

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

MISTY BARNES (Formerly known as Misty Stein, Misty Tunnell and Misty Delgado);
PAUL MICHAEL BARNES,
PM SPECIALTIES,
MILESTONE CONSULTING, AND
JOHN DOE BUSINESS ENTITIES 1-5,

Defendants.

EQUITY EQCE 132680

**ORDER GRANTING PRELIMINARY
INJUNCITON**

This is a case by the State against several Defendants pursuant to the Iowa Consumer Fraud Act, Iowa Code Section 714.16. The State of Iowa, office of the Attorney General, filed a Petition and Application for Temporary and Permanent Injunction on February 18, 2020. The Petition seeks monetary relief, civil penalties, and temporary and permanent injunctive relief for the Defendants' alleged violations of the Iowa Consumer Fraud Act. Filed with the Petition as Exhibits A through O were the affidavits of 15 consumers who each describe the harm they suffered as a result of Defendants' business practices. On March 25, 2020, the State filed an additional affidavit of state investigator Alberto Perales.

The individual Defendants are married and the two corporate Defendants are businesses created by both of the individual Defendants. The file demonstrates that all Defendants were served with the Petition and Original Notice on February 19, 2020. By Order dated February 26, 2020 the Court set the State's Application for Temporary Injunction for hearing on March 27, 2020 at 8:30 a.m. On March 6, 2020 the State filed a Certificate of Service showing the State served the

February 26, 2020 Order setting hearing on Defendants by U.S. mail to three different addresses of the individual Defendants and four different email addresses used by the Defendants. By Order dated March 23, 2020, which the State served on Defendants via email the same day, the parties were instructed to appear at the March 27 hearing by telephone by calling the number for court administration provided in the Order. The State, through Assistant Attorneys General William Pearson and Mariclare Thennes Culver appeared at the March 27 hearing by telephone, along with investigator Alberto Perales. None of the Defendants called in to participate in the hearing on the temporary injunction. None of the Defendants has filed an answer, nor has any Defendant filed affidavits or anything else in resistance to the State's application for a preliminary injunction.

The Court, fully apprised in the premises, FINDS AS FOLLOWS:

Defendant Misty Barnes, formerly known as Misty Stein, Misty Tunnell, and Misty Delgado, and Defendant Paul Michael Barnes, at all times material hereto are or were citizens of the State of Iowa, residing in Davenport and Bettendorf, Scott County Iowa. Misty and Paul Barnes created, own and operate one or more of the Defendant business entities, including but not limited to PM Specialties and Milestone Consulting.

Defendant PM Specialties was created by Paul and Misty Barnes and used by them to engage in telemarketing. PM Specialties does not appear to have any corporate form and is not legally registered to do business in the State of Iowa. PM Specialties at all times material hereto was engaged nationwide in the sale of advertising on alleged digital platforms and paper promotional products, selling "marketing boosting online," "online boosting marketing and advertising," "digital marketing and consulting services," "digital marketing search engines," "digital boosting," "marketing boosting online on all search engines and social media sites," "consulting," and similar services and goods. PM Specialties at all times material hereto was

engaged nationwide in telemarketing and has been used by Paul and Misty Banes to perpetrate the nationwide frauds as described in the Petition and affidavits.

Defendant Milestone Consulting was created by Paul and Misty Barnes and used by them to engage in telemarketing. Milestone Consulting does not appear to have any corporate form and is not legally registered to do business in the State of Iowa. Milestone Consulting at all times material hereto was engaged nationwide in telemarketing and has been used by Paul and Misty Banes to perpetrate the nationwide frauds as described in this Petition. At all times, Defendants Paul and Misty Barnes have held themselves out to be the owners of PM Specialties and Milestone Consulting.

Pursuant to the 16 affidavits on file, which Defendants have not contested, the evidence establishes that Defendants engaged in business practices which violate the Iowa Consumer Fraud Act, including but not limited to the following, by:

- a. Falsely informing consumers that Defendants are contracted with/associated with the consumer's local government and/or selling advertising space on fictitious government or community publications;
- b. Falsely informing consumers that Defendants can "boost" traffic to the consumer's business website, describing their services as including but not limited to, "Digital Boosting," "Marketing Boosting Online," "online boosting marketing and advertising" "digital marketing and consulting services," "digital marketing search engines," "marketing boosting online on all search engines and social media sites," and selling consumers such services. Defendants do not obtain administrative access to the consumer's website in the first instance to make necessary online content changes, nor do they discuss such changes with consumers or make any changes to the consumers'

