falsely representing to consumers that defendants were a Christian or faith-based organization;

8. $40,000.00 for failing to make or produce the paper promotional item containing the consumer's advertisement;

9. $40,000.00 for failing to distribute the paper promotional item containing the consumer's advertisement in the consumer's local community as warranted;

10. $40,000.00 for running unauthorized credit card charges on consumer's credit cards;

11. $40,000.00 for creating and running unauthorized electronic or remotely-created checks through consumer's checking accounts;

12. $40,000.00 for telling consumers that they had previously agreed to purchase advertising when no such agreement had been made;

13. $40,000.00 for telling consumers that payment for the previously agreed-to advertising was past due and must be paid immediately;

14. $40,000.00 for threatening consumers that if they did not immediately pay the fictitious debt for previously agreed-to advertising, that defendants would turn them over to a collection agency;

15. $40,000.00 for deceiving and confusing consumers into believing they did in fact owe money for previously agreed-to advertising by telling consumers that defendants had notes of the conversations in which the consumer had agreed to purchase the advertising; and

16. $40,000.00 for offering consumers debt relief by offering to reduce the fictious debt owed by the consumer if the consumer paid a lesser amount that day, over the telephone.

For a total civil penalty of **$640,000.00**.

IT IS FURTHER ORDERED that the defendants are ordered to make restitution to each consumer victim who provided substantial assistance to the State in its investigation and prosecution of this matter totaling **$203,184.00**, to be distributed as follows:

i. $115,334 in restitution to Alicia Gibbons;

ii. $50,000.00 in restitution to Gary Mueller;

iii. $7,400.00 in restitution to Amber James;

iv. $20,000.00 in restitution to Michael Jordan;

v. $7,500 in restitution to Beckie Kukal;

vi. $2,600.00 in restitution to JoAnn Riechers;

vii. $350.00 in restitution to James Parizek.

For a total restitution amount of **$203,184.00**. This restitution obligation is imposed jointly and severally against all named defendants.

IT IS FURTHER ORDERED that disgorgement in the amount of **$1,737,151.41** is ordered jointly and severally against all named defendants.

IT IS FURTHER ORDERED that attorney fees arising out of the previous Motion for Sanctions is awarded to the State in the amount of **$720.00**.

IT IS FURTHER ORDERED that costs are assessed to the defendants.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQCE083843	STATE OF IOWA VS ALPHONSO WADE BARNUM ET AL

So Ordered

Heather Lauber, District Judge,
Fifth Judicial District of Iowa