

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION**

TABATHA L. KING

PLAINTIFF

VS.

NO. 3:21-cv-03086-MEF

**BAXTER COUNTY, ARKANSAS;
JOHN MONTGOMERY, Sheriff, in his individual
and official capacities;
SERGEANT STEVEN GOODE; and DOES
1-10, in their individual and official capacities**

DEFENDANTS

DEFENDANTS' SUPPLEMENT TO MOTION FOR SANCTIONS

Separate Defendants, Baxter County, Arkansas; John Montgomery, Sheriff, in his individual and official capacities; and Sergeant Steven Goode, in his official capacity only, by and through their attorneys, submit this Supplement to Motion for Sanctions (the "Motion").

1. Since the filing of the Defendants' Motion for Sanctions and the Plaintiff's response thereto, Plaintiff's counsel took the deposition of Separate Defendant Goode.
2. In his recent deposition, Goode testified under oath as follows:
 - a. The Plaintiff and Goode had a consensual relationship in the fall of 2019. Goode Dep. p. 31-34.
 - b. Specifically, in the fall of 2019, while storing mats for the jail, the Plaintiff approached the Defendant, kissed him, grabbed his belt buckle, undid his belt and pant, grabbed his penis, and asked her to "take her on the mats." Exhibit 1, Goode Dep. p. 32-34.



- c. The Plaintiff sent Goode nude photographs of herself. Exhibit 1, Goode Dep. p. 31.
- d. With respect to Goode’s text messages to the Plaintiff, Goode testified that immediately after texting the Plaintiff, Goode deleted the texts and the text chains so that his wife did not see what he was texting to the Plaintiff. Exhibit 1, Goode Dep., p. 12-13.
- e. At the time that the lawsuit was filed, Goode did not have any of the text messages or photographs that were sent between he and the Plaintiff. Exhibit 1, Goode Dep., p. 13.

3. The Plaintiff’s cell phone activity supports the argument that the Plaintiff and Goode were in a consensual welcome relationship in the fall of 2019. In the fall of 2019, the Plaintiff’s cell phone activity with Goode increased exponentially as indicated by the number of minutes that the Plaintiff and Goode spoke by cell phone, the number of the Plaintiff’s outgoing text messages to Goode, and the number of incoming text messages from Goode. Exhibit 2, Phone Record Summary.

MONTH (Year)	MINUTES	INCOMING TEXTS	OUTGOING TEXTS
September (2019)	20	20	42
October (2019)	60	431	721
November (2019)	46	191	297
December (2019)	26	67	133

4. The Defendants are prejudiced in their defense of this lawsuit in that the Plaintiff has deleted over 3,200 text messages, all of which are relevant to the Plaintiff’s claim of unwelcome sexual harassment. The texts would clearly establish whether the Plaintiff found Goode’s conduct at issue to be unwelcome, if she also engaged in such

conduct with Goode, or if she regarded the conduct as undesirable or offensive. *Scusa v. Nestle U.S.A. Co.*, 181 F.3d 958, 966 (8th Cir.1999). Instead, the Plaintiff has produced only ten PDF pages of text message in such a format that the texts are susceptible of having been fabricated, are self-serving and unable to be authenticated.

5. Goode's recent testimony is further relevant to the issue of spoliation in that the Plaintiff attempts to evade her obligations to not destroy evidence while shifting blame to the County. Specifically, the Plaintiff argues that this Court should not consider sanctions against the Plaintiff because the County should have asked Goode for copies of the text messages between Goode and the Plaintiff when Sheriff Montgomery counseled Goode in 2019. Such an argument is a red herring and wholly unsupported by case law. The County was not placed on notice of litigation in 2019. Even if the County had been placed on such notice, the County's obligation is to preserve evidence in its possession and control. The text messages were exchanged between Goode and the Plaintiff on their personal phones. Nonetheless, Goode testified that he deleted the texts on the same day that he would send them.

6. The Plaintiff attempts to lay blame on counsel for the Defendant for not requesting a copy of the phone until January of 2023. The Plaintiff's argument is wholly disingenuous. The Plaintiff had previously advised that counsel on at least two occasions that the phone had been traded in or was otherwise unavailable. For the first time in her deposition in January of 2023, the Plaintiff admitted that she had not, in fact, traded her phone in and that she had possession of her phone. The Defendant immediately requested a forensic examination of the phone, at which time the Plaintiff then claimed that she could not find the phone. The Defendants acted timely and prudently based

upon the information (and misinformation) provided by the Plaintiff.

WHEREFORE, the Defendants respectfully request that this Court sanction the Plaintiff and provide the Defendants with all other just and proper relief to which they may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR BAXTER COUNTY,
ARKANSAS; JOHN MONTGOMERY, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES;
AND SERGEANT STEVEN GOODE, IN HIS
OFFICIAL CAPACITY**

CERTIFICATE OF SERVICE

I certify that on the 24th day of October, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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Susan Keller Kendall