- websites to boost traffic to the website;
- c. Using a system of fictitious invoices, whereby Defendants send a consumer a fictitious back-dated invoice which they claim is now due, for goods or services the consumer never agreed to purchase; Defendants then call the consumers, who never agreed to purchase a good or service from Defendants, and tell consumers that their payment on the (fictitious) invoice due Defendants is overdue;
 - d. Defendants also call consumers for the first time, who have never agreed to purchase a good or service from Defendants, and tell the consumer that their credit card payment some time ago did not go through and that the consumer now needs to send Defendants a check;
 - e. Defendants use a mobile banking app and request consumers to write their check, take a picture of the front and back of the check and text the check photos to Defendants. Using the mobile banking app, Defendants then quickly deposit the check, but falsely tell the consumer that Defendants ripped up the first check after making a mobile deposit. Defendants then tell consumers that the check did not go through and that the consumer needs to write another check immediately and text a picture of the front and back of the check to Defendants. Defendants quickly secure two payments from consumers in this fashion;
 - f. Defendants obtain consumers' credit card information by telephone, whereby consumers give Defendants all of their card account information to make a credit card payment by telephone. Defendants retain the consumers' credit card account information and make unauthorized charges, in the form of payments to themselves, on consumers' credit cards;

- g. Using false statements and misrepresentations to consumers to obtain more money from consumers, including but not limited to repeatedly telling consumers that they owe Defendants more and more money for alleged services or goods provided;
- h. Falsely telling consumers who have been victimized by another telemarketer called Universal AdCom (“UAC”), that Defendants can get a refund for consumers from UAC;
- i. Falsely telling consumers that Defendants got a refund from UAC for the consumer, but that the refund must be credited back to the same credit card that the consumer originally paid UAC with; once Defendants obtain the consumer’s credit card account information, they make unauthorized credit card charges on the account, payable to Defendants;
- j. Falsely telling consumers that Defendants are working with the Attorney General’s office in various states, including Iowa, in investigating and trying to stop UAC from scamming consumers;
- k. Falsely telling consumers that there is a lawsuit or class action against UAC that Defendants will add the consumer to for free, as Defendants falsely tell consumers that they are working with attorneys on the fictitious lawsuit against UAC;
- l. Falsely telling consumers that Defendants have an insurance company that is willing to pay consumers up to \$10,000.00 each in the future while the consumer waits for their refund from UAC, if the consumer will pay the fictitious insurance company (i.e., Defendants) several thousand dollars now;
- m. After making multiple unauthorized charges on consumers’ credit cards as “Milestone Consulting,” Defendants Paul and Misty Barnes, who created and operated Milestone

Consulting, told consumers that the credit card charges were not made by Defendants but had actually been made by UAC using the name Milestone Consulting;

n. Operating one or more websites for their businesses that contain a multitude of false and/or misleading statements, including but not limited to that Defendants offer “comprehensive consults,” offer “individual marketing plans,” and operate their business with “honest advice with integrity.”

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). 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). Pursuant to Iowa law, 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).

However, the Iowa Consumer Fraud Act is not merely a codification of common law fraud. *State of Iowa, ex rel Thomas J. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 622 (1989). The Act specifically abrogates several of the elements of common law fraud as follows: “Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, **it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity** of the claim or ignorance of the truth.” Iowa Code section 714.16(7) (2019) (emphasis added).

Iowa Rule of Civil Procedure 1.1502(1) specifically allows a request for temporary injunctive relief to be “supported by affidavit.” Iowa case law further recognizes that such a request may also be supported by “sworn testimony.” *Kleman v. Charles City Police Department*, 373 N.W.2d 90, 95-96 (Iowa 1985). The Iowa Supreme Court and Court of Appeals have long recognized the admissibility of affidavits to support injunctive relief. See, e.g., *Ney v. Ney*, 891 N.W.2d 446, 450 (Iowa 2017) (affidavits may be considered in determining whether to issue a temporary injunction); *Matlock v. Weets*, 531 NW 2d 118, 122 (Iowa 1995) (temporary injunction granted based on 16-page affidavit and petition); *Kleman v. Charles City Police Dept.*, 373 NW 2d 90, 95 (Iowa 1985)(affidavits may be considered in determining whether a temporary injunction may be allowed); *Jefferson County v. Barton-Douglas Contr.*, 282 N.W.2d 155, 157 (Iowa 1979) (*ex parte* injunction issued on strength of plaintiff’s affidavit supporting the allegations of the petition); *Atlas Mini Storage v. First Interstate Bank*, 426 N.W.2d 686, 689 (Iowa Ct. App. 1988) (affidavits may be considered in determining whether a temporary injunction may be allowed). Iowa law is in accord with its federal counterpart, as the Federal Rules of Civil Procedure also explicitly state that a court may enter a temporary restraining order on the basis of an affidavit or

verified complaint. F.R.Civ.P. 65(b)(1)(A) (2018).

