

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 and d/b/a XPRESHION MULTIMEDIA, LLC; LAFAYIA KAY BARNUM; WILLIE C. NANCE; KELSEY J. PATTERSON a/k/a KELSEY J. SAGERS; HENRY ALEXANDER CLARK a/k/a ALEXANDER CLARK; HENRY ALEXANDER CLARK d/b/a XPRESHION MULTIMEDIA; 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 SANCTIONS**

This matter came before the court on July 31, 2019, for a hearing on the plaintiff's Motion for Sanctions. Plaintiff, The State of Iowa ("State"), was represented by attorney Mariclare Culver. Defendant, Lafayia Kay Barnum ("Lafayia"), was represented by attorney Michael Meloy. The remaining defendants were represented by attorney Harold DeLange II. Having entertained the unreported arguments of

counsel, reviewed the court file, and being otherwise fully advised in the premises, the court now rules on said motion.

On May 28, 2019, the court entered an order granting the State's Motion to Compel as it related to all defendants, except Lafayia Barnum.<sup>1</sup> The order gave the defendants fourteen days to supplement their initial disclosures. To date, with the exception of some shipping receipts, the defendants have not supplemented their initial disclosures. The State asserts that the defendants have not provided any credit card documents, including receipts, banks records, customer emails, or tax records in their initial disclosures. The State further notes that the defendants have failed to provide any documents relating to the two newest LLCs or the specific victims referred to in the State's request for temporary injunction. The defendants counter that they have no further documents to produce to the State. If true, the State counters, that this is evidence the defendants intentionally failed to preserve evidence.

The State, accordingly, requests the court impose sanctions against the defendants, including an order precluding them from offering any testimony or evidence about any non-disclosed documents and attorney fees. The State also requests the court impose a \$15,000 penalty against Alphonso Barnum pursuant to Iowa Code Chapter 714.16(7). The defendants resist the State's requests.

The court has serious concerns that the defendants have failed to provide any additional documents, particularly any relating to the two newest LLCs. It defies all rational thought to accept the defendants have no documents in their custody or control

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<sup>1</sup> / The State's Motion for Sanctions specifically quoted the Court's May 28, 2019, order. Accordingly, the court interprets the motion as being directed toward all defendants, except Lafayia Barnum.

to produce. These businesses have been operational, and records relating to their business activities should exist. The court is further concerned that the defendants failed to communicate with the State regarding their supplemental initial disclosure responses. Sanctions, including reasonable attorney fees and an order precluding the defendants from presenting certain evidence at trial, are appropriate in this case.

In addition to these sanctions, the State further requests the imposition of a \$15,000.00 penalty against Alphonso Barnum pursuant to Iowa Code Chapter 714.16(7) for violation of the court's temporary injunction. The court's temporary injunction was issued on Friday, July 26, 2019. The injunction was not in existence when the State requested its discovery sanctions in this case, and the State did not formally request the imposition of a penalty at any time prior to the sanctions hearing. Mr. Barnum was not on notice of the State's request at the time of the hearing, and the court, accordingly, denies the request to impose the penalty at this time.

One other issue arose during the sanctions hearing, and although it is unrelated to the discovery issues, the court will address it now. As part of the State's request for a §714.16(7) penalty, the State relayed that it had viewed Greater Solutions' website the morning of the hearing. The State reported that the website was still active, as was the telephone number associated with the business. The State knew the telephone number was active because its investigator, Al Perales, called it the morning of the sanctions hearing. During the hearing, Mr. Barnum alleged that Mr. Perales contacted him on his personal cell phone number and not on the telephone number associated with Greater Solutions, and he has requested sanctions be imposed against the State for knowingly

telephoning a represented party. The State denied Mr. Barnum's allegations, and both parties have filed supplemental responses on this issue.

The court is deeply troubled by Mr. Barnum's assertions and subsequent filing. While the exact words used in the affidavit (as it relates to how and when Mr. Barnum received the telephone call) may be technically correct, it is at best disingenuous in its omissions and at worst perjurious. The documents presented to the court indicate that the State placed its call to the telephone number associated with Greater Solutions, and was not, as Mr. Barnum implied, placed directly to his personal cell phone number. Additionally, the length of the telephone call is evidence that the State did not intend to communicate with Mr. Barnum directly. This finding is bolstered by the fact that Mr. Barnum called Mr. Perales back, and Mr. Perales did not answer Mr. Barnum's call. Mr. Barnum's assertions and his request for sanctions are completely frivolous. The State, however, is entitled to sanctions against Mr. Barnum. The State may prepare an attorney fee affidavit in connection with its August 2<sup>nd</sup> reply to Mr. Barnum's request for sanctions.

**ORDER**

**IT IS THEREFORE ORDERED** that the State's Motion for Sanctions as it relates to these defendants is **GRANTED**.

**IT IS FURTHER ORDERED** that the defendants shall pay \$1,250.00 in attorney fees to the State for the litigation of the original motion for sanctions.

**IT IS FURTHER ORDERED** that these defendants shall be precluded from questioning any witness or offering any testimony or evidence that derives from or is related to any document not in the State's possession as of the date of this order.

**IT IS FURTHER ORDERED** that the State's request for a penalty pursuant to Iowa Code §714.16(7) is **DENIED**.

**IT IS FURTHER ORDERED** that Mr. Barnum's request for sanctions against the State is **DENIED**. The State's request for additional sanctions against Mr. Barnum is **GRANTED**. The State shall file an attorney fee affidavit within 7 days, indicating the amount of time it invested in filing its August 2, 2019, reply. Upon receipt, the court will review the attorney fee affidavit and enter an appropriate order for additional sanctions.



State of Iowa Courts

**Type:** OTHER ORDER

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

So Ordered

A handwritten signature in black ink, appearing to read 'Heather Lauber', with a long horizontal flourish extending to the right.

Heather Lauber, District Judge,  
Fifth Judicial District of Iowa