Iowa Rule 1.1502 governing temporary injunctions further provides that temporary injunctions may be granted in any case specially authorized by statute. I.R.Civ.P. 1.1502(3). The Iowa Consumer Fraud Act is such a statute. Iowa Code section 714.16(7) provides:

A civil action pursuant to this section shall be by equitable proceedings. 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 in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section....

The issuance or refusal to issue a temporary injunction rests largely in the sound discretion of the trial court, and an appellate court will not ordinarily interfere with such ruling unless there is an abuse of discretion or a violation of some principle of equity. *Iowa State Department of Health v. Hertko*, 282 N.W.2d 744, 751 (Iowa 1979).

Pursuant to I.R.Civ.P. 1.1502(1), a temporary injunction may be entered in any case specially authorized by statute and may be supported by affidavit. When, as here, an injunction is specially authorized by statute, the usual requirements for injunctive relief do not apply, and it is sufficient to meet the statutory conditions.¹ See Iowa R. Civ. P. 1.1502 (3). See also *State ex rel. Turner v. Limbrecht*, 246 N.W.2d 330, 334 (Iowa 1976), overruled on other grounds by *State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 616, 622 (Iowa 1989).

¹ In an action for an injunction under the Consumer Fraud Act it is not necessary to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in the unlawful act had knowledge of the falsity of the claim or ignorance of the truth, except in an action for the concealment, suppression or omission of a material fact with intent that others rely on it. Iowa Code § 714.16(7).

The Iowa Consumer Fraud Act authorizes the Attorney General to seek a temporary injunction “[i]f 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...” Iowa Code § 714.16(7). Based upon the foregoing factual findings, the Court finds that the Attorney General has sufficiently established facts demonstrating that Defendants have engaged in, are engaging in, or are about to engage in practices declared to be unlawful by the Consumer Fraud Act.

Furthermore, although the usual requirements for injunctive relief do not apply, relief is appropriate weighing and applying the factors relevant to issuance of temporary injunctive relief: likelihood of success on the merits, threat of irreparable harm/no adequate legal remedy, balance of harms, and public interest- the court concludes that the requested temporary injunctive relief is warranted. *See Curtis 1000, Inc. v. Youngblade*, 878 F.Supp. 1224, 1244-49 (N.D. IA 1995); *Kleman*, supra, at 95-96; *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001); *Nichols v. City of Evansdale*, 687 N.W.2d 562, 572 (Iowa 2004)):

A. Likelihood of success on the merits: The court concludes that this factor weighs heavily in favor of the State. The record contains substantial and unrebutted evidence that Defendants have, at all times relevant hereto, been subject to the Iowa Consumer Fraud Act and have been engaging in practices and/or acting in furtherance of practices which are unlawful according to that statute.

B. Threat of irreparable harm/no adequate legal remedy: The court concludes that this factor also weighs heavily in favor of the State. If temporary injunctive relief is not granted, the State’s ability to effectively enforce the Iowa Consumer Fraud Act and to protect consumers will be seriously impaired, perhaps even negated.

C. Balance of Harms: the presumed negative economic impact due to the imposition of

temporary injunctive relief on the Defendants, who failed to produce any evidence of same, is outweighed by the threat of potential harm to the State and consumers if the injunctive relief is not granted and Defendants are allowed to continue their unlawful practices and/or actions in furtherance of same.

D. Public interest: the public's interest in promoting legitimate economic activity by its members is, without doubt, outweighed by the public's interest in being protected from unlawful activity.

IT IS 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 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 temporarily enjoined from:**

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

- A) telemarketing;
- B) Internet, search engine or marketing boosting services, however described;
- C) Consulting services involving marketing and telemarketing;
- D) Universal Adcom and any claim of ability to obtain refunds for consumers from Universal Adcom, add consumers to any alleged litigation involving Universal Adcom, or issuing "Cease and Desist" letters to Universal AdCom on behalf of Consumers;
- E) The sale of advertising in any form; and the sale of promotional items containing advertising;

F) 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, text and internet messages, social media and social media messaging, and websites, whether such accounts or means are in Defendant's names or the names of third persons or entities, to communicate with potential customers for the purpose of soliciting customers or sales of goods or services;

4. Applying for and/or using any merchant account, credit card processing account, mobile banking application, and/or bank account, whether such account is applied for in the name of a Defendant or using the name of third person or entity, for the purpose of conducting any business or activity involving:

- A) telemarketing;
- B) the sale of advertising;
- C) internet or marketing boosting services, however described;
- D) consulting however described;
- E) the sale of promotional items;
- F) the sale of promotional items containing advertising;
- G) directing, accepting and/or receiving photographs of consumers' checks for purposes of depositing same into one or more of Defendant's bank accounts.



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCE132680 **Case Title** STATE OF IOWA EX REL VS BARNES, MISTY AND PAUL

So Ordered

Henry W. Latham II, District Court Judge,
Seventh Judicial District of Iowa